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DISTRICT III

February 28, 2023

To:

Hon. Benjamin J. Lane
Circuit Court Judge
Electronic Notice

Karen Hepfler
Clerk of Circuit Court
Chippewa County Courthouse
Electronic Notice

Lisa E.F. Kumfer
Electronic Notice

Cody M. Boehm 645572
Columbia Correctional Center
2925 Columbia Drive
Portage, WI 53901-0950

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

2022AP650-CR State of Wisconsin v. Cody M. Boehm (L. C. No. 2015CF140)

Before Stark, P.J., Hruz and Gill, 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).

Cody Boehm, pro se, appeals from an order denying his petition for sentence adjustment. 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 (2021-22).[1] For the reasons that follow, we summarily affirm the circuit court's order.

In April 2016, Boehm pled no contest to a single count of armed robbery, as a party to the crime. According to the criminal complaint, Boehm and two codefendants entered a convenience store at approximately 11:00 p.m. and demanded that the clerk give them money

[1] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

from the store's safe. All three men were masked, and Boehm and one of his codefendants brandished firearms. In addition to taking money from the store's safe, the men also took packs of cigarettes and eighteen to twenty bottles of liquor. Boehm received a fifteen-year sentence on the armed robbery charge, consisting of eight years of initial confinement followed by seven years of extended supervision.

On January 10, 2022, Boehm filed a petition for sentence adjustment under WIS. STAT. § 973.195.[2] Boehm asserted that sentence adjustment was warranted based on his "conduct, efforts at and progress in rehabilitation, or participation and progress in education, treatment, or other correctional programs since being sentenced." More specifically, Boehm contended that his progress in education was "more than sufficient" because he had "worked hard over the years, obtained many certificates, [an] HSED and [had become] a paralegal." Boehm also alleged that he and his girlfriend, "[P]aris [H]ilton," planned to create a "[t]rillion [d]ollar philant[h]ropy and corporate project" in Chippewa Falls with, among others, "Warren [B]uffet, the Kardashians, Mark Cuban … a few thousand millionaires, [and] Oprah Winfrey." Boehm asserted that granting his petition for sentence adjustment would be in the interest of justice because this project would raise "many tax dollars and jobs."

[2] As relevant here, "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." *See* WIS. STAT. § 973.195(1r)(a). Armed robbery, the offense for which Boehm was convicted, is a Class C felony. *See* WIS. STAT. § 943.32(2). For purposes of the sentence adjustment statute, the "applicable percentage" of a term of confinement for a Class C felony is eighty-five percent. Sec. 973.195(1g). If an inmate meets the criteria set forth in the sentence adjustment statute, a circuit court may order "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." Sec. 973.195(1r)(g)1.

After Boehm filed his petition for sentence adjustment, the circuit court notified the district attorney that the petition had been filed, that the court was holding the petition for further consideration, and that the district attorney could object to the petition within forty-five days. *See* WIS. STAT. § 973.195(1r)(c). An assistant district attorney subsequently filed a written objection to Boehm's petition.[3] Therein, he argued that granting the petition would "unduly depreciate the seriousness and the dangerousness of the offense," given "the seriousness of the charge, which involved the use of a dangerous weapon and [Boehm's] active involvement in the Armed Robbery[,] being responsible for forcing the clerk to open the safe and giv[e] him the money."

On March 14, 2022, the circuit court issued a form order denying Boehm's petition for sentence adjustment. The court found that Boehm was statutorily eligible for sentence adjustment under WIS. STAT. § 973.195 because he had served the applicable percentage of the confinement portion of his sentence, he had not previously petitioned for sentence adjustment, and he was not serving a sentence for a Class A or B felony. The court stated, however, that Boehm's petition was "[d]enied per District Attorney objection p[ur]suant to [§] 973.195(1r)(c)."

Boehm now appeals from the circuit court's order denying his petition for sentence adjustment. In his appellate brief, Boehm takes issue with the district attorney's reasons for opposing his petition. He asserts that his "use of a dangerous weapon" and his "active involvement" in the armed robbery do not "have anything to do with [his] eligibility [for

[3] Boehm has not developed any argument on appeal that it was impermissible for an assistant district attorney, rather than the district attorney, to object to his petition for sentence adjustment. For ease of reading, throughout the remainder of this summary disposition order, we refer to the objection as having been filed by the district attorney.

sentence adjustment] under [WIS. STAT.] § 973.195(1r)(g)." He further asserts that the fact that armed robbery, a Class C felony, is statutorily eligible for sentence adjustment shows that "our people and Congress are not opposed" to allowing sentence adjustment under the circumstances of this case.

In its respondent's brief, the State asks us to dismiss this appeal based on Boehm's failure to comply with the Rules of Appellate Procedure. In particular, the State notes that Boehm's brief does not contain any citations to legal authority and contains only a single citation to the appellate record. *See* WIS. STAT. RULE 809.19(1)(d) (requiring an appellant's brief to include "a statement of facts relevant to the issues presented for review, with appropriate references to the record"); RULE 809.19(1)(e) (requiring an appellant's brief to include an "argument" section, "with citations to the authorities, statutes and parts of the record relied on"). A party's failure to comply with the Rules of Appellate Procedure may result in sanctions, including "dismissal of the appeal." WIS. STAT. RULE 809.83(2).

