

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 10, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP535-CR

Cir. Ct. No. 2004CF7134

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

WAYNE E. WILLIAMS,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
JEFFREY A. WAGNER, Judge. *Affirmed.*

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 PER CURIAM. Wayne E. Williams, *pro se*, appeals an order denying his motion for sentence modification. He argues that he is entitled to sentence modification based on a new factor, the fact that he was in custody for a portion of the time during which the State alleged the crimes occurred. We affirm.

¶2 A jury found Williams guilty of three counts of second-degree sexual assault of a child. We affirmed the judgment of conviction after a no-merit appeal. Since his direct appeal, Williams has filed multiple motions seeking postconviction relief and sentence modification. Williams raised the exact same issue he raises here in at least one prior motion. As we explained in our decision affirming the circuit court’s order denying the prior motion:

Williams contends that he was entitled to a new trial or sentence modification based on evidence that he was incarcerated for part of the time period of the charged sexual assaults and that the State did not specify in the criminal complaint the exact dates of the assaults within that time period.

....

As to the motion for sentence modification, Williams has not asserted facts that are highly relevant to sentencing. Williams asserts facts that he believes create a reasonable doubt of his guilt—that he was in jail for three and one-half months of the ten months charged. At sentencing, however, Williams’ guilt had already been established. Thus, the sentencing court was not concerned with whether there were facts that would support reasonable doubt as to Williams’ guilt. Rather, the court considered the standard sentencing factors and objectives including the gravity of the offense, Williams’ character and criminal history, and the need to protect the public. We conclude that the facts asserted by Williams are not highly relevant to sentencing, and thus do not establish a new factor in support of sentence modification.

¶3 “A matter once litigated may not be relitigated in a subsequent postconviction motion no matter how artfully the defendant may rephrase the issue.” *State ex rel. Washington v. State*, 2012 WI App 74, ¶30, 343 Wis. 2d 434, 819 N.W.2d 305 (quoting *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991) (brackets omitted)). Because Williams previously raised the same issue, we will not again consider it.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT.
RULE 809.23(1)(b)5. (2011-12).

