OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

February 2, 2023

To:

Hon. Julie Genovese
Circuit Court Judge
Electronic Notice

Carlo Esqueda
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

Nicholas DeSantis
Electronic Notice

Tyrone R. Martin 583195
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:

2022AP793-CR State of Wisconsin v. Tyrone R. Martin (L.C. # 2013CF270)

Before Blanchard, P.J., Kloppenburg, and Graham, 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).

Tyrone R. Martin appeals a circuit court order that denied his petition for a sentence adjustment pursuant to WIS. STAT. § 973.195 (2019-20).[1] 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 affirm.

Following allegations of child abuse and neglect that were reported in 2013, Martin pled no contest and was convicted of several crimes, including one count (count 3) of exposing his

[1] All references to the Wisconsin Statutes are to the 2019-20 version.

genitals to a child contrary to WIS. STAT. § 948.10(1)(a). The circuit court sentenced Martin to a bifurcated sentence, and it ordered that his sentence for count 3 would be consecutive to the sentences Martin would serve for the other counts in this case and another criminal case.

In April 2022, Martin filed a petition under WIS. STAT. § 973.195 seeking an adjustment of his sentence for count 3.[2] As grounds, Martin checked a box indicating that his "conduct, efforts at and progress in rehabilitation, or participation and progress in education, treatment, or other correctional programs" supported his request, *see* § 973.195(1r)(b)1., and that sentence adjustment "is in the interest of justice," *see* § 973.195(1r)(b)5.

In his petition, Martin stated that, during sentencing, the circuit court had "some very harsh words (which were mostly true)" about his character and place in society, and that the court's statements "resonated like nothing else ever has" and motivated Martin "to make significant changes in his way of thinking and actions." Martin represented that he has been "a near model inmate with a minimal amount of major rule infractions," and that he "is taking full advantage of the [programming and rehabilitative] tools" available to him in prison "as he makes preparations to eventually become an outstanding member in his community." Along with his petition, Martin attached a programming participant evaluation issued by the state department of corrections ("DOC"), certificates demonstrating his participation in DOC programming, and his

[2] Although this is Martin's second petition for a sentence adjustment, there is no suggestion that it is barred by WIS. STAT. § 973.195(1r)(i), which provides that an "inmate may submit only one petition under this subsection for each sentence imposed under [WIS. STAT. §] 973.01." Martin's first petition sought an adjustment of his sentence for a different count for which he was convicted, and § 973.195(1r)(a) provides that, "[i]f an inmate is subject to more than one sentence imposed under this section, the sentences shall be treated individually for purposes of sentence adjustment." *See also* ***State v. Polar***, 2014 WI App 15, ¶15, 352 Wis. 2d 452, 842 N.W.2d 531 (2013) (providing that an inmate must file a separate petition for each individual sentence the inmate wishes to have adjusted under § 973.195).

inmate conduct record. Martin also submitted a verification from DOC that he had served more than 75 percent of his sentence on count 3. *See* WIS. STAT. § 973.195(1g), (1r)(a) (providing that, for a Class I felony such as count 3, an inmate is eligible to petition for a sentence adjustment if the inmate has served at least 75 percent of the term of confinement in prison).

The circuit court notified the district attorney of Martin's petition pursuant to WIS. STAT. § 973.195(1r)(c). The district attorney's office submitted a response objecting to Martin's request for the sentence adjustment.[3] Among other things, the district attorney's response summarized the details of Martin's crime and criminal history, and it pointed out that Martin's conduct report showed multiple infractions over the years and that his programming participant evaluation documented inconsistent progress. The response acknowledged that Martin "has participated in multiple programs while incarcerated, and for that he should be commended." Even so, the response asked the court to deny Martin's petition "given the severity of the crimes to multiple young children and the need to protect those children, and society as a whole, along with his poor conformance with prison rules[.]"

The circuit court issued a form order denying Martin's petition. On the order, the court checked a box indicating that, "after considering any relevant factors," the court was denying the

[3] WISCONSIN STAT. § 973.195(1r)(c) provides that, if the district attorney timely objects to adjustment of the inmate's sentence, "the court shall deny the inmate's petition." However, in ***State v. Stenklyft***, 2005 WI 71, 281 Wis. 2d 484, 697 N.W.2d 769, our supreme court determined that a prosecutorial veto over sentence adjustment petitions would be unconstitutional. ***Id.***, ¶¶85-86, 92-108 (Abrahamson, C.J., concurring in part, dissenting in part, and writing for the majority). The court further determined that "a circuit court has discretion to accept or reject the objection of a district attorney on a sentence adjustment petition." ***Id.***, ¶123 (Crooks, J., concurring in part, dissenting in part, and writing for the majority).

petition "because it is not in the public interest." The court also wrote on the order: "Glad to see Mr. Martin continues to improve."

On appeal, Martin contends that his sentence for count 3 should be adjusted because the circuit court recognized that he is making improvements in prison. We disagree.

It is within a circuit court's exercise of discretion to grant or deny a petition for sentence adjustment under WIS. STAT. § 973.195. ***State v. Stenklyft***, 2005 WI 71, ¶123, 281 Wis. 2d 484, 697 N.W.2d 769 (Crooks, J., concurring in part, dissenting in part, and writing for the majority). An inmate's improvement in prison, while commendable, does not alone entitle the inmate to a sentence adjustment. ***Id.***, ¶126 (before adjusting an inmate's sentence under § 973.195, a circuit court must consider all "appropriate factors," including "the nature of the crime, the character of the [inmate], the protection of the public, [the] positions of the State and the victim, and other relevant factors such as 'the inmate's conduct, efforts at and progress in rehabilitation, or participating and progress in education, treatment, or other correctional programs'" (quoting § 973.195(1r)(b)1.)). Apart from his argument that his sentence should be adjusted solely based on his improvement in prison, Martin does not develop any other argument that the circuit court erroneously exercised its discretion.

In addition, in its response brief, the State argues that the record supports the circuit court's exercise of discretion, and Martin did not file a reply brief responding to the State's argument. *See* ***United Co-op v. Frontier FS Co-op***, 2007 WI App 197, ¶39, 304 Wis. 2d 750, 738 N.W.2d 578 (an appellant's failure to address an issue raised in a response brief can be taken as a concession).

Based on the foregoing reasons,

IT IS ORDERED that the order of the circuit court 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