

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 3, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 97-1046-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

LONNA L. HANDSCHKE,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Wausahra County:
LEWIS MURACH, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Deininger, JJ.

PER CURIAM. Lonna Handschke appeals from an order denying her motion to withdraw her guilty plea and to modify her sentence. The issues are whether Handschke presented new factors to justify modification of her sentence, and whether we should recommend that the supreme court reconsider whether joint sentencing recommendations should be prohibited as against public policy.

Because we conclude that the facts presented by Handschke were not new factors, and because we decline to ask the supreme court to reconsider joint sentencing recommendations, we affirm.

Handschke pleaded no contest to the charge of second-degree intentional homicide in the death of her husband, David Handschke. The court sentenced her to ten years out of a possible forty. By postconviction motion, she moved to withdraw her plea and to modify her sentence because of alleged “new factors.” The new factors which Handschke asks this court to consider are that she was sexually assaulted by her stepfather when she was a child, and that about a month before her husband’s death, a law enforcement officer allegedly threatened her with criminal prosecution if she reported her husband’s abuse.

The phrase a “new factor” refers to:

[A] fact or set of facts highly relevant to the imposition of sentence, but not known to the trial judge at the time of the 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 the parties.

Rosado v. State, 70 Wis.2d 280, 288, 234 N.W.2d 69, 73 (1975).

Whether a set of facts is a “new factor” is a question of law which we review *de novo*. *State v. Franklin*, 148 Wis.2d 1, 8, 434 N.W.2d 609 (1989). Whether a new factor warrants a modification of sentence rests within the circuit court’s discretion. *State v. Michels*, 150 Wis.2d 94, 97, 441 N.W.2d 278, 279 (Ct. App. 1989). The new factor must be “an event or development which frustrates the purpose of the original sentence. There must be some connection between the factor and the sentencing—something which strikes at the very purpose for the sentence selected by the trial court.” *Id.* at 99, 441 N.W.2d at 280.

The facts Handschke alleges are not factors which were “unknowingly overlooked” by all the parties at the time of sentencing.¹ Handschke knew of both facts at the time of sentencing and did not disclose them. She has not offered any reason why she did not disclose them or claimed that she acted “unknowingly.” Consequently, these facts are not “new factors” warranting a modification of her sentence. The circuit court correctly denied Handschke’s motion for a modification of sentence.²

Handschke also asks that we recommend that the supreme court reconsider whether joint sentencing recommendations should be prohibited as against public policy. We are not persuaded, however, that the issue is one which requires reconsideration. Because we conclude that joint sentencing recommendations are in accord with public policy, we decline to recommend. Therefore, we affirm the order of the circuit court.

By the Court.—Order affirmed.

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

¹ We question whether there was a proper evidentiary basis for the court to consider these “new factors.” It appears that the only evidence Handschke presented at the postconviction hearing was an unsworn document. Since we conclude that these were not new factors and affirm the decision of the circuit court, we do not specifically reach this issue.

² We also note that the circuit court stated that the alleged “new factors” would not have changed Handschke’s sentence because the court had considered the fact that she was a person who had been “damaged by the physical and mental harm she had suffered.”

