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110 EAST MAIN STREET, SUITE 215  
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MADISON, WISCONSIN 53701-1688  
Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
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**DISTRICT I**

December 19, 2023

To:

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Circuit Court Judge  
Electronic Notice

Donald V. Latorraca  
Electronic Notice

Anna Hodges  
Clerk of Circuit Court  
Milwaukee County Safety Building  
Electronic Notice

Gregory W. Wiercioch  
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

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2022AP1495-CR

State of Wisconsin v. Jose M. Bonilla (L.C. # 2004CF5735)

Before White, C.J., Donald, P.J., and Geenen, J.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Jose M. Bonilla appeals the order of the circuit court denying his motion for sentence modification. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).<sup>1</sup> We summarily affirm.

Bonilla was convicted in October 2005 after pleading guilty to first-degree reckless injury and first-degree recklessly endangering safety, both with the use of a dangerous weapon. In

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

October 2004, Bonilla shot several people at a house party being held by Marquette University students, critically injuring one of them, after a fight broke out when Bonilla and his friends were denied admission into the party. Bonilla had just turned seventeen years old at the time of the shooting. He was sentenced to a total of thirty years of initial confinement, to be followed by fifteen years of extended supervision, the maximum possible sentences for the charges. *See* WIS. STAT. §§ 940.23(1)(a); 941.30(2); 939.50(3)(d), (g); 939.63(1)(b) (2003-04).<sup>2</sup>

After several years of incarceration, Bonilla was diagnosed with post-traumatic stress disorder (PTSD) by a psychologist at the Wisconsin Resource Center, a specialized facility that provides mental health services to people incarcerated in the Wisconsin prison system. Bonilla's PTSD is believed to be a result of extensive trauma he experienced throughout his childhood. The diagnosis was confirmed by two University of Wisconsin psychologists in 2020, after they reviewed Bonilla's records.

Bonilla filed a postconviction motion in March 2022, arguing that his diagnosis constitutes a new factor warranting sentence modification. He further argued that his youthful age at the time of the offense, as well as his efforts at rehabilitation while in prison, are mitigating factors that should be taken into consideration with a sentence modification. The circuit court rejected these arguments and denied Bonilla's motion. This appeal follows.

For purposes of sentence modification, 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

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<sup>2</sup> Bonilla was sentenced by the Honorable David A. Hansher, who we refer to as the trial court. The motion underlying this appeal was decided by the Honorable Milton L. Childs, Sr., who we refer to as the circuit court.

sentencing, either because it was not then in existence or because ... it was unknowingly overlooked by all of the parties.” *State v. Harbor*, 2011 WI 28, ¶40, 333 Wis. 2d 53, 797 N.W.2d 828 (citation omitted). To prevail, a defendant must satisfy a two-prong test that requires the defendant to: (1) demonstrate by clear and convincing evidence that a new factor exists; and (2) show that the alleged new factor justifies sentence modification. *Id.*, ¶¶36-38. The court may consider either prong first, and if a defendant fails to satisfy one prong of the new factor test, the court need not address the other. *Id.*, ¶38.

Whether a fact or set of facts constitutes a new factor is a question of law that this court considers *de novo*. *Id.*, ¶33. However, we review the circuit court’s determination of whether a new factor warrants sentence modification for an erroneous exercise of discretion. *Id.* We will not disturb that discretionary decision if the circuit court “[m]ade no error of law,” and if it “explained its reason for concluding that the facts ... presented did not justify modification” of the defendant’s sentence. *Id.*, ¶63.

The circuit court determined that Bonilla’s PTSD diagnosis did not satisfy either prong of the *Harbor* test. It found that even though his specific diagnosis was not known at the time of sentencing, the underlying issues that led to the diagnosis *were* known:

That he obtained an official diagnosis several years after sentencing—based on symptoms that existed at the time of sentencing and due to unfortunate life events preceding sentencing—does not satisfy the new factor test. The defendant and his trial attorney could have sought out a mental health evaluation, or presented information regarding the defendant’s mental health and history at sentencing with or without a formal diagnosis. That they did not choose to do so does not render the information new.

This analysis pinpoints why Bonilla’s diagnosis is not a new factor—he had symptoms of PTSD prior to sentencing, and the life experiences upon which his diagnosis is based existed and

were known at the time of sentencing. It was Bonilla’s choice not to pursue a mental health evaluation prior to sentencing or present his childhood history at sentencing. His subsequent diagnosis cannot now be deemed to be a new factor given that this information existed at the time of sentencing. *See id.*, ¶40. A “new expert opinion based on previously known or knowable facts is ‘nothing more than the newly discovered importance of existing evidence,’” and the “recharacterization or reweighing of previously known facts is not a new factor for sentence modification purposes.” *State v. Grindemann*, 2002 WI App 106, ¶25, 255 Wis. 2d 632, 648 N.W.2d 507 (citation and some internal quotation marks omitted).<sup>3</sup>

Additionally, the circuit court found that even if Bonilla’s PTSD diagnosis was deemed to be a new factor, sentence modification would not be warranted. It observed that the diagnosis “does not mitigate the seriousness of [Bonilla’s] actions,” noting that the trial court had given “heavy weight to the gravity of the offense in this case” due to the egregious nature of the circumstances. Indeed, at the sentencing hearing, the trial court specifically described the shooting, observing that Bonilla was under the influence of Ecstasy and alcohol at the time and, with his judgment impaired, he “introduced” a loaded gun into the argument with the Marquette students and “shot into a group of college kids.” The trial court also discussed the injuries of those who were shot, particularly the most critically injured student, who suffered permanent injuries: he was shot in the face which fractured his jaw, leaving his jawline uneven and causing

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<sup>3</sup> Bonilla also argues that his young age at the time of the shooting should be considered as a mitigating factor. However, that argument is not compelling for the new factor analysis, as Bonilla’s age can certainly not be deemed a new factor. *See State v. Harbor*, 2011 WI 28, ¶40, 333 Wis. 2d 53, 797 N.W.2d 828. A sentence may also be modified if it is concluded that the original sentence was “unduly harsh or unconscionable.” *State v. Grindemann*, 2002 WI App 106, ¶21, 255 Wis. 2d 632, 648 N.W.2d 507 (citation omitted). Bonilla did not raise that specific argument in his motion to the circuit court, nor does he raise it on appeal, and we do not develop arguments for parties. *See State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992).

speech problems; and he was shot in the abdomen and lost a kidney as a result. The court noted that it was “but for the grace of God” that Bonilla had not “kill[ed] three or four people that day.”

The determination by the circuit court that sentence modification was not warranted is grounded in the law regarding the exercise of discretion during sentencing, *see State v. Gallion*, 2004 WI 42, ¶¶17, 40-43, 270 Wis. 2d 535, 678 N.W.2d 197, and is supported by the record. It therefore was not an erroneous exercise of discretion. *See Harbor*, 333 Wis. 2d 53, ¶63.

In short, as Bonilla’s motion for sentence modification does not meet either prong of the *Harbor* test, it necessarily fails. *See id.*, ¶¶36-38. Accordingly, we affirm the circuit court’s order denying the motion.

Upon the foregoing, therefore,

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*