

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 26, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

**No. 98-3436-CR
98-3437-CR**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RONALD L. MIKKELSON,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Green County:
JAMES R. BEER, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Roggensack, JJ.

PER CURIAM. Ronald Mikkelson appeals from an order denying his motion for a reduced sentence. Mikkelson based his motion on what he identified as new factors. The issue is whether the trial court erroneously

exercised its discretion when it denied the motion. We conclude the trial court did not erroneously exercise its discretion and, therefore we affirm.

Mikkelson pleaded no contest to two securities fraud charges. The trial court accepted the plea and sentenced him to four years on one count, consecutive to a four-year sentence imposed in an unrelated proceeding. The court also imposed a four-year prison term on the second count, but stayed the sentence and placed Mikkelson on five years' probation consecutive. As a condition of probation, the court ordered restitution totaling \$163,000.

Mikkelson's motion alleged that his confinement in prison prevented him from paying any of the ordered restitution. He also asserted that his punishment exceeded that imposed for similar offenses in other venues within Wisconsin. In Mikkelson's view, these were new factors justifying a sentence concurrent with his other prison term, rather than consecutive to it.

The trial court may reduce a defendant's sentence if a new factor justifies that action. *See State v. Franklin*, 148 Wis.2d 1, 8, 434 N.W.2d 609, 611 (1989). A new factor is a fact highly relevant to the sentence but not known to the trial court at the time of sentencing because it did not then exist or was unknowingly overlooked by all of the parties. *Rosado v. State*, 70 Wis.2d 280, 288, 234 N.W.2d 69, 73 (1975).

Mikkelson's inability to pay restitution while imprisoned is not a new factor. Mikkelson presented that argument at his sentencing hearing and there is no indication that the trial court overlooked it. Nor did it frustrate the purpose of his sentence, which the trial court described as protecting the public from Mikkelson's criminal activities and avoiding a sentence that would unduly depreciate the seriousness of his offenses.

The sentences imposed in other securities fraud cases are not new factors because they are not relevant to Mikkelson’s sentence. “[I]ndividualized sentencing is a cornerstone to Wisconsin’s system of indeterminate sentencing.” *State v. Lechner*, 217 Wis.2d 392, 427, 576 N.W.2d 912, 928 (1998). Because there is no connection between Mikkelson and the cases he describes as similar, the disparate sentences in those cases are “totally irrelevant” to his sentence. *See id.* at 428, 576 N.W.2d 929.

By the Court.—Order affirmed.

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

