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DISTRICT III

November 18, 2025

To:

Hon. Jon M. Theisen
Circuit Court Judge
Electronic Notice

Nicholas DeSantis
Electronic Notice

Cherie Norberg
Clerk of Circuit Court
Eau Claire County Courthouse
Electronic Notice

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

2024AP1318-CR

State of Wisconsin v. Miquel D. Brown (L. C. No. 2017CF295)

Before Stark, P.J., Hruz, and Gill, 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).

Miquel D. Brown appeals the judgment convicting him of delivery of less than three grams of heroin as a second or subsequent offense, possession with the intent to deliver less than three grams of heroin as a second or subsequent offense, and battery to a law enforcement officer—all as a repeat offender. *See* WIS. STAT. §§ 961.41(1)(d)1., 961.41(1m)(d)1., 961.48(1)(b), 940.203(2), 939.62(1)(b)-(c) (2017-18).¹ 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.

¹ All references to the Wisconsin Statutes are to the 2023-24 version unless otherwise noted.

Brown pled no contest to the above-mentioned charges and was subsequently sentenced. Because he had been previously convicted of a felony, Brown was subject to a four-year penalty enhancer on the battery charge. *See* WIS. STAT. §§ 940.203(2), 939.50(3)(h), 973.01(2)(b)8. (2017-18) (imposing a maximum penalty of three years' initial confinement followed by three years' extended supervision for battering a law enforcement officer); WIS. STAT. § 939.62(1)(b) (2017-18) (allowing a four-year penalty enhancement for repeat felonies). In total, Brown received seven years' initial confinement followed by three years' extended supervision on the battery count, with concurrent terms of five years' initial confinement followed by five years' extended supervision on each of the drug-related counts. Following sentencing, Brown's counsel filed a no-merit report. We agreed that no issues of arguable merit existed and affirmed Brown's convictions.

Brown later filed a pro se motion for sentence modification, arguing that the circuit court improperly calculated his sentence on the battery count. Brown argued that his sentence exceeded the maximum allowed by law and that the circuit additionally erred by not first explicitly imposing a bifurcated sentence before applying the four-year penalty enhancer. The circuit court denied the motion, explaining that Brown's argument mischaracterized the sentence calculation. Brown then filed a motion for reconsideration, which was also denied. This appeal followed.

On appeal, Brown renews the arguments made in his pro se motion for sentence modification and his motion for reconsideration. Whether Brown's sentence requires modification is an issue we review independently. *See State v. Klubertanz*, 2006 WI App 71, ¶26, 291 Wis. 2d 751, 713 N.W.2d 116.

With the exception of Class A felonies, felony sentences in Wisconsin are bifurcated; in other words, they are made up of a period of initial confinement in prison followed by a period of extended supervision. *See* WIS. STAT. § 973.01(1)-(2). For each class of felony, there is a maximum period of initial confinement and a maximum period of extended supervision. Sec. 973.01(2)(b). A penalty enhancement statute may increase the period of confinement in prison. Sec. 973.01(2)(c).

A court applying a penalty enhancer to a sentence employs a two-step process. First, the sentencing court figures out the maximum sentence for the felony charge at issue and determines the appropriate bifurcated sentence. *State v. Lasanske*, 2014 WI App 26, ¶¶5-6, 353 Wis. 2d 280, 844 N.W.2d 417. Second, the court adds the applicable penalty enhancer to the initial confinement portion of the sentence. *Id.*, ¶7. Penalty enhancers may be added only to the initial confinement portion of a sentence, not to the extended supervision portion. *State v. Volk*, 2002 WI App 274, ¶¶35-36, 258 Wis. 2d 584, 654 N.W.2d 24.

Turning to Brown's sentence for the battery charge, we conclude the circuit court did not err in sentencing him to seven years' initial confinement followed by three years' extended supervision. Battering a law enforcement officer is a Class H felony carrying a maximum sentence of three years of initial confinement and three years of extended supervision. *See* WIS. STAT. §§ 940.203(2), 939.50(3)(h), 973.01(2)(b)8. (2017-18). The penalty enhancer added four years to the initial confinement portion of Brown's sentence. *See* WIS. STAT. § 939.62(1)(b) (2017-18); *Volk*, 258 Wis. 2d 584, ¶¶35-36. As this was exactly the sentence Brown received, the circuit court's sentencing calculation was correct.

Brown’s assertion that he was over-sentenced by one year has no basis in the law. Pointing to WIS. STAT. § 973.01(2)(c)1 (2017-18), which states that when a penalty enhancer increases a confinement term, “the total length of the bifurcated sentence that may be imposed is increased by the same amount,” Brown argues that a penalty enhancer cannot add more than three years to a Class H felony sentence. In other words, Brown argues that the penalty enhancer cannot do more than double the initial confinement portion of a sentence. But that is not what the statute allows. As explained above, the four-year penalty enhancer increases permissible length of an offender’s initial confinement period by up to four years. Therefore, in Brown’s case it increased the maximum length of the total bifurcated sentence from six to ten years—seven years of confinement and three years of supervision.

Furthermore, Brown’s assertion that the circuit court did not “first bifurcate [his] confinement and extended supervision before applying the ... enhancer” is belied by the record. As set forth above, the court did impose a bifurcated sentence that correctly included the enhancer. Indeed, the circuit court showed that it understood the two-step sentencing process outlined above when it confirmed the penalties for the battery charge at Brown’s sentencing hearing. The court specifically confirmed, “It’s a Class H, six years, with the repeater, four more, so there would be ten total, [bifurcated as] seven and three?” The court’s process and calculation were correct; therefore, Brown’s sentence does not require recalculation. *See Lasanske*, 353 Wis. 2d 280, ¶¶6-7.

Therefore,

IT IS ORDERED that the judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals