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DISTRICT II

July 10, 2019

To:

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

2018AP568-CR State of Wisconsin v. Shafia M. Jones (L.C. #2015CF188)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, 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).

Shafia M. Jones appeals from an order of the circuit court denying her motion for sentence modification based upon a "new factor." 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 (2017-18).[1] We affirm the order.

To succeed on a motion for sentence modification based upon a new factor, a defendant must first establish by clear and convincing evidence that a new factor in fact exists. ***State v. Harbor***, 2011 WI 28, ¶36, 333 Wis. 2d 53, 797 N.W.2d 828. Two key elements of a "new factor" are that the "factor" was "not known to the trial judge at the time of original sentencing" and was "highly relevant to the imposition of the sentence." ***Rosado v. State***, 70 Wis. 2d 280, 288, 234 N.W.2d 69 (1975). Whether a defendant has established the existence of a new factor is a question of law we review independently. ***State v. Hegwood***, 113 Wis. 2d 544, 547, 335 N.W.2d 399 (1983). Jones has failed to demonstrate the existence of a new factor.

Jones claims a new factor exists because the circuit court had made her eligible to participate in the Challenge Incarceration and Substance Abuse programs, but the department of corrections (DOC) subsequently determined that she could not participate in the programs. At sentencing, however, the court told Jones that, while the court determines whether Jones is *eligible* to participate in a program, the "DOC determines participation. So that's beyond both our controls." Thus, in sentencing Jones, the court was aware of the possibility she might not be able to participate in either program due to decisions by the DOC. As a result, her inability to participate in either program is not a new factor.

Furthermore, Jones fails to develop any argument to support her blanket assertion that her inability to participate in either program was "highly relevant" to the court's imposition of her

[1] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

sentence, and we do not consider assertions that are unsupported by a developed argument. *See* ***Clean Wis., Inc. v. PSC***, 2005 WI 93, ¶180 n.40, 282 Wis. 2d 250, 700 N.W.2d 768 ("We will not address undeveloped arguments."); *see also* ***Industrial Risk Insurers v. American Eng'g Testing, Inc.***, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82 ("[W]e will not abandon our neutrality to develop arguments [for a party]."). While we recognize that Jones is a pro se litigant, she is still required to abide by the same rules governing attorneys. *See* ***Waushara Cty. v. Graf***, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992).

Jones has failed to meet her burden to establish the existence of a "new factor." *See* ***Harbor***, 333 Wis. 2d 53, ¶36.[2]

For the foregoing reasons, we affirm.

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 will not be published.

Sheila T. Reiff
Clerk of Court of Appeals

[2] To the extent we have not addressed any other assertion made by Jones on appeal, it is because it is not supported by a developed argument. *See* ***Clean Wis., Inc. v. PSC***, 2005 WI 93, ¶180 n.40, 282 Wis. 2d 250, 700 N.W.2d 768.