

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 3, 2003

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. 02-1809-CR

Cir. Ct. No. 00-CF-538

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JAMES D. CROCHIERE,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Marathon County: PATRICK M. BRADY, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. James Crochiere appeals a judgment convicting him of recklessly endangering safety and an order denying his motion for sentence modification based on new factors. He raises no issues regarding the underlying conviction. He argues that his prison classification as a minimum security camp inmate, his authorization to work off prison grounds, his low rate of prison wages

and the effect it has on his restitution and child support obligations and passage of the truth-in-sentencing law constitute new factors that justify sentence reduction. Because none of these facts constitutes a new factor, we affirm the judgment and order.

¶2 Crochiere pled no contest to endangering the safety of a police officer. The complaint alleged that Crochiere attempted to drive off as the officer was writing him a ticket. The officer attempted to remove the keys from the ignition and could not free his arm from the steering wheel area as Crochiere accelerated, causing the officer to be dragged for some distance. The trial court sentenced Crochiere to three years' initial confinement and five years' extended supervision.

¶3 Whether a set of facts is a "new factor" is a question of law that is determined without deference to the trial court. *See State v. Michels*, 150 Wis. 2d 94, 97, 441 N.W.2d 278 (Ct. App. 1989). A new factor is a fact highly relevant to the imposition of sentence, but not known to the sentencing court because it was either not then in existence or was unknowingly overlooked by all of the parties. *See Rosado v. State*, 70 Wis. 2d 280, 288, 234 N.W.2d 69 (1979). To justify sentence modification, the new factor must be one that frustrates the purpose of the original sentence. *See State v. Johnson*, 158 Wis. 2d 458, 466, 463 N.W.2d 352 (Ct. App. 1990). There must be a connection between the factor and the sentencing that strikes at the very purpose of the sentence. *Michels*, 150 Wis. 2d at 99.

¶4 Crochiere's minimum security status and authorization to work off prison grounds do not constitute new factors. Also, events subsequent to sentencing relating to rehabilitation do not constitute a new sentencing factor. *See*

State v. Champion, 2002 WI App 267, ¶1, 258 Wis. 2d 781, 654 N.W.2d 242. Crochiere attempts to distinguish *Champion* because the alleged new factor in *Champion* consisted of completion of treatment and rehabilitation rather than minimum security status and authorization to work off grounds. We see no difference in the distinction. Placement in minimum security and off-ground work authorization reflect progress toward rehabilitation and do not frustrate the purpose of the initial sentence.

¶5 Likewise, Crochiere's low prison wages, restitution and child support obligations do not constitute new factors. The sentence reflected the seriousness of the offense, the victim's emotional, financial and long lasting injuries, and the need to protect the public. The fact that Crochiere could earn substantially more money if released from prison does not strike at the purposes for the sentence recited by the trial court.

¶6 The absence of parole under truth in sentencing does not establish a new factor. *Id.*, ¶6. The unavailability of parole was known to the trial court at the time it imposed the sentence.

¶7 Finally, the legislature has recently enacted a limited right to seek sentence modification based on post-sentencing rehabilitation. Effective February 1, 2003, an inmate confined for a Class D felony may petition for sentence modification after serving eighty-five percent of the term of confinement. *See* 2001 Wis. Act 109, § 1143m. Crochiere does not allege that he falls within the purview of that statute.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5 (2001-02).

