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 II

June 27, 2018

To:

Hon. Michael J. Piontek
Circuit Court Judge
730 Wisconsin Avenue
Racine, WI 53403

Abigail Potts
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Samuel A. Christensen
Clerk of Circuit Court
Racine County Courthouse
730 Wisconsin Avenue
Racine, WI 53403

Ricardo Glover 207606
Oshkosh Corr. Inst.
P.O. Box 3310
Oshkosh, WI 54903-3310

Patricia J. Hanson
District Attorney
730 Wisconsin Avenue
Racine, WI 53403

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

2017AP1947-CR State of Wisconsin v. Ricardo Glover (L.C. # 1989CF402)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

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).

Ricardo Glover appeals pro se from an order denying his motion for resentencing. 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.

In 1989, Glover pled no contest to first-degree sexual assault, false imprisonment with a dangerous weapon, and attempted first-degree intentional homicide. The charges stemmed from Glover abducting[2] and sexually assaulting his eleven-year-old sister-in-law and attempting to silence her by throwing her off a bridge with her hands tied behind her back. Glover was sentenced to forty-five years in prison, the maximum. Glover filed a direct appeal from the judgment of conviction, which we affirmed in 1992. ***State v. Glover***, No. 1991AP952-CR, unpublished slip op. at 1-2 (WI App Mar. 18, 1992). Glover also filed a postconviction motion under WIS. STAT. § 974.06 (1999-2000), which we addressed and denied in 2001. ***State v. Glover***, No. 2000AP1445, unpublished slip op. ¶1 (WI App Apr. 18, 2001).

In 2017, Glover filed a motion for resentencing. The circuit court summarily denied the motion because it was untimely, failed to raise a new factor to warrant resentencing, and "raise[d] issues that were raised and decided in earlier proceedings." Glover appeals the circuit court's order denying his motion for resentencing, arguing that he was entitled to resentencing based on several new factors. Glover invokes the circuit court's inherent authority to modify his sentence at any time.

The circuit court may exercise its inherent authority to modify a sentence in its discretion "only if a defendant demonstrates the existence of a 'new factor' justifying sentence modification." ***State v. Noll***, 2002 WI App 273, ¶11, 258 Wis. 2d 573, 653 N.W.2d 895 (citation

[2] Glover was initially charged with child abduction, but the charge was reduced to false imprisonment per a plea agreement.

omitted).[3] Glover "has the burden to demonstrate by clear and convincing evidence the existence of a new factor." *See* ***State v. Harbor***, 2011 WI 28, ¶36, 333 Wis. 2d 53, 797 N.W.2d 828. Whether a fact or set of facts is a new factor is a question of law we review de novo. ***Id.*** 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, even though it was then in existence, it was unknowingly overlooked by all of the parties.

Id., ¶40 (citation omitted).

Glover failed to establish the existence of any new factor. Glover's brief is lengthy and complex, but several general arguments are clear. Glover first reiterates his assertion from previous appeals that the sentencing court lacked subject matter jurisdiction. We have previously rejected the argument substantively in Glover's direct appeal and rejected it due to procedural bar in his postconviction appeal; it is not a new factor. *See* ***Glover***, No. 2000AP1445, ¶1; ***Glover***, No. 1991AP952-CR, at 11.[4]

Glover next argues that the circuit court misused its sentencing discretion, and this erroneous exercise of discretion constitutes a new factor. In addition to general disagreements

[3] Within ninety days of the sentencing order, a defendant may move to modify his or her sentence based on more general grounds of "excessiveness, undue harshness, or unconscionability." ***State v. Noll***, 2002 WI App 273, ¶¶9-10, 258 Wis. 2d 573, 653 N.W.2d 895; *see also* WIS. STAT. § 973.13. We are far outside the ninety-day period allowing for such general review.

[4] Apparently recognizing that these prior decisions are the law of the case, Glover characterizes the operative language in these cases as "dicta" and insists that we should disregard our previous decisions in the interests of justice. Even if we were somehow convinced that the jurisdictional issues were new, we are unpersuaded that the interests of justice justify setting aside the law of the case. Glover had a full and fair opportunity to raise his jurisdictional objections, and we rightly concluded that the circuit court had jurisdiction.

with the sentence imposed, he complains about the relative severity of his sentence when compared to the sentences of various other defendants convicted of murder and rape, sentences he lists in his brief. Disparate sentences are not a new factor. *See* ***State v. Studler***, 61 Wis. 2d 537, 541, 213 N.W.2d 24 (1973) ("The fact that a different judge imposed a lesser sentence upon an accomplice is not a 'new factor.'" (citation omitted)).

Glover finally complains about the circuit court's assessment of the evidence against him, in particular, its determination that the victim was credible. In his mind, the victim's account was not credible, and he is innocent of the crimes. But the circuit court's weighing of the evidence and credibility determinations during sentencing are not new factors. *See* ***State v. Grindemann***, 2002 WI App 106, ¶¶22-24, 255 Wis. 2d 632, 648 N.W.2d 507 ("a court's altered view of facts known to the court at sentencing, or a reweighing of their significance" is not a new factor).[5]

Because Glover failed to show the existence of a new factor, we affirm the circuit court's order denying his motion for resentencing.

[5] To the extent Glover raises any additional arguments, they are insufficiently developed to warrant particular attention, and we reject them summarily. ***State v. Waste Mgmt. of Wis., Inc.***, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) ("An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.").

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