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DISTRICT I

October 5, 2021

To:

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Circuit Court Judge
Electronic Notice

Kara Lynn Janson
Assistant Attorney General
Electronic Notice

John Barrett
Clerk of Circuit Court
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Electronic Notice

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

2020AP1400-CR State of Wisconsin v. Jumar K. Jones (L.C. # 1996CF960290A)
2020AP1401-CR State of Wisconsin v. Jumar K. Jones (L.C. # 1996CF961761)

Before Brash, C.J., Donald, P.J., and White, 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).

Jumar K. Jones, *pro se*, appeals an order of the circuit court denying his motion for sentence modification. Upon our review of the briefs and record, we conclude at conference that this matter is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).[1] We summarily affirm.

[1] All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

In 1996, Jones pled guilty to three counts of armed robbery, one count of attempted armed robbery, and one count of felony murder, all as a party to the crimes. Jones was a juvenile at the time of these offenses and was waived into adult court. The circuit court imposed indeterminate sentences totaling up to 105 years' imprisonment.

Jones filed a postconviction motion for resentencing, arguing that the circuit court failed to adequately explain its reasons for imposing Jones' specific sentence. The postconviction court denied the motion and this court affirmed.

Jones then began filing a series of *pro se* motions, including multiple motions for sentence modification. In his first motion for sentence modification, Jones argued that new factors warranted sentence modification because at the time he was sentenced the circuit court

> did not anticipate that the law and policies surrounding parole and the elimination of good time would dramatically change to effectively increase the amount of incarceration [Jones] would serve in connection with his indeterminate sentences prior to being released to parole. Also, the parties and [c]ourt were unaware that [Jones] would not be subject to mandatory release after serving two-thirds of his sentence, and instead would be serving a Presumptive, Mandatory Release (PMR) sentence, allowing for [Jones] to remain in prison, at the Parole Commission's discretion until the time of his maximum discharge date. Further, when [Jones] was sentenced in 1996, the [c]ourt was not required to evaluate the mitigating effects of youth, which the United States Supreme Court [has since] addressed.

The circuit court denied the motion and Jones ultimately withdrew his appeal.

Jones later filed another *pro se* motion for sentence modification, again arguing that a new factor warranted sentence modification. Specifically, he argued that the Department of Corrections' elimination of a "community treatment program" was a new factor. The circuit court denied the motion and a subsequent motion for reconsideration.

Jones then filed the motion for sentence modification that underlies this appeal. Jones argued that the circuit court erroneously exercised its discretion by sentencing him to 105 years, while simultaneously finding that Jones "could meet his sentencing objectives and return to the community and be a productive citizen." Jones also argued that the circuit court "misunderstood the consequence of [its] sentence" "under the current parole and early release programming, where DOC policy of delaying inmate program 1-2 year[s] until their [mandatory release] date and subsequent[ly] eliminating these programs altogether under state mandate." He further argued that: the circuit court erred in failing to consult with an expert in adolescent behavior so that it could better understand Jones's level of culpability; the circuit court failed to consider the effects of endogenous drugs[2] as a mitigating factor; and that his COMPAS risk assessment indicated that he posed a low risk to the community. Jones also appeared to argue that all of the circuit court's errors constituted new factors. Jones attached exhibits to his postconviction motion evidencing his rehabilitative efforts in prison. The circuit court denied the motion without a hearing. This appeal follows.

As best as this court can discern, Jones does not appear to raise any "new factor" arguments on appeal, but rather contends that the circuit court made erroneous assumptions about his character, particularly in its failure to consider the effects of endogenous drugs. He also argues that the circuit court's sentence failed to consider policy changes that would make it

[2] "An endogenous substance … is a substance that originates within the body of a living organism." *See* https://www.verywellhealth.com/what-is-an-endogenous-substance-914771 (last visited Aug. 30, 2021). Examples of endogenous substances include endogenous cholesterol and endogenous autoantibodies. *See* ***id.***

impossible for Jones to meet the court's stated sentencing objectives and that the circuit court relied on inaccurate information during sentencing.

At the outset, we note that Jones's contention that the circuit court relied on inaccurate information was not raised prior to this appeal. Accordingly, we conclude that Jones has forfeited this claim by not bringing it in his postconviction motion. *See* ***State v. Crute***, 2015 WI App 15, ¶19, 360 Wis. 2d 429, 860 N.W.2d 284.

As to Jones's claim about parole and early release programming, we conclude that this argument has been previously litigated and is therefore barred on appeal. In essence, the crux of Jones's argument is that policy changes and the circuit court's sentence made it impossible for Jones to one day return to society, something he claims the circuit court hoped for him when rendering its sentence. Jones raised this claim in his previous sentence modification motions. As this court explained in ***State v. Witkowski***, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991), "[a] matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue."

Similarly, Jones has previously litigated his claim about the effect of endogenous drugs. Jones's argument goes hand in hand with his contention that the circuit court failed to consider the effect of adolescence on Jones's decision-making abilities. Jones previously argued that the circuit court failed to consider the mitigating effects of the underdeveloped adolescent brain. In arguing that endogenous substances may have affected his decision making abilities, Jones is simply rehashing his argument that the sentencing court failed to consider his physiology.

To the extent the endogenous drugs argument could be considered a new factor argument, we agree that Jones has failed to raise a new factor warranting 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 (quoting ***Rosado v. State***, 70 Wis. 2d 280, 288, 234 N.W.2d 69 (1975)). Whether a fact constitutes a new factor is a question of law that this court decides independently. *See* ***Harbor***, 333 Wis. 2d 53, ¶33.

Whether endogenous substances affected Jones's decision making abilities is not a new factor warranting sentence modification. Even if the information could be considered new, it was not highly relevant to the imposition of Jones's sentence. The circuit court focused on the seriousness of the offenses, the effects on the victims and the community, Jones's character, his prior record, and the need to protect the public. Therefore, to the extent Jones contends that endogenous drugs constitute a new factor, we conclude that he is mistaken.

For the foregoing reasons, we affirm the circuit court.

IT IS ORDERED that the order is 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