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DISTRICT I

February 10, 2026

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

2024AP2363-CR State of Wisconsin v. Javon L. Alexander (L.C. # 2022CF3599)

Before White, C.J., Donald, and Geenen, 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).

Javon L. Alexander, pro se, appeals an order that denied his motion seeking postconviction relief under WIS. STAT. § 974.06 (2023-24).[1] He alleges that the circuit court improperly delayed his eligibility for participation in two prison programs, the challenge

[1] Alexander stated in his notice of appeal that he challenged both the order that denied his motion for relief under WIS. STAT. § 974.06, and a second order that denied his motion for sentence credit. However, he did not present any argument to this court regarding a sentence credit claim. We therefore deem that claim abandoned and affirm the sentence credit order without discussion. *See* ***State v. Ledger***, 175 Wis. 2d 116, 135, 499 N.W.2d 198 (Ct. App. 1993).

All references to the Wisconsin Statutes are to the 2023-24 version.

incarceration program (CIP) and the substance abuse program (SAP). Based upon a review of the briefs and record, we conclude at conference that this matter is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We summarily affirm.

Alexander entered no-contest pleas to three felonies arising out of his failure to remain at the scene of a motor vehicle accident: hit-and-run resulting in death; hit-and-run causing great bodily harm; and hit-and-run causing injury. *See* WIS. STAT. §§ 346.67(1), 346.74(5)(b)-(e). The circuit court imposed three concurrent sentences resulting in an aggregate 20-year term of imprisonment, bifurcated as twelve years of initial confinement and eight years of extended supervision. The circuit court's sentencing remarks included findings that Alexander was eligible to participate in both CIP and SAP but only after he completed ten years of initial confinement.

Alexander did not exercise his direct appeal rights under WIS. STAT. § 974.02 and WIS. STAT. RULE 809.30. Instead, as relevant here, he filed a motion under WIS. STAT. § 974.06, alleging that the circuit court lacked the power to delay his eligibility for CIP and SAP and that his trial counsel was ineffective at sentencing for failing to object to the delay in his eligibility. The circuit court denied the motion, concluding that the delay was lawful. Alexander appeals.

CIP and SAP are prison treatment programs. Upon successful completion of either program, the remaining portion of an inmate's initial confinement term is normally converted to extended supervision time. WIS. STAT. §§ 302.045(1), (3m)(b), 302.05(1)(am), (3)(c)2.; *but see* ***State v. Gramza***, 2020 WI App 81, ¶3, 395 Wis. 2d 215, 952 N.W.2d 836 (describing an exception to the rule). Determining the defendant's eligibility for these programs is a component of the sentencing discretion that the circuit court must exercise when imposing a bifurcated

sentence for certain crimes, including those specified under WIS. STAT. § 346.67(1). *See* WIS. STAT. § 973.01(3m), (3g).[2]

As a preliminary matter, we address whether WIS. STAT. § 974.06 is an available tool for challenging the specifics of CIP and SAP eligibility. Section 974.06 has been described as permitting a convicted person to raise constitutional and jurisdictional challenges to a conviction, *see* ***State v. Henley***, 2010 WI 97, ¶52, 328 Wis. 2d 544, 787 N.W.2d 350, but the statute also permits a convicted person to raise claims that a sentence is "in excess of the maximum authorized by law or is otherwise subject to collateral attack," *see* § 974.06(1). The State acknowledges that we may reach the merits of Alexander's challenge because Alexander alleges, in effect, that his sentences are unlawful, and a defendant may collaterally attack an illegal sentence at any time. *See* ***State v. Hungerford***, 76 Wis. 2d 171, 178, 251 N.W.2d 9 (1977). We accept the State's framing of the issue and proceed to the substantive claim.

Alexander claims that the statutory language of WIS. STAT. § 973.01(3g) and (3m) gives the circuit court authority to decide only if, but not when, an inmate is eligible to participate in CIP and SAP.[3] Whether the circuit court has statutory authority to determine when a defendant will become eligible for these programs is a question of law. *See* ***State v. White***, 2004 WI App 237, ¶6, 277 Wis. 2d 580, 690 N.W.2d 880. We resolve questions of statutory interpretation

[2] SAP was formerly known as the earned release program (ERP). Effective August 3, 2011, the legislature renamed the program. 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). We refer to the program as SAP throughout the remainder of this opinion.

