



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 II

September 11, 2024

To:

Hon. Jennifer R. Dorow
Circuit Court Judge
Electronic Notice

Michael C. Sanders
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
Electronic Notice

William D. Steele Jr. #166853
Racine Correctional Inst.
P.O. Box 900
Sturtevant, WI 53177-0900

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

2023AP1164-CR

State of Wisconsin v. William D. Steele, Jr. (L.C. #2021CF629)

Before Neubauer, Grogan and Lazar, 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).

William D. Steele, Jr., appearing pro se, appeals from a judgment of conviction for operating a motor vehicle while intoxicated (OWI) as a seventh offense and an order denying his motion to modify his sentence. 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 We affirm.

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

Steele pled guilty to OWI as a seventh offense as part of a plea agreement in which a charge of operating a motor vehicle with a prohibited alcohol concentration was dismissed, and charges of operating a motor vehicle after revocation and felony bail jumping were dismissed but read in at sentencing. The circuit court sentenced Steele to five years of initial confinement and five years of extended supervision. The court made Steele eligible for the Substance Abuse Program (SAP) after serving four years of initial confinement.

Steele moved for postconviction relief, pro se, seeking relief from the “condition” that he serve four years of initial confinement before being eligible for the SAP. He asked that he be made eligible for the SAP after serving the mandatory minimum of three years of initial confinement. The circuit court held a hearing and denied Steele’s motion “for reasons as stated on the record” at the hearing; the order does not set forth any of the reasoning underlying the court’s decision.

On appeal, Steele argues that the circuit court erred in denying his motion. His arguments are underdeveloped, but he appears to question whether the circuit court intended that he serve four years of initial confinement before eligibility for SAP and the court’s authority to do so. In any event, he contends that the court erred in denying his request to be made eligible for the SAP after serving the mandatory minimum of three years of initial confinement.

We conclude that Steele has not established that the circuit court erred in denying his motion. First, consistent with the judgment of conviction, the circuit court was clear, stating “I’ll make you eligible for the Substance Abuse Program after serving 4 years. So it’s 1 year past the mandatory minimum.” The court has discretion “to determine when the period of eligibility will begin.” *State v. White*, 2004 WI App 237, ¶2, 277 Wis. 2d 580, 690 N.W.2d 880. Once the

court makes an SAP eligibility determination, “the final placement decision is vested with the [Wisconsin Department of Corrections].” *State v. Schladweiler*, 2009 WI App 177, ¶10, 322 Wis. 2d 642, 777 N.W.2d 114, *overruled on other grounds by State v. Harbor*, 2011 WI 28, 333 Wis. 2d 53, 797 N.W.2d 828.

Moreover, the record on appeal does not include a transcript of the June 14, 2023 hearing at which the circuit court set forth its reasons for denying Steele’s motion to modify his sentence. As the appellant, it was Steele’s responsibility to make sure the transcript was included in the record. *See* WIS. STAT. RULE 809.11(4)(a) (“The appellant shall request a copy of the transcript of the court reporter’s verbatim record of the proceedings for each of the parties to the appeal and make arrangements to pay for the transcript and copies within 14 days after the filing of the notice of appeal.”); *Gaethke v. Pozder*, 2017 WI App 38, ¶36, 376 Wis. 2d 448, 899 N.W.2d 381. “[I]n the absence of a transcript we presume that every fact essential to sustain the circuit court’s decision is supported by the record.” *Butcher v. Ameritech Corp.*, 2007 WI App 5, ¶35, 298 Wis. 2d 468, 727 N.W.2d 546 (2006).

Having elected to proceed without a transcript, Steele cannot carry his burden of demonstrating error by the circuit court. The absence of the transcript precludes us from evaluating the court’s reasons for denying his motion, and specifically, whether it erroneously exercised its discretion in denying his request to modify. Accordingly, we reject Steele’s arguments.

Therefore,

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed.

See WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals