COURT OF APPEALS
DECISION
DATED AND FILED

July 15, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP1253-CR **Cir. Ct. No. 1996CF962285**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MAXIMILLIANO MEJIA,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: JEFFREY A. WAGNER, Judge. *Affirmed.*

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

¶1 PER CURIAM. Maximilliano Mejia, *pro se*, appeals an order denying his postconviction motion. He argues: (1) that he should be resentenced based on a "new factor," a previous amendment to WIS. STAT. § 302.11(1g)

(2011-12);[1] (2) that the circuit court should have told him about the change to § 302.11(1g) before he entered his plea; (3) that the circuit court misused its sentencing discretion because it did not adequately explain its decision; (4) that his sentence was unduly harsh; and (5) that his sentence should be reduced to allow him to be deported to Mexico to live with a gravely ill family member. We affirm.

¶2 Mejia was convicted after a guilty plea of first-degree reckless homicide in 1996 for killing Hector Pina. He was sentenced to an indeterminate prison term not to exceed thirty-five years. Mejia moved to withdraw his plea on direct appeal, but the circuit court denied the motion. He filed a collateral postconviction motion for sentence modification in 2000, which the circuit court denied. Mejia then moved for reconsideration of that order, but was unsuccessful. On April 10, 2013, Mejia filed the current postconviction motion, which the circuit court denied.

¶3 Mejia first argues that he should be resentenced based on a "new factor." 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, even though it was then in existence, 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 and quotation marks omitted). Mejia contends that an amendment to WIS. STAT. § 302.11(1g) that occurred in 1993, three years before he was sentenced, is a new factor. The amendment made mandatory release dates for prisoners convicted of serious

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

felonies *presumptive,* rather than mandatory, resulting in longer prison terms for most prisoners in that category.

¶4 The circuit court did not rely on the date Mejia would be eligible for parole in framing its sentence. The amendment to WIS. STAT. § 302.11(1g) is therefore not "highly relevant" to the imposition of Mejia's sentence. Moreover, Mejia has not shown that the trial judge was unaware of the amendment at the time of sentencing. Given that the amendment occurred three years prior to Mejia's sentencing, it is unlikely that the trial judge was not aware that the law had been changed. Mejia has not shown that the statutory amendment is a new factor.

¶5 Mejia next argues that he should have been informed at sentencing about the change to the mandatory release statute because the fact that he would not necessarily be eligible for release when two-thirds of his sentence was served is a "direct consequence" of his decision to plead guilty. We rejected this argument in ***State v. Yates***, 2000 WI App 224, ¶17, 239 Wis. 2d 17, 619 N.W.2d 132. We concluded that a change in parole eligibility based on the amendment to WIS. STAT. § 302.11(1g) was a collateral consequence of a plea, not a direct consequence. The circuit court was therefore not required to explain the amendment of the statute to Mejia before accepting his plea.

¶6 Mejia next argues that the circuit court misused its discretion when it sentenced him because it did not adequately explain why it imposed a thirty-five year prison term. An argument that the circuit court misused its sentencing discretion must be raised within ninety days of sentencing under WIS. STAT. § 973.19, or within the time for a direct appeal under WIS. STAT. § 809.30. Mejia was sentenced in 1996. He did not raise his argument that the circuit court

misused its sentencing discretion within the proper time limits. Therefore, we will not consider it.

¶7 Mejia next argues that the sentence imposed on him is unduly harsh and unconscionable. The circuit court may reduce a sentence after the time for appeal has expired if it concludes that the original sentence was "unduly harsh or unconscionable." ***State v. Wuensch***, 69 Wis. 2d 467, 480, 230 N.W.2d 665 (1975). Mejia's thirty-five year sentence was below the maximum forty-year prison term he could have received. Mejia avoided a charge of first-degree intentional homicide, with a much longer potential maximum prison term, by entering his plea. The prosecutor pointed out that the crime was senseless and violent. Mejia stabbed an unarmed man, who was an acquaintance, in the stomach with a butcher knife over a minor dispute. We agree with the State that it does not shock the public conscience that Mejia received a thirty-five year sentence for causing Pina's death under the circumstances of this case.

¶8 Finally, Mejia argues that his sentence should be reduced to allow him to be deported to Mexico to live with a gravely ill family member. Mejia's entire argument in his appellant's brief on this point is one sentence long. We will not review this issue because it is inadequately briefed. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

By the Court.—Order affirmed.

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