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 I

May 31, 2018

To:

Hon. Jeffrey A. Wagner
Circuit Court Judge
Milwaukee County Courthouse
901 N. 9th St.
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

Sarah K. Larson
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Karen A. Loebel
Asst. District Attorney
821 W. State St.
Milwaukee, WI 53233

Freddie D. Nash 247928
Waupun Corr. Inst.
P.O. Box 351
Waupun, WI 53963-0351

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

2016AP2247-CR State of Wisconsin v. Freddie D. Nash (L.C. # 1997CF973910)

Before Brennan, P.J., Brash and Dugan, 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).

Freddie D. Nash, *pro se*, appeals the circuit court's order denying his motion to modify his sentence imposed in 1997. He argues that WIS. STAT. § 302.11(1g)(am) (2015-16),[1] which was enacted in 1994, constitutes a new factor entitling him to resentencing. Based upon our

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

review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm.

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.'" ***State v. Harbor***, 2011 WI 28, ¶40, 333 Wis. 2d 53, 797 N.W.2d 828 (citation omitted). The defendant has the burden of showing by clear and convincing evidence that a new factor exists. ***Id.***, ¶36. Whether a fact or set of facts constitutes a new factor is a question of law. ***Id.***

WISCONSIN STAT. § 302.11(1g)(am) changed the mandatory release date for parole for indeterminate sentences to a *presumptive* mandatory release date for inmates serving sentences for serious felonies committed on or after April 21, 1994, but before December 31, 1999. Nash contends that the statute's enactment is a new factor because it was not known to the trial judge at the time of the original sentencing. We reject this argument.

The statute was enacted three years before Nash was sentenced. Nash has not met his burden of showing by clear and convincing evidence that the trial judge was unaware of the change in the law; in fact, Nash has provided *nothing* to support his claim that the trial judge was unaware of the statutory change.

Moreover, Nash has not shown that the statutory change was highly relevant to the imposition of sentence. The circuit court was required to set Nash's parole eligibility date when it imposed his sentence. *See* WIS. STAT. § 973.0135(2)(b). The circuit court said Nash was not a good candidate for parole, and thus it would set his parole eligibility date at the maximum, which was two-thirds of his sentence. It does not logically follow that the circuit court intended that

Nash serve *only* two-thirds of his sentence. Therefore, Nash has not established that the enactment of WIS. STAT. § 302.11(1g)(am) is a new factor.

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

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

Sheila T. Reiff
Clerk of Court of Appeals