



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

DISTRICT II

October 25, 2017

To:

Hon. Michael P. Maxwell
Circuit Court Judge
Waukesha County Courthouse
515 W Moreland Blvd
Waukesha, WI 53188

Kathleen A. Madden
Clerk of Circuit Court
Waukesha County Courthouse
515 W. Moreland Blvd.
Waukesha, WI 53188

Anne Christenson Murphy
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Susan Lee Opper
District Attorney
515 W. Moreland Blvd. Rm. G-72
Waukesha, WI 53188-2486

Aaron C. Hollis 621078
New Lisbon Corr. Inst.
P.O. Box 4000
New Lisbon, WI 53950-4000

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

2016AP2065-CR State of Wisconsin v. Aaron C. Hollis (L.C. #2014CF603)

Before Neubauer, C.J., Gundrum and Hagedorn, 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).

Aaron C. Hollis appeals pro se from an order denying reconsideration of his motions for sentence modification and postconviction relief. 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 (2015-16).¹ We summarily affirm the order of the circuit court.

¹ All references to the Wisconsin Statutes are to the 2015-16 version.

Hollis was convicted following guilty pleas to two counts of delivering cocaine (one gram or less). The charges stemmed from Hollis' sale of cocaine to police during multiple undercover drug buys. For his actions, the circuit court sentenced Hollis to a total of six years of initial confinement and eight years of extended supervision.

After sentencing, Hollis filed a motion for sentence modification based upon alleged new factors. Specifically, Hollis asserted that (1) the State misinformed the circuit court that he had sold drugs to "officers" when, in fact, he had met with only one officer during the undercover drug buys and (2) the parties unknowingly overlooked why further investigation/undercover drug buys were necessary when police had probable cause to arrest Hollis after the first undercover drug buy.

Before the circuit court could address the motion, Hollis filed a related motion for postconviction relief in which he also sought sentence modification. In it, he argued that the circuit court erroneously exercised its discretion by (1) not ordering a presentence investigation (PSI) report and (2) relying upon his prior arrest record at sentencing. Hollis further maintained that the court was unaware why further investigation/undercover drug buys were necessary when police had probable cause to arrest him after the first undercover drug buy.

Ultimately, the circuit court issued a decision denying both motions without a hearing. Hollis moved for reconsideration of the decision, which the circuit court denied in an order. This appeal follows.

On appeal, Hollis contends that the circuit court erred in denying reconsideration of his motions. He renews the claims made in them and asks this court to either grant a hearing or require the circuit court to modify his sentence.

A circuit court may modify a sentence upon a defendant's showing of a new factor. *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 ... 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 reviews independently. *See Harbor*, 333 Wis. 2d 53, ¶33.

To be entitled to a hearing on a postconviction motion, a defendant must allege “sufficient material facts that, if true, would entitle the defendant to relief.” *State v. Allen*, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433. This is also a question of law that this court reviews independently. *See id.* If the motion alleges sufficient facts, a hearing is required. *Id.* If the motion is insufficient, if it presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief, the circuit court may exercise its discretion in deciding whether to grant a hearing. *Id.* We review discretionary decisions under the erroneous exercise of discretion standard. *Id.*

Here, we are not persuaded that Hollis demonstrated the existence of a new factor. As noted by the State, the details of the undercover drug buys were set forth in the criminal complaint, which the circuit court referred to at sentencing. Hollis has not shown that the court was unaware of the number of officers involved in his case or the fact that he was not arrested after the first undercover drug buy.

Likewise, we are not persuaded that Hollis was entitled to a hearing on his remaining claims. Hollis provided no legal authority for his arguments that the circuit court should have

ordered a PSI and that police should have arrested him after the first undercover drug buy. Moreover, the court was well within its right to rely upon Hollis' prior arrest record at sentencing. See *Harris v. State*, 75 Wis. 2d 513, 519, 250 N.W.2d 7 (1977) (a sentencing court may take into account a defendant's criminal record and history of undesirable behavior).

For these reasons, we conclude that the circuit court properly denied reconsideration of Hollis' motions.

Upon the foregoing reasons,

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

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

Diane M. Fremgen
Clerk of Court of Appeals