



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

January 9, 2013

To:

Hon. John R. Race
Circuit Court Judge
Walworth County Courthouse
P.O. Box 1001
Elkhorn, WI 53121-1001

Sheila Reiff
Clerk of Circuit Court
Walworth County Courthouse
P.O. Box 1001
Elkhorn, WI 53121-1001

Joshua Patrick Grube
Assistant District Attorney
P.O. Box 1001
Elkhorn, WI 53121-1001

Marguerite M. Moeller
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Jason A. Sanders, #78479
Walworth County Jail
1770 County Rd. NN
Elkhorn, WI 53121

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

2012AP1147

State of Wisconsin v. Jason A. Sanders (L.C. #2003CF133)

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

Jason A. Sanders, pro se, appeals an order denying his motion to vacate his sentence. Sanders' main claim is that his sentence, commensurate with that of a Class C felony, was too harsh because when he was charged with forgery-uttering under WIS. STAT. § 943.38(2) (2001-02)¹ the crime had been reduced to a Class H felony. Based upon our review of the briefs and record, we conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We reject Sanders' argument and affirm.

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

In June 2002, Sanders forged and cashed a check from a book of checks he stole from his father. The criminal complaint charging Sanders with forgery-uttering under WIS. STAT. § 943.38(2) (2001-02) was filed in March 2003. Upon Sanders' plea of no contest, the trial court stayed a sentence of seven years' initial confinement and three years' extended supervision, and ordered ten years' probation. Sanders' probation was revoked in 2005 and he began serving his ten-year prison sentence.

Six years later, Sanders filed a "Motion to Vacate Illegal Sentence." He argued that at the time he was charged, WIS. STAT. § 943.38(2) no longer was a Class C felony exposing him to a fifteen-year sentence. He asserted that, as the legislature had reduced the crime to a Class H felony with a maximum six-year prison term, his ten-year prison term exceeded the legal limit. *See* 2001 Wis. Act 109, §§ 558, 773. The court denied the motion without a hearing. Sanders appeals.

Sanders' claim lacks merit. The amended WIS. STAT. § 943.38(2) first applied to "offenses committed on the effective date of this subsection." 2001 Wis. Act 109, § 9359(3). The effective date was February 1, 2003. *See id.*, § 9459(1); *see also State v. Tucker*, 2005 WI 46, ¶17, 279 Wis. 2d 697, 694 N.W.2d 926. Sanders uttered the forged document on June 6, 2002. Accordingly, he was subject to the earlier version of WIS. STAT. § 943.38(2), which made his crime a Class C felony punishable by a maximum of fifteen years.

We do not address Sanders' remaining issues. He raised them in two motions to the trial court in November 2006 and did not appeal their denial. Sanders' failure to do so deprives him of the opportunity to have this court review them half a dozen years later. *See State v. Schulpius*, 2006 WI 1, ¶26, 287 Wis. 2d 44, 707 N.W.2d 495.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to
WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals