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DISTRICT IV

January 22, 2020

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

2017AP715-CR

State of Wisconsin v. Michael A. Nieman (L.C. # 2015CF176)

Before Fitzpatrick, P.J., Blanchard and Kloppenburg, 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).

Michael Nieman appeals an order denying his motion for sentence modification. 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(2017-18).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

Nieman was convicted of one count of operating a motor vehicle with a prohibited blood alcohol content as a seventh, eighth or ninth offense. The amended judgment of conviction imposes a sentence of three years of initial confinement and five years of extended supervision. Nieman later moved for sentence modification based on new factors. The circuit court denied the motion. On appeal, the relief Nieman seeks is that his sentence be made concurrent with an earlier sentence, rather than consecutive as now, and that he be made eligible for the earned release program.

Nieman argues that the State failed to provide him with discovery material in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). This argument was not in his motion in circuit court. We usually do not address issues raised for the first time on appeal, *Binder v. City of Madison*, 72 Wis. 2d 613, 620, 241 N.W.2d 613 (1976), and we see no reason to do that in this case.

Nieman argues that he should be resentenced because the sentencing court had a mistaken belief about how many bail jumping charges were pending against Nieman at an earlier time, and due to various claimed irregularities regarding sentence calculations in his earlier cases. This argument fails because there is no indication in the circuit court's sentencing decision in this case that any of these facts were a basis for the court's decisions to make the sentence consecutive and to deny Nieman eligibility for the earned release program.

To the extent Nieman is also arguing that he was sentenced on the basis of inaccurate information, the argument similarly fails because there is no indication that the court relied on the supposedly inaccurate information.

Nieman next makes an argument in which he asserts that his current sentence was illegally stayed and that he had "legitimate expectations of finality" of that sentence. However,

Nieman's argument is incomprehensible, and we need not attempt to develop an argument for him. *See Industrial Risk Insurers v. American Eng'g Testing, Inc.*, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82 (“[W]e will not abandon our neutrality to develop arguments [for the parties].”).

Nieman next argues that his health care was wrongfully stopped and he was denied adequate health care and made to endure unnecessary pain. This appears to boil down to an argument that his medical condition is a new factor that requires sentence modification. However, there is no reason to believe this is new information. At sentencing Nieman's attorney noted as “special circumstances” Nieman's medical condition and the fact that Nieman “is in a lot of pain.” In addition, the court was familiar with Nieman's medical situation because it previously granted him furloughs from jail to obtain treatment, and had recognized his condition as a “serious” one.

Nieman next makes several arguments related to counsel. He argues that the circuit court erred by earlier amending, outside the presence of his attorney, the judgment of conviction to reduce the extended supervision portion of his sentence after the Department of Corrections informed the court that it exceeded the legal maximum. Nieman describes that amendment as a resentencing, but it was not. The amendment was pursuant to a statute which provides that sentences exceeding the legal maximum are void and are commuted to the maximum allowable time period “without further proceedings.” WIS. STAT. § 973.13.

Nieman next argues that his trial counsel was ineffective in relation to sentencing. We do not address this issue because it was not raised in Nieman's motion in circuit court. *See Binder*, 72 Wis. 2d at 620.

Nieman next asserts that he was not warned of the dangers of proceeding without counsel at the hearing on his sentence modification motion. Nieman also argues that he was not given enough time to decide whether to proceed without counsel, but he does not cite any authority requiring a specific amount of time, and does not explain how more time would have affected his decision. Neither of these arguments are developed and, accordingly, we do not consider those arguments. *See State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (stating that we need not consider an argument unsupported by citation to legal authority).

Finally, Nieman appears to argue that his health records were not timely transferred from one institution to another. It is not apparent how this relates to sentence modification and, therefore, we need not consider this argument.

IT IS ORDERED that the order appealed is summarily affirmed under WIS. STAT. RULE 809.21.

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

*Sheila T. Reiff
Clerk of Court of Appeals*