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DISTRICT I

October 6, 2026

To:

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Circuit Court Judge
Electronic Notice

Aaron R. O'Neil
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

John T. Wasielewski
Electronic Notice

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

2025AP679-CR	State of Wisconsin v. Elmo Jerome Peyton, III (L.C. # 2022CF1763)
2025AP680-CR	State of Wisconsin v. Elmo Jerome Peyton, III (L.C. # 2023CF135)

Before Donald, C.J., Colón, P.J., and Geenen, J.

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).

Elmo Jerome Peyton, III, appeals from his judgments of conviction and the order denying his postconviction motion seeking eligibility for the Substance Abuse Program (SAP). Based upon our review of the briefs and records, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).¹ We summarily affirm.

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

In May 2022, Peyton was charged with a number of felonies for shooting into the residence of the mother of his ex-girlfriend, S.A.M., with whom he shares two children. Seven people were inside the residence at the time, including five children, but no one was injured. Additionally, Peyton was subsequently charged with felony intimidation of a witness, as a habitual criminal repeater and with a domestic abuse assessment, for making several calls to S.A.M. from jail, despite a no-contact order, in an attempt to stop her from cooperating in the prosecution of his case.

The two cases were joined and proceeded to trial in February 2023. A jury found Peyton guilty of six of the seven counts related to the shooting, and the intimidation charge. The circuit court imposed sentences totaling twenty-two years of initial confinement and twelve years of extended supervision. Additionally, the court determined that Peyton was eligible for the Challenge Incarceration Program (CIP) after serving fifteen years of initial confinement, but not eligible for the SAP.

Peyton subsequently filed a postconviction motion seeking eligibility for the SAP. He alleged that the circuit court had erroneously exercised its discretion by failing to make an eligibility determination regarding the SAP at sentencing. Peyton also noted that he would not be able to participate in the CIP, because by the time he serves fifteen years of initial confinement as required by the court, he would be beyond the statutory age limit for eligibility. *See* WIS. STAT. § 302.045(2)(b). In contrast, the SAP has no age limit. *See* WIS. STAT. § 302.05.

The circuit court rejected these arguments. The court pointed to its statement at sentencing that it had not “heard anything about the [SAP]” as being indicative that it had made eligibility findings regarding the SAP. The court further declined to modify Peyton’s sentence to

allow for eligibility in the SAP based on his inability to participate in the CIP, noting that the programs “are not interchangeable,” and indicating that it did not consider this to be a new factor for purposes of sentence modification. The court further stated that Peyton’s sentence “was not predicated on an assumption that [Peyton] would necessarily be enrolled in an early release program or be released any sooner than serving the full term of confinement.”

Therefore, the court denied Peyton’s postconviction motion. This appeal follows.

“Sentencing decisions are discretionary; we review only whether the [circuit] court erroneously exercised its discretion.” *State v. Owens*, 2006 WI App 75, ¶7, 291 Wis. 2d 229, 713 N.W.2d 187. A discretionary decision will be affirmed “if it is made based upon the facts of record and in reliance on the appropriate law.” *Id.* “There is a strong public policy against interfering with the [circuit] court’s sentencing discretion, and we presume the [circuit] court acted reasonably.” *Id.*

The determination of whether to allow eligibility in the CIP and SAP is “part of the [circuit] court’s exercise of sentencing discretion.” *Id.*, ¶9. In fact, the court is not required to make “completely separate findings on the reasons for the eligibility decision,” as long as the “overall sentencing rationale” justifies the programming determination. *Id.*

Based on this standard, Peyton’s arguments fail. As the court stated, it commented during sentencing that it had not “heard anything about the [SAP].” This appears to be a reference to the requests for programming made by Peyton’s trial counsel at sentencing: he specifically referenced programming related to domestic abuse and anger management, but made only a general request for “early release programs,” and provided no information regarding any

substance abuse issues. Thus, the record provides support for the court’s ineligibility determination regarding the SAP.

Furthermore, the circuit court’s overall sentencing rationale demonstrates its focus on punishment and the protection of the community. See *id.*, ¶8. The court considered Peyton’s criminal history, which included multiple convictions involving a gun—in particular, the court noted an incident where he fired a gun at McDonald’s employees due to his disappointment in his fries—observing that “every single time you have a gun and you’re using them.” Additionally, the court stated it was “[a]bsolutely stunned” that Peyton had admitted to the police that he knew his children were inside the residence when he shot into it, alluding to the gravity of the offense. In consideration of these proper factors, see *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76, the court opined that Peyton is “too dangerous to be out.” Thus, the court’s overall sentencing rationale reflects an emphasis on imposing a significant term of initial confinement, as opposed to focusing on program eligibility that could result in Peyton’s early release. See *Owens*, 291 Wis. 2d 229, ¶9.

As such, the record demonstrates that the circuit court was justified in its programming decisions—making Peyton ineligible for the SAP and delaying his eligibility for the CIP, even though that delay ultimately results in his ineligibility for that program.² See *id.* We therefore

² Peyton specifically states that he is not asserting the existence of a new factor with regard to his ineligibility for the CIP. This may be due to Peyton’s conviction under WIS. STAT. § 941.20(3)(a)2. for discharging a firearm at a building, which appellate counsel points out is a violent felony under WIS. STAT. § 941.29(1g)(a), and therefore an exception to participation in the CIP. See WIS. STAT. § 302.045(2)(c).

(continued)

conclude that the circuit court did not erroneously exercise its discretion in making those eligibility determinations. See *id.*, ¶7. Accordingly, we affirm his judgments of conviction and the order denying his postconviction motion.

Therefore,

IT IS ORDERED that the judgments and order 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

Nevertheless, it appears that the court and counsel at sentencing overlooked that Peyton would have been beyond the statutory age limit for CIP eligibility based on the date the circuit court set for his CIP eligibility, because no one raised the issue. Had they, the entire issue underlying this appeal might have been avoided; the court could have noted that its decision was intentional, that Peyton would be eligible if CIP criteria changed, or that it was unintentional, or offered another explanation.