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**DISTRICT I**

December 5, 2019

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

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2018AP636-CR                      State of Wisconsin v. John D. Tiggs, Jr. (L.C. # 1996CF960674)

Before Brash, P.J., Kessler and Dugan, 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 D. Tiggs, Jr., *pro se*, appeals the circuit court's order denying his motion for postconviction relief. He argues that: (1) the presumptive mandatory release law (PMR) constitutes a new factor entitling him to resentencing; (2) his armed robbery conviction should be amended to a lesser charge; and (3) the PMR law unconstitutionally delegates judicial power to the executive branch. Based on 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).<sup>1</sup> We affirm.

Tiggs first argues that the PMR law, WIS. STAT. § 302.11(1g)(am), which was enacted in 1994, constitutes a new factor entitling him to sentence modification. 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 ... 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 (citation omitted). The defendant has the burden of showing by clear and convincing evidence that a new factor exists. *Id.*, ¶36. Whether a fact or set of facts constitutes a new factor is a question of law. *Id.*

Tiggs’s argument is unavailing. The PMR law changed the mandatory release date for parole for indeterminate sentences to a *presumptive* mandatory release date for inmates serving sentences for serious felonies committed on or after April 21, 1994, but before December 31, 1999. The PMR law was enacted two years before Tiggs was sentenced in 1996. Tiggs has provided nothing to support his assertion that the circuit court was unaware of the statutory change when it sentenced Tiggs. Moreover, Tiggs has not shown that the statutory change was highly relevant to the imposition of his sentence. Therefore, Tiggs has not established that the enactment of WIS. STAT. § 302.11(1g)(am) is a new factor.

Tiggs next argues that his armed robbery conviction should be amended to the reduced charge of robbery with use of force, which would not trigger the PMR law. The circuit court has

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

no statutory authority to amend a judgment of conviction to a reduced charge. *See State v. Dawson*, 2004 WI App 173, ¶18, 276 Wis. 2d 418, 688 N.W.2d 12.

Tiggs contends that we could *order* the circuit court to amend his judgment of conviction pursuant to our supervisory authority over the circuit court under WIS. STAT. RULE 809.51. We disagree. We will issue a supervisory writ only if the petitioner shows that: (1) an appeal is an inadequate remedy; (2) the petitioner will suffer grave or irreparable harm; (3) the duty of the circuit court to undertake the action the petitioner seeks is plain and it must have acted or intends to act in violation of that duty; and (4) the request for relief has been promptly made. *See State ex rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶17, 271 Wis. 2d 633, 681 N.W.2d 110. Tiggs does not meet these criteria.

Finally, Tiggs argues that the PMR law unconstitutionally delegates judicial power to the executive branch. Tiggs did not raise this issue in the circuit court. “It is the often-repeated rule in this State that issues not raised or considered in the trial court will not be considered for the first time on appeal.” *See State v. Bodoh*, 226 Wis. 2d 718, 737, 595 N.W.2d 330 (1999) (citation omitted). Therefore, we will not consider this issue.

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

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*