COURT OF APPEALS
DECISION
DATED AND FILED

January 20, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP672 **Cir. Ct. No. 2002CF003787**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

SHERWOOD L. HARD,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: STEPHANIE G. ROTHSTEIN, Judge. *Affirmed.*

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 PER CURIAM. Sherwood L. Hard, *pro se*, appeals from a circuit court order denying his WIS. STAT. § 302.113(7m) (2013-14)[1] petition to modify

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

his conditions of extended supervision by removing the requirement that he register as a sex offender and "submit to an evaluation for sex offender treatment and participate in any treatment that is deemed necessary."[2] We affirm.

BACKGROUND

¶2 In 2003, a jury found Hard guilty of second-degree sexual assault of a child. The trial court sentenced Hard to twelve years of initial confinement and five years of extended supervision. It also ordered Hard to register as a sex offender, which was statutorily required because he had been convicted of sexually assaulting a child in violation of WIS. STAT. § 948.02(2) (2001-02). *See* WIS. STAT. § 973.048(2m) (2001-02).[3]

¶3 In the years since his conviction, Hard has filed numerous postconviction motions, appeals, and petitions for relief. In his last appeal, we provided a summary of his prior six appeals and eleven postconviction motions. *See* ***State v. Hard***, No. 2012AP2826, unpublished slip op. and order (WI App Oct. 11, 2013); *see also* ***State v. Hard***, No. 2008AP1858-CR, unpublished slip op. (WI App Aug. 11, 2009) (providing additional details of the arguments Hard presented

[2] In this opinion, we will use the term "circuit court" to describe the court that denied the petition at issue in this appeal, while we will use the term "trial court" to describe the court that presided over the jury trial and sentenced Hard. The Honorable Stephanie G. Rothstein is the circuit court that denied the petition we now consider. The Honorable Richard J. Sankovitz served as the trial court.

[3] WISCONSIN STAT. § 973.048(2m) (2001-02) provided in relevant part:

> If a court imposes a sentence … for a violation … of [WIS. STAT. §] 948.02 (1) or (2) … the court shall require the person to comply with the reporting requirements under [WIS. STAT. §] 301.45 unless the court determines, after a hearing on a motion made by the person, that the person is not required to comply under [§] 301.45 (1m).

in his various filings). We will not repeat those litigation summaries in this decision.

¶4 In March 2015, Hard filed the petition to modify conditions of extended supervision that is the subject of this appeal. At the time the petition was filed, Hard was still incarcerated but was anticipating release on extended supervision. The circuit court denied the petition in a written order, stating that the petition "set[] forth nothing which would cause this court to amend the judgment of conviction." It also stated that Hard's "claim that the [trial] court had no jurisdiction to impose sex offender/treatment requirements is completely without merit and summarily denied." This appeal follows. While this appeal was pending, Hard was released on extended supervision.

DISCUSSION

¶5 Hard's petition to modify his conditions of extended supervision was based on WIS. STAT. § 302.113(7m), which he cited in his petition. That statute provides in relevant part:

> (a) Except as provided in par. (e), a person subject to this section or the department may petition the sentencing court to modify any conditions of extended supervision set by the court.
>
> ….
>
> (c) The court may conduct a hearing to consider the petition. The court may grant the petition in full or in part if it determines that the modification would meet the needs of the department and the public and would be consistent with the objectives of the person's sentence.
>
> (d) A person subject to this section or the department may appeal an order entered by the court under this subsection. The appellate court may reverse the order only if it determines that the sentencing court erroneously exercised its discretion in granting or denying the petition.

> (e) 1. An inmate may not petition the court to modify the conditions of extended supervision earlier than one year before the date of the inmate's scheduled date of release to extended supervision or more than once before the inmate's release to extended supervision.
>
> 2. A person subject to this section may not petition the court to modify the conditions of extended supervision within one year after the inmate's release to extended supervision. If a person subject to this section files a petition authorized by this subsection after his or her release from confinement, the person may not file another petition until one year after the date of filing the former petition.

¶6 In this appeal, we must consider whether the circuit court "erroneously exercised its discretion in … denying the petition." *See* WIS. STAT. § 302.113(7m)(d). "'A circuit court erroneously exercises its discretion if it applies an improper legal standard or makes a decision not reasonably supported by the facts of record.'" ***Johnson v. Cintas Corp. No. 2***, 2012 WI 31, ¶22, 339 Wis. 2d 493, 811 N.W.2d 756 (citation omitted). "Although the proper exercise of discretion contemplates that the circuit court explain its reasoning, when the court does not do so, we may search the record to determine if it supports the court's discretionary decision." ***Randall v. Randall***, 2000 WI App 98, ¶7, 235 Wis. 2d 1, 612 N.W.2d 737.

