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**DISTRICT III**

May 17, 2022

*To*:

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Circuit Court Judge
Electronic Notice

Shirley Lang
Clerk of Circuit Court
Marathon County Courthouse
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Antwan I. Slater 471227
McNaughton Corr. Center
8500 Rainbow Rd.
Lake Tomahawk, WI 54539-9558

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

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2020AP613 State of Wisconsin v. Antwan I. Slater (L. C. No. 2003CF97)

Before Stark, P.J., Hruz and Gill, 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).**

Antwan Slater, pro se, appeals an order denying his motion for sentence modification. Slater argues that the circuit court misinterpreted his sentence modification motion and, therefore, erred by applying an "improper legal standard" to deny the motion. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for

summary disposition. We reject Slater's arguments and summarily affirm the order. *See* WIS. STAT. RULE 809.21 (2019-20).[1]

In 2004, Slater was convicted, upon a trial to the court, of burglary with a dangerous weapon while concealing his identity, armed robbery while concealing his identity, and substantial battery with intent to cause bodily harm, with all three counts as a party to a crime. The convictions arose from events that occurred on January 21, 2003, when Slater and Toby Thompson broke into a Wausau home, beat the couple that lived there, and stole over $4,500 in cash.

The circuit court imposed concurrent sentences resulting in an aggregate forty-year sentence. Specifically, Slater was sentenced to twenty years' initial confinement and twenty years' extended supervision on both the armed burglary conviction and the armed robbery conviction, and two years' initial confinement followed by two years' extended supervision for the substantial battery conviction.

In January 2020, Slater moved for sentence modification, appearing to challenge the classification of his penalties under Truth-in-Sentencing I (TIS-I) rather than under Truth-in-Sentencing II (TIS-II). Slater's motion took particular issue with the penalty classifications for armed burglary and armed robbery. Slater argued that the circuit court erred by treating armed burglary as a Class B felony with a maximum sixty-year sentence under WIS. STAT. § 943.10(2)(a) (2001-02) (TIS-I classification) instead of as a Class E felony with a

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

maximum fifteen-year sentence under § 943.10(2)(a) (2001-02) (TIS-II classification).[2] Slater similarly argued that the court erred by treating armed robbery as a Class B felony under WIS. STAT. § 943.32(2) (2001-02) (TIS-I classification) rather than a Class C felony with a maximum forty-year sentence under § 943.32(1)(a) and (2) (2001-02) (TIS-II classification).

Slater claimed that his sentences were based on an ex post facto violation and that they were otherwise illegal and unduly harsh based on the circuit court's alleged application of the wrong maximum confinement time. The court denied the motion without a hearing, concluding that Slater was properly sentenced under TIS-I based on the date his crimes were committed. Citing ***State v. Tucker***, 2005 WI 46, ¶2, 279 Wis. 2d 697, 694 N.W.2d 926, the court explained that the reduction in the maximum penalties under TIS-II did not constitute a new factor justifying sentence modification. This appeal follows.

When, as here, the time has expired to request sentence modification pursuant to WIS. STAT. § 973.19 or WIS. STAT. RULE 809.30, a defendant may seek relief by invoking the court's inherent authority. *See* ***State v. Harbor***, 2011 WI 28, ¶35, 333 Wis. 2d 53, 797 N.W.2d 828. A court has the inherent authority to modify a sentence when: (1) a new factor warrants modification; (2) the sentence is illegal or void; or (3) the court determines that the sentence is unduly harsh or unconscionable. ***State v. Peterson***, 2019 WI App 58, ¶29, 389 Wis. 2d 103, 936 N.W.2d 398.

[2] Slater's motion also claimed that his trial and postconviction counsel were ineffective by failing to adequately investigate and challenge the felony classifications for armed burglary and armed robbery, and that the circuit court erred by applying a penalty enhancer for concealing identity. Slater has abandoned these claims on appeal. *See* ***A.O. Smith Corp. v. Allstate Ins. Cos.***, 222 Wis. 2d 475, 491, 588 N.W.2d 285 (Ct. App. 1998) ("[A]n issue raised in the [circuit] court, but not raised on appeal, is deemed abandoned.").

On appeal, Slater argues that the circuit court erred by denying his motion without considering his true legal argument—that his sentence was based on an ex post facto violation. Slater therefore seeks to reverse the underlying order and remand the matter for the court to address the actual basis for his motion. Whether conditions are satisfied for sentence modification because the sentence is illegal—such as for an ex post facto violation—is a question of law that this court decides independently. *See* ***State v. Klubertanz***, 2006 WI App 71, ¶26, 291 Wis. 2d 751, 713 N.W.2d 116. Because we review Slater's argument independently, a remand to the circuit court is not warranted.

The ex post facto clauses of the state and federal constitutions protect against any law that: (1) punishes as a crime an act previously committed, which was innocent when done; (2) makes more burdensome the punishment for a crime, after its commission; or (3) deprives one charged with a crime of any defense available according to law at the time when the act was committed. ***State v. Thiel***, 188 Wis. 2d 695, 703, 524 N.W.2d 641 (1994). Slater develops no argument that implicates any of these scenarios. This is not a case in which the sentences were the result of increased criminal penalties enacted *after* the offenses were committed. The only change in the law implicated by Slater's sentence modification motion is the change from TIS-I to TIS-II, which reduced the applicable penalties for offenses occurring after February 1, 2003.

Truth-in-Sentencing legislation was adopted in two phases. The first phase, TIS-I, was enacted in June 1998 and applied to offenses committed on or after December 31, 1999. *See* 1997 Wis. Act 283. The second phase, TIS-II, was enacted in July 2002 and became effective February 1, 2003. *See* 2001 Wis. Act 109. Although TIS-II reduced maximum confinement times for most offenses, *see* ***State v. Trujillo***, 2005 WI 45, ¶¶3-9, 279 Wis. 2d 712, 694 N.W.2d 933, *abrogated on other grounds by* ***Harbor***, 333 Wis. 2d 53, ¶46, Slater's crimes occurred

before TIS-II's effective date. To the extent Slater argues that the circuit court imposed penalties in excess of those permitted by law, that argument does not implicate the ex post facto clauses. Ultimately, we reject Slater's ex post facto argument as undeveloped. *See* ***State v. Pettit***, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992) (holding that court of appeals need not address undeveloped arguments).

Slater also appears to assert that his sentences were illegal and unduly harsh because the circuit court applied the wrong maximum confinement times. As noted above, the penalties under TIS-I applied to Slater's crimes. His concurrent sentences of twenty years' initial confinement and twenty years' extended supervision on his armed robbery and armed burglary convictions, both with penalty enhancers based upon Slater concealing his identity, were well within the maximum sixty-five-year sentence for each crime, as allowed by the statutes then in effect. There is a presumption that a sentence well within the maximum allowed by law is not unduly harsh or unconscionable, nor "so excessive and unusual" as to shock public sentiment. *See* ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507; *see also* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed. 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*