

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**January 10, 2002**

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. 01-0960-CR**

**Cir. Ct. No. 00-CF-148**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**ALEJANDRO AGUILERA,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Jefferson County:  
JOHN M. ULLSVIK, Judge. *Affirmed.*

Before Dykman, Deininger and Lundsten, JJ.

¶1 PER CURIAM. Alejandro Aguilera appeals an order denying his motion for sentence modification. He claims that his ineligibility for the challenge incarceration program and a deportation order entered after sentencing constitute new factors warranting a hearing on his motion. We disagree and affirm.

¶2 A new sentencing 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, which operates to frustrate the purpose of the original sentence. *State v. Johnson*, 210 Wis. 2d 196, 203, 565 N.W.2d 191 (Ct. App. 1997). Whether a set of facts constitutes a new factor is a question of law that we review without deference to the trial court. *State v. Michels*, 150 Wis. 2d 94, 97, 441 N.W.2d 278 (Ct. App. 1989).

¶3 At the time of sentencing, the trial court mistakenly commented that the forty-nine-year-old Aguilera was eligible for the challenge incarceration program commonly known as boot camp, when in fact he was ineligible due to his age. WIS. STAT. § 302.045(2)(b)(1999-2000)<sup>1</sup> (limiting program to offenders under age thirty). However, there is nothing in the trial court's comments to suggest that the court was factoring Aguilera's potential participation in the program into the length of his sentence. To the contrary, the trial court's statement that Aguilera would be released from confinement within thirty days "if" he completed the program indicates that the trial court understood that Aguilera could serve the entire period of incarceration. Therefore, the trial court's sentence is not frustrated by the fact that Aguilera will not, in fact, be admitted to the boot camp program.

¶4 The deportation order is not a new sentencing factor because the trial court was made aware of the likelihood of deportation prior to imposing Aguilera's sentence. The trial court's inquiry into the potential effect of

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<sup>1</sup> All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

Aguilera's deportation on any extended supervision shows that this factor was already taken into account, and its occurrence as anticipated does not frustrate the purpose of the sentence.

*By the Court.*—Order affirmed.

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

