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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  
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**DISTRICT I**

April 11, 2023

To:

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Circuit Court Judge  
Electronic Notice

Anna Hodges  
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Milwaukee County Safety Building  
Electronic Notice

Sonya Bice  
Electronic Notice

Paul C. Dedinsky  
Electronic Notice

Craig R. Hawkins 403962  
New Lisbon Correctional Inst.  
P.O. Box 2000  
New Lisbon, WI 53950-2000

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

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2021AP424-CR                      State of Wisconsin v. Craig R. Hawkins (L.C. # 2000CF5871)

Before Brash, C.J., Donald, P.J., and White, J.

**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).**

Craig Hawkins, *pro se*, appeals from an order of the circuit court that denied his petition for release to extended supervision without a hearing. 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).<sup>1</sup> The order is summarily affirmed.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

In November 2000, Hawkins shot his wife six times, killing her, after she told him she wanted a divorce. Hawkins pled guilty to first-degree intentional homicide while armed. On February 26, 2001, Hawkins was sentenced to life imprisonment “with an extended supervision eligibility date of ... 2027.” On February 24, 2021, Hawkins filed a petition for release to extended supervision. *See* WIS. STAT. § 302.114. Because Hawkins’s petition was filed more than ninety days before his eligibility date, the circuit court denied the motion without a hearing. Hawkins appeals.

The crime of first-degree intentional homicide is punishable by a mandatory life sentence. *See* WIS. STAT. §§ 940.01(1)(a) (1999-2000) (“[W]hoever causes the death of another human being with intent to kill that person or another is guilty of a Class A felony.”) and 939.50(3)(a) (1999-2000) (stating that penalty for a Class A felony is “life imprisonment.”).

When imposing a life sentence, the sentencing court shall also:

make an extended supervision eligibility date determination regarding the person and choose one of the following options:

1. The person is eligible for release to extended supervision after serving 20 years.
2. The person is eligible for release to extended supervision on a date set by the court....
3. The person is not eligible for release to extended supervision.

*See* WIS. STAT. § 973.014(1g)(a)1.-3. (1999-2000).

An eligible inmate serving a life sentence may petition the sentencing court for release to extended supervision “after he or she has served 20 years, if the inmate was sentenced under [WIS. STAT. §] 973.014(1g)(a)1., or after he or she has reached the extended supervision eligibility date set by the court, if the inmate was sentenced under [§] 973.014(1g)(a)2.” *See*

WIS. STAT. § 302.114(2). “An inmate may not file an initial petition under this paragraph earlier than 90 days before his or her extended supervision eligibility date.” WIS. STAT. § 302.114(5)(a). “If an inmate files an initial petition for release to extended supervision at any time earlier than 90 days before his or her extended supervision eligibility date, the court shall deny the petition without a hearing.” *Id.*

Here, Hawkins petitioned for release to extended supervision believing that he was eligible to do so because he had completed twenty years of imprisonment. The circuit court denied the motion without a hearing because the sentencing court set Hawkins’s parole eligibility date in 2027, and the 2021 motion was more than ninety days premature. It explained that although Hawkins “apparently interprets [WIS. STAT.] § 302.114(2) ... as giving him the option of petitioning for release to extended supervision after 20 years *or* in 2027,” that interpretation is unreasonable because “a person sentenced to life imprisonment is sentenced under only one of the three alternatives under [WIS. STAT. § ]973.014(1g)(a)[.]”

On appeal, Hawkins claims the circuit court erred in its interpretation of the rule. However, we agree with the circuit court. WISCONSIN STAT. § 973.014(1g)(a) clearly states that the sentencing court shall “choose *one* of the ... options” for release eligibility. (Emphasis added.) If the sentencing court had intended for Hawkins to be eligible for release to extended supervision after serving twenty years, it would have selected the first option and so stated Hawkins’ eligibility. Because the sentencing court specified a date for Hawkins’ release, he was sentenced under § 973.014(1g)(a)2. and he is not eligible to petition for release until no earlier than ninety days before that eligibility date. The circuit court properly denied his motion without a hearing. *See* WIS. STAT. § 302.114(5)(a).

Hawkins also claims that WIS. STAT. § 973.014 violates both the separation of powers doctrine and due process. Neither claim was raised in the circuit court and, therefore, these arguments have been forfeited. *See Tatera v. FMC Corp.*, 2010 WI 90, ¶19 n.16, 328 Wis. 2d 320, 786 N.W.2d 810. In any event, our supreme court rejected both such challenges to § 973.014 in *State v. Borrell*, 167 Wis. 2d 749, 762-73, 482 N.W.2d 883 (1992), *overruled on other grounds by State v. Greve*, 2004 WI 69, ¶31, 272 Wis. 2d 444, 681 N.W.2d 479 (withdrawing language from *Borrell* and other cases that implied a due process right of allocution under the federal constitution).

Therefore,

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

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*