



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 III**

June 2, 2026

To:

Hon. Samuel Louis Lawton  
Circuit Court Judge  
Electronic Notice

Sharon Millermon  
Clerk of Circuit Court  
Barron County Justice Center  
Electronic Notice

Eliot M. Held  
Electronic Notice

Jermaine W. Nielsen 267591  
Oshkosh Correctional Institution  
P.O. Box 3310  
Oshkosh, WI 54903-3310

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

---

2024AP1783-CR      State of Wisconsin v. Jermaine W. Nielsen  
(L. C. No. 2017CF122)

Before Stark, P.J., Hruz, and Gill, JJ.

**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).**

Jermaine Nielsen, pro se, appeals from an order that denied his postconviction motion for sentence modification. Nielsen alleged that his trial counsel failed to provide the circuit court with a private presentence investigation report (PSI) that had been prepared prior to sentencing, such that the private PSI was a new factor warranting 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).<sup>1</sup> We affirm.

---

<sup>1</sup> All references to the Wisconsin Statutes are to the 2023-24 version.

Nielsen pled guilty to second-degree sexual assault of an unconscious victim. The defense commissioned a private PSI, which was completed about a week before sentencing. The private PSI recommended a sentence of three to five years of initial confinement followed by six to ten years of extended supervision. The private PSI also mentioned that Nielsen regretted taking a plea and wished he could go to trial because he did not feel he had all of “the pertinent information” when he entered the plea.

After the private PSI raised the issue regarding Nielsen’s regret over taking a plea, Nielsen’s trial counsel informed the circuit court that Nielsen wished to withdraw his plea. Nielsen himself also raised the issue of plea withdrawal at the beginning of his sentencing hearing, but the court determined he had not provided a reason aside from disliking the sentence recommendation in the PSI prepared by the Department of Corrections (DOC). The record does not show that trial counsel provided the private PSI to the court before Nielsen was sentenced, however.

At the sentencing hearing, the State followed the DOC’s PSI and recommended a sentence of 6 to 8 years of initial confinement followed by 5 to 6 years of extended supervision, while Nielsen recommended a sentence of 18 months to 2 years of initial confinement followed by a “substantial” amount of extended supervision. The circuit court observed that the offense was particularly aggravated because Nielsen had violated the victim’s trust as a long-time family friend. The court viewed Nielsen’s rehabilitative needs as substantial because he was using intoxication as an excuse for what he did. It also noted that Nielsen’s extensive criminal history, along with his selfish and impulsive character, suggested a substantial risk that Nielsen would reoffend. The court then sentenced Nielsen to ten years of initial confinement followed by five years of extended supervision.

Following a prior appeal on unrelated grounds, Nielsen filed the pro se sentence modification motion that is the subject of this appeal. The motion asserted, without any discussion or explanation, that the existence of the private PSI constituted a highly relevant new sentencing factor. The circuit court denied the sentence modification motion without a hearing because it determined that the private PSI was not new. This was evidenced by the fact that Nielsen's trial counsel had seen the private PSI prior to sentencing, the court cited counsel's comment during a prior postconviction proceeding that the private PSI was what had triggered Nielsen's presentencing plea withdrawal motion.

A circuit court has ongoing inherent authority to modify a previously imposed sentence based upon a new factor.<sup>2</sup> *State v. Noll*, 2002 WI App 273, ¶11, 258 Wis. 2d 573, 653 N.W.2d 895. A new sentencing factor is a fact or set of facts highly relevant to the imposition of sentence but not known to the court at the time of sentencing, either because the fact was not then in existence or because it was unknowingly overlooked by all the parties. *Rosado v. State*, 70 Wis. 2d 280, 288, 234 N.W.2d 69 (1975). A defendant bears the burden of establishing a new factor by clear and convincing evidence. *State v. Harbor*, 2011 WI 28, ¶36, 333 Wis. 2d 53, 797 N.W.2d 828. Whether a particular fact or set of facts constitutes a new factor is a question of law subject to de novo review. *Id.*, ¶¶33, 36.

On this appeal, Nielsen has identified no information in the private PSI that was relevant to sentencing that was not already before the circuit court in the DOC's PSI, aside from the

---

<sup>2</sup> The State concedes that the circuit court mistakenly thought the sentence modification motion was brought pursuant to WIS. STAT. § 973.19 and was thus untimely. That error does not affect this court's de novo review of whether Nielsen established a new factor warranting sentence modification.

private PSI author's sentence recommendation.<sup>3</sup> We first question whether a sentence recommendation constitutes a "fact" within the meaning of *Rosado*. A recommendation is a suggestion or opinion about what should happen in the future, not an objectively verifiable statement about something that has already happened.

Even assuming that such a recommendation is a fact, Nielsen has not made any allegations that would suggest his trial counsel "unknowingly overlooked" the private PSI author's recommendation. The private PSI author's recommendation of 3 to 5 years of initial confinement was about twice the recommendation that trial counsel made, asking for 18 months to 2 years of initial confinement. Introducing the private PSI could therefore have undermined Nielsen's position at sentencing. Absent any affidavit or even a specific allegation that trial counsel failed to introduce the private PSI at sentencing by mistake, the logical inference would be that counsel made a strategic decision not to introduce the private PSI because it was not sufficiently helpful.

Finally, Nielsen has provided no basis to believe that the private PSI author's recommendation would have been "highly relevant" to the circuit court's imposition of its sentence. The court thoroughly explained why it believed ten years of initial confinement were necessary, notwithstanding lower recommendations from the State, the DOC agent, and Nielsen's trial counsel. The court's decision was based in significant part upon its rejection of the COMPAS evaluation showing that Nielsen posed only a medium risk of recidivism.

---

<sup>3</sup> For instance, both the DOC's PSI and the private PSI conveyed the same COMPAS evaluation showing that Nielsen presented only a medium risk of reoffending.

Therefore, another recommendation based upon that same rejected evaluation was unlikely to have swayed the court.

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed. 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*