COURT OF APPEALS
DECISION
DATED AND FILED

August 17, 2017

Diane M. Fremgen
Clerk of Court of Appeals

Appeal Nos. 2016AP1117-CR
2016AP1118-CR

Cir. Ct. Nos. 1996CF96370
1996CF96290

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

WAYNE E. HOLLINS, JR.,

DEFENDANT-APPELLANT.

APPEALS from an order of the circuit court for Milwaukee County: THOMAS J. MC ADAMS, Judge. *Affirmed*.

Before Lundsten, P.J., Sherman and Kloppenburg, JJ.

¶1 PER CURIAM. Wayne Hollins appeals an order denying his motion for sentence modification. He argues that a new factor, in the form of affidavits provided by his co-defendants, justifies a reduction of his sentence. We conclude that the trial court properly exercised its discretion in determining that Hollins did not demonstrate a new factor warranting sentence modification. We affirm.

¶2 Hollins was charged with three counts of armed robbery, one count of felony murder, and one count of attempted robbery, all as a party to a crime. The charges stemmed from robberies of an Open Pantry and a Quick Pantry, and an attempted robbery of a George Webb restaurant on November 26, 1995, as well as a robbery of a credit union on January 11, 1996. Hollins was the driver of the vehicle used in the commission of the crimes. He described his involvement in each robbery in a written, signed confession.

¶3 Hollins was tried by a jury and found guilty of the three counts of armed robbery and one count of attempted armed robbery. As to the felony murder count, the circuit court declared a mistrial due to a hung jury. Hollins later entered an ***Alford***[1] plea to the felony murder count. Hollins was sentenced on May 22, 1996 to a total of 100 years in prison. Hollins pursued a direct appeal and, in an opinion issued June 25, 1998, we affirmed the judgments of conviction. On January 26, 2016, Hollins filed a motion to modify his sentence under a new factor analysis. The circuit court denied the motion, and Hollins now appeals.

[1] ***North Carolina v. Alford,*** 400 U.S. 25 (1970).

¶4 Hollins argues that affidavits provided by his three co-defendants—Jumar Jones, Sandronnia Gillespie, and Darkos Hollins—constitute a new factor entitling him to sentence modification. The affidavits of Jumar Jones and Sandronnia Gillespie each state that, but for the last robbery of the credit union, Hollins was not involved in the planning of the robberies. Similarly, the affidavit of Hollins' brother, Darkos Hollins, states that Hollins was not involved in the planning and would not have been involved in the robberies at all if Darkos had not asked him to be the driver. According to Hollins, the affidavits show that the circuit court erred in finding that he had a "greater" role than that of a getaway driver. Hollins argues that he was sentenced based on that finding, and that he is entitled to a reduction in his sentence.

¶5 We conclude that the circuit court did not err in denying Hollins' sentence modification motion. 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 (quoted source omitted). A defendant seeking modification of his or her sentence based on a new factor must demonstrate both the existence of a new factor and that the new factor justifies modification of the sentence. ***Id.***, ¶38. Though the existence of a new factor presents a question of law that we review de novo, whether and to what degree a sentence should be modified is a discretionary determination for the trial court. ***Id.***, ¶¶36-37.

¶6 We conclude, as did the circuit court, that the affidavits do not constitute a new factor. Whether or not Hollins planned the robberies was not "highly relevant" in the court's imposition of sentence. ***Id.***, ¶40. The sentencing

transcript indicates that, although Judge Patricia McMahon did state that Hollins had a "greater" role than that of getaway driver, it was not one of the factors that she weighed at the time of imposing sentence. In addition, the record supports the circuit court's assessment of Hollins' culpability. Judge McMahon stated at the sentencing hearing that Hollins supplied the sawed-off shotgun used in the armed robberies. Hollins admitted as much in his own written confession, and the affidavits of his co-actors do not contradict this fact. Notably, all three affidavits are consistent with the circuit court's finding that Hollins led the planning of the final armed robbery, which was the robbery of the credit union on January 11, 1996.

¶7 Hollins also has failed to establish that the facts asserted in the affidavits were unknown to the trial judge at the time of original sentencing because they were not then in existence or because they were "unknowingly overlooked by all of the parties." *See* ***id.***, ¶40. Hollins argues that the affidavits could not have been procured at the time of his sentencing because his co-defendants were themselves facing charges and had no incentive to provide the information contained in the affidavits. While it is true that the affidavits themselves were not in existence at the time of Hollins' original sentencing, the facts asserted in the affidavits as to Hollins' role in the robberies *were* known, both by Hollins and his co-defendants. In addition, the court was aware of Hollins' role in the robberies from the trial evidence, including Hollins' own confession.

¶8 In sum, because the facts asserted by Hollins were neither unknown at the time of sentencing nor highly relevant to his sentence, we conclude that Hollins has not demonstrated the existence of a new factor by clear and convincing evidence. *See* ***id.***, ¶36 (the defendant bears the burden to establishing a

new factor by clear and convincing evidence). Accordingly, the circuit court did not erroneously exercise its discretion in denying Hollins' motion for sentence modification.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2015-16).