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DISTRICT I

March 10, 2026

To:

Hon. David C. Swanson
Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

John W. Kellis
Electronic Notice

Mark S. Rosen
Electronic Notice

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

2025AP15-CR State of Wisconsin v. Kamari J. Roy (L.C. #2022CF4564)

Before White, C.J., Colón, P.J., and Donald, J.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Kamari J. Roy appeals from a judgment of conviction and from an order denying his postconviction motion for sentence modification. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).[1] The judgment and order are summarily affirmed.

On June 23, 2022, a bystander was killed in the crossfire of a gunfight between rival groups when a bullet pierced her femoral artery. Police investigation revealed that a total of 44

[1] All references to the Wisconsin Statutes are to the 2023-24 version.

shots had been fired; of those, 10 were attributed to Roy and 17 were attributed to his brother Marquan Roy ("Marquan"). However, it could not be determined which brother fired the fatal shot. The brothers were each charged with one count of first-degree reckless homicide as a party to a crime; Roy was also charged with one count of possession of a firearm by a felon.

Roy entered guilty pleas to the two charges against him. The circuit court imposed a 40-year sentence on the homicide and a concurrent 10-year sentence for the firearm possession. Marquan later pled guilty to an amended charge of second-degree reckless homicide, for which the circuit court imposed a 25-year sentence. Roy then filed a postconviction motion for sentence modification, asserting that Marquan's subsequent lesser sentence constituted a new factor and arguing that a 15-year disparity "for the same conduct" was not warranted because Marquan had equal or greater culpability based on the number of shots fired. The circuit court denied the motion, explaining why the disparity was justified. Roy appeals.

A new factor is a fact or set of facts that is "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, even though it was then in existence, it was unknowingly overlooked by all of the parties." ***Rosado v. State***, 70 Wis. 2d 280, 288, 234 N.W.2d 69 (1975); *see also* ***State v. Harbor***, 2011 WI 28, ¶¶40, 57, 333 Wis. 2d 53, 797 N.W.2d 828. The defendant must demonstrate the existence of a new factor by clear and convincing evidence. ***Harbor***, 333 Wis. 2d 53, ¶36. Whether a fact or set of facts is a "new factor" is a question of law. ***Id.***

For the purposes of this discussion, we will assume without deciding that Roy established a new factor because if the circuit court determines that a new factor exists, the circuit court then determines, in an exercise of discretion, whether modification of the sentence is warranted. ***Id.***,

¶37. We will uphold a discretionary decision if the circuit court "examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach." ***Long v. Long***, 196 Wis. 2d 691, 695, 539 N.W.2d 462 (Ct. App. 1995). In this case, the circuit court concluded that "even assuming that Marquan's sentence is a new factor because it was not in existence when the court sentenced the defendant in this case, it does not justify a modification of the sentence."

Relying on ***State v. Ralph***, 156 Wis. 2d 433, 456 N.W.2d 657 (Ct. App. 1990), Roy argues that the sentence and history of other similarly situated offenders is a new factor. In ***Ralph***, Ralph and two accomplices were each charged with two drug offenses. ***Id.*** at 435. Ralph, who had a prior drug conviction, was sentenced to consecutive 24-month prison terms. ***Id.*** Later, his accomplices each pled to one count; the female accomplice had no prior record and was given a 15-month sentence while the male accomplice with a prior record received 18 months. ***Id.*** When Ralph moved for sentence modification, the circuit court granted the request, stating it was unaware of the male accomplice's sentence and, if it had, he would have wanted Ralph to receive a "consistent" sentence. ***Id.*** at 435-36. Thus, the circuit court modified Ralph's sentences to two concurrent terms of 18 months' imprisonment. ***Id.*** at 436. The State appealed.

We affirmed the sentence modification, but not because the accomplice's sentence was a new factor. In fact, we specifically said that "the trial court erroneously relied on [the male accomplice's] [18]-month sentence as a new factor with respect to Ralph's sentence." ***Id.*** at 437. Instead, we affirmed because the circuit court had implicitly concluded Ralph's sentence was unduly harsh, a different reason for sentence modification. ***Id.*** at 439. We are therefore unpersuaded that ***Ralph*** applies here.

A mere disparity in sentence is not improper if the individual sentences are based upon individual culpability and rehabilitative needs. ***State v. Toliver***, 187 Wis. 2d 346, 362, 523 N.W.2d 113 (Ct. App. 1994). This is because Wisconsin emphasizes the importance of "individualized sentencing." ***State v. Gallion***, 2004 WI 42, ¶48, 270 Wis. 2d 535, 678 N.W.2d 197. Defendants do not receive the same punishment simply because they are convicted of the same offense, but are to be "sentenced according to the needs of the particular case as determined by the criminals' degree of culpability and upon the mode of rehabilitation that appears to be of greatest efficacy." ***McCleary v. State***, 49 Wis. 2d 263, 275, 182 N.W.2d 512 (1971). "[N]o two convicted felons stand before the sentencing court on identical footing ... and no two cases will present identical factors." ***Gallion***, 270 Wis. 2d 535, ¶48 (citation omitted; brackets in ***Gallion***).

Here, the circuit court rejected Roy's assertion that Marquan had greater culpability in this case; it did not believe that "a difference of seven rounds materially mitigates [Roy's] culpability, particularly when it could not be determined who fired the fatal shot." The court further explained that "the Roy brothers were not similarly situated in terms of their character and rehabilitative needs." Whereas Roy presented with a "significant juvenile and adult record" that was "enormously concerning to the court,"[2] Marquan had no prior record, a factor that the court found to be "a significant positive in [his] case."

As the circuit court explained:

[2] Roy had also been charged in Milwaukee County Circuit Court Case No. 2022CF2795 with obstructing an officer, causing a soft tissue injury to an officer, possession of a firearm by a felon, and carrying a concealed weapon, all committed while police were looking for Roy in connection with the homicide. Those charges were later dismissed and read in for sentencing pursuant to plea negotiations.

> [D]ue to the differences in the two brothers' criminal histories and the nature of their convictions in this matter, the court determined that their individual sentences should vary significantly in order to accomplish the primary goals of punishment, deterrence, rehabilitation, and community protection in each case. The defendant may believe that the sentencing disparity between him and his brother is too great; however, the court finds that the sentencing difference appropriately reflects their individual characters, backgrounds, and rehabilitative needs. Consequently, even assuming that Marquan's sentence is a new factor because it was not in existence when the court sentenced the defendant in this case, it does not justify a modification of the sentence.

We agree and think no further explanation is necessary.

Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals