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DISTRICT II

July 23, 2025

To:

Hon. Timothy D. Boyle
Circuit Court Judge
Electronic Notice

Hector Salim Al-Homsi
Electronic Notice

Amy Vanderhoef
Clerk of Circuit Court
Racine County Courthouse
Electronic Notice

Edward R. Tomczak, #622599
Kettle Moraine Correctional Inst.
P.O. Box 282
Plymouth, WI 53073-0282

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

2024AP1664-CR

State of Wisconsin v. Edward R. Tomczak (L.C. #2022CF68)

Before Gundrum, P.J., Neubauer, and Lazar, 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).

Edward Tomczak appeals from an order of the circuit court. 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 (2023-24).¹ For the following reasons, we dismiss the appeal as moot.

Tomczak asserts on appeal that the circuit court erroneously exercised its discretion in denying his petition for sentence adjustment under WIS. STAT. § 973.195. He complains that the

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

court did not hold a hearing, and thus no transcripts exist, and that it did not issue a written decision but merely “checked the box” for denying his request on the basis that it was not in the public interest “and included the District Attorney’s response and objection as its reasoning.” He asserts that the court’s determination that sentence adjustment was not in the public interest was erroneous because his crime “was not committed against the public or in public. It was a personal domestic issue between him and his ex within the home. Therefore, the public has nothing to do with whether to grant or deny the petition.” He also complains that the court did not consider his “progress in rehabilitation.”

In its response brief, the State asserts Tomczak’s appeal is moot because, according to Department of Corrections’ (DOC) records, Tomczak’s mandatory release date on the confinement portion of his prison sentence was in December 2024. A review of the record supports this assertion, as the judgment of conviction indicates that at Tomczak’s September 2022 sentencing, the circuit court ordered an imposed and stayed sentence of one year of initial confinement and one year of extended supervision and a DOC “NOTICE OF CASE STATUS CHANGE” in the record indicates his probation was revoked and he was sent to prison approximately a year earlier than his mandatory release date. Tomczak failed to file a reply brief refuting the State’s assertion, and we deem this failure to be a concession. *See Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (unrefuted arguments may be deemed conceded).

As the State points out in its response brief, “[a]n issue is moot when its resolution will have no practical effect on the underlying controversy.” *State v. Fitzgerald*, 2019 WI 69, ¶21, 387 Wis. 2d 384, 929 N.W.2d 165 (citation omitted). Through a petition for sentence adjustment under WIS. STAT. § 973.195, an inmate seeks early release from the confinement portion of his

sentence, with the remaining time of that confinement portion then converted to extended supervision time. *See* § 973.195(1r)(g). In this case, because Tomczak has already concluded the confinement portion of his sentence and is on extended supervision, he cannot obtain the early-release-from-confinement relief he was seeking with his petition for sentence adjustment. As a result, we conclude that this appeal is moot and dismiss it. *See Portage County v. J.W.K.*, 2019 WI 54, ¶31, 386 Wis. 2d 672, 927 N.W.2d 509.

Therefore,

IT IS ORDERED that the appeal is summarily dismissed as moot 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