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DISTRICT II

June 22, 2022

To:

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Circuit Court Judge
Electronic Notice

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Circuit Court Judge
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Clerk of Circuit Court
Racine County Courthouse
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Brandon C. Jones, #453753
Oshkosh Correctional Inst.
P.O. Box 3310
Oshkosh, WI 54903-3310

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

2021AP283-CR

State of Wisconsin v. Brandon C. Jones (L.C. #2010CF51)

Before Gundrum, P.J., Neubauer and Grogan, 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).

Brandon C. Jones appeals pro se from orders denying his postconviction motions seeking sentence modification and reconsideration. 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 affirm.

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

In January 2010, the State charged Jones with possession with intent to deliver THC, second and subsequent offense, and felony bail jumping, both as a repeater. In October 2011, Jones pled no contest to the drug charge, and the bail-jumping charge was dismissed and read in. The sentencing court imposed and stayed a five-year sentence consisting of three years' initial confinement and two years' extended supervision. The court placed Jones on probation for three years. As a condition of probation, the court imposed and stayed a six-month jail term. The court made the probation consecutive to another sentence Jones was currently serving the extended supervision portion of and concurrent with the probation in two other cases. Judgment was entered in January 2012.

On December 4, 2020, Jones filed a pro se motion seeking sentence modification. He alleged that the consecutive part of his sentence was unlawful. The circuit court denied his motion on December 16, 2020. On January 11, 2021, Jones filed a motion for reconsideration, which the circuit court denied on January 19, 2021. Jones filed a Notice of Appeal on February 12, 2021.²

Jones argues in his brief-in-chief that WIS. STAT. § 973.15 does not permit the circuit court's consecutive sentencing structure. In response, the State indicated that Jones's sentence-structure argument rested on an older version of § 973.15(2). Jones conceded in his Reply brief that the State was correct and that the current version of the statute permits the consecutive sentence structure imposed. We agree that the current version of § 973.15(2) permits the

² Jones states he is appealing from a final judgment or order entered on November 6, 2011. However, we construe his appeal as timely as to the December 16, 2020 order denying his request for sentence modification and to the January 19, 2021 order denying his motion for reconsideration.

sentence structure imposed by the sentencing court, and we affirm the circuit court's orders denying Jones's sentence modification and reconsideration motions.

Jones raises a second issue claiming the circuit court is without authority to allow the probation agent to impose the six-month conditional jail time. This issue appears to be related to a circuit court order from February 15, 2021, which it is unclear whether we have jurisdiction over as that order did not precede Jones's Notice of Appeal.³

In any event, even if we have jurisdiction, we would not disturb the circuit court's decision regarding Jones's second issue because there is no merit to it. Jones argues the sentencing court improperly delegated sentencing authority to his probation agent, but the record reflects Jones is mistaken. The sentencing court here actually *imposed* sentence, including the six months of conditional jail time, on Jones in 2012. It did not delegate sentencing authority to Jones's probation agent or the Department of Corrections. The case Jones relies on, *State v. Fearing*, 2000 WI App 229, 239 Wis. 2d 105, 619 N.W.2d 115, does not apply.

³ Jones filed a second motion seeking sentence modification on January 19, 2021, which was the same day the circuit court denied the motion for reconsideration discussed above. The February 15, 2021 order addressed the January 19 motion.

Therefore,

IT IS ORDERED that the orders of the circuit court are 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