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January 23, 2018

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

2017AP910-CR	State of Wisconsin v. Gregory Alan Wall (L.C. # 2016CF946)
2017AP911-CR	State of Wisconsin v. Gregory Alan Wall (L.C. # 2016CF2199)

Before Sherman, Kloppenburg and Fitzpatrick, 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).

Gregory Alan Wall appeals judgments of conviction and an order denying a postconviction motion that requested that the circuit court find Wall eligible for the Substance Abuse Program (SAP). Wall contends that the court erroneously exercised its sentencing discretion by failing to consider Wall's rehabilitative needs in denying Wall eligibility for SAP. 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 (2015-16).¹ We summarily affirm.

In June 2016, Wall pled guilty to one count of operating a motor vehicle while intoxicated (OWI), sixth offense, and one count of felony bail jumping. The circuit court sentenced Wall to a total of three years of initial confinement and five years of extended supervision. The court did not address early release program eligibility at sentencing, but indicated on the judgments of conviction that it determined that Wall was not eligible for early release programming. Wall moved for postconviction relief, arguing that the court should have found him eligible for SAP. The circuit court denied the motion.

When a circuit court imposes a bifurcated sentence, “the court shall, as part of the exercise of its sentencing discretion, decide whether the person being sentenced is eligible or ineligible to participate in the [substance abuse] program.” WIS. STAT. § 973.01(3g). While the circuit court must determine whether a defendant is eligible for SAP, the court need not state “completely separate findings on the reasons for the eligibility decision, so long as the overall sentencing rationale also justifies the [SAP] determination.” *State v. Owens*, 2006 WI App 75, ¶9, 291 Wis. 2d 229, 713 N.W.2d 187.

Wall contends that the circuit court erroneously exercised its discretion by considering only the need for punishment and the need to protect the public in denying Wall eligibility for SAP. He asserts that the court failed to consider the required factor of Wall’s rehabilitative needs. *See id.*, ¶8 (“In imposing sentence, the court must consider at least the three primary

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

factors or objectives: the gravity and nature of the offense, including the effect on the victim; the character *and rehabilitative needs of the offender*; and the need to protect the public.” (Emphasis added)). Wall argues that the court failed to consider his rehabilitative needs when it decided to deny eligibility because three years of initial confinement “was the minimum amount of confinement necessary to achieve the court’s sentencing goals of punishment, deterrence and community protection.” We are not persuaded.

The circuit court explained that it considered Wall’s rehabilitative needs in determining that Wall was not eligible for SAP. The court stated that it was obvious to the court that Wall has substance abuse issues, but that Wall had “ample opportunities to address these issues in the past as this was his *sixth* OWI offense.” The court also noted that Wall had failed to maintain sobriety while released on bond in this case. The court then explained that the three years of initial confinement it imposed was the minimum necessary to achieve its sentencing goals of punishment, deterrence, and community protection, and that early release program eligibility would undermine the court’s sentencing intent. It was within the court’s discretion to determine the weight to place on each of the sentencing factors and objectives. *See State v. Odom*, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695 (“The weight given each of [the primary sentencing] factors lies within the [circuit] court’s discretion, and the court may base the sentence on any or all of them.”).

Finally, Wall asserts that the circuit court could have structured his sentence differently to require more confinement time in connection with program eligibility, that program eligibility would not have resulted in early release unless Wall actually completed the programming, and that making Wall eligible for SAP could have furthered the court’s goal to protect the public by helping Wall address his substance abuse issues. However, while these assertions would support

a determination of eligibility, they do not establish that the court erroneously exercised its discretion by denying eligibility. For the reasons set forth above, we discern no erroneous exercise of the court's sentencing discretion.

Therefore,

IT IS ORDERED that the judgments and order are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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

Diane M. Fremgen
Acting Clerk of Court of Appeals