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**DISTRICT II**

December 16, 2020

To:

Hon. Teresa S. Basiliere  
Circuit Court Judge  
Winnebago County Courthouse  
P.O. Box 2808  
Oshkosh, WI 54903

Hon. Thomas J. Gritton  
Circuit Court Judge  
Winnebago County Courthouse  
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You are hereby notified that the Court has entered the following opinion and order:

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2020AP280-CR                      State of Wisconsin v. William J. Wolfgram (L.C. #2015CF25)

Before Neubauer, C.J., Gundrum and Davis, 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).**

William J. Wolfgram appeals from a judgment of conviction and an order denying his postconviction motion.<sup>1</sup> He contends that he is entitled to resentencing due to the existence of a

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<sup>1</sup> The Honorable Thomas J. Gritton entered the judgment of conviction. The Honorable Teresa S. Basiliere entered the order denying the postconviction motion.

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).<sup>2</sup> We affirm.

Wolfgram was convicted following a no contest plea to possession with intent to deliver THC. The circuit court withheld sentence and placed Wolfgram on probation. His probation was later revoked due to multiple rules violations,<sup>3</sup> and he appeared before the court for sentencing after revocation. There, the court imposed a sentence of three years of initial confinement and three years of extended supervision.

Wolfgram subsequently filed a postconviction motion alleging the existence of a new factor. In it, he noted that he was never charged with sexual assault, which was one of his alleged rules violations. The circuit court denied Wolfgram's motion, determining that no new factor existed. This appeal follows.

A circuit court may modify a sentence upon a defendant's showing of a new factor. *State v. Harbor*, 2011 WI 28, ¶35, 333 Wis. 2d 53, 797 N.W.2d 828. 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.”” *Id.*, ¶40 (quoting *Rosado v. State*, 70 Wis. 2d 280, 288, 234

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

<sup>3</sup> Wolfgram does not dispute that he committed five violations of his probation. They were for consuming methamphetamine, engaging in a sexual relationship without agent approval, violating a no contact provision, accessing Facebook under an alias, and threatening a woman. However, he has consistently denied an alleged sixth violation of sexual assault. The Administrative Law Judge who ordered Wolfgram revoked found insufficient credible evidence to substantiate the sexual assault allegation.

N.W.2d 69 (1975)). Whether a fact or set of facts constitutes a new factor is a question of law that this court reviews independently. *See Harbor*, 333 Wis. 2d 53, ¶33.

Here, we are not persuaded that Wolfgram has demonstrated the existence of a new factor. As noted by the State, the circuit court knew at the time of the sentencing after revocation that Wolfgram denied the sexual assault allegation. Likewise, it knew that Wolfgram had not been charged with the sexual assault.<sup>4</sup> From this, the court must have known it was possible that Wolfgram would never be charged with the sexual assault. Thus, the subsequent noncharging of Wolfgram cannot constitute a fact unknown to the court. Accordingly, we are satisfied that it properly denied Wolfgram’s motion.

Upon the foregoing reasons,

IT IS ORDERED that the judgment and order of the circuit court are 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*

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<sup>4</sup> The circuit court specifically asked whether the sexual assault had been charged, and Wolfgram’s counsel answered that it had not “even been referred yet.” Only then, after hearing that information, did the court impose its sentence, which was based on Wolfgram’s inability to change his behavior while on probation.

