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DISTRICT II

October 29, 2014

To:

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

2014AP8-CR

State of Wisconsin v. Shamika L. Robinson (L.C. # 2009CF717)

Before Brown, C.J., Reilly and Gundrum, JJ.

Shamika L. Robinson appeals pro se from a circuit court order denying her motion for sentence modification. Based on 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 (2011-12).¹ We affirm the order of the circuit court.

Robinson was convicted following pleas of no contest to one count of burglary by use of a dangerous weapon, as a repeater, and one count of armed robbery with use of force. The

¹ All references to the Wisconsin Statutes are to the 2011-12 version.

charges stemmed from a 2009 incident in which Robinson and two associates entered a residence, threatened the occupant with a firearm and a baseball bat, and stole approximately \$300.

The circuit court imposed an aggregate sentence of seven years of initial confinement followed by three years of extended supervision. In doing so, the court declined to make Robinson eligible for early release via the Challenge Incarceration Program (CIP) or the Earned Release Program (ERP) because doing so would unduly depreciate the seriousness of the offenses and not adequately protect the public.

Approximately six months after sentencing, in January 2011, Robinson wrote to the circuit court asking that it reconsider her eligibility for CIP and ERP. She claimed that she had addiction issues and that the treatments offered in those programs would help her be a better mother and citizen upon release. The court denied her request, reiterating its concern to protect the public.

Over two and one-half years later, in September 2013, Robinson filed a motion for sentence modification. In it, she again asked the circuit court to reconsider her eligibility for ERP, taking into account her rehabilitation while in prison. The court denied her request, noting that its comments at sentencing demonstrated that it properly exercised its discretion in denying her eligibility for the program. This appeal follows.

On appeal, Robinson contends that the circuit court erred in denying her motion for sentence modification. The State, meanwhile, submits that her motion is procedurally barred. Whether a defendant's postconviction motion is procedurally barred is a question of law which we review de novo. See *State v. Flowers*, 221 Wis. 2d 20, 27, 586 N.W.2d 175 (Ct. App. 1998).

Here, we conclude that Robinson’s motion is procedurally barred because of her previous request for the same relief in 2011. See *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991) (“A matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue.”). Because Robinson’s motion includes no new factors² which would otherwise justify sentence modification, we are satisfied that the circuit court properly denied it.

Upon the foregoing reasons,

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

Diane M. Fremgen
Clerk of Court of Appeals

² 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.” *State v. Harbor*, 2011 WI 28, ¶40, 333 Wis. 2d 53, 797 N.W.2d 828 (quoting *Rosado v. State*, 70 Wis. 2d 280, 288, 234 N.W.2d 69 (1975)). Robinson’s purported rehabilitation while in prison is not a new factor as a matter of law. See *State v. Kluck*, 210 Wis. 2d 1, 7-8, 563 N.W.2d 468 (1997).