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**DISTRICT II**

February 13, 2013

To:

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

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2012AP1134

State of Wisconsin v. Cory A. Brown (L.C. #2006CF1008)

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

Cory A. Brown appeals pro se from an order denying his motion to correct a clerical error in his written judgment of conviction. 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 (2011-12).<sup>1</sup> We affirm the order of the circuit court.

In 2008, Brown was convicted following a plea of no contest to second-degree reckless homicide as a party to a crime. At sentencing, the circuit court imposed a sentence of fifteen

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version.

years of initial confinement and ten years of extended supervision. The court also awarded the victim's family restitution. However, in its oral ruling, the court did not specify when Brown would be required to start making restitution payments.

Brown's written judgment of conviction does address when he would be required to start making restitution payments. It states in relevant part, "It is the court's intention that the Department of Corrections [DOC] can take 50% from all money received for the benefit of the inmate while he is incarcerated to be applied to restitution owing to the victim."

In May 2012, Brown filed a "Motion to Correct Clerical Error," in which he requested deletion of the provision in the written judgment of conviction allowing DOC to put 50% of his money received during his incarceration toward restitution. The circuit court denied Brown's motion. This appeal follows.

On appeal, Brown contends that the circuit court erred in denying his motion. He argues that the court unambiguously stated at sentencing that he would not have to start paying restitution until after his release from prison when he begins his extended supervision. Accordingly, Brown maintains that the court's oral statement renders the contrary provision in the written judgment a clerical error, citing *State v. Prihoda*, 2000 WI 123, ¶¶15-17, 239 Wis. 2d 244, 618 N.W.2d 857 (when a written judgment of conviction differs from the court's oral pronouncement of sentence, a clerical error exists that may be corrected at any time).

We are not persuaded that a conflict exists between the circuit court's oral pronouncement of sentence and its written judgment. Although it is true that the court discussed

restitution in the context of other conditions of supervision, that does not mean that the court intended that Brown would not pay restitution until he was on supervision.<sup>2</sup> Here, we are satisfied that the written judgment simply formalizes the court's remarks at sentencing that it was important that restitution be made. The emphasis on this importance supports the conclusion that the court intended Brown to start paying restitution while incarcerated. Accordingly, there is no clerical error in the written judgment, and the court properly denied Brown's motion.

Upon the foregoing reasons,

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

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*

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<sup>2</sup> As noted by the State, restitution, by definition, is a condition of supervision, WIS. STAT. § 973.20(1r). However, this does not mean that defendants cannot be required to pay restitution until they are on supervision. See *State v. Greene*, 2008 WI App 100, ¶¶7, 12-13, 313 Wis. 2d 211, 756 N.W.2d 411 (courts may order DOC to distribute restitution payments from an inmate's prison wages and gifted funds).