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DISTRICT I

January 31, 2023

To:

Hon. William S. Pocan
Circuit Court Judge
Electronic Notice

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Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Edward V. Allen Jr. 596168
Kettle Moraine Correctional Institution
P.O. Box 282
Plymouth, WI 53073-0282

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

2022AP1102-CR

State of Wisconsin v. Edward V. Allen, Jr. (L.C. # 2014CF3398)

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).

Edward V. Allen, Jr., appeals from an order denying his petition for sentence adjustment under WIS. STAT. § 973.195 (2019-20).¹ That statute permits certain prison inmates to seek a reduction in the length of their terms of confinement. *See id.*² The circuit court concluded that

¹ The Honorable Milton L. Childs, Sr., considered Allen's petition for sentence adjustment. We refer to Judge Childs as the circuit court. The Honorable William S. Pocan presided over Allen's original sentencing. We refer to Judge Pocan as the sentencing court.

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

² As relevant here, WIS. STAT. § 973.195 provides:

(1g) DEFINITION. In this section, "applicable percentage" means 85 percent for a Class C to E felony[.]

(continued)

the relief Allen sought was not in the public interest. 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. We summarily affirm.

Allen pled guilty to two counts of armed robbery as a party to a crime, a Class C felony. *See* WIS. STAT. §§ 943.32(2), 939.05. The two crimes occurred on July 29, 2014, within an hour

(1r) CONFINEMENT IN PRISON.

(a) ...[A]n 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.

....

(c) Upon receipt of a petition filed under par. (a), the sentencing court may deny the petition or hold the petition for further consideration....

....

(f) If the sentencing court receives no objection to sentence adjustment from the district attorney ... or the victim ... 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)....

(g) Except as provided under par. (h), the only sentence adjustments that a court may make under this subsection are as follows:

1. If the inmate is serving the term of confinement in prison portion of the sentence, a reduction in the term of confinement in prison by the amount of time remaining in the term of confinement in prison portion of the sentence, less up to 30 days, and a corresponding increase in the term of extended supervision.

of each other. Each offense began with a minivan rear-ending a car. When the victim got out of his car to examine the damage, the occupants of the minivan emerged, threatened the victim with a shotgun, and robbed him. In one of the incidents, the robbers drove away in the victim's car. Both victims picked Allen's photograph from a photo array and said that Allen was the gunman.

The case proceeded to sentencing in June 2015. The sentencing court identified community protection, punishment, rehabilitation of the defendant, and deterrence as the sentencing goals. The sentencing court then discussed, among other matters, Allen's "horrendous" juvenile record and the "violent and aggravated nature" of the armed robberies at issue. The sentencing court recognized that Allen was only seventeen years old when he committed the crimes and that several of his family members and community supporters had submitted letters on his behalf describing some of the disadvantages that Allen had faced throughout his life. The sentencing court concluded, however, that Allen had "preyed on the public" and that he should serve a "substantial sentence" sufficient to protect the community. Accordingly, the circuit court imposed two concurrent, fifteen-year terms of imprisonment, each bifurcated as nine years of initial confinement and six years of extended supervision. The sentencing court also awarded Allen 316 days of credit for his time in custody prior to sentencing.

Allen petitioned for sentence adjustment in April 2022, after completing eighty-five percent of his initial confinement. *See* WIS. STAT. § 973.195(1g), (1r)(a). Using a prescribed form, he sought relief on the ground that his "conduct, efforts at and progress in rehabilitation or participation and progress in education, treatment, or other correctional programs since being sentenced support[ed his] request." *See* § 973.195(1r)(b)1. He attached a personal plea describing his rehabilitative progress, copies of certificates he had earned in prison, an affidavit

verifying the amount of confinement time that he had served, his inmate conduct record, and correspondence with Department of Corrections personnel regarding his efforts to gather information in aid of the petition. He also submitted copies of the letters from his family members and community supporters that he had previously filed at the time of his original sentencing. The circuit court summarily denied the petition in an order entered without a hearing and without seeking a response from the State. *See* § 973.195(1r)(c). In the order, the circuit court discussed the relevant factors that it considered in resolving the petition and then concluded that sentence adjustment was not in the public interest. *See* § 973.195(1r)(f). Allen appeals.

