



OFFICE OF THE CLERK  
**WISCONSIN COURT OF APPEALS**

110 EAST MAIN STREET, SUITE 215  
P.O. BOX 1688  
MADISON, WISCONSIN 53701-1688  
Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
Web Site: [www.wicourts.gov](http://www.wicourts.gov)

**DISTRICT II**

February 7, 2024

To:

Hon. Jason A. Rossell  
Circuit Court Judge  
Electronic Notice

Esther Cohen Lee  
Electronic Notice

Rebecca Matoska-Mentink  
Clerk of Circuit Court  
Kenosha County Courthouse  
Electronic Notice

Anne Christenson Murphy  
Electronic Notice

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

---

2022AP1533-CR                      State of Wisconsin v. Daniel Seaberg (L.C. # 2018CF1174)

Before Neubauer, Grogan and Lazar, JJ.

**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).**

Daniel Seaberg appeals a judgment of conviction for burglary, operating a vehicle without the owner's consent and theft of moveable property in excess of \$10,000, all as party to a crime. He also appeals an order denying his postconviction motion seeking 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 affirm.

---

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

Seaberg was charged with three co-defendants but was tried separately. The charges stemmed from the theft of a truck and tools from a garage by the four individuals; Seaberg then sold the stolen goods to one of his contacts and distributed the money amongst the perpetrators. At the conclusion of the trial, the jury found Seaberg guilty of the above-identified crimes. The circuit court imposed a total sentence of twelve-and-one-half years' incarceration, consisting of seven-and-one-half years' initial confinement and five years' extended supervision.<sup>2</sup> The sentences were made concurrent to one another but consecutive to Seaberg's sentences in various other court cases.

One of Seaberg's co-defendants, Jacob Mitbo, testified against Seaberg. He was subject to a deferred prosecution agreement that reduced identical charges against him to a single Class A misdemeanor. Mitbo completed the agreement after Seaberg's sentencing and the charge against Mitbo was dismissed. Another co-defendant, Michael Wright, had all but one charge dismissed pursuant to a plea agreement with the State.<sup>3</sup> Wright was sentenced to five years' incarceration, consisting of two years' initial confinement and three years' extended supervision. That sentence was imposed several months prior to Seaberg's sentencing.

The circuit court denied Seaberg's motion for sentence modification. A circuit court may order sentence modification if it concludes its original sentence was unduly harsh or unconscionable, or on the basis of "new factors." *State v. Grindemann*, 2002 WI App 106, ¶21, 255 Wis. 2d 632, 648 N.W.2d 507. On appeal, Seaberg renews his postconviction arguments

---

<sup>2</sup> The twelve-year sentence was imposed for the burglary offense and was the maximum sentence for that crime. The other, lesser sentences were made concurrent to the burglary sentence.

<sup>3</sup> Seaberg's brief represents that Wright was convicted of the theft of moveable property charge. In fact, he pled guilty to operating a vehicle without the owner's consent, a Class H felony.

that he is entitled to sentence modification because of the sentencing disparity between him and Wright and because Mitbo's deferred prosecution agreement constitutes a "new factor." We reject these arguments.

A sentence is harsh or unconscionable if it is "so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We review a circuit court's conclusion that a sentence was not harsh and unconscionable for an erroneous exercise of discretion. *Grindemann*, 255 Wis. 2d 632, ¶30. Here, as the court explained, there was ample reason for Seaberg's greater sentence: he was much older than Wright, he had a more extensive criminal history that included prison time, and there was evidence he was the mastermind of the criminal scheme.

Turning to whether the disposition of Mitbo's case constituted a "new factor," we agree with the State's assessment that Mitbo's deferred prosecution agreement was not highly relevant to Seaberg's sentence—one of the essential components of a "new factor" claim. See *State v. Harbor*, 2011 WI 28, ¶40, 333 Wis. 2d 53, 797 N.W.2d 828. Whether a fact or set of facts constitute a new factor is a question of law. *Id.*, ¶33. The circuit court expressed no intention to achieve parity in sentencing among Seaberg and his co-defendants. Beyond that, Seaberg was older than Mitbo, had a considerably greater criminal history, and was far more culpable: not only was Seaberg directing the criminal enterprise, but Mitbo had cooperated with authorities and thought he would receive some consideration for his truthful testimony against Seaberg. The outcome of Mitbo's case was not a fact highly relevant to the twelve-year sentence the circuit court imposed.

Based on the foregoing,

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed.

*See* WIS. STAT. RULE 809.21.

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

---

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