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DISTRICT IV

February 20, 2025

To:

Hon. Karl Hanson
Circuit Court Judge
Electronic Notice

Christine A. Remington
Electronic Notice

Amanda Nelson
Clerk of Circuit Court
Rock County Courthouse
Electronic Notice

Milton Eugene Warren 631350
Redgranite Correctional Institution
P.O. Box 925
Redgranite, WI 54970-0925

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

2023AP1954

State of Wisconsin v. Milton Eugene Warren (L.C. # 2014CF2123)

Before Graham, Nashold, and Taylor, 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).

Milton Warren, pro se, appeals a circuit court order that denied Warren's motion to modify his sentence to make him eligible for early release programming. 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 (2021-22).¹ We summarily affirm.

In 2014, Warren was convicted of possession of more than fifty grams of heroin with intent to deliver, as a party to a crime, possession of THC as a second or subsequent offense, and

¹ All references to the Wisconsin Statutes are to the 2021-22 version.

contributing to the delinquency of a minor. We affirmed on appeal. Warren has pursued two postconviction motions under WIS. STAT. § 974.06, both of which were denied by the circuit court.

In April 2023, Warren filed the postconviction motion underlying this appeal. In the April 2023 motion, Warren moved the circuit court to modify his sentence to make him eligible for early release programming. The circuit court held a hearing on the motion on June 1, 2023. On August 1, 2023, the court issued an order stating that, having held the June 1, 2023 hearing at which the court heard the parties' arguments, the court denied Warren's motion to modify his sentence.

Warren argues that the circuit court erred by denying his motion for sentence modification. However, the record on appeal does not include a transcript of the June 1, 2023 hearing on Warren's motion for sentence modification. As the appellant, it was Warren's responsibility to make sure the transcript was included in the record. *See* WIS. STAT. RULE 809.11(4)(a) ("The appellant shall request a copy of the transcript of the court reporter's verbatim record of the proceedings for each of the parties to the appeal and make arrangements to pay for the transcript and copies within 14 days after the filing of the notice of appeal."); *Gaethke v. Pozder*, 2017 WI App 38, ¶36, 376 Wis. 2d 448, 899 N.W.2d 381. "[I]n the absence of a transcript we presume that every fact essential to sustain the circuit court's decision is supported by the record." *Butcher v. Ameritech Corp.*, 2007 WI App 5, ¶35, 298 Wis. 2d 468, 727 N.W.2d 546 (2006).

Because Warren chose to proceed on appeal without a transcript of the June 1, 2023 motion hearing, Warren cannot carry his burden of demonstrating that the circuit court erred by

denying Warren's motion for sentence modification. The absence of the transcript precludes us from evaluating the court's reasons for denying his motion, and specifically, whether it erroneously exercised its discretion in denying his request to modify his sentence. *See State v. Harbor*, 2011 WI 28, ¶¶36-38, 333 Wis. 2d 53, 797 N.W.2d 828 (circuit court's decision on sentence modification is reviewed for erroneous exercise of discretion). The scope of our review on appeal is necessarily confined to the record before us, and we assume that any missing transcript would support the circuit court's exercise of discretion. *See Austin v. Ford Motor Co.*, 86 Wis. 2d 628, 641, 273 N.W.2d 233 (1979); *see also Fiumefreddo v. McLean*, 174 Wis. 2d 10, 26-27, 496 N.W.2d 226 (Ct. App. 1993). We therefore reject Warren's arguments.

Therefore,

IT IS ORDERED that the order is summarily affirmed 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