COURT OF APPEALS
DECISION
DATED AND FILED

April 15, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP1139-CR **Cir. Ct. No. 2000CF253**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DAVID G. HUUSKO,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Eau Claire County: JON M. THEISEN, Judge. *Affirmed.*

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM. David Huusko, pro se, appeals an order denying his WIS. STAT. § 973.195[1] petition for sentence adjustment. Huusko contends the circuit court relied on inaccurate information when denying the petition. We reject Huusko's argument and affirm the order.

BACKGROUND

¶2 A jury found Huusko guilty of armed robbery as a repeat offender for his part in a May 2000 robbery of an Eau Claire gas station. In March 2001, the court imposed a twenty-five-year sentence consisting of fifteen years' initial confinement and ten years' extended supervision.

¶3 In April 2013, Huusko filed a WIS. STAT. § 973.195 petition for sentence adjustment. As grounds for the petition, Huusko indicated he was "subject to a sentence of confinement in another state." Attached to the petition were (1) a copy of an August 15, 2001 detainer based on his federal judgment and commitment in the United States District Court for the Western District of Wisconsin; (2) a form completed by the Department of Corrections that verified Huusko's time served as of April 5, 2013, and indicated that Huusko "does not have another sentence;" and (3) a copy of an August 2, 2001 federal district order revoking Huusko's federal supervised release and recommitting him to federal prison for twenty-four months, to run consecutive to his sentence on the underlying robbery conviction.

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

¶4 The court notified the district attorney of Huusko's petition, and the district attorney filed an objection to the petition. The court ultimately denied the petition on grounds that sentence adjustment was not in the public interest. This appeal follows.

DISCUSSION

¶5 To be considered for sentence adjustment, an inmate must establish one of four grounds specified in WIS. STAT. § 973.195(1r)(b), including that "[t]he inmate is subject to a sentence of confinement in another state or the inmate is in the United States illegally and may be deported." *See* ***State v. Stenklyft***, 2005 WI 71, ¶25, 281 Wis. 2d 484, 697 N.W.2d 769. Upon receipt of the petition, the circuit court may either deny it or hold it for further consideration. WIS. STAT. § 973.195(1r)(c). If the petition is held for further consideration, the court must notify the district attorney of the petition. ***Id.*** The statute further provides: "If the district attorney objects to adjustment of the inmate's sentence within 45 days of receiving notification under this paragraph, the court shall deny the inmate's petition." ***Id.***

¶6 Our supreme court has interpreted "shall" in this provision to be permissive on grounds that granting the district attorney veto power of a sentence adjustment petition would violate the separation of powers doctrine. ***Id.***, ¶85 (Abrahamson, C.J., concurring in part and dissenting in part).[2] Thus, the circuit

[2] Because Justices Ann Walsh Bradley, N. Patrick Crooks, and Louis B. Butler joined Chief Justice Abrahamson's concurrence/dissent, it formed a four-person majority for this proposition. ***State v. Stenklyft***, 2005 WI 71, ¶82, 281 Wis. 2d 484, 697 N.W.2d 769.

court may consider, but is not bound by, the district attorney's objection in deciding whether to grant or deny the petition. ***Id.***, ¶82.

¶7 Sentence adjustment is ultimately left to the circuit court's discretion. *See* ***id.***, ¶112. In determining whether to grant or deny a sentence adjustment petition, the applicable standard is "the public interest." WIS. STAT. § 973.195(1r)(f). "When a circuit court fails to set forth its reasoning, appellate courts [may] independently review the record to determine whether it provides a basis for the circuit court's exercise of discretion." ***State v. Hunt***, 2003 WI 81, ¶¶44-45, 263 Wis. 2d 1, 666 N.W.2d 771.

¶8 Here, Huusko claims the circuit court erred by denying his petition. Noting that the DOC's verification of time served form mistakenly indicated he "does not have another sentence," Huusko speculates that the circuit court relied on this error when denying his petition. We are not persuaded. If the circuit court had relied upon this claimed mistake, it would have likely denied the petition outright for its failure to set forth one of the threshold grounds for sentence adjustment under WIS. STAT. § 973.195(1r). Instead, the court treated the petition as facially sufficient, holding it for further consideration and input from the district attorney.

¶9 Further, the court's order declared the petition was denied because sentence adjustment was not in the public interest—not because Huusko's petition was facially inadequate. We therefore reject Huusko's claim that the circuit court's decision was based on inaccurate information from the DOC. Given the district attorney's response and the nature of the offense, we conclude there is a reasonable basis in the record to determine the court properly exercised its

discretion when determining that sentence adjustment was not in the public interest.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.