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DISTRICT II

March 7, 2018

To:

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

2017AP1270-CR

State of Wisconsin v. Jason P. Thomaschaske (L.C. #2013CF1127)

Before Reilly, P.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).

Jason P. Thomaschaske appeals pro se from an order denying his 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. *See* WIS. STAT. RULE 809.21 (2015-16).¹ We

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

conclude that the circuit court properly denied Thomaschaske's motion. Accordingly, we affirm its order.

In 2014, Thomaschaske was convicted following a guilty plea to burglary to a building or dwelling as a party to a crime. The circuit court sentenced him to five years of initial confinement and four years of extended supervision.

In June 2017, Thomaschaske filed a motion for sentence modification, arguing that his postsentencing assistance to law enforcement in an unrelated burglary prosecution in Dane County constituted a new factor. The circuit court denied the 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. First, the defendant must demonstrate by clear and convincing evidence that a new factor exists. *Id.*, ¶36. 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. Whether a new factor warrants sentence modification is a discretionary determination for the circuit court. *See id.*, ¶¶37, 66.

Here, the circuit court’s order acknowledges the case of *State v. Doe*, 2005 WI App 68, ¶1, 280 Wis. 2d 731, 697 N.W.2d 101, which recognized that postsentencing assistance to law enforcement can qualify as a new factor. However, the court was not persuaded that sentence modification was warranted. Its order indicates that it “reviewed the sentencing transcript in this case and reviewed the factors considered by the sentencing court.” Based upon that review, the court concluded that, “[e]ven when considering the testimony [Thomaschaske] provided in the Dane County case, the [c]ourt does not find a sufficient basis to disturb the sentence originally handed down in this case.” Because the court’s order reflects a proper exercise of discretion, we affirm 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.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals