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DISTRICT I

May 2, 2023

To:

Hon. Frederick C. Rosa
Circuit Court Judge
Electronic Notice

Sonya Bice
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Dennis L. Torres 536460
Stanley Correctional Inst.
100 Corrections Dr.
Stanley, WI 54768

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

2021AP1870-CR State of Wisconsin v. Dennis L. Torres (L.C. # 2017CF2034)

Before Brash, C.J., Donald, P.J., and White, J.

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).

Dennis L. Torres, *pro se*, appeals the circuit court's order denying his motion for sentence modification. He argues: (1) that his sentence should be modified based on a new factor; and (2) that he was entitled to an evidentiary hearing on his motion. After reviewing the briefs and record, we conclude that summary disposition is appropriate. *See* WIS. STAT. RULE 809.21. Upon review, we affirm.

In 2017, Torres was convicted after pleading guilty to physical abuse of a child, repeated acts causing great bodily harm. The circuit court sentenced him to fifteen years of initial confinement and eight years of extended supervision. In 2021, Torres filed a motion for sentence

modification, arguing that his sentence should be modified because a prison physician diagnosed him with bipolar disorder in 2018. The circuit court denied the motion without a hearing. This appeal follows.

A new factor is “a fact or set of facts highly relevant to the imposition of sentence, but not known to the [circuit court] 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.*

Documents in the record establish that Torres was initially diagnosed with bipolar disorder as far back as 2008, long before he was sentenced. When the circuit court sentenced Torres, it was aware of this diagnosis. In denying Torres’s motion for sentence modification, the circuit court explained that it knew of Torres’s bipolar disorder prior to sentencing because the information was presented to the court in the defense sentencing memorandum and in the presentence investigation report. The bipolar diagnosis made by the prison physician in 2018 is not a new factor warranting sentence modification because Torres’s illness was known to the circuit court when it sentenced Torres. Because the record conclusively shows that Torres was not entitled to relief, the court properly denied his motion for sentencing modification without a hearing. *See State v. Romero-Georgana*, 2014 WI 83, ¶30, 360 Wis. 2d 522, 849 N.W.2d 668 (providing that a defendant is not entitled to an evidentiary hearing when the record conclusively establishes that the defendant is not entitled to relief).

IT IS ORDERED that the order of the circuit court 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