



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

January 4, 2013

To:

Hon. Gregory J. Potter
Circuit Court Judge
Wood County Courthouse
400 Market Street, PO Box 8095
Wisconsin Rapids, WI 54494

Cindy Joosten
Clerk of Circuit Court
Wood County Courthouse
400 Market Street, PO Box 8095
Wisconsin Rapids, WI 54494

John P. Henkelmann
District Attorney
Courthouse
P. O. Box 8095
Wisconsin Rapids, WI 54495-8095

Eileen A. Hirsch
Asst. State Public Defender
P.O. Box 7862
Madison, WI 53707-7862

Warren D. Weinstein
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

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

2011AP2804-CR State of Wisconsin v. Ryan C. Rodriguez (L.C. # 2010CF285)

Before Higginbotham, Sherman and Blanchard, JJ.

Ryan Rodriguez appeals a judgment of conviction and an order denying his postconviction motion. 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(1) (2009-10).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

Rodriguez first argues that the court did not sufficiently articulate how the court's chosen sentence was supported by the need to protect the public. We disagree. The court referred to the effect of Rodriguez's controlled substance sales on others. The court also noted Rodriguez's long criminal record, including "a few batteries," and that the presentence report appeared to show that he has "a very explosive personality." These are factors that, combined with Rodriguez's acknowledged substance problems, are related to protection of the public.

Rodriguez also argues that the court considered an irrelevant and improper factor when it noted the "per capita" income that he receives from the Ho-Chunk Nation. The court did so in the course of a statement noting Rodriguez's "very poor employment record" and "lack of work ethic."

Rodriguez appears to concede that his employment record and work ethic are proper factors to consider in sentencing. He does not appear to argue that the court erred in reaching a negative assessment of his employment record or work ethic. It is therefore somewhat difficult to discern exactly what error Rodriguez is claiming occurred here. Even if we were to agree that the court's reference to the per capita was irrelevant, it does not appear that removing that reference from the court's discussion would achieve anything in Rodriguez's favor. His employment record and work ethic would remain poor.

To the extent Rodriguez is arguing that the reference reflected an ethnic bias by the court, we see no basis to reach that conclusion. The reference to the per capita appears to be only the court's speculation or belief about one factor possibly contributing to his poor employment record and work ethic.

IT IS ORDERED that the judgment and order appealed from are summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals