

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 9, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2025AP1440

Cir. Ct. No. 2020CF1634

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

KEVIN PATRICK RAYE,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Brown County:
DONALD R. ZUIDMULDER, Judge. *Affirmed.*

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

Per curiam opinions 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).

¶1 PER CURIAM. Kevin Patrick Raye, pro se, appeals from an order that denied his motion for postconviction relief under WIS. STAT. § 974.06

(2023-24).¹ For the reasons explained below, we reject Raye’s arguments and affirm.

BACKGROUND

¶2 In October 2020, the State charged Raye with seven counts of felony theft and one count of misconduct in public office. The charges were based on allegations that, while employed by Brown County, Raye used county funds to buy hundreds of Cisco Wireless Access Points worth approximately \$1.2 million over a period of several years; that he sold those items to a Texas school through his personal company for approximately \$640,000; and that he subsequently used that money for various personal purchases, including a tractor, real estate, gold and silver coins, and stocks.

¶3 Raye pled no contest to all eight of the charges against him. The circuit court later imposed concurrent and consecutive sentences totaling 22 years, comprised of 10 years’ initial confinement followed by 12 years’ extended supervision.² During its sentencing remarks, the court emphasized the “aggravated nature of the case,” as evidenced by the duration of Raye’s unlawful conduct; the large amount stolen; the “very dramatic impact on Brown County and its citizens ... not just the financial impact, but really the impact on the perception of county government”; the “sophisticated” and “elaborate” nature of Raye’s criminal scheme; and the fact that each instance of theft “was a deliberate intention to take money from the community.”

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

² The Honorable Kendall M. Kelley accepted Raye’s no-contest pleas and presided over his sentencing.

¶4 Raye did not file a direct appeal from his judgment of conviction. However, in January 2025, he filed a pro se motion for postconviction relief under WIS. STAT. § 974.06. In that motion, Raye first sought “resentencing,” based on new information that he had learned about sentences that other defendants had received in cases that he asserted bore “similarities” to his own. Raye asserted that his aggregate sentence was “extreme and excessive in comparison” to those other defendants’ sentences. He therefore asked the circuit court to “resentence” him so that all of his sentences would run concurrent with each other, which would result in a total aggregate sentence of five years’ initial confinement followed by five years’ extended supervision.³

¶5 In the alternative, in the event that the circuit court denied his request for resentencing, Raye asked the court to allow him to withdraw his no-contest pleas “to correct a manifest injustice.” As the basis for his plea withdrawal claim, Raye asserted that his trial attorney was constitutionally ineffective by failing to argue that the complaint should have been dismissed because the State should have charged him “with either separate offenses for each of the individual thefts pursuant to WIS. STAT. § 971.36(1) or with a single offense in connection with [his] entire course of conduct pursuant to ... § 971.36(3)(a).”⁴ (Formatting altered.)

³ Although Raye’s postconviction motion used the term “resentencing,” in response to the motion, the State argued—as it does now on appeal—that Raye was actually seeking sentence modification either based on a new factor or because his sentences were excessive. We agree with the State—and Raye appears to concede on appeal—that Raye’s argument regarding the other defendants’ sentences is properly characterized as a claim for sentence modification.

⁴ Each of the seven theft charges against Raye pertained to thefts that occurred during a different one-year time period.

¶6 Following briefing and oral argument, the circuit court denied Raye’s postconviction motion in an oral ruling, which was later memorialized in a written order.⁵ The court concluded that Raye was not entitled to relief with respect to the length of his sentences because he had not shown that the other defendants’ cases constituted “a new factor unknown at the time of sentencing which if known to the sentencing court would have persuaded the sentencing court not to do what it did.” The court also reasoned that the sentencing court had considered appropriate sentencing factors and that Raye’s sentences did not fall within the limited category of sentences that could be labeled “outrageous.” The court did not address Raye’s plea withdrawal claim. Raye now appeals.

DISCUSSION

¶7 Raye raises two arguments in his appellate briefs. First, Raye contends that he was sentenced based on inaccurate information because, contrary to the sentencing court’s belief, the Wisconsin Department of Corrections (DOC) has determined that he has no rehabilitative needs. Second, Raye renews his argument that he is entitled to sentence modification either based on the existence of a new factor—i.e., the disparity between his aggregate sentence and those of similarly situated defendants—or because this disparity shows that his aggregate sentence is unduly harsh and unconscionable. We address these arguments in turn.⁶

⁵ The Honorable Donald R. Zuidmulder denied Raye’s postconviction motion.

⁶ Raye does not raise any argument on appeal that he is entitled to withdraw his no-contest pleas based on the ineffective assistance of his trial attorney. We therefore deem that claim abandoned and do not address it further. *A.O. Smith Corp. v. Allstate Ins.*, 222 Wis. 2d 475, 491, 588 N.W.2d 285 (Ct. App. 1998) (explaining that an issue raised in the circuit court, but not raised on appeal, is deemed abandoned).

