

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 7, 2006

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 Nos. 2006AP149-CR
2006AP151-CR**

**Cir. Ct. Nos. 1996CF963666
1996CF963667**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOHN DOE,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
KAREN E. CHRISTENSON, Judge. *Affirmed.*

Before Lundsten, P.J., Dykman and Vergeront, JJ.

¶1 PER CURIAM. An anonymous appellant, identified here as John Doe, appeals an order denying in part his motion for sentence modification. The circuit court amended his parole eligibility date to correct an error of law in the

judgment, but denied his request for further modification based on a new sentencing factor. The issue is whether the circuit court properly denied relief on the new factor argument. We affirm.

¶2 In 1997, Doe was sentenced on two counts of armed robbery, and one count of robbery, reduced from armed robbery pursuant to a plea bargain. He received consecutive ten-year sentences. In sentencing Doe, the circuit court primarily considered the seriousness of the offenses and the effect on the victims, Doe's history of prior armed robbery convictions, the fact that Doe committed his offenses shortly after his release on parole from the prison terms imposed for his prior armed robberies, and Doe's poor adjustment to society, as demonstrated by his persistent drug use and virtually nonexistent employment record. The court determined that a lengthy term of imprisonment was necessary to address Doe's rehabilitative needs, to deter Doe and others from committing repeat crimes, and to protect the community.

¶3 Before his conviction, Doe provided police with valuable information in a homicide prosecution. When sentenced in this matter, Doe did not mention his assistance in the other case, as a mitigating factor, because he was afraid his identity would be revealed to the person he provided information about. Doe explained that he sought postconviction relief only after learning that the person he informed on had already discovered Doe's identity.

¶4 In ruling on Doe's motion, the circuit court held that Doe's cooperation with police was not a new factor because it did not frustrate the purpose of the original sentence. Additionally, the court determined that even if Doe had presented a new factor, it did not justify a modified sentence. Doe seeks review of that ruling.

¶5 A new factor is a fact or set of facts highly relevant to the defendant's sentence, but not known to the trial judge at the time of the original sentencing. *State v. Franklin*, 148 Wis. 2d 1, 8, 434 N.W.2d 609 (1989). The effect of the new factor must frustrate the purpose of the original sentence. *State v. Michels*, 150 Wis. 2d 94, 97, 441 N.W.2d 278 (Ct. App. 1989). Whether the defendant has demonstrated a new factor is a question of law that we decide without deference to the circuit court's decision. *Franklin*, 148 Wis. 2d at 8. Whether the new factor warrants a modified sentence, however, is left to the circuit court's discretion. *Id.*

¶6 We agree that Doe did not present a new sentencing factor because the fact of his participation as an informant was not highly relevant to the original sentence and did not frustrate its purpose. The circuit court made clear that the long prison terms were imposed to protect the public, to punish Doe for repeated armed robberies, and to deter Doe and others. Without more, the fact that Doe aided a homicide investigation does not amount to a significant factor in light of other sentencing information. Very dangerous people assist authorities for a variety of reasons.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2003-04).

