``COURT OF APPEALS
DECISION
DATED AND FILED

January 20, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-1656-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ANTHONY P. ROBINSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Brown County: JOHN DENNIS McKAY, Judge. *Affirmed.*

Before Cane, C.J., Myse, P.J., and Hoover, J.

PER CURIAM. Anthony Robinson appeals a judgment convicting him of armed robbery and false imprisonment and sentencing him to twenty years in prison. He also appeals an order denying his motion to modify the sentence. He argues that his postsentence cooperation with law enforcement constituted a

"new factor" and that the twenty-year sentence is unduly harsh. We reject these arguments and affirm the judgment and order.

The criminal complaint alleged that Anthony and his brothers, James and William, robbed a liquor store and falsely imprisoned the clerk. Anthony was the first to go to trial. After the jury found Anthony guilty, the court ordered a presentence investigation. At that time, Anthony stated that the clerk erroneously identified James as the gunman. Anthony stated that William was the gunman and James waited in the car. Anthony also indicated that he was closer to his brother James than to William and described James as his best friend.

After Anthony was convicted, James went to trial and was found guilty. Before sentencing, James' attorney approached the prosecutor and suggested that James was not the gunman and the clerk misidentified him because of his strong resemblance with William. The State then obtained a one-party consent tape recording between William and another brother, Jesse, which implicated William. A police detective interviewed Anthony to obtain clarification on which of his brothers was the gunman. In a written statement, Anthony clarified that William, not James, was the gunman. Anthony filed a motion for sentence modification, claiming that his cooperation with the police constitutes a new factor justifying a reduction of his sentence.

A new factor is a fact or set of facts highly relevant to the imposition of sentence, but unknown to the trial court at the original sentencing, either because it was then not in existence or because all of the parties unknowingly overlooked it. *See* ***Rosado v. State***, 70 Wis.2d 280, 288, 234 N.W.2d 60, 73 (1975). A new factor "must be an event or development which frustrates the purpose of the original sentence. There must be some connection between the

factor and the sentencing – something which strikes at the very purpose of the sentence selected by the trial court." *See* ***State v. Michels***, 150 Wis.2d 94, 99, 441 N.W.2d 278, 280 (Ct. App. 1989). Whether a fact is a "new factor" is a question of law we review without deference to the trial court. ***Id.*** at 97, 441 N.W.2d at 279.

The trial court correctly concluded that Anthony's clarification of the role his brothers played in the robbery was not a new factor justifying a sentence modification. Anthony argues that the trial court stressed his selfishness as an undesirable character trait at sentencing and that his cooperation with the police, including self-incriminatory statements, show a change of character justifying a new sentence. Generally, postsentencing conduct, a change of attitude or progress toward rehabilitation are not new factors. ***State v. Johnston***, 184 Wis.2d 794, 823, 518 N.W.2d 759, 769 (1994). *See* ***State v. Wuensch***, 69 Wis.2d 467, 478, 230 N.W.2d 665, 671 (1975); ***State v. Kaster***, 148 Wis.2d 789, 804, 436 N.W.2d 891, 897 (Ct. App. 1989); A prisoner's progress toward improving his character should be brought to the attention of the parole commission, not the sentencing court.

Furthermore, Anthony's evidence of a change in character is too weak to meet his burden of demonstrating a new factor by clear and convincing evidence. *See* ***State v. Franklin***, 148 Wis.2d 1, 8-9, 434 N.W.2d 609, 611-12 (1989). His statement that William was the gunman rather than James was reported in the presentence report and, therefore, is not a new factor. Self-incriminatory statements after conviction do not seriously compromise a prisoner's interests. Giving the police information that mitigates the crime his best friend committed does not establish a change of character that frustrates the purpose of the original sentence.

Robinson argues that his twenty-year sentence was excessive because he was a first offender at age 36, he was not the gunman, he was motivated by drinking and financial problems he was facing and he had a good record of employment and military service. This court has a strong policy against interference with the trial court's sentencing discretion. *See* ***State v. Harris***, 119 Wis.2d 612, 622, 350 N.W.2d 633, 638 (1984). Misuse of this discretion will be found only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances. ***Ocanas v. State,*** 70 Wis.2d 179, 185, 233 N.W.2d 457, 461 (1975). The court properly considered the gravity of the offense including its serious impact on the victim's life, Robinson's character and the need to protect the public. *See* ***State v. Mosley***, 201 Wis.2d 36, 43-44, 547 N.W.2d 806, 809 (Ct. App. 1996). After the crime, Robinson laughed about how afraid the clerk was. His girlfriend's statement to the police suggests that the crime was planned in advance and that Robinson was planning future robberies. His participation in this robbery surfaced after he suggested that his girlfriend participate in the next robbery. She notified the police of his involvement in the robbery after he beat and threatened to kill her. Under these circumstances, the twenty-year sentence is not so excessive and unusual as to shock public sentiment.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.