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DISTRICT I

February 16, 2021

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

2019AP1897-CR State of Wisconsin v. Lawrence Williams
(L.C. # 1995CF955598A)

Before Brash, P.J., Graham and White, 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).

Lawrence Williams, *pro se*, appeals from orders denying his motions for postconviction relief and for reconsideration. Williams argues that he has identified a new factor that warrants sentence modification. Based upon our review of the briefs and the record, we conclude at

conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2017-18).¹ We summarily affirm the orders.

In December 1995, the State charged Williams with eleven felonies, all as a party to a crime, including: one count of attempted first-degree intentional homicide while armed with a dangerous weapon; seven counts of armed robbery, all while concealing identity; and three counts of attempted armed robbery, two while concealing his identity. The charges followed an incident in which Williams and his co-actors, Shulbert Williams (Williams's brother), Andre Mitchell, and Jerry Curry, robbed a gas station. Upon fleeing the robbery, Curry shot an off-duty Milwaukee police officer, Jeffrey Cole. During police interviews after his arrest, Williams admitted to participating in ten robberies during the final weeks of 1995, including the robbery which resulted in the shooting of Officer Cole.

The matter proceeded to a jury trial. Williams testified in his own defense and admitted to participating in the robbery of a gas station employee and an off-duty police officer, who was a customer that day. Williams testified that he had a gun at the robbery, that he was the driver of the getaway car, and that he noticed someone following the car after it left the scene. Williams testified that he pulled the car into an alley to try to get away from the person following them, and that Curry exited the car and began shooting. It was later revealed that Officer Cole had followed the car from the robbery, and that after Curry exited the vehicle, he shot at and hit Officer Cole. Officer Cole survived and later identified Williams as the driver of the getaway car. A jury convicted Williams of all eleven felonies.

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

Following his conviction, Williams made a series of unsuccessful attempts to either overturn his conviction or modify his sentence. These attempts included, but were not limited to, filing a direct appeal, a federal habeas corpus petition, multiple WIS. STAT. § 974.06 motions, a state habeas corpus petition, and a motion to modify his sentence.

In August 2019, Williams filed another motion to modify his sentence, which is the basis of this appeal. Williams argued that a new factor warranted sentence modification, namely, that his codefendants' statements to police corroborated his own statements to police by suggesting that Williams was unaware of Curry's plan to shoot Officer Cole. Williams argued that he would have received a lesser sentence if either the trial court or the sentencing court had been made aware of the codefendants' statements. The postconviction court denied the motion without a hearing, stating that Williams did not identify any new factors. Williams moved the court to reconsider. The postconviction court denied the motion, stating that Williams's motion was procedurally barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994), because the motion "does not allege a new factor" and is instead "essentially a challenge to his conviction[.]" This appeal follows.

On appeal, Williams contends that the corroborating statements from his codefendants constitute new factors because neither the trial court nor the sentencing court were aware of the statements. Had either court been aware of those statements, Williams contends, his culpability in the shooting would have been minimized and his sentence would have been lower.

A "new factor" is "a fact or set of facts" that is "highly relevant to the imposition of sentence, but not known to the trial judge at the time of the 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.”” *State v. Harbor*, 2011 WI 28, ¶40, 333 Wis. 2d 53, 797 N.W.2d 828 (citation omitted). A motion for sentence modification premised on a new factor may be brought at any time without regard to appellate time limits or other procedural bars.

We agree with the postconviction court that Williams’s motion does not identify a new factor, and that his arguments are an attempt to avoid the procedural bar his claim would otherwise face under *Escalona*. Indeed, his claim that he was unaware of Curry’s plan to shoot Officer Cole was considered and rejected by the sentencing court. The sentencing court stated that under the circumstances, it was clear that the parties planned to ambush Officer Cole. Specifically, the sentencing court noted that Williams waited in the car while Curry exited and shot Officer Cole, waited for Curry to return to the car, and then drove away. In short, the sentencing court rejected William’s contention that he was unaware of Curry’s plan to shoot Officer Cole.

Moreover, we agree with the postconviction court that Williams’s argument for sentence modification is essentially an attempt to challenge his conviction for first-degree attempted homicide as party to the crime. A “motion for postconviction relief cannot be used to secure review of issues which were or could have been litigated on direct appeal, no matter how those issues may be phrased or rephrased.” *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991).

IT IS ORDERED that the orders are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals