



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

January 13, 2022

To:

Hon. Karl Hanson
Circuit Court Judge
Rock County Courthouse
Electronic Notice

Jacki Gackstatter
Clerk of Circuit Court
Rock County Courthouse
Electronic Notice

Philip J. Brehm
Electronic Notice

Anne Christenson Murphy
Electronic Notice

Gerald A. Urbik
Electronic Notice

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

2020AP1484-CR

State of Wisconsin v. Victor Garcia (L.C. # 2009CF807)

Before Kloppenburg, Fitzpatrick, and Graham, 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).

Victor Garcia appeals an order denying his motion for sentence modification. 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 (2019-20).¹ We affirm.

Garcia was sentenced for several felonies that he committed when he was seventeen years old. Several years later, he moved for sentence modification on the ground that the

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

sentencing court did not consider his youth when it imposed sentence. The circuit court denied the motion.

On appeal, Garcia argues that his youth is a new factor warranting sentence modification. A new factor is a fact or set of facts highly relevant to sentencing, but not known to the sentencing court. *State v. Harbor*, 2011 WI 28, ¶40, 333 Wis. 2d 53, 797 N.W.2d 828. Whether the facts or set of facts constitutes a new factor is a question of law. *Id.*, ¶33.

We conclude that Garcia's youth is not a new factor. Garcia argues that his age is a new factor because the sentencing court did not expressly state that it was taking his age into account when sentencing him. However, Garcia does not cite any law requiring the circuit court to specifically identify every relevant fact that it considers when sentencing. Moreover, Garcia does not dispute that his birthdate or youth were referred to in the record at numerous points, including during sentencing. Therefore, we are satisfied that his age is not a fact unknown to the sentencing court, and is thus not a new factor.

Garcia also makes an argument based on *Miller v. Alabama*, 567 U.S. 460 (2012). In that case, which was issued after Garcia was sentenced, the United States Supreme Court held that it violates the Eighth Amendment to sentence a juvenile to life imprisonment without the possibility of parole under a statutory scheme in which that sentence is mandatory. However, Garcia does not clearly explain how *Miller* fits into the analysis of the motion currently before us. We consider and reject Garcia's arguments as best as we understand them.

If Garcia is arguing that the *Miller* decision is itself a new factor, he has not provided any citation or developed an argument for the proposition that later case law qualifies as a "fact or set of facts" that can be considered a new factor. *Harbor*, 333 Wis. 2d 53, ¶40. And, even if later

case law can be a new factor, this case law is not highly relevant, because the holding regarding mandatory life imprisonment in *Miller* is not applicable to Garcia's situation. That is, Garcia was not subject to mandatory life imprisonment without the possibility of parole.

If Garcia is arguing that the analysis in *Miller* is relevant to whether the circuit court should exercise its discretion to modify his sentence if it first finds his youth to be a new factor, we need not address this argument, because we have concluded that Garcia's age is not a new factor.

Finally, if Garcia is attempting to argue that his sentence is unconstitutional because it violates the Eighth Amendment, he acknowledges that this would require an extension of *Miller* to include the facts of his own case. A request for such an extension is better directed to our supreme court.

For these reasons, we conclude that Garcia's motion for sentence modification was properly denied.

IT IS ORDERED that the order appealed from is summarily affirmed under 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