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**DISTRICT IV**

May 30, 2019

To:

Hon. Richard T. Werner  
Circuit Court Judge  
Rock County Courthouse  
51 S. Main St.  
Janesville, WI 53545

Hon. John M. Wood  
Circuit Court Judge  
Circuit Court Branch 6  
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Janesville, WI 53545

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

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2018AP1219-CR                      State of Wisconsin v. Kayla Louise Pearson (L.C. # 2013CF146)

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

Kayla Pearson appeals a judgment of conviction and an order denying her postconviction motion.<sup>1</sup> Based upon our review of the briefs and record, we conclude at conference that this

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<sup>1</sup> The Honorable Richard T. Werner entered the judgment of conviction. The Honorable John M. Wood entered the order denying Pearson's postconviction motion.

case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).<sup>2</sup> We affirm.

Pearson argues that the court erroneously denied her motion for sentence modification. Pearson's motion was based on her belief that another defendant's statements in the other defendant's presentence investigation (PSI) report described Pearson's conduct in relation to the crimes in a way that would corroborate Pearson's own description of her conduct, and thus potentially be mitigating in sentencing Pearson. The circuit court denied the motion.

For purposes of this appeal, we assume that the other defendant did corroborate Pearson's statements in her own PSI report, to an extent that would cause the court to believe that Pearson's account was accurate. We further assume that such a belief in Pearson's account qualifies as a new factor for purposes of sentencing. We focus on the last step of the analysis, whether the new factor justifies sentence modification. *See State v. Harbor*, 2011 WI 28, ¶37, 333 Wis. 2d 53, 797 N.W.2d 828. This is a discretionary decision for the court reviewing the motion to modify sentence. *Id.*

In this case, the postconviction court, in the person of a different judge than the sentencing court, reviewed the original sentencing transcript. The postconviction court concluded that even if the sentencing court had believed Pearson's account of her conduct, that would not have made any significant difference in the sentence imposed. In reaching that conclusion, the postconviction court noted the sentencing court's emphasis on the seriousness of the offenses and Pearson's involvement in suggesting the crimes in the first place. The

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

postconviction court also noted that even in Pearson's own account she did not take any affirmative steps to stop the crimes. Accordingly, the court concluded that Pearson's account did not justify sentence modification.

We conclude that this was a reasonable exercise of discretion. The postconviction court accurately summarized the record of the original sentencing. The postconviction court also reasonably concluded that Pearson's potentially mitigating conduct was a very minor part of her total conduct in connection with these crimes, and was not a basis for sentence modification.

IT IS ORDERED that the judgment and order appealed are summarily affirmed under 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*