

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 24, 2005

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

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

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

Appeal No. 2004AP609-CR

Cir. Ct. No. 1992CF923395A

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

BRUCE LEE BROWN,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
JEAN W. DIMOTTO, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

¶1 PER CURIAM. Bruce Lee Brown appeals from an order denying his motion for sentence modification, which he requested because of an alleged change in parole policy. The trial court properly concluded that the alleged

change in parole policy did not amount to a new factor entitling Brown to resentencing. Accordingly, we affirm.

¶2 Brown was convicted in 1993 of first-degree reckless homicide and first-degree reckless injury. The circuit court imposed consecutive sentences totaling thirty-five years of imprisonment. Brown moved the circuit court for sentence modification in 2004, arguing that a change in Parole Board policy regarding discretionary parole amounted to a new factor entitling him to resentencing.

¶3 To obtain sentence modification, Brown was required to show: (1) that there is a new factor; and (2) that the new factor justifies sentence modification. *See State v. Franklin*, 148 Wis. 2d 1, 8, 434 N.W.2d 609 (1989). Whether a fact or set of facts constitutes a new factor is a question of law which may be decided without deference to the lower court's determination; however, whether the new factor justifies modification of the sentence is committed to the circuit court's discretion and will be reviewed under an erroneous exercise of discretion standard. *Id.*

¶4 A new factor, as defined in *Rosado v. State*, 70 Wis. 2d 280, 288, 234 N.W.2d 69 (1975), is a "fact or set of facts highly relevant to the imposition of sentence, but not known to the trial judge at the time of [the] original sentencing, either because it was not then in existence or because, even though it was then in existence, it was unknowingly overlooked by all of the parties." This court further developed the definition of a "new factor" as "an event or development which frustrates the purpose of the original sentence." *State v. Michels*, 150 Wis. 2d 94, 99, 441 N.W.2d 278 (Ct. App. 1989).

¶5 As proof of the policy shift, Brown points to a letter from former Governor Tommy G. Thompson to former Department of Corrections Secretary Michael J. Sullivan, instructing him to “pursue any and all available legal avenues to block the release of violent offenders who have reached their mandatory release date.” The letter goes on to state that “[t]he policy of this Administration is to keep violent offenders in prison as long as possible under the law.”

¶6 Review of the sentencing hearing satisfies this court that the circuit court did not rely on Parole Board Policy on discretionary parole or Brown’s eligibility for discretionary parole to fashion the sentences imposed in these cases. Because the circuit court did not consider parole policy in its original sentencing of Brown, a subsequent alleged change in parole policy is not a new factor under *Franklin*, and cannot serve as a basis for sentence modification. See 148 Wis. 2d at 15.

¶7 Because our decision on this point disposes of the appeal, we decline to decide the other issues Brown raises. See *Sweet v. Berge*, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983).

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

