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DISTRICT I

September 20, 2022

To:

Hon. Glenn H. Yamahiro
Circuit Court Judge
Electronic Notice

John D. Flynn
Electronic Notice

George Christenson
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Brian Patrick Mullins
Electronic Notice

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

2021AP1370-CR

State of Wisconsin v. Freddy Lee Lovett (L.C. # 2018CF3843)

Before Donald, P.J., Dugan 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).

Freddy Lee Lovett appeals a judgment convicting him of two counts of burglary and an order denying his postconviction motion. Lovett argues that he is entitled to sentence modification based on a “new factor”—his termination from the Substance Abuse Program in a separate case. We conclude at conference that summary disposition is appropriate. *See* WIS. STAT. RULE 809.21 (2019-20).¹ Upon review, we affirm.

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

After pleading guilty, Lovett was convicted of two counts of burglary to a dwelling. He committed the offenses while on probation for a prior burglary offense. The circuit court sentenced Lovett to five years of initial confinement and three years of extended supervision on each count, to be served concurrently. Lovett filed a postconviction motion seeking sentence modification. The circuit court denied the motion.

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 (citation omitted). The defendant has the burden of showing by clear and convincing evidence that a new factor exists. *Id.*, ¶36. Whether a fact or set of facts constitutes a new factor is a question of law. *Id.*

Lovett argues that the fact that he was terminated from the Substance Abuse Program in his revocation case is a new factor entitling him to a reduction of his sentence in this case. He contends that the information was not in existence at the time of his sentencing because the Department of Corrections sent out a classification report that indicated that he did not complete the Substance Abuse Program in the revocation case three months *after* he was sentenced.

Lovett has not shown that new information exists. Regardless of when the Department of Corrections issued its classification report, Lovett himself knew at the time of the sentencing in this case that his participation in the Substance Abuse Program had been terminated. In fact, Lovett had already been released from custody on the revocation case by the time he was sentenced for these burglaries.

Moreover, Lovett has not shown that his termination from the Substance Abuse Program in the prior case was highly relevant to his sentence. The sentencing court made no mention of Lovett's participation in the Substance Abuse Program in his revocation case at sentencing. In addition, the sentencing court explained in denying Lovett's motion for sentence reduction that Lovett's termination from the Substance Abuse Program was "not only not highly relevant to the sentence imposed, it is *completely irrelevant* to the sentence imposed." Therefore, we reject Lovett's argument that he is entitled to resentence modification based on a new factor.

Upon the foregoing,

IT IS ORDERED that the judgment and order of the circuit court 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