COURT OF APPEALS
DECISION
DATED AND FILED

June 11, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP2516-CR **Cir. Ct. No. 1998CF2895**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RALPH P. LISKE,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: DAVID L. BOROWSKI, Judge. *Affirmed.*

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

¶1 PER CURIAM. Ralph P. Liske, *pro se*, appeals an order denying his motion for sentence modification. The issue he presents is whether either his declining health or the presumptive mandatory release statute, which permits the Department of Corrections to confine him although he has served two-thirds of his

sentence, constitutes a new factor. We conclude that Liske has not shown a basis for relief, and we affirm the order of the circuit court.

¶2 In 1998, when Liske was sixty-one years old, the State filed a complaint charging him with two counts of first-degree sexual assault of a child during the period between June and September 1996. *See* WIS. STAT. § 948.02(1) (1995-96).[1] Liske quickly pled guilty as charged. The circuit court imposed a twenty-year sentence for one count. The circuit court imposed and stayed a forty-year sentence for the second count and ordered Liske to serve a consecutive ten-year term of probation. In 2012, Liske filed a motion in circuit court alleging that new factors exist warranting sentencing modification.

¶3 A circuit court may modify a sentence upon a showing of a new factor. ***State v. Harbor***, 2011 WI 28, ¶35, 333 Wis. 2d 53, 797 N.W.2d 828. The defendant has the burden of proving by clear and convincing evidence that a new factor exists. ***Id.***, ¶36. A new factor is '"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.'" ***Id.***, ¶40 (citation omitted). Whether a fact or set of facts constitutes a new factor is a question of law that this court decides independently. ***Id.***, ¶33. If the facts do not constitute a new factor as a matter of law, a court need go no further in the analysis. ***Id.***, ¶38. If the defendant shows that a new factor exists, the circuit court has discretion to determine whether the new factor warrants sentence modification. ***Id.***, ¶37.

[1] All subsequent references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

¶4 We begin with Liske's allegation that he is in increasingly poor health and that his worsening condition constitutes a new factor. The circuit court did not address this argument in denying Liske's motion. We can, however, affirm a correct circuit court decision on grounds other than those relied upon by the circuit court. *See* ***Vanstone v. Town of Delafield***, 191 Wis. 2d 586, 595, 530 N.W.2d 16 (Ct. App. 1995). Our *de novo* review persuades us that Liske's allegedly worsening health is not a new factor as a matter of law.

¶5 A convicted person's deteriorating health is generally not a new factor. *See* ***State v. Iglesias***, 185 Wis. 2d 117, 128, 517 N.W.2d 175 (1994) (change in health not a new factor); *see also* ***State v. Ramuta***, 2003 WI App 80, ¶21, 261 Wis. 2d 784, 661 N.W.2d 483 (obesity-related health problems and shorter-than-normal life expectancy not new factors). Here, the record reflects that the circuit court imposed sentence recognizing that Liske was elderly and that his health might fail while he was incarcerated. The circuit court explained that "it may end up being that Liske will die in prison with this sentence. That depends a lot on him, of course, and on his health and how he does." The potential for Liske to sicken in prison was thus not overlooked at the time of sentencing but, rather, was an eventuality expressly contemplated by the circuit court. Accordingly, his health is not a new factor now. *See* ***Harbor***, 333 Wis. 2d 53, ¶40.

¶6 We turn to Liske's arguments for relief premised on WIS. STAT. § 302.11(1g), which provides for presumptive mandatory release of certain inmates. Generally, a prisoner sentenced for a crime committed before December 31, 1999, is entitled to mandatory release after serving two-thirds of his or her sentence. *See* WIS. STAT. § 302.11(1). Pursuant to § 302.11(1g), however, a mandatory release date is only a presumptive mandatory release date for prisoners who committed a serious felony between April 21, 1994, and

December 31, 1999. First-degree sexual assault of a child is a serious felony within the meaning of the statute. *See* ***id.*** Liske has not yet been paroled despite serving more than two-thirds of his sentence, and he contends that his continued confinement pursuant to § 302.11(1g) is a new factor in this case. We disagree.

¶7 WISCONSIN STAT. § 302.11(1g) went into effect four years before the circuit court sentenced Liske in 1998. *See* 1993 Wis. Act 194, § 2; WIS. STAT. § 991.11. Nothing in the record suggests that the circuit court was unaware of § 302.11(1g) at sentencing. To the contrary, the circuit court's remarks reflect knowledge that Liske might not be released before completing his sentence. The circuit court explained to him that "the most extreme care is used in cases like this. I think that it would be difficult for you to be paroled; and I agree with defense counsel, I doubt that you will be paroled when you're first eligible." Moreover, the circuit court is presumed to know the law. *See* ***Tri-State Mech., Inc. v. Northland Coll.***, 2004 WI App 100, ¶10, 273 Wis. 2d 471, 681 N.W.2d 302. In the absence of any showing to the contrary, we therefore presume that the circuit court was fully aware when it imposed Liske's sentence that he was not guaranteed release from prison upon serving two-thirds of his sentence.[2]

¶8 Last, Liske argues that he was himself unaware of the presumptive mandatory release provisions at the time of sentencing and that he is therefore entitled to relief. A new factor is a fact or set of facts that was "'not known to the trial judge.'" ***Harbor***, 333 Wis. 2d 53, ¶40 (citation omitted). Liske's personal

[2] Liske filed material with his motion showing that a circuit court judge who did not preside over his case admitted in an unrelated proceeding that the judge lacked awareness of WIS. STAT. § 302.11(1g) when imposing a sentence in the late 1990s. We will not impute a judge's lack of knowledge to other members of the judiciary. *Cf.* ***Tri-State Mech., Inc. v. Northland Coll.***, 2004 WI App 100, ¶10, 273 Wis. 2d 471, 681 N.W.2d 302.

lack of knowledge is thus not relevant to the analysis of whether a new factor exists warranting sentence modification.

¶9 In effect, however, Liske alleges that he has suffered an injustice because he resolved his case without necessary information about WIS. STAT. § 302.11(1g), the law governing presumptive mandatory release. A manifest injustice occurs when a guilty plea is not entered knowingly, voluntarily, and intelligently. *See* ***State v. Yates***, 2000 WI App 224, ¶4, 239 Wis. 2d 17, 619 N.W.2d 132. Although Liske's postconviction motion did not explicitly seek plea withdrawal, we are not bound by the label that a *pro se* prisoner attaches to his or her pleading. *See* ***bin-Rilla v. Israel***, 113 Wis. 2d 514, 521, 335 N.W.2d 384 (1983). Accordingly we consider, as did the circuit court, whether Liske's claimed unawareness of § 302.11(1g) at the time of his guilty pleas suggests a manifest injustice warranting some relief in this case.

¶10 The rule is well-established that no manifest injustice occurs when a defendant enters a guilty plea without first receiving notification of the collateral consequences of that plea. *See* ***Yates***, 239 Wis. 2d 17, ¶6. Presumptive mandatory release is a collateral consequence rather than a direct consequence of a guilty plea. ***Id.***, ¶17. Therefore, Liske is not entitled to relief even if, as he claims, he lacked knowledge of the presumptive mandatory release provisions of WIS. STAT. § 302.11(1g) when he entered his guilty pleas. Accordingly, we affirm.

By the Court.—Order affirmed.

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