¶7 With those standards in mind, we turn to Hard's petition and appellate brief, both of which are admittedly difficult to understand. To the extent we do not address a particular argument, it is denied because it is undeveloped or inadequately briefed. *See* ***League of Women Voters v. Madison Cmty. Found.***, 2005 WI App 239, ¶19, 288 Wis. 2d 128, 707 N.W.2d 285 (we do not decide undeveloped arguments); ***Vesely v. Security First Nat'l Bank of Sheboygan Trust Dep't***, 128 Wis. 2d 246, 255 n. 5, 381 N.W.2d 593 (Ct. App. 1985) (we do not decide inadequately briefed arguments). In addition, to the extent Hard has

presented new issues on appeal, we decline to consider them because they are raised for the first time on appeal. *See* ***State v. Van Camp***, 213 Wis. 2d 131, 144, 569 N.W.2d 577 (1997).

¶8 Hard's petition argued that his confinement in prison and his release on extended supervision have both subjected him to "slavery or involuntary servitude" as prohibited by the Thirteenth Amendment to the Constitution of the United States. He further asserted that he has been "kidnapped" since his sentencing in May 2003. The petition said that requiring Hard to participate in sex offender treatment and register as a sex offender "would put him in slavery or involuntary servitude" and offend his due process rights and his right to be free from cruel and unusual punishment.

¶9 This is not the first time Hard has asserted that his imprisonment subjects him to slavery and involuntary servitude. The basis for this claim, which he presented in response to the no-merit report and in subsequent postconviction motions, is that he believes he was wrongfully convicted. Indeed, he continues to assert that he is "actually innocent of the offense." (Bolding and italics omitted.) This court has on numerous occasions rejected Hard's challenges to the sufficiency of the evidence and to the victim's testimony. Hard cannot relitigate those issues. *See* ***State v. Witkowski***, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991) ("A matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue.").

¶10 Hard's petition also discussed the role of the Department of Corrections ("DOC") in offering and directing sex offender treatment. The petition mentioned promulgation of regulations by administrative agencies, but did

not adequately explain how that discussion relates to the petition to modify conditions of extended supervision. Hard, quoting ***State v. Lynch***, 105 Wis. 2d 164, 168, 312 N.W.2d 871 (Ct. App. 1981), also asserted that '"[t]he sentencing court has no jurisdiction to place conditions on a prison sentence.'" We agree with the circuit court's implicit determination that these arguments did not provide a basis to modify the conditions of extended supervision. The trial court did not direct the DOC to do anything while Hard was serving his period of initial confinement, and the extended supervision provisions at issue were the result of the trial court's order, not the DOC's order.

¶11 Next, Hard's petition stated that the trial court had erroneously exercised its discretion at sentencing because it did not explain its reasoning.[4] Hard also asserted that the "sex offender treatment and registration" requirements were "not authorized by law." These arguments are not compelling. First, the trial court adequately explained its sentence, as this court concluded in Hard's direct appeal. *See* ***State v. Hard***, No. 2004AP1193-CRNM, unpublished slip op. and order at 8-10 (WI App Feb. 11, 2005). Second, as noted above, WIS. STAT. § 973.048(2m) (2001-02) *required* the trial court to order Hard to register as a sex offender because he had been convicted of sexually assaulting a child in violation of WIS. STAT. § 948.02(2) (2001-02).[5] *See* § 973.048(2m) (2001-02). Finally,

[4] Curiously, Hard argues in his reply brief that the trial court "never imposed any conditions upon the terms of his extended supervision." This is simply wrong. At sentencing, the trial court informed Hard how extended supervision works and then outlined specific requirements that the trial court was imposing as conditions of Hard's extended supervision, including that Hard "submit to an evaluation for sex offender treatment and participate in any treatment that is deemed necessary."

[5] WISCONSIN STAT. § 973.048(2m) (2001-02) did provide a procedure by which a defendant could move to be relieved of the duty to report as a sex offender, but the sentencing transcript does not indicate that Hard filed such a motion.

trial courts are statutorily authorized to impose conditions on the term of extended supervision, as we have recognized:

> WISCONSIN STAT. § 973.01(5) authorizes the trial court to impose conditions upon a term of extended supervision. It is within the broad discretion of the trial court to impose conditions as long as the conditions are reasonable and appropriate. While rehabilitation is the goal of probation, judges must also concern themselves with the imperative of protecting society and potential victims. "[W]hen a judge allows a convicted individual to escape a prison sentence and enjoy the relative freedom of probation, he or she must take reasonable judicial measures to protect society and potential victims from future wrongdoing. To that end—along with the goal of rehabilitation—the legislature has seen fit to grant circuit court judges broad discretion in setting the terms of probation."

State v. Koenig, 2003 WI App 12, ¶7, 259 Wis. 2d 833, 656 N.W.2d 499 (citations and footnotes omitted).

¶12 In summary, we have examined Hard's petition to modify the conditions of his extended supervision. As we have explained here, many of the arguments Hard presented in his petition were previously litigated, irrelevant, or simply inaccurate. Contrary to Hard's assertion in his petition, the circuit court was not required to conduct a hearing on the petition, *see* WIS. STAT. § 302.113(7m)(c), and, for the reasons outlined above, we conclude that the circuit court did not erroneously exercise its discretion when it denied the petition.

By the Court.—Order affirmed.

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