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MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
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**DISTRICT IV**

October 19, 2018

*To:*

Hon. Everett Mitchell  
Circuit Court Judge  
215 S. Hamilton St.  
Madison, WI 53703

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

Carlo Esqueda  
Clerk of Circuit Court  
215 S. Hamilton St., Rm. 1000  
Madison, WI 53703

John G. Dahlk  
5706 Odana Rd.  
Madison, WI 53719

Erin Hanson  
Assistant District Attorney  
215 S. Hamilton St., Rm. 3000  
Madison, WI 53703

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

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2018AP160-CR

State of Wisconsin v. John G. Dahlk (L.C. # 1993CF1604)

Before Sherman, Blanchard, and Kloppenburg, 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).**

John Dahlk, pro se, appeals a circuit court order denying his motion for sentence modification. Dahlk argues that the circuit court erred in determining that his post-sentence cooperation with a tax fraud investigation was not a new factor warranting modification of Dahlk's sentence for second degree sexual assault and false imprisonment. 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>1</sup> We reject Dahlk’s arguments and affirm.

In 1994, Dahlk pled no contest to three counts of second degree sexual assault, including two counts with a weapons enhancer, and one count of false imprisonment, also with a weapons enhancer. At sentencing, the circuit court focused on the highly aggravated nature of Dahlk’s violent sexual assaults, the substantial mental trauma caused to Dahlk’s victim, and Dahlk’s failure to appreciate that his actions were criminal. The court sentenced Dahlk to an indeterminate sentence totaling twenty-seven years. We affirmed this sentence on direct appeal.

In 2015, Dahlk filed a motion to modify his sentence. Among other things, Dahlk pointed to a 2006 letter from an Assistant U.S. Attorney stating that Dahlk had provided valuable information and evidence about the illegal filing of tax returns by prisoners and other individuals. The circuit court denied Dahlk’s motion, but we reversed and remanded for a hearing on whether Dahlk’s post-sentence cooperation was a new factor warranting sentence modification. *See State v. Doe*, 2005 WI App 68, ¶1, 280 Wis. 2d 731, 697 N.W.2d 101 (“substantial and important assistance to law enforcement after sentencing may constitute a new factor that the [circuit court] can take into consideration when deciding whether modification of a sentence is warranted”). On remand, the circuit court denied Dahlk’s motion after an evidentiary hearing. Dahlk appeals.

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

“A [circuit] court has discretion to modify a sentence if the defendant presents a new factor.” *State v. Boyden*, 2012 WI App 38, ¶5, 340 Wis. 2d 155, 814 N.W.2d 505. A new factor exists when “a fact or set of facts highly relevant to the imposition of sentence, but not known to the [circuit court] 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.” *State v. Harbor*, 2011 WI 28, ¶40, 333 Wis. 2d 53, 797 N.W.2d 828 (quoting *Rosado v. State*, 70 Wis. 2d 280, 288, 234 N.W.2d 69 (1975); *id.* at ¶52 (concluding that “the definition set forth in *Rosado* is the correct definition of a ‘new factor’ for the purpose of sentence modification”).

“Deciding a motion for sentence modification based on a new factor is a two-step inquiry.” *Boyden*, 340 Wis. 2d 155, ¶5 (quoted source omitted). “First, the defendant must ‘demonstrate by clear and convincing evidence the existence of a new factor.’” *Id.* (quoted source omitted). This is “a question of law we review de novo, without deference to the [circuit] court.” *Id.*, ¶6. “Second, if a new factor is present, the [circuit] court must determine ‘whether that new factor justifies modification of the sentence.’” *Id.*, ¶5 (quoted source omitted). This determination “is committed to the discretion of the circuit court, and we review such decisions for erroneous exercise of discretion.” *Harbor*, 333 Wis. 2d 53, ¶33.

Here, the circuit court determined that Dahlk provided “substantial and important” cooperation with authorities. *See Doe*, 280 Wis. 2d 731, ¶1. However, the circuit court determined that Dahlk had not established that this cooperation was highly relevant to Dahlk’s sentence. Specifically, the court explained that the sentencing court had considered Dahlk’s cooperation with law enforcement following his arrest, but this cooperation was tempered by the fact that Dahlk nonetheless failed to fully appreciate the wrongfulness of his crimes. Moreover,

given the serious nature of Dahlk's own crimes, Dahlk's subsequent cooperation with the tax fraud investigation was not highly relevant to this analysis.<sup>2</sup>

In this appeal, Dahlk argues that his cooperation with the tax investigation was highly relevant to the imposition of the original sentence. During the hearing on remand, the circuit court specifically asked Dahlk to address why his cooperation with the tax fraud investigation was highly relevant to the imposition of the original sentence. Dahlk responded by arguing that his post-sentence cooperation "frustrates the imposition of the original sentence" because "it goes against everything that the DA said goes to my character at the original sentencing." However, as the circuit court explained, the sentencing court expressly considered Dahlk's cooperation with law enforcement at the original sentencing. Specifically, the sentencing court determined that Dahlk cooperated with the investigation because he did not believe that his actions amounted to sexual assault or rape. The sentencing court therefore viewed Dahlk's cooperation as a sign that he was "out of touch with reality" and "truly amoral and truly dangerous." We fail to see how Dahlk's cooperation, more than a decade later, with tax crimes committed by other individuals is "highly relevant" to the sentencing court's determinations regarding Dahlk's failure to take responsibility for his own profoundly violent sexual offenses.

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<sup>2</sup> The circuit court also determined that even if Dahlk had demonstrated a new factor, this new factor did not warrant modification of Dahlk's sentence. The court explained that the gravity of Dahlk's offenses "greatly outweighs any value of any cooperation that Mr. Dahlk has provided," as did the deterrent effect of Dahlk's sentence and the need to protect the public. Because we affirm on the ground that Dahlk's assistance was not highly relevant to the imposition of the original sentence, we need not address the circuit court's analysis at the second step. See *Cholvin v. Wisconsin DHFS*, 2008 WI App 127, ¶34, 313 Wis. 2d 749, 758 N.W.2d 118 ("if a decision on one point disposes of the appeal, we will not decide the other issues raised").

Dahlk’s remaining arguments do not help Dahlk satisfy his burden of showing that his cooperation with the tax fraud investigation was highly relevant to the imposition of the original sentence. *See Boyden*, 340 Wis. 2d 155, ¶5 (the defendant has the burden of demonstrating the existence of a new factor by “clear and convincing evidence”) (quoted source omitted). Because our remand was for the limited purpose of determining whether Dahlk’s post-sentence cooperation was a new factor warranting sentence modification, we do not discuss these arguments further. *See Libertarian Party of Wis. v. State*, 199 Wis. 2d 790, 801, 546 N.W.2d 424 (1996) (an appellate court need not discuss arguments that lack “sufficient merit to warrant individual attention”).

Upon the foregoing reasons,

IT IS ORDERED that the order is 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*