

In 2006, Stechauner entered a plea agreement with the State pursuant to which he was convicted of second-degree reckless homicide and armed robbery with use of force, both as a party to a crime, and three additional felonies were dismissed and read in. *See* WIS. STAT. §§ 940.06(1), 943.32(2), and 939.05 (2003-04). At the plea hearing, Stechauner stipulated to the facts in the criminal complaint, including allegations that Stechauner told a detective that he and another defendant beat another man to death with baseball bats and that Stechauner served as the “planner” and “look-out guy” when two other defendants robbed a store. The sentencing court sentenced Stechauner to fifteen years of initial confinement and ten years of extended supervision for the reckless homicide, and it imposed a consecutive sentence of ten years of initial confinement and five years of extended supervision for the armed robbery.²

In the years that followed, Stechauner sought postconviction relief on multiple occasions and filed three unsuccessful appeals. *See State v. Stechauner*, No. 2006AP1923-CR, unpublished slip op. (WI App Mar. 27, 2007); *State v. Stechauner*, No. 2009AP2367, unpublished slip op. (WI App Dec. 7, 2010); and *State v. Stechauner*, No. 2014AP1694, unpublished slip op. (WI App July 21, 2015). In 2017, Stechauner filed the *pro se* motion for sentence modification that is the subject of this appeal. The motion asserted that Stechauner was entitled to sentence modification based on ten new factors. The circuit court denied the motion in a written order.³ This appeal follows.

² The Honorable Mel Flanagan presided over the plea hearing and sentencing hearing.

³ The Honorable Jeffrey A. Conen denied the motion at issue on appeal. We will refer to Judge Conen as the circuit court.

Defendants may seek sentence modification upon the showing of a “new factor.” *See State v. Harbor*, 2011 WI 28, ¶¶35, 57, 333 Wis. 2d 53, 797 N.W.2d 828 (citation omitted). 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.

Id., ¶40 (quoting *Rosado v. State*, 70 Wis. 2d 280, 288, 234 N.W.2d 69 (1975)). “[A] motion for sentence modification based on a new factor [requires] a two-step inquiry.” *Id.*, ¶36. First, it is the defendant’s “burden to demonstrate by clear and convincing evidence the existence of a new factor.” *Id.* “Whether the fact or set of facts put forth by the defendant constitutes a ‘new factor’ is a question of law.” *Id.* Second, if the defendant establishes the existence of a new factor, the circuit court exercises discretion to determine whether sentence modification is justified. *See id.*, ¶37.

In this case, the circuit court concluded that Stechauner had not shown the existence of a new factor. The circuit court added that even if Stechauner’s allegations qualified as new factors, it was not persuaded that sentence modification was justified.

We conclude that Stechauner’s motion did not establish the existence of a new factor. We begin our analysis with Stechauner’s first five allegations. He argued that new factors included: (1) the existence of an expert report suggesting that Stechauner was too short to be one of the men seen on video carrying a baseball bat; (2) a witness said the men who beat the victim to death were Hispanic, and Stechauner is not Hispanic; (3) the two men who robbed the store were shorter than Stechauner; (4) the videotape of the store robbery was destroyed; and

(5) Stechauner's fingerprints were not found at the scene of the armed robbery. The circuit court concluded these five allegations "are not sentencing factors at all but rather raise issues pertaining to the identification evidence, which were previously raised in the defendant's second [WIS. STAT. §] 974.06 motion filed on May 5, 2014."

We conclude that Stechauner's five allegations concerning the factual bases for his convictions do not qualify as new factors that could justify sentence modification. As noted, Stechauner stipulated to the facts in the criminal complaint at the plea hearing, including allegations that he beat another man with a baseball bat and served as the "look-out guy" while two other men robbed a store. Stechauner's involvement in those crimes was not a contested issue at sentencing. Stechauner cannot attempt to cast doubt on his responsibility for the crimes by labeling his allegations "new factors" in a sentence modification motion.

Stechauner's sixth and seventh allegations were that his mental and physical illnesses justify sentence modification. Specifically, his motion claimed that since arriving in prison he has been diagnosed with numerous mental illnesses (*e.g.*, mood disorder, ADHD, and PTSD) and that he has "life-threatening" bronchitis and a damaged vocal cord. A convicted person's diminished health is normally not a new factor. *See State v. Iglesias*, 185 Wis. 2d 117, 128, 517 N.W.2d 175 (1994) (stating that the health of a defendant can be considered at the sentencing hearing, "but a change in health is not a 'new factor' so as to warrant modification of original sentence"); *State v. Ramuta*, 2003 WI App 80, ¶21, 261 Wis. 2d 784, 661 N.W.2d 483 (stating that obesity-related health problems and shorter-than-normal life expectancy are not new factors).

In this case, the sentencing court was aware that Stechauner suffered from mental illness, having been told by trial counsel that Stechauner “suffered from a number of mental issues” and had spent several years in the Mendota Mental Health Institute as a juvenile. The sentencing court acknowledged that Stechauner had mental health treatment needs, but it did not indicate that the sentences were dependent on any single mental health diagnosis. The fact that Stechauner has been diagnosed with specific mental illnesses while in prison is not a fact “highly relevant to the imposition of sentence, but not known to the trial judge at the time of original sentencing.” See *Harbor*, 333 Wis. 2d 53, ¶40 (citation omitted).

As far as Stechauner’s physical illness claims, the fact that Stechauner may be suffering from bronchitis or a damaged vocal cord are not facts that are highly relevant to the sentences imposed. There was no discussion of Stechauner’s physical health at sentencing, and the sentencing court’s remarks do not suggest it was making assumptions about Stechauner’s physical health when it imposed the sentences. Stechauner’s physical illness claims are not new factors that could justify sentence modification. See *id.*

The eighth allegation in Stechauner’s motion was that a 2015 COMPASS risk assessment indicates that he is at low risk to reoffend. Similarly, the tenth allegation in Stechauner’s motion asserted that he has had good behavior while in prison, has completed certain vocational programs, and plans to do positive work with children when he is released. With both of these allegations, Stechauner was, in effect, asking for consideration of his rehabilitative efforts while in prison. However, “courts of this state have repeatedly held that rehabilitation is not a ‘new factor’ for purposes of sentence modification.” *State v. Kluck*, 210 Wis. 2d 1, 7, 563 N.W.2d 468 (1997); see also *State v. Prince*, 147 Wis. 2d 134, 136, 432 N.W.2d 646 (Ct. App. 1988)

(“Changes in attitude and prison rehabilitation are not new factors justifying sentence modification.”). Accordingly, Stechauner failed to show a new factor as a matter of law.

The ninth allegation in Stechauner’s motion was a request that he be declared eligible to participate in substance abuse programming. Having reviewed the sentencing transcript, we agree with the State that the date Stechauner may become eligible for specific prison programming was not a fact highly relevant to the imposition of Stechauner’s sentences. Stechauner’s desire to participate in certain programming is not a new factor that could justify sentence modification.

In summary, we conclude that none of the allegations in Stechauner’s motion constitute “new factors” as a matter of law. Therefore, he is not entitled to sentence modification. *See Harbor*, 333 Wis. 2d 53, ¶40. We summarily affirm the circuit court’s order.

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals