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DISTRICT II

April 1, 2015

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

2014AP1786-CR State of Wisconsin v. Parish D. Perkins (L.C. # 1996CF252)

Before Neubauer, P.J., Reilly and Gundrum, JJ.

Parish D. Perkins appeals pro se from an order denying his 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 (2013-14).[1] We affirm the order of the circuit court.

In August 1996, Perkins was convicted following a guilty plea of first-degree reckless homicide. The circuit court sentenced Perkins to thirty-five years in prison.

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[1] All references to the Wisconsin Statutes are to the 2013-14 version.

In April 2014, Perkins filed a motion for sentence modification on the ground that a new factor existed. Specifically, he complained that the department of corrections had done away with discretionary parole, which was contrary to the expectations of the circuit court at sentencing. In support of this argument, Perkins cited a statement by the circuit court at a subsequent postconviction motion hearing observing, "35 years doesn't mean 35."[2] The circuit court summarily denied Perkins' 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. ***Id.***, ¶36. First, the defendant must demonstrate by clear and convincing evidence that a new factor exists. ***Id.*** Second, the defendant must show that the new factor justifies sentence modification. ***Id.***, ¶¶37-38. 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 (quoting ***Rosado v. State***, 70 Wis. 2d 280, 288, 234 N.W.2d 69 (1975)). Whether a fact or set of facts constitutes a new factor is a question of law that this court decides independently. *See* ***Harbor***, 333 Wis. 2d 53, ¶33. If the fact or set of facts do not constitute a new factor as a matter of law, we need go no further in our analysis. ***Id.***, ¶38.

Here, we are not persuaded that Perkins has demonstrated the existence of a new factor for at least two reasons. First, he has failed to show that there has been any change in parole

[2] The statement was made when denying one of Perkins' postconviction motions challenging the effectiveness of his trial counsel. The circuit court noted that counsel had gotten Perkins a pretty good deal, which avoided a possible life sentence without parole. In making this point, the court observed that, under the law that existed before truth-in-sentencing, "35 years doesn't mean 35."

policy for defendants like him who were sentenced before truth-in-sentencing. Second, he has failed to show that parole policy was a fact highly relevant to the imposition of his sentence. Again, the statement made by the circuit court that, "35 years doesn't mean 35," did not come from the sentencing hearing. Rather, it came from a subsequent postconviction motion hearing on a different matter entirely. There is nothing in the sentencing transcript to suggest that the court considered parole policy when imposing its sentence. Accordingly, we are satisfied that it properly denied Perkins' motion.[3]

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

[3] We do not address Perkins' constitutional challenge to the parole board, as it was not raised in the circuit court. *See* ***State v. Huebner***, 2000 WI 59, ¶10, 235 Wis. 2d 486, 611 N.W.2d 727 (issues not preserved at the circuit court generally will not be considered on appeal). To the extent we have not addressed any other argument raised by Perkins on appeal, the argument is deemed rejected. *See* ***State v. Waste Mgmt. of Wis., Inc.***, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) ("An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.").