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**DISTRICT I/IV**

August 19, 2014

To:

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

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2013AP1840-CR	State of Wisconsin v. Danielle M. Valoe (L.C. # 2005CF6918)
2013AP1841-CR	State of Wisconsin v. Danielle M. Valoe (L.C. # 2006CF2557)

Before Blanchard, P.J., Sherman and Kloppenburg, JJ.

Danielle Valoe, pro se, appeals an order denying her 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. We reject Valoe's arguments and summarily affirm the order. *See* WIS. STAT. RULE 809.21.

In two criminal complaints, the State charged Valoe with conspiracy to commit theft by defrauding U.S. Bank and Wells Fargo Bank. The State alleged that Valoe recruited people to open accounts with the banks. After the account balances were inflated with deposits of worthless checks or empty envelopes at automatic teller machines, Valoe would withdraw

money from the accounts before the banks determined that the deposit transactions were fraudulent. After a jury trial, Valoe was found guilty of the crimes charged. The circuit court imposed consecutive sentences totaling ten years, consisting of five years of initial confinement and five years of extended supervision.

Valoe filed a postconviction motion for a new trial, claiming that evidence of her prior criminal convictions was erroneously placed before the jury. That motion was denied and, on direct appeal, we affirmed, concluding that any error was harmless in light of the strong and overwhelming evidence of Valoe's guilt. *See State v. Valoe*, No. 2008AP1960-CR, unpublished slip op. (WI App Oct. 6, 2009). Valoe subsequently filed a pro se postconviction motion pursuant to WIS. STAT. § 974.06, seeking to vacate her convictions on the ground that her postconviction counsel was ineffective. The circuit court's denial of that motion was affirmed on appeal. *See State v. Valoe*, Nos. 2011AP1992 and 2011AP1993, unpublished slip op. (WI App Nov. 20, 2012).

Valoe then filed the underlying motion for sentence modification, claiming that a "new factor" entitled her to relief from the remainder of her sentence. The circuit court denied both the sentence modification motion and her subsequent reconsideration motion. This appeal follows.

A circuit court may modify a defendant's sentence upon a showing of a new factor. *See State v. Harbor*, 2011 WI 28, ¶35, 333 Wis. 2d 53, 797 N.W.2d 828. The analysis involves a two-step process: (1) the defendant must demonstrate by clear and convincing evidence that a new factor exists; and (2) the defendant must show that the new factor justifies sentence modification. *Id.*, ¶¶36-37. 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 ... it was unknowingly overlooked by all of the parties.” *Id.*, ¶40. Whether a fact or set of facts constitutes a new factor is a question of law that this court decides independently. *Id.*, ¶33. If the facts do not constitute a new factor as a matter of law, a court need go no further in the analysis. *Id.*, ¶38.

As an initial matter, we note that Valoe’s arguments generally seem to relate more to the validity of the verdict and the fairness of her trial than to the sentencing. To the extent that Valoe attempts to reframe issues addressed in her previous appeals, those issues cannot be relitigated no matter how artfully they are rephrased. *See State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991).

With specific respect to her sentence, Valoe contends that her co-conspirator, Clarence Banks, provided false testimony throughout the proceedings against her, and that this was unknown to the sentencing court. Valoe further intimates that the sentencing court relied upon Banks’s testimony when noting that she was the “mastermind” behind the crimes. However, Valoe maintained her innocence throughout the proceedings, including at the sentencing hearing. Therefore, any testimony to the contrary would have to be false, according to Valoe. Because the sentencing court was aware of Valoe’s implicit challenge to any witness—including Banks—whose testimony established her guilt, the alleged falsity of Banks’s testimony does not constitute a “new factor” justifying sentence modification.

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE  
809.21.

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