The State also asserts that we should affirm the circuit court's decision because Boehm's argument on appeal is "entirely undeveloped." The State argues that Boehm "does not support his argument with a single citation to the law" and "fails to develop any analysis of the law's application to the relevant facts of his case." As such, the State contends that we should "disregard Boehm's inadequately briefed argument." *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (court of appeals need not address undeveloped arguments or arguments unsupported by references to legal authority); ***Industrial Risk Insurers v. American Eng'g Testing, Inc.***, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82 (court of appeals will not abandon its neutrality to develop arguments for a party).

We agree with the State that Boehm's appellate brief is inadequate in multiple respects. Boehm has failed to comply with WIS. STAT. RULE 809.19(1)(d) and (e), and he has failed to present a developed legal argument demonstrating that the circuit court erred by denying his petition for sentence adjustment. We also observe that Boehm has failed to file a reply brief, and he has therefore conceded the State's arguments regarding his violations of the Rules of Appellate Procedure and his failure to present a developed legal argument. *See* ***Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.***, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (unrefuted arguments may be deemed conceded). We could affirm the circuit court's decision on these grounds alone.

The State also argues that even if this court were to address the merits of Boehm's appeal, the record shows that the circuit court properly exercised its discretion by denying Boehm's petition for sentence adjustment. *See* ***State v. Stenklyft***, 2005 WI 71, ¶¶81-82, 112, 281 Wis. 2d 484, 697 N.W.2d 769 (Abrahamson, C.J., concurring in part and dissenting in part, but writing for a majority in holding that sentence adjustment is committed to the circuit court's discretion). The sentence adjustment statute states that if the district attorney objects to a petition for sentence adjustment, "the court shall deny the inmate's petition." WIS. STAT. § 973.195(1r)(c). A majority of our supreme court has concluded, however, that the word "shall" in § 973.195(1r)(c) is directory, rather than mandatory. *See* ***Stenklyft***, 281 Wis. 2d 484, ¶123 (Crooks, J., concurring in part and dissenting in part, but writing for a majority on this issue). Consequently, "a circuit court has discretion to accept or reject the objection of a district attorney on a sentence adjustment petition." ***Id.*** (Crooks, J., concurring in part and dissenting in part). Ultimately, if an inmate is statutorily eligible for sentence adjustment, the court may grant

the inmate's petition if it determines that sentence adjustment is in the public interest. *See* § 973.195(1r)(a), (f).

The State concedes that the circuit court's reasoning in support of its decision to deny Boehm's petition for sentence adjustment was "short." The State asserts, however, that the court "made clear that it adopted the reasoning contained in the district attorney's objection as its basis to deny Boehm's petition." The State further asserts that the court properly exercised its discretion by adopting the district attorney's determination that sentence adjustment would "unduly depreciate the seriousness and the dangerousness of the offense," given Boehm's "use of a dangerous weapon" and his "active involvement" in the armed robbery.

We agree with the State that the circuit court's written decision can reasonably be read as adopting the district attorney's reasoning and concluding, for the reasons stated by the district attorney, that sentence adjustment would not be in the public interest. We note, however, that an argument could also be made that the court did not, in fact, adopt the district attorney's reasoning but instead believed that it was required to deny Boehm's petition based solely on the fact that the district attorney had filed an objection. *See* WIS. STAT. § 973.195(1r)(c) (stating that when the district attorney objects to the adjustment of an inmate's sentence, "the court *shall* deny the inmate's petition" (emphasis added)). If the court believed that it was required to deny Boehm's petition solely because the district attorney had filed an objection, then its decision denying the petition would have been contrary to ***Stenklyft***.

Boehm has not, however, developed any argument on appeal that the circuit court denied his petition solely because the district attorney filed an objection. Moreover, Boehm has not responded to the State's argument that the court adopted the district attorney's reasoning as its

own and denied Boehm's petition for the reasons stated in the district attorney's objection. Under these circumstances, we decline to develop an argument on Boehm's behalf that the court erroneously denied his petition solely because the district attorney had filed an objection. Instead, we deem Boehm to have conceded that the court adopted the district attorney's reasons for denying the petition. *See* ***Charolais***, 90 Wis. 2d at 109.

The district attorney's objection provided a reasonable basis for the circuit court to conclude that granting Boehm's petition for sentence adjustment would not be in the public interest. *See* WIS. STAT. § 973.195(1r)(f). The district attorney stressed that Boehm had used a dangerous weapon during the commission of the armed robbery.[4] The district attorney also noted that Boehm was an active participant in the armed robbery by "forcing the clerk to open the safe and giv[e] him the money." Based on these factors, the court could reasonably agree with the district attorney's assessment that granting Boehm's petition for sentence adjustment would "unduly depreciate the seriousness and the dangerousness of the offense." On this record, we cannot conclude that the court erroneously exercised its discretion by denying Boehm's petition.

Therefore,

IT IS ORDERED that the order is summarily affirmed. WIS. STAT. RULE 809.21.

[4] In his appellate brief, Boehm asserts that he merely used a "BB gun" during the armed robbery. He does not, however, provide any citation to the appellate record in support of that assertion. To the contrary, the criminal complaint states that Boehm brandished a "handgun" during the armed robbery. An "Inmate Classification Report" attached to Boehm's petition for sentence adjustment similarly states that Boehm "was carrying a handgun" when he and his codefendants robbed the convenience store. We have not located any reference in the appellate record to Boehm carrying or using a BB gun during the commission of the crime.

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

Sheila T. Reiff
Clerk of Court of Appeals