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DISTRICT I

December 6, 2022

To:

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Circuit Court Judge
Electronic Notice

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

2020AP928-CR State of Wisconsin v. Jack Boo Williams (L.C. # 1993CF931789)

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).

Jack Boo Williams, *pro se*, appeals from an order of the circuit court that denied his motion for sentence modification based on a new factor. 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] The order is summarily affirmed.

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

In March 1993, the State charged then-sixteen-year-old Williams with one count of first-degree intentional homicide, while armed, as a party to a crime. A jury convicted Williams of that offense in December 1993.

Prior to the February 1994 sentencing hearing, Williams's attorney filed a sentencing memorandum, which included a report from a private psychologist. This report indicated that Williams had an I.Q. of 63, which put him in the "mild mental retardation classification." The psychologist had also given Williams a test "designed to measure social maturity" and the results indicated that Williams had "little social maturity and a problem with impulse control … [and] trouble comprehending what society is expecting him to do." The report explained that Williams's low I.Q. and social immaturity "would give him limited coping abilities" and cause him to "react impulsively to a problem rather than to think through the consequences."

At sentencing, the trial court[2] acknowledged that it had reviewed several documents, explicitly referencing the defense's sentencing memorandum. The trial court recognized Williams's "troubled and difficult background," which included physical abuse by his parents in the guise of discipline and a "significant amount of substance abuse" in the home. The trial court further recognized the "significant limitations" with which Williams struggled, and acknowledged that Williams was only seventeen with no "prior record indicating violence." The trial court also explained that it had considered Williams's young age when calculating the parole eligibility date. The trial court sentenced Williams to life imprisonment with parole eligibility after thirty-five years; Williams will first be eligible for parole on February 7, 2029.

[2] The Honorable John A. Franke presided at trial and imposed sentence and will be referred to as the trial court.

Williams has since pursued postconviction relief several times. Most recently, Williams, with the assistance of counsel, filed a motion for sentence modification in January 2020, arguing that "the fact that Williams was, by virtue of his adolescent brain, biologically predisposed to impulsive, reckless, self-destructive, and antisocial behavior at the time of his crime is a new factor warranting modification of his sentence[.]"

Specifically, Williams's postconviction motion included a report prepared by Dr. Elizabeth Cauffman, a psychology professor, who concluded that: (1) because Williams was sixteen years old at the time of the homicide, "it is likely that [he] was unable to regulate his emotions effectively; (2) Williams was "abusing substances and substance use has been shown to affect the development of brain structures that regulate behavioral, emotional, and cognitive processes"; (3) Williams had been "exposed to and experienced trauma/violence in his life which has been found to delay emotional (self-regulatory) development"; and (4) Williams was "with negative peers during the time of the offense and the presence of peers has been shown to affect the brain differently during adolescence." Thus, Williams argued, his "biological predisposition" to "impulsive, reckless, self-destructive, and anti social behavior … [was] a mitigating fact that both is relevant to and warrants downward modification of his sentence."

The circuit court[3] denied the motion after briefing but without a hearing. It concluded that this court has rejected any argument that recent research regarding juvenile brain development constituted a new factor, as modern research simply put new labels on existing

[3] The Honorable Janet C. Protasiewicz denied the postconviction motion at issue in this appeal and will be referred to as the circuit court.

knowledge. It also stated that even assuming for the sake of argument that new research constitutes a new factor, sentence modification in this case was not warranted. Williams appeals.

A new factor is a fact or set of facts that is "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, even though it was then in existence, it was unknowingly overlooked by all of the parties." ***Rosado v. State***, 70 Wis. 2d 280, 288, 234 N.W.2d 69 (1975); *and see* **State v. *Harbor***, 2011 WI 28, ¶¶40, 57, 333 Wis. 2d 53, 797 N.W.2d 828. "[F]rustration of the purpose of the original sentence is not an independent requirement" in a new factor determination. *See* ***Harbor***, 333 Wis. 2d 53, ¶48. The defendant must demonstrate the existence of a new factor by clear and convincing evidence. *See* ***id.***, ¶36. Whether the facts constitute a new factor is a question of law this court reviews *de novo*. *See* ***id.***

Williams's appellate argument is difficult to discern, but it appears to be two-fold. First, Williams seems to assert that the "biological result of developing adolescent brain research was 'unknowingly overlooked'" at sentencing and that "less culpability should attach to a crime committed by a juvenile … since inexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his conduct[.]"

As the circuit court noted, however, this court has rejected the argument that "the recent realization in the scientific community that adolescents are generally impulsive and often have trouble making wise choices" is a new factor. *See* ***State v. McDermott***, 2012 WI App 14, ¶¶16-17, 339 Wis. 2d 316, 810 N.W.2d 237. This is because the new research has simply confirmed well-established conclusions about juvenile offenders. *See* ***id.***, ¶¶18-21.

Williams's second contention appears to be that the effect of ***McDermott*** has been to "mislead or confuse lower courts into believing 'new factors' on brain development research restricts the court's ability, otherwise permissible under ***Rosado***[,] to correct unjust sentences." This argument appears to be based on the circuit court's conclusion that, even if the research constituted a new factor, sentence modification in this case was not warranted.

If a new factor is established, whether to grant sentence modification in light of that factor is a matter of circuit court discretion. *See* ***Harbor***, 333 Wis. 2d 53, ¶37. Here, the circuit court noted that the trial court had acknowledged Williams's "troubled childhood," which included "physical abuse and substance abuse at the hand of his parents" and the derivative effects of such neglect. The circuit court also observed that the trial court "explicitly took into consideration the defendant's age and lack of a prior record in setting a parole eligibility date[.]" Thus, upon its review of the trial court's sentencing decision, the circuit court concluded that the parole eligibility date as set by the trial court was "an appropriate disposition in light of all the facts and circumstances, including a modern understanding of juvenile brain development."

In other words, the trial court considered the effects of Williams's youth and other negative external factors on his culpability relative to the required sentencing considerations when it set his parole eligibility date. Thus, the circuit court properly exercised its discretion when it concluded that new research confirming matters already considered by the trial court, even if a new factor, did not warrant modification of the sentence.

Therefore,

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