



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](http://www.wicourts.gov)

**DISTRICT I/IV**

March 9, 2016

To:

Hon. David A. Hansher  
Circuit Court Judge  
Milwaukee County Courthouse  
901 N. 9th St.  
Milwaukee, WI 53233

John Barrett  
Clerk of Circuit Court  
Room 114  
821 W. State Street  
Milwaukee, WI 53233

Karen A. Loebel  
Asst. District Attorney  
821 W. State St.  
Milwaukee, WI 53233

Nancy A. Noet  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

Brian K. Schessler 259428  
Oshkosh Corr. Inst.  
P.O. Box 3310  
Oshkosh, WI 54903-3310

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

---

2015AP391-CR

State of Wisconsin v. Brian K. Schessler (L.C. # 1997CF971747)

Before Kloppenburg, P.J., Sherman and Blanchard, JJ.

Brian Schessler appeals from an order denying his motion for sentence modification. Schessler was denied parole for failing to participate in a rehabilitation program. He argues that the denial constitutes a new factor warranting sentence modification because the sentencing court intended him to be released on his presumptive mandatory release date under WIS. STAT. § 302.11(1g) (1997-98).<sup>1</sup> Based upon our review of the briefs and record, we conclude at

---

<sup>1</sup> All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14). We affirm the order.

Schessler was sentenced in 1997 to twenty-five years in prison for first-degree sexual assault of a child. At sentencing, the circuit court made reference to the presumptive mandatory release date, the parole eligibility date, and the fact that it was “highly unlikely” that Schessler would be paroled early. The court stated, “These type of offenses the prison system watches people closely and keeps them close to their MR dates unless someone makes significant progress in prison and I hope the defendant does but I think he needs a long time in prison because his treatment will take a long time ....” Schessler’s presumptive mandatory release date under applicable law was in 2013. The parole commission denied Schessler’s release at that time based on his refusal to participate in a rehabilitation program.

“Within certain constraints, Wisconsin circuit courts have inherent authority to modify criminal sentences.” *State v. Harbor*, 2011 WI 28, ¶35, 333 Wis. 2d 53, 797 N.W.2d 828. *See also State v. Hegwood*, 113 Wis. 2d 544, 546, 335 N.W.2d 399 (1983). A parole policy change that changes a defendant’s “real eligibility for parole” can be a new factor, but only if parole policy was “highly relevant to the imposition of sentence.” *State v. Franklin*, 148 Wis. 2d 1, 10, 13, 434 N.W.2d 609 (1989). “[A] court may ‘correct a sentence only where the sentencing judge's *express* intent is thwarted by the promulgation of new parole policies contemporaneous or subsequent to the original imposition of sentence[.]’” *Id.* at 14 (quoted source omitted and alteration in original).

Schessler’s sentence is governed by the presumptive mandatory release scheme which requires the parole commission to consider release to parole for inmates who have served

two-thirds of their sentences, with certain exceptions. WIS. STAT. § 302.11(1) and (1g)(am). The parole commission may deny presumptive mandatory release to an inmate for “[r]efusal by the inmate to participate in counseling or treatment that the social service and clinical staff of the institution determines is necessary for the inmate.” WIS. STAT. § 302.11(1g)(b)2.

On appeal, Schessler argues that the denial of parole in his case is a new factor because the sentencing court made reference to his presumptive mandatory release, which he argues created a “prospect of parole.” The denial, Schessler argues, is “[a] change affecting the prospect of parole” and therefore a new factor.

Among the things Schessler must show is that “the sentencing judge’s *express* intent is thwarted by the promulgation of new parole policies.” See *Franklin*, 148 Wis. 2d at 14 (quoted source omitted and alteration in original). The record clearly shows the sentencing judge’s express intent was that Schessler would have a long period of treatment in prison. In addition to the fact that there is no new parole policy, Schessler’s denial of parole was due to his refusal to participate in the rehabilitation programming the circuit court intended as part of the sentence. The statute permits denial of release on those grounds. See WIS. STAT. § 302.11(1g)(b)2. The facts do not satisfy the requirements for a new factor warranting sentence modification.

Upon the foregoing reasons,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21 (2013-14).

---

*Diane M. Fremgen*  
*Clerk of Court of Appeals*