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**DISTRICT IV**

July 26, 2017

To:

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Circuit Court Judge  
Waushara County Courthouse  
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You are hereby notified that the Court has entered the following opinion and order:

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2016AP707-CR

State of Wisconsin v. Christopher D. Selby (L.C. # 2014CF145)

Before Kloppenburg, P.J., Lundsten, and Blanchard, 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).**

Christopher Selby appeals a judgment and an order of the circuit court that respectively convicted him of being party to the crime of delivery of illegal articles to an inmate and denied his postconviction motion to vacate the judgment. After reviewing the record, we conclude at

conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).<sup>1</sup> We affirm for the reasons discussed below.

There is no dispute between the parties that the charges against Selby were based upon his being the recipient of contraband drugs from a visitor while Selby was an inmate in prison. Selby contends that the statute under which he was convicted, WIS. STAT. § 302.095(2), does not unambiguously criminalize an inmate's delivery of contraband to himself. Therefore, Selby reasons, the court should apply the rule of lenity and conclude that the crime to which Selby entered a plea does not exist.

In addition to challenging Selby's interpretation of the delivery statute, the State also argues that Selby could properly be convicted of the charged crime under a theory of party-to-the-crime liability. That is, the State argues that Selby either aided and abetted the visitor's delivery of drugs to Selby, or Selby conspired with the visitor in the delivery of the drugs.

Selby did not address the question of liability by aiding and abetting or by conspiracy in his initial appellant's brief, and did not file a reply brief. We therefore deem Selby to have conceded that he could properly have been convicted as a party to the crime. *See Schlieper v. DNR*, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994) (An argument to which no response is made may be deemed conceded for purposes of appeal.).

IT IS ORDERED that the judgment of conviction and postconviction order are summarily affirmed under WIS. STAT. RULE 809.21(1).

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

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

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*