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DISTRICT IV

February 17, 2022

To:

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Circuit Court Judge
Electronic Notice

Carlo Esqueda
Clerk of Circuit Court
Dane County Courthouse
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You are hereby notified that the Court has entered the following opinion and order:

2019AP1668-CR State of Wisconsin v. Jeremy T. Greene (L.C. # 2001CF390)

Before Fitzpatrick, Graham, and Nashold, 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).

Jeremy Greene, pro se, appeals circuit court orders denying his motions for sentence credit and sentence modification, as well as an order denying reconsideration of those decisions. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).¹ We summarily affirm.

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

In 2002, Greene was convicted, after a jury trial, of first-degree intentional homicide, burglary while armed with a dangerous weapon, and armed robbery with threat of force. He was sentenced to life imprisonment. In 2019, Greene filed motions for sentence credit and sentence modification. The circuit court denied both motions. Greene filed a motion for reconsideration, which the circuit court also denied. This appeal follows.

On appeal, Greene argues that he is entitled to 147 days of sentence credit in this case, as well as 27 days of sentence credit in an earlier case, Dane County Circuit Court case number 1999CF2193. A defendant seeking sentence credit has the burden of demonstrating both that he or she was in custody for the relevant time period, and that the custody was in connection with the course of conduct for which the sentence was imposed. *State v. Carter*, 2010 WI 77, ¶11, 327 Wis. 2d 1, 785 N.W.2d 516. The State asserts that Greene has failed to meet this burden, and that the record is inadequate to support his sentence credit claims. Greene has failed to file a reply brief responding to the State's assertion. Propositions asserted by a respondent on appeal and not disputed by the appellant in a reply brief are taken as admitted. *See Schlieper v. DNR*, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994). Accordingly, we reject Greene's sentence credit arguments as inadequately supported, and we affirm the circuit court order denying his motion for sentence credit.

Greene's notice of appeal states that he seeks review of the circuit court order denying reconsideration of his motion for sentence credit. However, Greene's appellant's brief does not contain any argument alleging that the circuit court erroneously exercised its discretion in denying reconsideration. *See Koepsell's Olde Popcorn Wagons, Inc. v. Koepsell's Festival Popcorn Wagons, Ltd.*, 2004 WI App 129, ¶6, 275 Wis. 2d 397, 685 N.W.2d 853 (circuit court's decision on a motion for reconsideration is reviewed under the erroneous exercise of discretion

standard). To the extent that Greene challenges the circuit court's denial of his reconsideration motion, we reject that challenge as undeveloped and unsupported. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (this court may decline to review issues inadequately briefed).

We turn next to Greene's argument that the circuit court erred in denying his motion for sentence modification. *See State v. Harbor*, 2011 WI 28, ¶¶35, 40, 333 Wis. 2d 53, 797 N.W.2d 828 (a defendant is entitled to resentencing if he or she shows the existence of a "new factor," which is defined as a fact or set of facts highly relevant to the imposition of the original sentence, but not known to the circuit court at the time of the original sentencing). Greene asserts that he developed a mental illness as a result of traumatic events he experienced as an institutionalized juvenile, and that post-sentencing diagnosis of his mental health issues constitutes a new factor entitling him to sentence modification. Greene further argues that the circuit court relied on an improper argument by the prosecutor at sentencing, that the sentencing judge inappropriately commented that Greene perjured himself at trial, and that the circuit court erroneously exercised its sentencing discretion. Greene contends that each of these events and circumstances are new factors entitling him to sentence modification.

In the respondent's brief, the State argues that Greene's mental health diagnosis is not a new factor because the circuit court was aware, based on information in the presentence investigation report, of Greene's trauma as a juvenile and its impact on his mental health. The State also argues that the remarks of the prosecutor and the judge, and the circuit court's exercise of sentencing discretion, are not "new factors" as that term is defined in *Harbor*, 333 Wis. 2d 53, ¶40. Without a reply brief, the State's assertion on each of these points is deemed admitted. *See Schlieper*, 188 Wis. 2d at 322. Greene has not demonstrated that any of the events or

circumstances identified in his motion for sentence modification constitute new factors entitling him to resentencing.

IT IS ORDERED that the orders are summarily affirmed under WIS. STAT. RULE 809.21(1).

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

Sheila T. Reiff
Clerk of Court of Appeals