

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 10, 2004

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. 03-1904-CR
STATE OF WISCONSIN**

Cir. Ct. No. 00CF000845

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MATTHEW T. LAKE,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Dane County: STEVEN D. EBERT, Judge. *Affirmed.*

Before Dykman, Vergeront and Higginbotham, JJ.

¶1 PER CURIAM. Matthew Lake appeals from a judgment of conviction and an order denying his postconviction motion. The issues relate to sentencing. We affirm.

¶2 Lake was convicted of one count of causing a child to view sexually explicit activity, and three counts of attempt of that offense. Lake's postconviction motion alleged three new factors that should lead to modification of his sentence. The law of "new factors" is well established. *See, e.g., State v. Scaccio III*, 2000 WI App 265, ¶¶13-14, 240 Wis. 2d 95, 622 N.W.2d 449. The circuit court denied the motion without a hearing.

¶3 Lake's first argument relates to a comment the court made during sentencing. The comment indicated that the court believed Lake would be permitted to apply for "early release considerations" after serving "an appropriate part of the confinement," and therefore "our Truth in Sentencing is now almost Truth in Sentencing." Lake argues that the state of the law is actually unclear as to whether persons in his position will be permitted to seek early release. He argues that the uncertainty of the law is a new factor that calls for modification of the sentence that was imposed based on the circuit court's faulty assumption that he would be allowed to seek early release. However, we do not agree that Lake has established this as a new factor. As argued by Lake, the law remains unclear on this question of early release. If the law is unclear, it has not yet been shown that the court's view was in error, or that there has been a new legal development. If that point is eventually clarified in a manner that prevents Lake from seeking release, it is possible he would be able to establish a new factor at that time, but the issue is not ripe now.

¶4 The second argument relates to the court's statement during sentencing that Lake's treatment and assessment needs should be evaluated in Wisconsin, and that a prison sentence was necessary for that to occur. His postconviction motion alleged that he was not receiving treatment or counseling in the prison system, and that this was frustrating the court's objective in sentencing.

The circuit court, in its order denying the motion, noted that the court relied on other factors besides treatment needs in imposing the sentences. These factors included the gravity of the offense, the need to protect the public, and the revocation of Lake's probation. We agree with the court's analysis, and conclude that the objective of the sentence is not frustrated.

¶5 The third argument is that the interaction of these sentences with a federal sentence is a new factor because he will serve federal confinement time during the first part of his Wisconsin extended supervision. Lake argues that this frustrates the purpose of extended supervision by giving him less time to adjust in the community. As relief, he apparently wants the court to reduce his confinement time and increase his supervision time. With this result, he would serve less total confinement and have a supervision period of the length the court originally contemplated. We do not agree that the federal sentence is a new factor. The effective change in the length of the supervision time does not sufficiently frustrate sentencing objectives. Lake does not offer any reason to believe the remaining twenty-two months will be inadequate to serve the purpose of extended supervision.

By the Court.—Judgment and order affirmed.

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

