COURT OF APPEALS
DECISION
DATED AND RELEASED

JULY 29, 1997

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 97-0640-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

LEON SMETAK,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Price County: PATRICK J. MADDEN, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Leon Smetak appeals a postjudgment order that denied his motion to modify his two-year sentence for conspiracy to manufacture and deliver drugs. Smetak argued that, since his sentencing, the Wisconsin Department of Corrections had hardened its discretionary parole policy for drug dealers and that the executive branch's postsentencing policy change constituted a

"new factor" warranting a judicial sentence reduction. The trial court denied his motion without a hearing. On appeal, Smetak raises two arguments: (1) the Department's postsentencing parole policy change was a new factor; and (2) the trial court should not have denied the motion without at least giving Smetak the benefit of a hearing. We reject Smetak's arguments and therefore affirm the trial court's postjudgment order.

Smetak's claims on appeal are not meritorious. First, executive branch changes in parole policy are not new factors unless the trial court relied on the old parole policy when it sentenced the defendants. *See* ***State v. Franklin***, 148 Wis.2d 1, 13-14, 434 N.W.2d 609,613-14 (1989). Here, there is no indication that the trial court relied on the old parole policy. Rather, the trial court cited the standard sentencing factors, such as the severity of the offense, the defects in Smetak's character, his dangerousness to the public, and the need for deterrence. *See, e.g.,* ***State v. Sarabia***, 118 Wis.2d 655, 673-74, 348 N.W.2d 527, 537 (1984). Second, the trial court had the right to deny Smetak's motion without a hearing if the motion had no merit. *See* ***State v. Bentley***, 201 Wis.2d 303, 309-10, 548 N.W.2d 50, 53 (1996). Smetak's motion meets this test.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.