



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](http://www.wicourts.gov)

**DISTRICT I**

June 11, 2018

To:

Hon. Pedro Colon  
Circuit Court Judge  
821 W. State St.  
Milwaukee, WI 53233

Robert N. Meyeroff  
Robert N. Meyeroff, S.C.  
633 W. Wisconsin Ave., #605  
Milwaukee, WI 53203-1918

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

Christine A. Remington  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

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

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

---

2017AP722-CR

State of Wisconsin v. Antwan D. Robinson (L.C. # 2002CF1942)

Before Kessler, P.J., Brennan 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).**

Antwan D. Robinson<sup>1</sup> appeals from an order of the circuit court that denied his motion for sentence modification. Based upon our review of the briefs and record, we conclude at

---

<sup>1</sup> Robinson filed his main appellate brief *pro se*. He subsequently retained counsel, who filed the reply brief.

conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).<sup>2</sup> The order is summarily affirmed.

In 2002, Robinson pled no contest to and was convicted of three counts of armed robbery with the threat of force and one count of false imprisonment with use of a dangerous weapon, all as a party to a crime. As part of the plea agreement, an additional three counts of armed robbery with the threat of force and one count of false imprisonment with use of a dangerous weapon, all as a party to a crime, were dismissed and read in. Robinson was given consecutive sentences totaling thirty-one years of initial confinement and fourteen years of extended supervision.<sup>3</sup>

After sentencing, Robinson filed a postconviction motion to withdraw his plea. The motion was denied; we affirmed on appeal. In 2006, Robinson moved to vacate the DNA surcharge and a portion of the restitution. The circuit court denied the motion as to restitution but granted it as to the surcharge. Robinson did not appeal. In 2011, Robinson filed a postconviction motion, under WIS. STAT. § 974.06, seeking to vacate the judgment of conviction and requesting a new trial. The circuit court denied the motion. Robinson appealed, but the appeal was dismissed for nonpayment of the filing fee. In 2014, Robinson filed a postconviction motion nearly identical to the 2011 motion. The new motion was denied. We summarily affirmed on appeal.

---

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

<sup>3</sup> The Honorable Jean A. DiMotto imposed sentence. The Honorable Pedro R. Colon denied the motion for sentence modification; the order was signed by the Honorable T. Christopher Dee on behalf of Judge Colon.

In 2017, Robinson moved for sentence modification based on new factors. As new factors, Robinson alleged: (1) the sentencing court relied on inaccurate information when it stated that he had committed sexual assault and when it expressed a belief that his crimes were sexually motivated; (2) the sentencing court relied on inaccurate information because the prosecutor stated he had prior convictions for guns and drugs, even though he was not arrested for a firearm violation until April 1, 2002, which was after his March 28, 2002 crimes in this case; (3) the sentencing court and the presentence investigation report (PSI) author believed him to be a high risk for re-offense, even though a COMPAS<sup>4</sup> evaluation performed by the Department of Corrections in 2015 suggested he is less likely to re-offend; and (4) Robinson has used his time in prison productively by completing various programs and classes.

The circuit court denied the motion. It stated that the claims of inaccurate information were not new factors and, thus, Robinson was procedurally barred from raising them under *State v. Escalona-Naranjo*, 185 Wis.2d 168, 517 N.W.2d 157 (1994). It also stated that the COMPAS assessment, institutional adjustment, and programming achievements are all indicators of his rehabilitative progress, which is not a new factor justifying sentencing modification. See *State v. Prince*, 147 Wis. 2d 134, 136, 432 N.W.2d 646 (Ct. App. 1988). Thus, no new factors had been shown, so no sentence modification was warranted. Robinson appeals.

As noted, Robinson claimed he should be resentenced because of new factors. A new factor is a fact or set of facts that is “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

---

<sup>4</sup> “COMPAS stands for ‘Correctional Offender Management Profiling for Alternative Sanctions.’” *State v. Samsa*, 2015 WI App 6, ¶1 n.1, 359 Wis. 2d 580, 859 N.W.2d 149.

because, even though it was then in existence, it was unknowingly overlooked by all of the parties.” *Rosado v. State*, 70 Wis. 2d 280, 288, 234 N.W.2d 69 (1975); *see also State v. Harbor*, 2011 WI 28, ¶¶40, 57, 333 Wis. 2d 53, 797 N.W.2d 828. The defendant must demonstrate the existence of a new factor by clear and convincing evidence. *See Harbor*, 333 Wis. 2d 53, ¶36. Whether a fact constitutes a new factor presents a question of law. *See id.*, ¶33. If the circuit court determines that a new factor exists, the circuit court decides, in its exercise of discretion, whether modification of the sentence is warranted. *Id.*, ¶37.

