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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 I**

August 8, 2013

To:

Hon. Richard J. Sankovitz  
Circuit Court Judge  
Safety Building  
821 W. State St.  
Milwaukee, WI 53233

John Barrett  
Clerk of Circuit Court  
Room 114  
821 W. State Street  
Milwaukee, WI 53233

Karen A. Loebel  
Asst. District Attorney  
821 W. State St.  
Milwaukee, WI 53233

Christopher G. Wren  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

Damien Tyshaun Green 384855  
Wisconsin Secure Program Facility  
P.O. Box 9900  
Boscobel, WI 53805-9900

Jeremy C. Perri  
First Asst. State Public Defender  
735 N. Water St., #912  
Milwaukee, WI 53203

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

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2012AP776

State of Wisconsin v. Damien Tyshaun Green (L.C. # 2008CF991)

Before Curley, P.J., Fine and Brennan, JJ.

Damien Tyshaun Green, *pro se*, appeals the circuit court's order denying his motion to withdraw his guilty plea and to modify his sentence. Green argues: (1) that he is entitled to withdraw his guilty plea in order to correct a manifest injustice; and (2) that his sentence should be modified because his trial lawyer ineffectively represented him by failing to file pretrial motions on his behalf and by waiving his rights under the Fourth Amendment. We affirm.

Green first argues that he should be allowed to withdraw his guilty plea in order to correct a manifest injustice. Green did not raise this issue in the circuit court. To the contrary,

he specifically stated in his postconviction motion that he did *not* want to withdraw his guilty plea; he wanted his sentence to be modified. We generally will not consider issues that are raised for the first time on appeal. See *State v. Caban*, 210 Wis. 2d 597, 604, 563 N.W.2d 501 (1997). There is no reason to deviate from that general rule here. We will not consider this argument.

Green next argues that his sentence should be modified because his trial lawyer ineffectively represented him by failing to file pretrial motions on his behalf and by waiving his rights under the Fourth Amendment without explaining to Green what he was doing. A motion to modify a sentence brought after the time for direct appeal has expired must be premised on the existence of a new factor, with limited exceptions not applicable here. See *State v. Harbor*, 2011 WI 28, ¶35, 333 Wis. 2d 53, 797 N.W.2d 828. 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 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.”” *Id.*, ¶40 (citation omitted). Green does not allege that a new factor exists. Instead, he argues that his sentence should be modified based on his claim of ineffective assistance of counsel. While a successful claim of ineffective assistance of counsel may be grounds for *reversal* of a conviction, an allegation of ineffective assistance of counsel is not grounds to modify a sentence. See *id.*, ¶35. We reject Green’s argument that his sentence should be modified based on alleged ineffective assistance of counsel.

This is the third time Green has moved to modify his sentence since his conviction. Green may not repeatedly file postconviction motions raising the same claims. We warn Green that if he continues to file repetitive motions, we may consider imposing sanctions against him,

including restricting the circumstances under which he is allowed to file motions in the circuit court or pursue appeals in this court. *See State v. Casteel*, 2001 WI App 188, ¶¶25-27, 247 Wis. 2d 451, 634 N.W.2d 338 (sanctions imposed against a litigant because he “abus[ed] the appellate process by repetitively litigating the same matters”).

IT IS ORDERED that the order of the circuit court is summarily affirmed.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*