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DISTRICT I

January 11, 2022

To:

Hon. Stephanie Rothstein
Circuit Court Judge
Electronic Notice

John Barrett
Clerk of Circuit Court
Milwaukee County
Electronic Notice

John D. Flynn
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Christine A. Remington
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John L. Dye, Jr. 207379
Waupun Correctional Inst.
P.O. Box 351
Waupun, WI 53963-0351

You are hereby notified that the Court has entered the following opinion and order:

2020AP1412-CR State of Wisconsin v. John L. Dye, Jr. (L.C. # 2000CF1584)

Before Donald, P.J., Dugan and White, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

John L. Dye, Jr., appeals an order denying his petition seeking early release from confinement due to his alleged extraordinary health conditions. Upon our review of the briefs and record, we conclude at conference that this matter is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).¹ Because Dye did not follow the steps required to seek release based on an extraordinary health condition, we affirm.

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

A jury found Dye guilty of kidnapping and first-degree sexual assault by use of a dangerous weapon. At his sentencing in November 2000, the circuit court imposed an aggregate forty-five-year term of imprisonment bifurcated as thirty-five years of initial confinement and ten years of extended supervision.

In July 2020, Dye, then fifty-seven years old, petitioned the circuit court for release from confinement, alleging that he was a person of advanced age and suffering from numerous medical conditions that heightened the risks he faced in the event that he contracted COVID-19. *See* WIS. STAT. § 302.113(9g). The circuit court denied the petition on the ground that Dye failed to take the steps required to proceed under § 302.113(9g). Dye appeals.

Pursuant to WIS. STAT. § 302.113(9g), certain inmates who are at least sixty years of age or who suffer from an extraordinary health condition may seek sentence modification. *See* § 302.113(9g)(b). The inmate must proceed by filing a petition with the program review committee (PRC) at the institution where the inmate is confined. *See* § 302.113(9g)(c). If the PRC concludes that sentence modification would serve the public interest, the PRC shall approve the petition for referral to the sentencing court and notify the Department of Corrections (the Department). *See* § 302.113(9g)(cm), WIS. STAT. § 301.01(1). The Department will then ask the sentencing court to hold a hearing. *See* § 302.113(9g)(cm). When the circuit court is notified by the Department that it seeks a hearing on an inmate's petition for sentence modification under § 302.113(9g), the circuit court shall schedule a hearing on the matter. *See* § 302.113(9g)(d).

Dye did not petition the PRC for sentence modification. Instead, he sought relief directly from the circuit court. On appeal, he concedes that he did not follow the procedure required by WIS. STAT. § 302.113(9g). He explains that his failures arose from concern for his health and

safety in light of the ongoing pandemic. As did the circuit court, we recognize the legitimacy of Dye’s anxiety. However, § 302.113(9g) provides the mechanism for inmates to pursue the relief he seeks, and Dye offers no legal basis for bypassing that mechanism. The circuit court therefore correctly denied his claim. *See Jocius v. Jocius*, 218 Wis. 2d 103, 119-20, 580 N.W.2d 708 (Ct. App. 1998) (holding that the “[circuit] court cannot ignore the statutory procedure promulgated by the legislature”). We affirm.

IT IS ORDERED that the circuit court order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals