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DISTRICT II

March 23, 2022

To:

Hon. Sandra Jo Giernoth
Circuit Court Judge
Electronic Notice

Theresa Russell
Clerk of Circuit Court
Washington County Courthouse
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Mark Bensen
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Brian J. Block, #216146
Green Bay Correctional Inst.
P.O. Box 19033
Green Bay, WI 54307-9033

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

2021AP584-CR

State of Wisconsin v. Brian J. Block (L.C. # 2008CF206)

Before Neubauer, Grogan and Kornblum, 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).

Brian J. Block, pro se, appeals from an order denying his request to reduce his sentence made pursuant to WIS. STAT. § 973.195 (2019-20),¹ which permits certain inmates to petition the sentencing court for sentence adjustments.² Based upon our review of the briefs and record, we

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

² WISCONSIN STAT. § 973.195 provides as material:

(continued)

conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm.

(1r) CONFINEMENT IN PRISON (a) Except as provided in [WIS. STAT. §] 973.198, an inmate who is serving a sentence imposed under [WIS. STAT. §] 973.01 for a crime other than a Class B felony may petition the sentencing court to adjust the sentence if the inmate has served at least the applicable percentage of the term of confinement in prison portion of the sentence. If an inmate is subject to more than one sentence imposed under this section, the sentences shall be treated individually for purposes of sentence adjustment under this subsection.

(b) Any of the following is a ground for a petition under par. (a):

1. The inmate's conduct, efforts at and progress in rehabilitation, or participation and progress in education, treatment, or other correctional programs since he or she was sentenced.

3. A change in law or procedure related to sentencing or revocation of extended supervision effective after the inmate was sentenced that would have resulted in a shorter term of confinement in prison or, if the inmate was returned to prison upon revocation of extended supervision, a shorter period of confinement in prison upon revocation, if the change had been applicable when the inmate was sentenced.

4. The inmate is subject to a sentence of confinement in another state or the inmate is in the United States illegally and may be deported.

5. Sentence adjustment is otherwise in the interests of justice.

(c) Upon receipt of a petition filed under par. (a), the sentencing court may deny the petition or hold the petition for further consideration. If the court holds the petition for further consideration, the court shall notify the district attorney of the inmate's petition. If the district attorney objects to adjustment of the inmate's sentence within 45 days of receiving notification under this paragraph, the court shall deny the inmate's petition.

....

(f) If the sentencing court receives no objection to sentence adjustment from the district attorney under par. (c) or the victim under par. (d) and the court determines that sentence adjustment is in the public interest, the court may adjust the inmate's sentence as provided under par. (g). The court shall include in the record written reasons for any sentence adjustment granted under this subsection.

In 2008, Block pled no contest to armed robbery with use of force and a second count of the same was dismissed and read in. The circuit court imposed a twenty-five-year sentence consisting of fifteen years' initial confinement followed by ten years' extended supervision concurrent to a prior sentence. At sentencing, the circuit court explained the sentence imposed was:

[T]he absolute minimum sentence that I can consider under the circumstances here, considering the priors, considering the nature of these offenses, considering the four prior offenses -- the same offenses, considering the lack of success in the correctional system, that is the minimum that I feel can be imposed here to adequately protect the public and, hopefully, adequately provides sufficient time for Mr. Block to engage in whatever kind of rehabilitation is necessary.

The sentencing court found it troubling that Block had been in and out of prison for most of his adult life, he had been offered “multiple, multiple, and multiple attempts of failed programming,” had “four prior conviction[s] for armed robbery,” and he committed the armed robberies in this case approximately two weeks after his most recent release from prison.

After judgment was entered, Block filed a pro se postconviction motion alleging ineffective assistance of counsel. The circuit court denied the motion. This court affirmed the judgment and order on Block's direct appeal. *See State v. Block*, No. 2009AP2899-CR, unpublished op. and order (WI App Aug. 11, 2010).

In February 2021, Block petitioned the circuit court under WIS. STAT. § 973.195, asking it to reduce the initial confinement portion of his sentence. Block alleged two grounds warranted sentence reduction: (1) his conduct and efforts in prison, including his rehabilitation, education, and successful completion of prison program certifications; and (2) the interests of justice. In support of these grounds, Block attached documentation showing: (1) he “has paid in full all

court costs, surcharges, and restitution”; (2) his “positive institution adjustment”; (3) his successful completion of two vocational programs in masonry and cabinetry; (4) his participation in a creative writing contest resulting in publication of a poem he wrote; (5) his successful work history of holding a variety of jobs in the prison; and (6) he has family support. He also asserted he has matured and “does not view himself as a criminal any longer, nor does he relate to that type of life style,” and he set forth details of a solid release plan, which included a place to live and his future business plans based on his masonry skills he believes will “keep him busy and away from any negative influences.” His petition included a letter confirming his release plan from his mother (with whom he would live), and a supportive letter from his ex-wife. He also included photos reflecting his masonry work and birdbaths and other items he built.

The district attorney objected to Block’s petition for sentence adjustment. The circuit court denied the petition “because it is not in the public interest.” Block then filed a motion asking the circuit court for a written decision, and the circuit court issued a written decision explaining more in depth its reason for denying the petition:

The Defendant was convicted of Armed Robbery with Use of Force; a second count of Armed Robbery by Use of Force was dismissed for [sic] read-in. The Court has reviewed the transcript from the Sentencing, held on January 9, 2009. The Defendant was convicted of a violent crime that involved an identified, known victim. Armed robbery is an offense for which there is often a traumatizing effect on the victim, which the sentencing court noted was relevant both to the victim in the case but also to the need to protect the public from such crime. Further, this was not the first occasion the Defendant committed armed robbery as he has been convicted of this same offense four previous times, which this Court finds concerning. Equally concerning is the fact the Defendant committed this offense shortly following his release from prison—just over two weeks later. Additionally, the Defendant had been offered many chances at rehabilitation previously, both during his periods of incarceration and during community supervision, all of which led the sentencing court to

wonder what rehabilitative efforts could be employed to prevent future reoffending. This Court shares that concern and conclusion.

This Court concludes, considering the nature of the offense, defendant's prior record, defendant's lack of success in the correctional system prior to this sentence, and the need to protect the public, the Defendant[']s Petition for Sentence Adjustment is not in the public's interest.

(Citation omitted.) Block appeals.

The circuit court's decision on a WIS. STAT. § 973.195 petition is discretionary, and we will affirm unless the circuit court erroneously exercised its discretion. *See State v. Tucker*, 2005 WI 46, ¶10, 279 Wis. 2d 697, 694 N.W.2d 926 (“Ultimately, the decision of whether the sentence should be modified is left to the sound discretion of the circuit court[,]” and “[w]e will not overrule a decision to modify a sentence unless the circuit court erroneously exercised its discretion.”).

The circuit court's decision here was a proper exercise of discretion. It reviewed Block's petition and reviewed the sentencing transcript. It acknowledged the sentencing court's concerns that prompted the fifteen-year initial confinement period and explained that shortening that time period was not in the public interest. The circuit court pointed to the seriousness of Block's crime, his extensive criminal history, the past failed attempts at rehabilitation, and his decision to commit additional armed robberies two weeks after being released from prison in determining that maintaining the sentence imposed by the sentencing court was required to protect the public.

Block's documentation is impressive and his accomplishments are commendable. The photos submitted of his masonry work and other items he built show he is very talented. Nevertheless, the circuit court did not erroneously exercise its discretion in denying Block's petition. It applied the correct law to the pertinent facts of this case and reached a reasonable

determination. Accordingly, we will not overrule the circuit court's discretionary decision to maintain the sentence originally imposed.

Therefore,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to 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