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DISTRICT I

September 1, 2026

To:

Hon. Lindsey Grady
Circuit Court Judge
Electronic Notice

Sarah Catherine Geers
Electronic Notice

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

Robert Mario Wheeler 356445
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2019 Wisconsin St.
Sturtevant, WI 53177-1829

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

2025AP657-CR

State of Wisconsin v. Robert Mario Wheeler (L.C. # 2018CF3182)

Before Donald, C.J., Colón, P.J., and Geenen, 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).

Robert Mario Wheeler, pro se, appeals from an order denying his motion seeking sentence modification without a hearing.¹ 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).² We summarily affirm.

¹ The Honorable Lindsey Grady imposed Wheeler's sentence, while the Honorable Jack L. Davila decided the motion for sentence modification as the successor to Judge Grady's general felony calendar.

² All references to the Wisconsin Statutes are to the 2023-24 version.

In September 2019, Wheeler pled guilty to first-degree reckless injury and being a felon in possession of a firearm, relating to the shooting of W.W. W.W. told police Wheeler had approached him in the alley by W.W.'s residence and started shooting him, based on the belief that W.W. had sexually assaulted Wheeler's niece. W.W. was struck by gunfire ten times. The State described it as being "as close ... to an intentional homicide act as you can be"—Wheeler shot W.W. "six or eight times," and then shot him several more times as he crawled under his van, trying to take "some semblance of cover."

W.W. required multiple surgeries to reconnect his organs that had been severed. He has a "multitude" of permanent injuries and is confined to a wheelchair. After discussing these extensive injuries, and the fact that Wheeler was not supposed to have a gun as a convicted felon, the circuit court imposed a total of twelve years of initial confinement followed by seven years of extended supervision.

Wheeler filed the underlying motion for sentence modification in February 2025. He asserted that a new factor warranted sentence modification; specifically, that W.W. was armed with a "large knife" at the time of the shooting. Wheeler admitted this fact was known at sentencing, but claimed he overlooked it due to being under "mental duress" from the sentencing proceedings. He also seemed to suggest that the shooting was self-defense because W.W. was "armed with a dangerous weapon."

The circuit court rejected this argument. It noted that Wheeler's claim "is supported solely by still images from a body cam which appear to show police recovering a pocket-sized knife (with only the handle clearly visible in the photo) from the back pocket of a bloody individual lying on the ground." The court observed that "[m]erely possessing a knife is not a

crime, nor does it establish that the victim was the aggressor, particularly given the defendant's apparent motive and the fact that the knife was found concealed in the victim's pocket."

The circuit court thus determined that the knife did not meet the definition of a new factor. It found that Wheeler knew about this evidence at the time of sentencing, observing that "[Wheeler's] vague and unsupported claim of mental duress does not transform old information into a new factor." The court further noted that this evidence was "not highly relevant to [Wheeler's] culpability," given his motive and the circumstances of the shooting. Therefore, the court denied Wheeler's motion. This appeal follows.

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." *State v. Harbor*, 2011 WI 28, ¶40, 333 Wis. 2d 53, 797 N.W.2d 828 (citation omitted). To prevail on such a claim, a defendant has the burden of demonstrating by clear and convincing evidence that a new factor exists, and showing that the alleged new factor justifies sentence modification. *Id.*, ¶¶36-38. Whether a set of facts constitutes a new factor is a question of law that we review de novo. *State v. Crockett*, 2001 WI App 235, ¶13, 248 Wis. 2d 120, 635 N.W.2d 673.

Although Wheeler asserts the circuit court may have "unknowingly overlooked" the fact that W.W. had a knife at the time of the shooting, he does not claim that he was unaware of this fact. Rather, he argues his mental duress at sentencing caused him to fail to mention this factor at sentencing. This argument misconstrues the "unknowingly overlooked" requirement. As the circuit court stated, Wheeler's unsupported claim of mental duress does not "transform" information known to Wheeler at the time of sentencing into a new factor. See *id.*, ¶14 (noting

that “a fact in existence at the time of sentencing is new only if unknowingly overlooked by *all* of the parties” (citation modified)). Therefore, Wheeler has not demonstrated the existence of a new factor. See *Harbor*, 333 Wis. 2d 53, ¶36.

Additionally, Wheeler has not established that this factor was highly relevant to his sentence. See *id.*, ¶40. As noted above, the circuit court’s focus at sentencing was on the gravity of the offense—primarily, the extent of W.W.’s injuries—and the fact that as a convicted felon, Wheeler was prohibited from possessing a firearm at the time of the shooting. Moreover, as pointed out in the order denying sentence modification, there was no evidence that W.W. was an aggressor in the shooting, as Wheeler admitted his motive for shooting W.W. was his belief that W.W. sexually assaulted his niece. Indeed, there is nothing in the record to suggest that W.W. having a knife in his pocket at the time of the shooting would have been a mitigating factor in fashioning Wheeler’s sentences.

Therefore, Wheeler has not established that the knife recovered from W.W.’s pocket after the shooting is a new factor warranting sentence modification. See *id.*, ¶38. Accordingly, we affirm the order denying his motion for sentence modification.

For all the foregoing reasons,

IT IS ORDERED that the order is 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