

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**December 19, 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 No. 2005AP0807-CR**

**Cir. Ct. No. 2004CF1832**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**SONJA L. HOLIFIELD,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Milwaukee County: JEFFREY A. CONEN, Judge. *Affirmed.*

Before Fine, Curley and Kessler, JJ.

¶1 PER CURIAM. Sonja L. Holifield appeals from a judgment of conviction for forgery, and from a postconviction order denying her sentence modification motion. The issues are whether Holifield's mental health concerns and the trial court's erroneous impression that this forgery was related to

Holifield's participation in a church festival constituted new factors warranting sentence modification. We conclude that none of these proffered factors frustrated the purposes of the trial court's sentence, which were punishment, deterrence and community protection. Therefore, we affirm.

¶2 Holifield entered a merchant's print shop, claiming to be associated with the "Victory Church." While in the shop, she took the purse of the merchant's wife and illegally charged items on a credit card found in the victim's purse.

¶3 Incident to a plea bargain, Holifield pled guilty to forgery (uttering), in violation of WIS. STAT. § 943.38(2) (2001-02), in exchange for the State's sentencing recommendation of an unspecified period of confinement to run concurrent to a sentence she was already serving. Holifield requested a sentence in the range of twenty-seven to thirty months, comprised of a fifteen- to eighteen-month period of confinement followed by a twelve-month period of extended supervision. The trial court imposed a four-year consecutive sentence comprised of two-year periods of confinement and extended supervision.

¶4 Holifield proffered two alleged "new" factors as a basis for sentence modification: (1) her existing but allegedly overlooked mental health problems and treatment needs; and (2) the trial court's erroneous belief that she took advantage of the victim during a church festival, which prompted it to classify this offense as intermediate rather than mitigated, resulting in a lengthier period of confinement. The trial court denied the motion, ruling that: (1) Holifield's denial of mental health problems when asked by the trial court precluded sentence modification on that basis; and (2) its alleged misunderstanding of the forgery occurring during a church festival was "wholly irrelevant" to the purpose of the

sentence. It further explained that “the purpose of the sentence was punishment, deterrence, and the need for community protection given the defendant’s extensive prior criminal history (twelve prior convictions) and the fact that she was on correctional supervision when she committed the present offense.” Holifield appeals.

¶5 The defendant must clearly and convincingly prove the existence of a new factor warranting sentence modification. See *State v. Franklin*, 148 Wis. 2d 1, 8-10, 434 N.W.2d 609 (1989). A new factor 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 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.”

*Id.* at 8 (quoting *Rosado v. State*, 70 Wis. 2d 280, 288, 234 N.W.2d 69 (1975)). Once the defendant has established the existence of a new factor, the trial court must determine whether that “‘new factor’ ... frustrates the purpose of the original sentence.” *State v. Michels*, 150 Wis. 2d 94, 99, 441 N.W.2d 278 (Ct. App. 1989). *Michels* further explains that “[t]here must be some connection between the factor and the sentencing—something which strikes at the very purpose for the sentence selected by the trial court.” *Id.* “Whether a set of facts is a ‘new factor’ is a question of law which we review without deference to the trial court. Whether a new factor warrants a modification of sentence rests within the trial court’s discretion.” *Id.* at 97 (citation omitted).

¶6 At sentencing, the trial court asked Holifield directly whether she had mental health issues. She responded “[n]ot anymore I [do] not,” although she told the trial court that she was drug and alcohol dependent at the time of the offense and is “in a six months program now.” Defense counsel did not correct or

clarify any of Holifield's responses. At the guilty plea hearing however, Holifield told the trial court what medications she was taking, and that they did not affect her ability to understand the proceedings or the ramifications of her guilty plea. According to Holifield's appellate counsel, these medications were for schizophrenia and bipolar disorder. Holifield was represented by the same defense counsel at the plea hearing and at sentencing, and he did not correct or clarify her responses despite his awareness of her mental health issues.

¶7 In its postconviction order, the trial court rejected Holifield's mental health claims as new factors

because the court specifically asked the defendant whether she had mental health issues during the sentencing proceeding, and she herself stated that she did not. (Tr. 6/22/04, p. 10). Further, even though the information currently provided to the court is submitted as a "new factor," the court finds that it would not have altered the outcome [because it did not] frustrate[] the purpose of the original sentence.

¶8 Holifield's mental health problems and treatment needs are not new factors unknown to the defendant at the time of sentencing. First, Holifield denied any such problems and her trial counsel did not correct her denial. Second, her trial counsel told the trial court in his sentencing presentation that Holifield has been in a six-month drug treatment program for three months, thus far. Whether her trial counsel should have corrected Holifield's denial, or whether her denial did not warrant correction does not comport with Holifield's mental health problems and treatment needs being "unknowingly overlooked." *Rosado*, 70 Wis.