I. Inaccurate information

¶8 As noted above, Raye’s first argument on appeal is that he was sentenced based on inaccurate information. During its sentencing remarks, the sentencing court briefly stated that Raye has a “need for close rehabilitative control” and “likely needs some sort of correctional treatment that’s most effectively provided if confined.” Raye contends that this information was inaccurate because the DOC has since determined that Raye has no rehabilitative needs. As a result, Raye asserts that his aggregate sentence “has transformed into a ‘punitive’ only sentence causing a ‘structural error’ in [his] sentence, with the result being [he is] now serving an ‘unjust sentence.’” (Formatting altered.)

¶9 As the State correctly notes, Raye forfeited this argument by failing to raise it in the circuit court. See *Tatera v. FMC Corp.*, 2010 WI 90, ¶19 n.16, 328 Wis. 2d 320, 786 N.W.2d 810 (“Arguments raised for the first time on appeal are generally deemed forfeited.”); *State v. Anderson*, 215 Wis. 2d 673, 683, 573 N.W.2d 872 (Ct. App. 1997) (“[A]n appellate court need not consider arguments raised for the first time on appeal.”). Raye’s postconviction motion did not include any argument that the sentencing court had relied on inaccurate information regarding his rehabilitative needs, nor did Raye raise that argument in his reply brief in support of his postconviction motion.

¶10 In his reply brief on appeal, Raye notes that his postconviction motion contained the following statement: “When my COMPAS Case was completed by Wisconsin DOC my COMPAS Risk Level Recommendation was stated as low. Wisconsin DOC also determined that I have no rehabilitation program needs.” (Formatting altered.) Raye suggests that this statement was sufficient to preserve his current inaccurate information claim for appellate

review. However, Raye’s postconviction motion did not develop any argument that he was entitled to relief based on the sentencing court’s consideration of inaccurate information regarding his rehabilitative needs. Moreover, in his reply brief in support of his postconviction motion, Raye specifically disputed the State’s assertion that he was “claiming these items as ‘new factors’” that “should be considered for sentencing modification.” Instead, Raye asserted that he had “added this information” to his postconviction motion “as a supplement to validate the assessments contained in the original [presentence investigation report]” in order to demonstrate “that [his] positive behavior and attitude has continued since [he] entered prison over two years ago.”

¶11 Thus, neither Raye’s postconviction motion nor his reply brief in support of that motion contained a developed argument alerting the circuit court that Raye was seeking relief based on the sentencing court’s consideration of inaccurate information about his rehabilitative needs. “We will not ... blindsides [circuit] courts with reversals based on theories which did not originate in their forum.” See *State v. Rogers*, 196 Wis. 2d 817, 827, 539 N.W.2d 897 (Ct. App. 1995); see also *Bishop v. City of Burlington*, 2001 WI App 154, ¶8, 246 Wis. 2d 879, 631 N.W.2d 656 (explaining that, to preserve an issue for appeal, “[a] litigant must raise an issue with sufficient prominence such that the [circuit] court understands that it is being called upon to make a ruling”). Accordingly, we decline to address Raye’s argument that he was sentenced based on inaccurate information regarding his rehabilitative needs.

II. Sentence modification

¶12 Raye next argues that he is entitled to sentence modification based on new information about the disparity between his aggregate sentence and the

sentences imposed on other defendants. “Within certain constraints, Wisconsin circuit courts have inherent authority to modify criminal sentences.” ***State v. Harbor***, 2011 WI 28, ¶35, 333 Wis. 2d 53, 797 N.W.2d 828. As relevant here, a court may modify a defendant’s sentence based on the existence of a new factor or when the court determines that the original sentence was “unduly harsh or unconscionable.” ***State v. Grindemann***, 2002 WI App 106, ¶21, 255 Wis. 2d 632, 648 N.W.2d 507 (citation omitted). We conclude that Raye is not entitled to relief on either of these bases.

A. New factor

¶13 “Deciding a motion for sentence modification based on a new factor is a two-step inquiry.” ***Harbor***, 333 Wis. 2d 53, ¶36. First, the defendant must “demonstrate by clear and convincing evidence the existence of a new factor”—that is, a fact or set of facts that is highly relevant to the imposition of sentence, but was not known to the judge at the time of the original sentencing, either because it was not then in existence or because it was unknowingly overlooked by all of the parties. ***Id.***, ¶¶36, 40. Whether a fact or set of facts constitutes a new factor is a question of law. ***Id.***, ¶36. If the defendant demonstrates the existence of a new factor, the circuit court then determines, in the exercise of its discretion, “whether that new factor justifies modification of the sentence.” ***Id.***, ¶37.

¶14 Here, we conclude that Raye failed to show the existence of a new factor by clear and convincing evidence because the other defendants’ sentences that Raye relied upon were not highly relevant to the imposition of Raye’s aggregate sentence. It is clear from the sentencing court’s remarks that the court’s primary consideration in sentencing Raye was the aggravated nature of the offenses, which involved Raye—a county employee—engaging in an elaborate

scheme to repeatedly steal large amounts from the county over a period of several years, which not only resulted in significant financial losses by the county but also negatively affected the public's perception of the county's government.

