COURT OF APPEALS
DECISION
DATED AND FILED

DECEMBER 23, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-1721

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

WILLIAM N. LEDFORD,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Buffalo County: DANE F. MOREY, Judge. *Affirmed.*

Before Cane, P.J., Myse and Hoover, JJ.

PER CURIAM. William Ledford appeals a postjudgment order that denied his motion to modify his sentence due to "new factors." In 1993, the trial court sentenced Ledford to an eight-year prison term and a concurrent eight-year probation term on two forgery convictions, Ledford having pleaded guilty to the charges. On appeal, Ledford relies on two matters he deems new factors: (1) his

health had worsened since sentencing; and (2) the executive branch had hardened its policy on the Intensive Sanctions Program (DIS). Ledford believes that these matters now make his 1993 sentence excessive. The trial court made a discretionary decision that we will not overturn absent an improper exercise of discretion. *See* ***State v. Hegwood***, 113 Wis.2d 544, 546, 335 N.W.2d 399, 401 (1983). We reject Ledford's arguments and therefore affirm the trial court's postjudgment order.

First, Ledford's health deterioration is not a new factor for purposes of judicial sentence modification. *See* ***State v. Michels***, 150 Wis.2d 94, 99-100, 441 N.W.2d 278, 280-81 (Ct. App. 1989). Rather, it is a matter for sentence administration by the executive branch, relevant to Ledford's parole eligibility or possibly executive clemency. Second, we conclude that DIS policy changes by the executive branch do not qualify as new factors unless the trial court had expressly relied on the old executive branch policies at sentencing. The supreme court reached this conclusion regarding parole policy changes by the executive branch, *see* ***State v. Franklin***, 148 Wis.2d 1, 14-15, 434 N.W.2d 609, 613-14 (1989), and we see no reason to apply a different rule to executive branch changes in the DIS program. Here, the record contains no indication that the trial court relied on existing executive branch DIS policies at sentencing, and therefore, any new DIS policies gave Ledford no basis for sentence modification.

By the Court.—Order affirmed.

This opinion will not be published.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