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**DISTRICT IV**

November 6, 2018

To:

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

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2017AP1450-CR	State of Wisconsin v. Joseph M. Mullins aka Mike Mullins (L.C. #2013CF128)
2017AP1451-CR	State of Wisconsin v. Joseph M. Mullins aka Mike Mullins (L.C. #2013CF184)

Before Lundsten, P.J., Sherman 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).**

Joseph M. Mullins, pro se, appeals an order denying his motion for sentence modification in two criminal cases. Mullins argues that he is entitled to sentence modification based on a change in the rate at which inmate funds are collected to pay outstanding court obligations, as established by the Department of Corrections Division of Adult Institutions (DOC). Mullins also

contends that DOC's change in the rate at which funds are collected from Mullins' prison inmate accounts violates his due process rights and the ex post facto clause. Based upon our review of the briefs and record, we conclude at conference that these cases are appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).<sup>1</sup> We summarily affirm.

In July 2013, Mullins was convicted of several crimes and was placed on probation. The court imposed costs, fees, and surcharges. In February 2016, Mullins was sentenced to prison after his probation was revoked. The judgments of conviction sentencing Mullins to prison set forth Mullins' court costs, fees, and surcharges, but are silent as to collection of funds from Mullins' prison inmate accounts during his initial confinement.

In June 2017, Mullins moved to modify his sentence based on a change in the rate at which DOC was collecting inmate funds to pay court obligations. The court denied the motion. Mullins appeals.

A defendant seeking sentence modification must establish the existence of a new factor by clear and convincing evidence. *State v. Harbor*, 2011 WI 28, ¶36, 333 Wis. 2d 53, 797 N.W.2d 828. A “new factor” is a “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 (quoted source omitted). If a defendant establishes the existence of a new factor, the circuit court must decide whether it justifies a modification. *See id.*, ¶38.

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

Mullins asserts that the change in the rate at which his inmate funds are deducted to pay his court obligations constitutes a new factor entitling him to sentence modification. He contends that, at the time of sentencing, the court was not aware that DOC would increase the rate at which the funds would be deducted from Mullins' prison inmate accounts. Mullins contends that his due process rights were violated by the change in policy because, he asserts, he has a property interest in his prison inmate accounts and the increase in the rate at which funds are deducted from his accounts to pay his court obligations deprived him of his property interest without due process. He argues that this constitutional violation amounts to a "new factor" warranting sentence modification. We disagree.

We conclude that a change in the rate at which funds are deducted from Mullins' prison inmate accounts to satisfy court obligations does not constitute a new factor. Nothing in the court's sentencing comments or the judgments of conviction indicates that the court actually considered the rate at which Mullins' inmate funds would be collected to pay his court obligations in imposing Mullins' sentence and his costs, fees, and surcharges.<sup>2</sup> Accordingly, the change in the rate at which Mullins' funds are collected is not "highly relevant to the imposition of sentence." See *id.*, ¶40 (quoted source omitted); see also *State v. Franklin*, 148 Wis. 2d 1, 15, 434 N.W.2d 609 (1989) ("In order for a change in parole policy to constitute a new factor, parole policy must have been a relevant factor in the original sentencing. It is not a relevant factor unless the court expressly relies on parole eligibility.").

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<sup>2</sup> The records contain the transcript of the February 2016 sentencing after revocation, but do not contain a transcript of the July 2013 original sentencing. When a transcript is not part of the record, we assume it supports every fact essential to the circuit court's decision. *Austin v. Ford Motor Co.*, 86 Wis. 2d 628, 641, 273 N.W.2d 233 (1979).

Next, Mullins contends that DOC's change in the rate at which it collects inmate funds to satisfy an inmate's court obligations violates the ex post facto clause. *See State v. Thiel*, 188 Wis. 2d 695, 703, 524 N.W.2d 641 (1994) (explaining that the ex post facto clause prohibits a statute "which makes more burdensome the punishment for a crime[] after its commission" (internal quotation marks and quoted source omitted)). Mullins also repeats his argument that DOC has deprived him of his property interest in his prison inmate accounts without due process. *See Casteel v. McCaughtry*, 176 Wis. 2d 571, 579, 500 N.W.2d 277 (1993) (explaining that the due process clause protects against state action that deprives a person of life, liberty, or property without due process of law). Mullins asserts that his motion for sentence modification entitled him to relief by establishing that DOC was acting contrary to his constitutional rights.<sup>3</sup> Again, we disagree.

Mullins' assertions that DOC is acting contrary to Mullins' constitutional rights by the manner in which it is deducting funds from Mullins' prison inmate accounts must be raised by certiorari, not within a motion for sentence modification. *See State v. Williams*, 2018 WI App 20, ¶4, 380 Wis. 2d 440, 909 N.W.2d 177 (holding that a "circuit court, acting as the sentencing

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<sup>3</sup> Mullins also argues that DOC is acting contrary to his judgments of conviction by deducting funds towards Mullins' court obligations. In Mullins' motion for sentence modification, Mullins asserted that DOC was acting contrary to the judgments of conviction because, Mullins asserted, the judgments of conviction ordered that the funds were to be deducted at a rate of 25% and DOC was deducting the funds at a rate of 50% from Mullins' accounts. However, as noted above, the judgments of conviction are silent as to the rate at which DOC may deduct funds from Mullins' accounts to pay Mullins' court obligations. On appeal, Mullins does not continue his argument that the judgments of conviction set the rate of deduction at 25% of Mullins' accounts, and we therefore deem that argument abandoned. *See Reiman Assocs., Inc. v. R/A Advert., Inc.*, 102 Wis. 2d 305, 306 n.1, 306 N.W.2d 292 (Ct. App. 1981). Rather, Mullins contends for the first time on appeal that DOC is acting contrary to the judgments of conviction because, Mullins asserts, the judgments of conviction set forth that the court costs, fees, and surcharges were to be paid only upon Mullins' release to extended supervision. Because Mullins did not raise this argument in his motion for sentence modification, we do not consider it on appeal. *See Jackson v. Benson*, 218 Wis. 2d 835, 901, 578 N.W.2d 602 (1998).

court, lacks the competency to address an allegedly improper disbursement of funds by the DOC” and that, “[o]nce an inmate is sentenced to prison, he or she is under the control of the executive branch and must address his or her objections to the internal operating procedures of the DOC through the ICRS ... and then, if necessary, by writ of certiorari to the circuit court”).

Upon the foregoing,

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*