

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 2, 2010

David R. Schanker
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. 2009AP1654-CR

Cir. Ct. No. 2002CF8

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DANIEL J. BLESKACEK,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Chippewa County:
WILLIAM M. GABLER, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Daniel J. Bleskacek appeals an order denying his motion for a sentence adjustment pursuant to WIS. STAT. § 973.195.¹ The circuit

¹ All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

court concluded it lacked authority to reduce the initial confinement term that Bleskacek had already served. Bleskacek also appeals an order denying his motion to modify the sentence based on a new factor. Because we conclude the circuit court lacked authority to adjust the sentence under § 973.195 and Bleskacek failed to establish a new factor, we affirm the orders.

¶2 In this case, Chippewa County case No. 2002CF8, the court sentenced Bleskacek in 2002 to seven years' initial confinement and three years' extended supervision for first-degree reckless endangering safety. In Chippewa County case No. 2002CF7, the court also imposed a consecutive term of two years' initial confinement and three years' extended supervision for possessing a firearm as a felon. The court gave sentence credit for 201 days Bleskacek was incarcerated before sentencing. Four months later, the Taylor County court sentenced Bleskacek to five years' initial confinement and ten years' extended supervision to run consecutive to case No. 2002CF8, but concurrent with case No. 2002CF7.

¶3 In 2008, Bleskacek petitioned the courts in both counties for eligibility for the Earned Release Program (ERP) under WIS. STAT. § 302.05(3)(e). The Chippewa County court granted the motion. The Taylor County court required Bleskacek to serve three years of its consecutive sentence before eligibility for ERP. In case No. 2002CF8, Bleskacek then filed a petition for sentence adjustment pursuant to WIS. STAT. § 973.195 on the ground that he had served seventy-five percent of his original period of seven years' initial confinement and had exemplary behavior in prison. The court initially granted the motion, but was notified by the Department of Corrections that it was not possible to execute the court's order because by the time the court granted the motion,

Bleskacek had already served the entire initial confinement portion of the sentence. Therefore, the court refused to file an amended judgment of conviction.

¶4 The court correctly concluded that it lacked authority to grant sentence adjustment under WIS. STAT. § 973.195 after Bleskacek completed the initial confinement portion of the sentence. Section 973.195(1r)(g) itemizes the “only sentence adjustments the court may make.” For a prisoner serving the confinement portion of the sentence,² the court may grant “a reduction in the term of confinement in prison by the amount of time remaining in the term of confinement in [the] prison portion of the sentence, less up to 30 days, and a corresponding increase in the term of extended supervision.” In other words, the court can convert the remaining term of initial confinement to extended supervision. Because Bleskacek had completed the entire initial confinement portion of his sentence in case No. 2002CF8, there was no time left for the court to convert to extended supervision. Bleskacek forfeited any right to sentence adjustment because he served too much of his term of initial confinement before he applied for sentence adjustment.

¶5 Bleskacek contends WIS. STAT. § 973.195(1r)(g) is ambiguous because it is not clear what is meant by the “time remaining.” We disagree. The only reasonable construction of the statute is that, as of the date the court grants sentence adjustment, it can convert the remaining term of initial confinement to a term of extended supervision.

² None of the other sentence adjustments applies to Bleskacek.

¶6 Bleskacek contends he was not too late filing the petition for sentence adjustment because he was serving consecutive sentences, meaning he had time remaining on his terms of initial confinement. Generally, consecutive sentences are treated as one single sentence. *See* WIS. STAT. § 302.113(4). However, WIS. STAT. § 973.195(1r)(a) provides: “If an inmate is subject to more than one sentence imposed under this section, the sentences shall be treated individually for purposes of sentence adjustment under this subsection.”

¶7 Because the Taylor County sentence became the controlling sentence when Bleskacek completed the term of initial confinement in case No. 2002CF8, only the Taylor County court would have the authority to grant a sentence adjustment under WIS. STAT. § 973.195. The Chippewa County court appropriately concluded it had no authority to interfere with the Taylor County court’s decision by retroactively amending its sentence.

¶8 At the hearing on Bleskacek’s petition, he also requested sentence modification based on a new factor. The alleged new factor was the fact that the Taylor County court refused to grant Bleskacek immediate eligibility for the ERP. As a matter of law, that does not constitute a new factor. A new factor is a fact highly relevant to the imposition of sentence, not known to the sentencing court 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. *Rosado v. State*, 70 Wis. 2d 280, 288, 234 N.W.2d 69 (1975). A new factor must be a fact that strikes at the very purpose for the sentence selected by the circuit court, and must frustrate the purpose of the original sentence. *State v. Michels*, 150 Wis. 2d 94, 99, 441 N.W.2d 278 (Ct. App. 1989). The Taylor County court’s decision delaying ERP eligibility does not strike at the purpose or frustrate the Chippewa County court’s sentence. When a defendant commits

crimes in two jurisdictions, the first sentencing court's decision to make the defendant eligible for early release is not frustrated by a subsequent court's imposition of a sentence that does not allow eligibility for early release.

By the Court.—Orders affirmed.

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