Whether to grant or deny a petition for sentence adjustment under WIS. STAT. § 973.195 rests in the circuit court’s discretion. *See* § 973.195(1r)(c), (f); *see also State v. Stenklyft*, 2005 WI 71, ¶¶81-82, 281 Wis. 2d 484, 697 N.W.2d 769 (Abrahamson, C.J., concurring in part and dissenting in part, but writing for the majority in holding that sentence adjustment is left to the circuit court’s discretion). Accordingly, our standard of review is “highly deferential.” *See Olivarez v. Unitrin Prop. & Cas. Ins. Co.*, 2006 WI App 189, ¶16, 296 Wis. 2d 337, 723 N.W.2d 131. We will sustain a circuit court’s discretionary decision if the circuit court examined the relevant facts, applied a proper legal standard, and reached a reasonable conclusion. *See State v. Firebaugh*, 2011 WI App 154, ¶5, 337 Wis. 2d 670, 807 N.W.2d 245. “When the [circuit] court has properly exercised its discretion, we follow a consistent and strong policy against interference with the discretion of the [circuit] court, and we afford a strong presumption of reasonability to the court’s sentencing determination.” *Id.* (citation and ellipsis omitted).

The circuit court appropriately exercised its discretion here. The order denying sentence adjustment reflects that the circuit court expressly considered the objectives identified at

sentencing and the intent of the original sentencing court. The circuit court then examined the program completion certificates that Allen had earned in prison and indicated that they were positive factors, but the circuit court “note[d] that some of them are dated.” The circuit court also considered Allen’s “multitude of prison conduct reports, including major violations,” and the circuit court found that Allen’s poor conduct in prison “casts doubt upon the likelihood of his success on extended supervision.” The circuit court therefore found that, on balance, “the scales tip in favor of additional confinement” and that reducing Allen’s confinement time would unduly depreciate the seriousness of his offenses and defeat the sentencing goals. Accordingly, the circuit court concluded that sentence adjustment was not in the public interest and that Allen must serve the remaining confinement portion of his sentences.

In this court, Allen asserts that the “circuit court did not take into account [his] accomplishments [or] the letters from friends and family, showing their support.” To the contrary, the record shows that the circuit court considered the materials that Allen submitted, explicitly noting the nature and timing of the rehabilitative steps that he took as well as the significant setbacks reflected in his “multitude” of conduct reports. The circuit court, however, assessed those materials differently than Allen hoped it would. While Allen clearly would have preferred that the circuit court weigh his accomplishments and his network of community support more heavily than his prison conduct reports and the court’s concerns for public safety, the weight to assign to the relevant factors rests in the discretion of the circuit court. *See Stenklyft*, 281 Wis. 2d 484, ¶¶81-83 (Abrahamson, C.J., concurring in part, dissenting in part, and remanding a petition for sentence adjustment to the circuit court for consideration of appropriate factors); *see also State v. Berggren*, 2009 WI App 82, ¶49, 320 Wis. 2d 209, 769

N.W.2d 110 (reiterating the well-settled principle that the circuit court chooses how to weigh sentencing factors).

In sum, the record shows that the circuit court considered appropriate factors, did not consider any improper factors, and reached a conclusion that a reasonable judge could reach. Allen therefore fails to demonstrate a basis to disturb the circuit court's exercise of discretion in denying his petition for sentence adjustment. *See State v. Jeske*, 197 Wis. 2d 905, 913, 541 N.W.2d 225 (Ct. App. 1995) (explaining that a circuit "court's discretionary determinations ... will stand unless it can be said that no reasonable judge, acting on the same facts and underlying law, could reach the same conclusion"). For all the foregoing reasons, we affirm.

IT IS ORDERED that the circuit court's 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