Robinson first claims it is a new factor that he was sentenced on “inaccurate information” about the supposed sexual motivation of his crimes and about his prior record. However, at the time of sentencing, Robinson plainly knew whether his crimes could be described as sexually motivated and what his prior record was. Information known to the defendant at the time of sentencing is not a new factor. *See State v. Crockett*, 2001 WI App 235, ¶14, 248 Wis. 2d 120, 635 N.W.2d 673.

A defendant does have a constitutional due process right to be sentenced on accurate information.<sup>5</sup> *See State v. Lechner*, 217 Wis. 2d 392, 419, 576 N.W.2d 912 (1998). However, a

---

<sup>5</sup> We question whether the information was actually inaccurate. According to the criminal complaint, Robinson fondled the breasts of a fourteen-year-old female victim and slapped the buttocks of a fifteen-year-old victim. Robinson claimed that he patted down the fourteen-year-old in the same way he had patted down the male victims, so it is not fair to say the touching of the fourteen-year-old was sexual. However, the complaint also indicates that Robinson’s co-actor stated he saw Robinson slap the other girl’s buttocks, and that Robinson told him that he planned to “get naked with both girls” but ran out of time during the robbery.

(continued)

prisoner who has had a direct appeal or other postconviction motion may not seek collateral review of an issue, even a constitutional issue, that could have been raised in an earlier proceeding unless there is sufficient reason for failing to raise it earlier. *See Escalona*, 185 Wis. 2d at 185; *see also* WIS. STAT. § 974.06(1), (4). Robinson does not provide any reason why he did not raise his claims of inaccurate information in his original postconviction motion or his 2011 and 2014 motions. The circuit court properly deemed the claims of inaccurate information to be procedurally barred.

The circuit court was also correct to hold that Robinson's progress in various classes, service projects, and rehabilitative programs does not constitute a new factor. *See Prince*, 147 Wis. 2d at 136; *see also State v. Crochiere*, 2004 WI 78, ¶15, 273 Wis. 2d 57, 681 N.W.2d 524, *abrogated on other grounds by Harbor*, 333 Wis. 2d 53, ¶¶47 n.11, 52.

This leaves only the question of whether the 2015 COMPAS evaluation, performed by the Department of Corrections as part of a statewide implementation, which showed a lower likelihood of re-offense than the sentencing court had attributed to Robinson, constitutes a new factor. We conclude that it does not.

---

With respect to prior convictions, Robinson does not dispute that he had a prior conviction for possession with intent to deliver marijuana. Robinson had also been sentenced on two counts of possession of a firearm by a felon and one count of carrying a concealed weapon in June 2002, prior to his July 2002 sentencing in this case, though he claimed the gun offenses had occurred after the March 2002 robberies. He also claims the State was wrong to rely on his admission of involvement in a 2001 firearm incident because he was only given traffic citations following that incident. We simply observe that according to electronic docket entries for Milwaukee County Circuit Court case No. 2002CF1883, one of Robinson's felon-in-possession offenses allegedly occurred on November 24, 2001, which clearly predates the March 2002 offenses.

The assessment is based on a multitude of factors, gleaned from the defendant's file and a prison interview, *see State v. Loomis*, 2016 WI 68, ¶13, 371 Wis. 2d 235, 881 N.W.2d 749, including information about substance abuse, criminal history, personal relationships, and mental health. However, none of that information constitutes a new factor because it was all before the circuit court as part of the PSI. Further, though a COMPAS assessment may be reviewed by a sentencing court, its use at sentencing is limited. *See id.*, ¶¶92-98. Indeed, a COMPAS assessment is a tool designed to provide decisional support for the Department of Corrections in managing offenders, *see id.*, ¶13, and it is “only one of many factors” that a court may—or may not—consider at sentencing, *see id.*, ¶99. But it was not until 2012 that the Department of Corrections adopted COMPAS as its statewide assessment tool for its correctional officers. *See id.*, ¶37. Thus, a COMPAS evaluation would not have been considered in 2002, and we are not persuaded that an evaluation is highly relevant to the imposition of sentence in this case.

Finally, we note that it is not evident that the results of the 2015 COMPAS evaluation demonstrate that the risk level attributed to Robinson in 2002 was inaccurate, and to the extent that the 2015 assessment simply reflects a reduced risk of re-offense because of Robinson's progress during the rehabilitative progress, it cannot be a new factor.<sup>6</sup> *See Prince*, 147 Wis. 2d at 136.

IT IS ORDERED that the order appealed from is summarily affirmed.

---

<sup>6</sup> We are not persuaded by counsel's citation in the reply brief to *State v. Wilson*, No. 2013AP415-CR, unpublished slip op. (WI App Nov. 13, 2013). Aside from the fact that *Wilson* is ultimately distinguishable on its facts, it is an unpublished *per curiam* opinion. Its citation is therefore a violation of WIS. STAT. RULE 809.23(3)(a). We further note that when an unpublished opinion is appropriately cited, a copy of that opinion must be provided. *See* WIS. STAT. RULE 809.23(3)(c). Counsel also failed to comply with that requirement.

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

---

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