¶15 The sentencing court made no mention during its sentencing remarks of other defendants, other theft prosecutions, or sentences imposed in other cases. Nothing in the court's remarks indicated that its aim was to achieve parity between Raye's aggregate sentence and the sentences imposed by other courts on other defendants. And, importantly, the court was not required to do so. "There is no requirement that defendants convicted of committing similar crimes must receive equal or similar sentences." *State v. Lechner*, 217 Wis. 2d 392, 427, 576 N.W.2d 912 (1998). To the contrary, "individualized sentencing is a cornerstone" of sentencing in Wisconsin, and "no two cases will present identical factors." *Id.* (citation omitted).

¶16 Under these circumstances, we agree with the State that "the case dispositions in those cases offered by Raye did not just fall short of being 'highly relevant' to his sentence; they were utterly *irrelevant*." Consequently, the circuit court properly determined that Raye had failed to demonstrate the existence of a new factor by clear and convincing evidence.

B. Unduly harsh and unconscionable sentence

¶17 Raye also asserts that he is entitled to sentence modification because, in comparison to the sentences received by other defendants, his aggregate sentence is unduly harsh and unconscionable.

When a defendant argues that his or her sentence is excessive or unduly harsh, a court may find an erroneous exercise of sentencing discretion "only where the sentence is so excessive and unusual and so disproportionate to the

offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.”

Grindemann, 255 Wis. 2d 632, ¶31 (citation omitted). Notably, however, a sentence that is “well within the limits of the maximum sentence” “is presumptively *not* unduly harsh or unconscionable.” **Id.**, ¶¶31-32 (citation omitted).

¶18 In this case, Raye pled no contest to five Class G felonies, two Class F felonies, and one Class I felony. As such, the sentencing court could have imposed an aggregate sentence of 78.5 years, bifurcated as 41.5 years’ initial confinement followed by 37 years’ extended supervision, see WIS. STAT. §§ 939.50(3)(f), (g), (i), 973.01(2)(b)6m., 7., 9., which would have effectively ensured that Raye—who was 55 years old at the time of sentencing—would spend the rest of his life in prison. Instead, the court imposed an aggregate sentence of 22 years, comprised of 10 years’ initial confinement followed by 12 years’ extended supervision. Thus, the court ordered Raye to serve less than one-quarter of the maximum aggregate term of initial confinement that was available for his offenses and less than one-third of the maximum aggregate term of extended supervision. Accordingly, Raye’s aggregate sentence is well within the statutory maximum and is therefore presumptively not unduly harsh or unconscionable.⁷ See **Grindemann**, 255 Wis. 2d 632, ¶¶31-32.

⁷ Raye asserts that Wisconsin case law holding that a sentence that is well within the statutory maximum is presumptively not unduly harsh or unconscionable is “flawed.” This court, however, has no authority to disregard that binding precedent. See **Cook v. Cook**, 208 Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997).

¶19 Moreover, under the circumstances, Raye’s aggregate sentence is not “so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.” See *id.*, ¶31 (citation omitted). The record before the sentencing court showed that Raye did not simply engage in a single, isolated theft, nor did he engage in a mere crime of opportunity. Instead, the record showed that Raye devised and perpetrated an elaborate scheme over a period of several years in which he exploited his position as a government employee to steal more than \$1.2 million dollars in assets from Brown County. Raye then sold those assets for approximately \$640,000 and used those funds for personal purchases, including a tractor, real estate, gold and silver coins, and stocks. Additionally, the record showed that Raye was not motivated to commit the thefts by poverty or unmet financial needs; rather, he admitted to law enforcement that he began stealing from the County because he did not feel that he was being “compensated fairly” for his work.

¶20 The sentencing court referenced many of these aggravating factors during its sentencing remarks. As noted above, the court emphasized the duration of Raye’s unlawful conduct, the large amount stolen, the impacts on Brown County and its citizens, the sophisticated and elaborate nature of Raye’s scheme, and the fact that Raye made a series of decisions to “take money from the community.” The court acknowledged the existence of some mitigating factors, including Raye’s lack of a past criminal record, but it clearly determined that the aggravating factors discussed above outweighed those mitigating factors, thus justifying an aggregate sentence of 10 years’ initial confinement followed by 12 years’ extended supervision.

¶21 Raye acknowledges that the sentencing court “met the *Gallion* responsibilities at [his] original sentencing.” See *State v. Gallion*, 2004 WI 42, ¶¶40-46, 270 Wis. 2d 535, 678 N.W.2d 197 (explaining that a proper exercise of sentencing discretion requires a circuit court to discuss relevant sentencing factors and objectives on the record and explain how those factors and objectives relate to the sentence imposed). In other words, Raye does not argue that the court erroneously exercised its sentencing discretion. Instead, Raye contends that his aggregate sentence is unduly harsh when compared with sentences imposed on defendants in other cases. Again, however, “[t]here is no requirement that defendants convicted of committing similar crimes must receive equal or similar sentences.” *Lechner*, 217 Wis. 2d at 427. Given the aggravated facts of this case, the other defendants’ sentences that Raye cites do not convince us that Raye’s aggregate sentence—which is well within the maximum—is unduly harsh or unconscionable.

By the Court.—Order affirmed.

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

