



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

June 13, 2023

To:

Hon. Janet C. Protasiewicz
Circuit Court Judge
Electronic Notice

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

Paul C. Dedinsky
Electronic Notice

Jacob J. Wittwer
Electronic Notice

Jimmie Sargent 091178
Oshkosh Correctional Inst.
P.O. Box 3310
Oshkosh, WI 54903-3310

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

2021AP1593-CR State of Wisconsin v. Jimmie Sargent (L.C. # 1997CF970742)

Before Brash, C.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).

Jimmie Sargent, *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 (2021-22).¹ The order is summarily affirmed.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

According to a criminal complaint filed February 11, 1997, Sargent took portraits of twelve-year-old C.B.'s family around Christmas 1996. When he dropped the completed photos off at C.B.'s home on February 1, 1997, he asked C.B.'s mother if he could take C.B. to his place "to do some proof shots for modeling." C.B.'s mother agreed. At Sargent's apartment, he gave C.B. three items of lingerie to put on. After she changed, Sargent massaged oil into her breasts, buttocks, and vaginal area, and recorded himself doing so. A similar incident was alleged to have occurred on February 4, 1997, involving C.B. and D.T., her older sister. In May 1997, a jury convicted Sargent on two counts of first-degree sexual assault of a child, one count of second-degree sexual assault of a child, and one count of child enticement. He was sentenced to twenty years of imprisonment on each count, to be served consecutively.

On June 17, 2021, Sargent filed the underlying motion for sentence modification, alleging that the COVID-19 pandemic constituted a new factor. The motion requested "modification sentences/confinement time to be run concurrently to be lowered at the court's discretion." The circuit court denied the motion.

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); *State v. Harbor*, 2011 WI 28, ¶¶40, 57, 333 Wis. 2d 53, 797 N.W.2d 828. The defendant has the burden of proving a new factor by clear and convincing evidence. See *Harbor*, 333 Wis. 2d 53, ¶36. Whether the facts presented by the defendant constitute a new factor is a question of law that this court reviews *de novo*. *Id.*, ¶33.

On appeal, Sargent asserts that the pandemic is a new factor because it “frustrate[s the] trial court’s original sentencing intent,” as the court “did not sentence [him] to a death sentence from COVID-19.” We disagree with Sargent’s analysis. It is indisputable that, when Sargent was sentenced in 1997, the COVID-19 pandemic was not then in existence. However, while a new factor must be “highly relevant to the imposition of sentence,” *see id.*, ¶57 (citation omitted), “frustration of the purpose of the original sentence is not an independent requirement” for showing a new factor, *see id.*, ¶48.

The sentencing transcript reflects that the sentencing court was “appalled” by Sargent using his photography business “as a tool to entice mothers to send their children over” by “promising them that he would get them ... to become models.” The court commented that Sargent was “not remorseful” and that there was “no acceptance of responsibility”; it believed Sargent was “just mouth[ing] the words because that’s what he probably expects the Court wants to hear.” The sentencing court was also concerned with protecting the community “from someone who’s going to use his position, and he may be well known and he may have had contracts with the school board and radio stations and newspapers but he’s using these ... to get women into his studios, especially children, and try to seduce them[.]”

Nothing about the COVID-19 pandemic relates to those elements of sentencing, and Sargent does not demonstrate, in either his motion or on appeal, how a pandemic or other health crisis in the prison system was highly relevant to the imposition of his sentence. We, therefore,

conclude that Sargent has failed to show the existence of a new factor and, thus, the circuit court did not err when it denied his motion for sentence modification.²

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

² To the extent that Sargent may have been attempting to raise a claim that he was sentenced on inaccurate information, that claim is wholly undeveloped, and we decline to consider it. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992). To the extent that Sargent may have been attempting to challenging the sentencing court’s original exercise of its discretion, such a challenge is procedurally barred by his prior postconviction motions under WIS. STAT. RULE 809.30 and WIS. STAT. § 974.06. *See State v. Romero-Georgana*, 2014 WI 83, ¶35, 360 Wis. 2d 522, 849 N.W.2d 668. To the extent that Sargent claims that his completing of treatment and other programs in prison warrants sentence modification, that argument was first raised on appeal in his reply brief and, in any event, progress in the prison rehabilitation system does not qualify as a new factor. *See State v. Krueger*, 119 Wis. 2d 327, 335, 351 N.W.2d 738 (Ct. App. 1984).