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DISTRICT II

November 6, 2024

To:

Hon. Phillip A. Koss
Circuit Court Judge
Electronic Notice

Hector Salim Al-Homsi
Electronic Notice

Michele Jacobs
Clerk of Circuit Court
Walworth County Courthouse
Electronic Notice

Bradley J. Hohner #619839
Stanley Correctional Inst.
100 Corrections Dr.
Stanley, WI 54768

You are hereby notified that the Court has entered the following opinion and order:

2023AP53-CR

State of Wisconsin v. Bradley J. Hohner (L.C. #2020CF264)

Before Neubauer, Grogan and Lazar, JJ.

Summary disposition orders 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).

Bradley J. Hohner appeals pro se from an order denying his motion for sentence modification. He alleges the existence of new factors. He also complains that the circuit court denied his motion without allowing him the opportunity to file a reply to the State's response. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Hohner was convicted following guilty pleas to armed robbery, armed burglary, impersonating a peace officer with use of a dangerous weapon, and first-degree recklessly endangering safety with use of a dangerous weapon—all as a party to a crime. Hohner and a co-actor were accused of breaking into what they mistook for a drug dealer’s home. They identified themselves as narcotics officers, tied up the occupants, and demanded money. One of them also fired a gun steps away from a child’s crib.

On the first three counts, the circuit court imposed an aggregate sentence of ten years of initial confinement and ten years of extended supervision. On the last count, the court noted the close proximity of a bullet hole to the child’s crib and remarked, “for somebody who is almost shot ... I’m going to impose five and five consecutive.” Thus, for his crimes, Hohner received a total of fifteen years of initial confinement and fifteen years of extended supervision.

Two years after sentencing, Hohner filed a motion for sentence modification. In it, he claimed that he was not the one who discharged the gun, and this information constituted a new factor. He also argued that his post-sentence completion of various educational and correctional programs constituted a new factor. The State filed a response opposing the motion. The circuit court subsequently denied the motion, concluding that Hohner had not shown a new factor.² This appeal follows.

A circuit court may modify a sentence upon a defendant’s showing of a new factor. *State v. Harbor*, 2011 WI 28, ¶35, 333 Wis. 2d 53, 797 N.W.2d 828. A new factor is “a fact or set of

² The circuit court also observed that Hohner’s motion was not filed within ninety days of sentencing as required by WIS. STAT. § 973.19. However, a motion for sentence modification based on new factors is not governed by that deadline and may be filed at any time. See *State v. Noll*, 2002 WI App 273, ¶12, 258 Wis. 2d 573, 653 N.W.2d 895.

facts highly relevant to the imposition of sentence, but not known to the [circuit court] 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.” *Id.*, ¶40 (quoting *Rosado v. State*, 70 Wis. 2d 280, 288, 234 N.W.2d 69 (1975)). Whether a fact or set of facts constitutes a new factor is a question of law that this court reviews independently. *See Harbor*, 333 Wis. 2d 53, ¶33.

Here, we are not persuaded that Hohner has demonstrated the existence of a new factor. As noted by the State, Hohner’s claim that he did not discharge the gun was not information unknown to the circuit court at the time of sentencing. Indeed, prior to sentencing, Hohner submitted a memorandum that took the same position.³ As for Hohner’s post-sentence completion of various educational and correctional programs, case law makes clear that such accomplishments, while commendable, do not constitute a new factor. *See State v. Krueger*, 119 Wis. 2d 327, 335, 351 N.W.2d 738 (Ct. App. 1984).

Hohner’s additional complaint about the circuit court denying his motion without allowing him the opportunity to file a reply fares no better. To begin, Hohner cites no direct legal authority showing that he was entitled to file a reply to the State’s response. In any event, we are not persuaded that filing a reply would have changed the outcome of the motion for the reasons mentioned. Accordingly, we affirm.⁴

³ In the memorandum, Hohner wrote that, while he “did not personally restrain or assault anyone, nor fire the weapon, he fully acknowledges that he actively participated in the entire event and is equally responsible.” The circuit court referenced the memorandum in its sentencing remarks. Thus, it was presumably aware of Hohner’s position that he did not discharge the gun.

⁴ To the extent we have not addressed an argument raised by Hohner on appeal, the argument is deemed rejected. *See State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978).

Upon the foregoing reasons,

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

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

Samuel A. Christensen
Clerk of Court of Appeals