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May 18, 2018

To:

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

2016AP1318-CR	State of Wisconsin v. Jeffery J. Bauman, Jr. (L.C. # 2014CM416)
2016AP1319-CR	State of Wisconsin v. Jeffery J. Bauman, Jr. (L.C. # 2015CF5)
2016AP1320-CR	State of Wisconsin v. Jeffery J. Bauman, Jr. (L.C. # 2015CF6)

Before Sherman, Kloppenburg and Fitzpatrick, 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).

Jeffery Bauman appeals 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 affirm.

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

Bauman argues that his sentence should be modified because there is a new factor, specifically, Department of Corrections policies that he argues may have the effect of delaying drug treatment while he is in prison, or of preventing him from obtaining drug treatment before his release from prison.

We conclude that this is not a new factor because it is not highly relevant to the sentence imposed. The circuit court did not, and could not, order that Bauman receive any particular treatment or programming on a certain schedule while incarcerated. Therefore, a delay or absence of such treatment is not highly relevant to that sentence.

Furthermore, while the sentencing court did make several references to its belief that Bauman is in need of drug treatment, the court also focused on Bauman's impulsivity and poor judgment, and the danger that his delivery of opiates caused in the community. In other words, Bauman's need for drug treatment was only a small part of the court's rationale for the imposed sentence. In sum, while it is laudable that Bauman is pursuing drug treatment while incarcerated, the fact that he is not yet eligible for that treatment is not a new factor.

To the extent that Bauman also argues on appeal that the Department policy of not offering treatment until the inmate has reached minimum security is unconstitutional, we decline to address this issue because it was not raised in the circuit court in Bauman's sentence modification motion. See *Binder v. City of Madison*, 72 Wis. 2d 613, 620, 241 N.W.2d 613 (1976) (we usually do not address issues that are raised for the first time on appeal).

IT IS ORDERED that the order appealed is summarily affirmed under 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