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DISTRICT II

June 22, 2022

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

2021AP783-CR

State of Wisconsin v. Joel M. Goessl (L.C. #2019CF57)

Before Gundrum, P.J., Neubauer and Grogan, 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).

Joel M. Goessl appeals from an order denying his postconviction motion seeking sentence modification. Goessl alleged that the COVID-19 pandemic and its effects on inmates constitutes a new factor warranting 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 Because the COVID-19 pandemic is not a new factor, we affirm.

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

In January 2019, the State charged Goessl with second-degree sexual assault, exposing genitals, and felony bail jumping following an incident where Goessl, then forty-eight years old, attended a party where fifteen- and sixteen-year olds were drinking. The Complaint alleged that Goessl was making sexual comments to the minors, tried to show one of them his genitals, and asked to see a child's genitals. At one point, when GS, another adult at the party, passed out, Goessl unzipped his own pants and put his penis into GS's mouth while GS was unconscious. In October 2019, Goessl pled no contest to second-degree sexual assault of an unconscious victim. In exchange for the plea, the State agreed to dismiss and have read in the exposing-genitals and felony bail-jumping charges.

The sentencing hearing occurred on March 17, 2020. The circuit court addressed the three primary sentencing factors as outlined in *State v. Gallion*, 2004 WI 42, ¶40, 270 Wis. 2d 535, 678 N.W.2d 197 (sentencing court must “specify the objectives of the sentence on the record[,]” which include “the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence to others”). It found the gravity of the offense to be serious, noting the crime carried “a potential penalty of 40 years in prison, 25 years [of] initial confinement, and 15 years [of] extended supervision.” The circuit court addressed Goessl's character, including his prior record “involving [multiple] disorderly conducts, four OWI[] convictions, with a fifth one pending, and a prior sexual assault conviction involving a vulnerable individual that was not in a position to give consent.” The circuit court was concerned about Goessl's sexual deviancy, particularly since Goessl committed the sexual assault here after having previously completed sex-offender treatment. The court noted mitigating factors, including Goessl's employment, high school diploma, and “developmental delays[.]” The court viewed Goessl's conduct as “beginning to show a very serious pattern of

sexual deviancy where the public is in danger[.]” Because Goessl’s past punishments, including “a 12 month jail sentence,” did not deter him from committing this crime, the circuit court concluded a prison sentence was necessary. The court sentenced Goessl to four years’ initial confinement followed by eight years’ extended supervision.

On March 31, 2021, Goessl filed a postconviction motion seeking sentence modification on the basis that the COVID-19 pandemic constituted a new factor. He argued that the rampant outbreaks of the virus within prisons and his risk of contracting it while incarcerated were unknown to the sentencing court and thus warranted sentence modification. The circuit court denied the motion. Goessl appeals.

On appeal, Goessl repeats his assertion that the widespread presence of COVID-19 within the prison system and an inmate’s reduced ability to protect himself from getting sick makes it a new factor. Goessl suggests that the circuit court misinterpreted his motion to be complaining that the virus caused interference with prison programming or availability of treatment. But, Goessl claims, he was instead asserting that being in prison with widespread outbreaks of COVID-19 puts him at a higher risk of contracting the virus than if he was not incarcerated. He contends these risks were unknown at the time he was sentenced and therefore constitute a new factor. We disagree.

A circuit court may modify a sentence based on 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”” that is not known to the sentencing court ““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.”” *Id.*, ¶40 (quoting *Rosado v.*

State, 70 Wis. 2d 280, 288, 234 N.W.2d 69 (1975)). Whether the defendant has shown a new factor justifying sentence modification is a question of law reviewed de novo. *State v. Samsa*, 2015 WI App 6, ¶14, 359 Wis. 2d 580, 859 N.W.2d 149. The defendant bears the burden of establishing the existence of a new factor “by clear and convincing evidence[.]” *Harbor*, 333 Wis. 2d 53, ¶36.

Goessl has failed to demonstrate the existence of a new factor by clear and convincing evidence. Although the COVID-19 pandemic was unknown to the court at the time of Goessl’s sentencing, it was not “highly relevant to the imposition of sentence[.]” *See id.*, ¶40 (citation omitted). The sentencing transcript reflects that the court’s driving factors for the four-year prison sentence were the seriousness of Goessl’s crime and Goessl’s inability to refrain from criminal acts despite previous sentences including probation, sex-offender treatment, and jail time. The postconviction court did not view COVID-19 as highly relevant to Goessl’s sentence. Rather, it saw a four-year initial confinement term as necessary to protect the public from Goessl’s lack of self-control and pattern of sexual deviance.

To the extent Goessl argues that COVID-19 adversely impacts him because being an inmate puts him at a higher risk of contracting the virus, he is presenting a challenge to his specific conditions of confinement—a matter redressed through means other than a sentence modification motion. *See State v. Krieger*, 163 Wis. 2d 241, 259-60, 471 N.W.2d 599 (Ct. App. 1991) (prisoners may challenge conditions of confinement by appropriate writs, “not by seeking a modification of their sentence”); *State v. Gibbons*, 71 Wis. 2d 94, 98-99, 237 N.W.2d 33 (1976) (a sentencing court lacks authority to order specific conditions of confinement; “Prisoners are entitled to, and do, challenge the conditions of their confinement by appropriate writs such as habeas corpus.”).

Because Goessl fails to establish that either the COVID-19 pandemic or his risk of contracting the virus constitute new factors, we affirm the circuit court's order denying his motion for sentence modification.

Therefore,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to 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