

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 27, 2010

A. John Voelker
Acting 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. 2009AP1968-CR

Cir. Ct. No. 2001CF239

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

WALTER V. GLADNEY,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
PATRICIA D. McMAHON, Judge. *Affirmed.*

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

¶1 PER CURIAM. Walter V. Gladney, *pro se*, appeals an order denying his motion to modify his sentence. He argues that he has a mental disability and that this disability constitutes a “new factor” that entitles him to sentence modification. We affirm.

¶2 Gladney argues that his sentence should be modified because he has a cognitive impairment that was not known to the circuit court at the time he was sentenced in 2001 for two counts of first-degree sexual assault of a child. A motion for sentence modification based on a “new factor” may be made after the expiration of the deadline for filing a direct appeal. *See State v. Noll*, 2002 WI App 273, ¶12, 258 Wis. 2d 573, 653 N.W.2d 895. “The term ‘new factor’ refers to a fact or set of facts 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 ... it was unknowingly overlooked by all of the parties.” *State v. Kluck*, 210 Wis. 2d 1, 7, 563 N.W.2d 468 (1997).

¶3 We reject Gladney’s argument because he has not shown that he has a mental disability. Gladney attached a discharge letter from the Army dated March 8, 1976, but it shows that he was discharged for disrespect for military authority and a poor attitude; it says nothing about a mental disability. Gladney attaches test results that show he has received low math and reading scores during his incarceration, but low test scores do not by themselves translate into a mental disability. Finally, the documents Gladney attached from the Social Security Administration establish only that Gladney received disability benefits for a period of time. They do not show that he ever suffered from a cognitive disability.

¶4 Even if we were to accept for purposes of argument that Gladney suffers from some type of mental disability, he has not shown that there is a causal connection between the alleged mental disability and the commission of these crimes, or that the mental disability frustrates the purpose of the original sentence. Therefore, we reject Gladney’s argument that he is entitled to sentence modification.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)5. (2007-08).