[3] As relevant here, both WIS. STAT. § 973.01(3m), governing CIP, and § 973.01(3g) governing SAP, provide that when a court imposes a bifurcated sentence for certain crimes, the court, "shall, as part of the exercise of its sentencing discretion, decide whether the person being sentenced is eligible or ineligible" for the program.

independently. ***State v. Lehman***, 2004 WI App 59, ¶7, 270 Wis. 2d 695, 677 N.W.2d 644. When, however, the court of appeals has previously published an opinion deciding an issue, we are bound by that opinion. ***White***, 277 Wis. 2d 580, ¶7. "[T]he court of appeals may not overrule, modify or withdraw language from a previously published decision of the court of appeals." ***Cook v. Cook***, 208 Wis. 2d 166, 190, 560 N.W.2d 246 (1997).

In this case, the question that Alexander presents is answered directly by prior published decisions of this court. In ***Lehman***, we held that "[WIS. STAT.] § 973.01(3m) authorizes the sentencing court, in the exercise of its discretion, to determine both if and when a defendant is eligible for the CIP program." ***Lehman***, 270 Wis. 2d 695, ¶19. In ***White***, we determined that the statutory language of § 973.01(3m), governing CIP, is virtually identical to the statutory language of § 973.01(3g), governing SAP. ***White***, 277 Wis. 2d 580, ¶9. We therefore concluded that ***Lehman*** controlled our interpretation of § 973.01(3g) and required us to hold that § 973.01(3g) authorizes the circuit court to determine both if and when a defendant is eligible for SAP. ***White***, 277 Wis. 2d 580, ¶¶9-10. We are bound by ***Lehman*** and ***White***. *See* ***Cook***, 208 Wis. 2d at 190.

Alexander appears to recognize that we are not free to disregard ***Lehman*** and ***White***. He states that, if we reject his reading of WIS. STAT. § 973.01(3g) and (3m), then we should certify his appeal to the Wisconsin Supreme Court and ask it to conclude that we erred in deciding those cases. In support, Alexander asserts that our decisions in ***Lehman*** and ***White*** conflict with our supreme court's decision in ***State v. Gibbons***, 71 Wis. 2d 94, 237 N.W.2d 33 (1976). The ***Gibbons*** court held that a sentencing court "acted in excess of its jurisdiction in specifying ... the conditions of the defendant's confinement in the state prison." ***Id.*** at 99. We reject Alexander's

request to certify this matter, because we disagree with his premise that ***Lehman*** and ***White*** are in conflict with ***Gibbons***.

Gibbons does not bar a circuit court from imposing sentence terms that the circuit court is authorized by statute to impose. ***State v. Campbell***, 2011 WI App 18, ¶21, 331 Wis. 2d 91, 794 N.W.2d 276 (citation omitted) ("If the authority to fashion a particular criminal disposition exists, it must derive from the statutes."). To the contrary, when a statute grants a circuit court authority to impose a condition at sentencing, the circuit court may exercise that authority as the statute permits. ***Id.***, ¶¶21-23. As our supreme court has explained: "Trial courts have broad discretionary power to deal with individual cases on their merits. These powers are as broad and inclusive as in the opinion of the legislature was consistent with sound public policy." ***State v. Machner***, 101 Wis. 2d 79, 81, 303 N.W.2d 633 (1981) (citations modified).

In ***Lehman*** and ***White***, we interpreted WIS. STAT. §§ 973.01(3m) and (3g), respectively, and we determined that the language of those statutes conferred authority on the circuit court to impose a waiting period before a defendant became eligible for CIP and SAP. ***Lehman***, 270 Wis. 2d 695, ¶19; ***White***, 277 Wis. 2d 580, ¶¶9-10. Accordingly, no conflict exists between ***Gibbons***, on the one hand, and ***Lehman*** and ***White***, on the other. We therefore decline the invitation to certify this matter to the Wisconsin Supreme Court.

Last, we reject Alexander's claim of ineffective assistance of trial counsel. According to Alexander, his trial counsel should have objected at sentencing when the circuit court delayed his eligibility for CIP and SAP and should have raised an argument that the delay was unlawful. To prevail on such claim, Alexander must establish both that his trial counsel's performance was deficient and that the deficiency prejudiced the defense. *See* ***Strickland v. Washington***, 466 U.S.

668, 687 (1984). In light of ***Lehman*** and ***White***, however, trial counsel had no basis to object to the lawfulness of the waiting period. Counsel does not perform deficiently by failing to raise a meritless objection. ***State v. Cameron***, 2016 WI App 54, ¶27, 370 Wis. 2d 661, 885 N.W.2d 611. For all the foregoing reasons, we affirm.

Therefore,

IT IS ORDERED that the orders are summarily affirmed. *See* 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