COURT OF APPEALS
DECISION
DATED AND FILED

December 13, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP692-CR **Cir. Ct. No. 1996CF963053**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

EDWARD L. HENNINGS,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: DAVID A. HANSHER, Judge. *Affirmed*.

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

¶1 PER CURIAM. Edward L. Hennings appeals *pro se* from an order denying his WIS. STAT. § 974.06 motion (2001-02).[1] He argues that the trial court

[1] All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

erred in denying his request for sentence modification based on a new factor. Because Hennings's claim is procedurally barred, we affirm.

BACKGROUND

¶2 In October 1996, Hennings was convicted of first-degree reckless homicide. He was sentenced on November 27, 1996. He filed a direct appeal in 1997. This court affirmed the judgment of conviction, including the sentence and denial of the postconviction motion.

¶3 In September 1999, he filed his second postconviction motion, which was denied. In September 2002, he filed his third postconviction motion, which was denied. Hennings filed his fourth postconviction motion in February 2005, alleging that a 1994 change in parole board policy constituted a new factor, warranting resentencing. The trial court denied his motion. Hennings now appeals from that order.

DISCUSSION

¶4 Hennings argues that the trial court should have granted his motion because of the 1994 change in parole board policy, which discouraged release of violent criminals. We reject his argument.

¶5 If a defendant could have raised a "new factor" claim in a previous postconviction motion, but did not, he is procedurally barred from raising it later. *See* ***State v. Casteel***, 2001 WI App 188, ¶¶16-17, 247 Wis. 2d 451, 634 N.W.2d 338. This is black letter law. *See* WIS. STAT. § 974.06; ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 517 N.W.2d 157 (1994) (barring successive postconviction motions, which raise claims that could have been raised previously, unless defendant sets forth a sufficient reason).

¶6 Here, Hennings does not offer a sufficient reason for his failure to raise this issue in one of his previous postconviction motions. In addition, even on the merits, we are not persuaded by Hennings's argument. A new factor is a fact or set of facts, highly relevant to the sentence determination, that was not known to the trial judge at the time of the original sentencing because it was not then in existence or was "unknowingly overlooked" by all the parties. ***State v. Franklin***, 148 Wis. 2d 1, 8, 434 N.W.2d 609 (1989). The parole change Hennings proffers as a new factor occurred in 1994. He was sentenced in November 1996. Something that happened two years prior to the sentencing does not satisfy the definition of "new." The parole policy existed at the time Hennings was sentenced and Hennings fails to demonstrate that the trial court was not aware of the policy at the time it pronounced sentence.

By the Court.—Order affirmed.

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