2d at 288. They were addressed by the same lawyers and the same trial court judge at the guilty plea hearing and at sentencing.<sup>1</sup>

¶9 The second proffered new factor is that the trial court classified this offense as intermediate as opposed to mitigated “because [it] believe[s] that this is it, even though there is not abuse of a position of trust or authority, this is something where [Holifield] did take advantage of the merchant, [the trial court] believe[s] that was involved in a church festival.” The trial court rejected this challenge, explaining that

[it] did not misstate the complaint; it was aware that a festival, or festivities, of some kind had transpired and that the victims had opened their business to permit people from the festival to use their facilities. Whether it was a church festival or another type of festivity was wholly irrelevant to the purpose of the sentence. The fact is that the defendant took advantage of the merchant’s hospitality by stealing a purse from the store. The court’s misperception of the type of festivity that occurred does not diminish the defendant’s actions and is no reason to modify the sentence imposed or modify the disposition to concurrent status.

¶10 Holifield’s purported involvement with the church festival was slightly misunderstood, but the trial court’s reason for classifying this offense as

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<sup>1</sup> In the context of her treatment needs, Holifield also mentions that the trial court never addressed why the sentence met the minimum amount of custody necessary to achieve the sentencing considerations (“minimum custody standard”). Preliminarily, we reject Holifield’s treatment needs as constituting a new factor warranting sentence modification. See *State v. Michels*, 150 Wis. 2d 94, 99, 441 N.W.2d 278 (Ct. App. 1989). More significantly, the trial court addressed the minimum custody standard when it imposed sentence. It evaluated Holifield’s risk assessment predicated on this offense, her prior record, and the lengthy duration of her criminal activity. It explained that probation or a concurrent sentence to the sentence she was presently serving for another forgery would unduly depreciate the seriousness of this forgery. We conclude that the trial court adequately considered why its two-year period of confinement met the minimum custody standard. *State v. Ramuta*, 2003 WI App 80, ¶25, 261 Wis. 2d 784, 661 N.W.2d 483 (“no appellate-court-imposed tuner can ever modulate with exacting precision the exercise of sentencing discretion”).

intermediate rather than mitigated remained valid; Holifield was in the victim's printing shop, claiming to be associated with the "Victory Church." This particular merchant was very civic-minded, an enthusiastic supporter of the West Allis business community and its festivals, and thus, opened his shop's restrooms to the public during community festivals. Whether Holifield was attending a church festival when she entered his shop, or whether she identified herself as associated with the "Victory Church" is a minor distinction. The trial court classified this forgery as intermediate rather than mitigated because Holifield identified herself as affiliated with a church (implying what a "righteous" person she was), to facilitate her victimization of a civic-minded merchant.<sup>2</sup> The trial court found Holifield using an ostensible church affiliation to victimize someone as particularly distasteful, and considered that when imposing her sentence.

¶11 Most notably, neither proffered new factor "str[uc]k[] at the very purpose for the sentence selected by the trial court." *Michels*, 150 Wis. 2d at 99. The trial court explained that its purposes were "punishment, deterrence, and the need for community protection given the defendant's extensive prior criminal history (twelve prior convictions) and the fact that she was on correctional

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<sup>2</sup> The trial court characterized the victims as merchants who

tried to be very civic-minded, and open and generous, and they were rewarded not just on this occasion, but on other occasions, as well, with people like Ms. Holifield taking advantage, in this case, taking a purse and cash and then using the credit cards from the purse.

And it is very frustrating when a business owner is trying to be civic-minded and then is taken advantage of in this way.

supervision when she committed the present offense.” Although whether a defendant has clearly and convincingly established the existence of a new factor is subject to our independent review, it is difficult to imagine that mental health issues (that were not unknown) and a marginal distinction as to whether the forgery occurred during a church festival, rather than by an ostensible member of the “Victory Church” were critical in the trial court’s sentencing decision. To reject the stated purposes of the sentence—punishment, deterrence and community protection (without affording deference to the trial court’s determination)—for imposing a four-year sentence on a forgerer, with a criminal history of twelve prior convictions, who was on supervision when she represented herself as affiliated with a church when she committed this forgery, in favor of imposing a sentence predicated on Holifield’s mental health issues and the arguably misunderstood fact of her participating in a church festival, as opposed to being affiliated with a church, does not “strike[] at the very purpose for the sentence selected.” *Id.* We independently conclude that Holifield has not clearly and convincingly shown that either of her proffered factors are “new.”

*By the Court.*—Judgment and order affirmed.

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

