COURT OF APPEALS
DECISION
DATED AND FILED

April 9, 2013

Diane M. Fremgen
Clerk of Court of Appeals

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* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP1516-CR **Cir. Ct. No. 1999CF6043**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MICHAIAH A. BELLE,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: DENNIS R. CIMPL, Judge. *Affirmed.*

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Michaiah A. Belle, *pro se*, appeals an order denying his motion to modify his sentence. He argues that a change in sentencing legislation seven years before he was sentenced constitutes a "new factor," entitling him to sentence modification. We affirm.

¶2 A defendant is entitled to sentence modification if he or she shows the existence of a "'new factor.'" ***State v. Harbor***, 2011 WI 28, ¶35, 333 Wis. 2d 53, 72, 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.***, 333 Wis. 2d 53, ¶40 (citation omitted). Whether a fact or set of facts constitutes a new factor is a question of law. ***Id.***, 333 Wis. 2d 53, ¶33.

¶3 Belle contends that a statutory change in the parole laws in 1994, seven years before his sentencing, constitutes a new factor because the circuit court judge and the attorneys at his sentencing hearing were apparently not aware that WIS. STAT. § 302.11(1g) (2011-12)[1] had been amended, changing the mandatory release date for parole to a *presumptive* mandatory release date. Belle argues that this is a "new factor" because the change was "not known to the trial judge at the time of the original sentencing … because, even though it was then in it was unknowingly overlooked by all of the parties."

¶4 Belle premises his arguments on two points. First, he argues that the circuit court incorrectly believed when it sentenced him that he would serve only twenty-five percent of his sentence. We reject this contention because the sentencing court never said that Belle would serve only twenty-five percent of his sentence. The circuit court said Belle would "be *eligible* for parole consideration" after serving twenty-five percent of his sentence.

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

¶5 Second, Belle argues that the circuit court incorrectly believed that he would be paroled after serving sixty-seven percent of his sentence. The circuit court's only comment on the matter was: "You will be mandatorily released after you serve [sixty-seven] percent of the sentence[].... The parole commission must release you by the time you're 55." These neutral statements of fact, although incorrect, do not show that Belle's mandatory release date was "highly relevant to the imposition of [Belle's] sentence"; therefore, these statements do not constitute a new factor. *See* ***Harbor***, 333 Wis. 2d 53, ¶40 (a new factor must be highly relevant to the imposition of the sentence). Therefore, we affirm the circuit court's order denying Belle's motion to modify his sentence.

By the Court.—Order affirmed.

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