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**DISTRICT II**

May 16, 2018

To:

Hon. Kristine E. Drettwan  
Circuit Court Judge  
Walworth County Courthouse  
P.O. Box 1001  
Elkhorn, WI 53121

Hon. David M. Reddy  
Circuit Court Judge  
Walworth County Courthouse  
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Elkhorn, WI 53121

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

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2017AP1154-CR	State of Wisconsin v. Melonie K. Dent (L.C. #2016CF119)
2017AP1155-CR	State of Wisconsin v. Melonie K. Dent (L.C. #2010CF160)

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).**

In these consolidated cases, Melonie K. Dent appeals from judgments of conviction and an order denying her motion for sentence modification.<sup>1</sup> 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).<sup>2</sup> We affirm.

In 2010, Dent was convicted following guilty pleas to two counts of misappropriating identity to obtain money or goods. Dent was released on probation and later revoked. She then pled guilty to four more counts of misappropriating identity to obtain money or goods in a separate case. The circuit court sentenced Dent on both cases at a hearing on July 5, 2016.

At sentencing, the circuit court imposed an aggregate sentence of seven years of initial confinement and seven years of extended supervision. It declined to make Dent eligible for the Challenge Incarceration Program (CIP), as she had completed it twice before without success. However, it found Dent eligible for the Substance Abuse Program (SAP) after she has served a significant portion of her aggregate sentence.

Dent subsequently filed motion for sentence modification based upon a new factor. In it, she cited a report questioning the efficacy of the CIP for individuals like her who have a history of trauma. The report also explains how the SAP operates and why it could be successful for Dent. The circuit court denied the motion after a hearing on the matter, finding that Dent had not

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<sup>1</sup> The Honorable David M. Reddy entered the judgments of conviction. The Honorable Kristine E. Drettwan denied the motion for sentence modification, which related to both judgments, in a single order.

<sup>2</sup> All references to the Wisconsin Statutes are to the 2015-16 version.

established a new factor, and even if she had, it did not warrant modification. 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 warrants 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 we review independently. *See id.*, ¶33. Whether a new factor warrants sentence modification is a discretionary determination that we review for an erroneous exercise of discretion. *Id.*

Here, we are not persuaded that Dent has demonstrated the existence of a new factor warranting sentence modification. As noted by the State, the primary focus of the circuit court's sentencing remarks was not Dent's rehabilitative needs, but rather the protection of the public and punishment.<sup>3</sup> Thus, the efficacy of the CIP and the differences between it and the SAP were not highly relevant to the imposition of Dent's sentence. Even if the information did constitute a

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<sup>3</sup> The circuit court specifically said that “confinement is needed to protect the public from further criminal activity by the defendant....” It also observed that, “the concept of progressive punishment screams out in this case for severe imprisonment in a consecutive fashion.”

new factor, the court reasonably determined that it did not warrant modification based upon the original sentencing rationale. Accordingly, we are satisfied that the court properly denied Dent's motion.

Upon the foregoing reasons,

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

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*