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DISTRICT IV

June 8, 2023

To:

Hon. John M. Wood
Circuit Court Judge
Electronic Notice

Donald V. Latorraca
Electronic Notice

Amanda Nelson
Clerk of Circuit Court
Rock County Courthouse
Electronic Notice

William Bradley Slawson, IV
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P.O. Box 9900
Prairie du Chien, WI 53821

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

2022AP1278-CR

State of Wisconsin v. William Bradley Slawson, IV
(L.C. # 2016CF570)

Before Blanchard, P.J., Fitzpatrick, and Nashold, 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 Bradley Slawson, IV, pro se, appeals a circuit court order denying his motion for reconsideration of the circuit court's determination that he was not eligible for the substance abuse program (SAP) or the challenge incarceration program (CIP). Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. We summarily affirm. *See* WIS. STAT. RULE 809.21 (2021-22).¹

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

Slawson pled guilty to armed burglary as a party to a crime, felon in possession of a firearm, and felony bail jumping in connection to a home invasion. The circuit court determined at sentencing that Slawson was not eligible for CIP or SAP. Slawson filed a motion for reconsideration, requesting that the court find him eligible to participate in SAP. The court denied the motion. Slawson then filed the instant appeal, seeking review of the court's order denying reconsideration.

The State asserts that Slawson's postconviction motion for reconsideration was untimely, and argues that the circuit court order denying reconsideration should be affirmed on that basis. We need not address the State's timeliness argument because we affirm the decision of the court on its merits. *See Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663 (1938) (only dispositive issues need be addressed).

Successful completion of either the CIP or SAP prison program permits an inmate serving a bifurcated sentence to convert his or her remaining initial confinement time to extended supervision time. *See* WIS. STAT. §§ 302.045(1), (3m)(b), 302.05(1)(am), (3)(c)2. A circuit court may deny eligibility for CIP and SAP even if the offender otherwise meets the statutory criteria for eligibility. *State v. Lehman*, 2004 WI App 59, ¶16, 270 Wis. 2d 695, 677 N.W.2d 644 (CIP); *State v. Owens*, 2006 WI App 75, ¶¶6-9, 291 Wis. 2d 229, 713 N.W.2d 187 (SAP). Under WIS. STAT. § 973.01(3g) and (3m), a circuit court exercises its discretion when determining a defendant's eligibility for these programs. We will sustain the circuit court's

determinations if they are supported by the record and the overall sentencing rationale. *See Owens*, 291 Wis. 2d 229, ¶¶7-9.²

Here, the record reflects a proper exercise of the circuit court’s discretion in determining that Slawson was not eligible for CIP and SAP. In its order denying Slawson’s reconsideration motion, the court explained that its determination that Slawson was not eligible for CIP or SAP was based on several factors, including the serious nature of his conduct, his character and history of unsuccessful programming, and the need to protect the public. At sentencing, the court identified its sentencing objections as falling into three categories: “the seriousness of the offense, the history and character of the offender, and the needs of society.” The court discussed the fact that in the past there had been “a lot of services provided” to Slawson that he “refused or neglected to take advantage of.” The court discussed two past occasions in which Slawson had failed to comply with the terms of extended supervision, as well as instances where he had been offered alternatives to revocation, electronic monitoring, and the opportunity to participate in a treatment alternative program. The court considered the serious nature of the conduct in this case, including that one of Slawson’s accomplices in the home invasion was shot and killed and that there were children present in the home. The court further considered the community’s need for protection. Overall, we conclude that the circuit court’s determination that Slawson was not eligible to participate in CIP or SAP is supported by the record and the overall sentencing rationale, and we affirm on that basis.

² The Wisconsin substance abuse program was formerly known as the earned release program. Effective August 3, 2011, the legislature renamed the program. *See* 2011 Wis. Act 38, § 19; WIS. STAT. § 991.11. The program is identified by both names in the current version of the Wisconsin Statutes. *See* WIS. STAT. §§ 302.05, 973.01(3g).

In the appellant's brief, Slawson asserts that the presentence investigation report prepared by the Department of Corrections (DOC) incorrectly stated that he was statutorily ineligible for CIP and SAP. For purposes of this opinion we will assume, without deciding, that Slawson's assertion is correct and that he was statutorily eligible for CIP and SAP. Even so, any error by DOC as to Slawson's eligibility for these programs was harmless because, as discussed above, both the sentencing transcript and the circuit court order denying reconsideration show that the court based its decision regarding CIP and SAP on its overall sentencing objectives. In addition, there is nothing in the sentencing record to indicate that the court relied upon the DOC's determination that Slawson was not eligible for CIP and SAP. To the contrary, the court stated in its order denying reconsideration that its decision on Slawson's eligibility or ineligibility for early release programming was made "[r]egardless of the Department of Correction's recommendation contained in the Presentence Investigation Report."

Slawson also raises equal protection and due process arguments in his brief, based on the assertion that his co-defendant received only probation while Slawson was sentenced to prison. The State argues in the respondent's brief that Slawson forfeited review of these constitutional claims because he did not raise them in his postconviction motion. Slawson has failed to file a reply brief responding to the State's forfeiture argument. Propositions asserted by a respondent on appeal and not disputed by the appellant in the reply brief are taken as admitted. *See Schlieper v. DNR*, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994). We reject Slawson's equal protection and due process arguments on that basis.

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

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

Sheila T. Reiff
Clerk of Court of Appeals