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DISTRICT II

October 1, 2025

To:

Hon. Heather R. Iverson
Circuit Court Judge
Electronic Notice

Kathleen E. Wood
Electronic Notice

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
Electronic Notice

Daniel D. Williams #680036
Racine Correctional Inst.
P.O. Box 900
Sturtevant, WI 53177-0900

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

2024AP1907-CR

State of Wisconsin v. Daniel D. Williams (L.C. #2017CF692)

Before Neubauer, P.J., 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).

Daniel D. Williams appeals a circuit court order denying his motion for sentence modification. 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 (2023-24).¹ We affirm.

In 2019, following Williams' guilty plea, Williams was sentenced for second-degree reckless homicide as party to a crime. In 2020, Williams, by counsel, filed a postconviction

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

motion, seeking to withdraw his plea. Following a hearing, the circuit court denied his motion. Williams did not appeal.

In 2023, Williams, by another counsel, filed a second motion to withdraw his guilty plea. The State responded that Williams' motion was procedurally barred because Williams failed to allege a sufficient reason for failing to raise this new claim in his earlier postconviction motion. The State also argued that Williams was not entitled to plea withdrawal. The circuit court denied Williams' motion, adopting the State's rationale as its own.

In 2024, Williams, by yet another counsel, filed a motion for sentence modification. He argued he was entitled to sentence modification because the circuit court's sentencing comments revealed the court was biased. The State responded that Williams' motion was untimely, and failed to identify a "new factor" that would entitle him to modification. The State also argued that Williams' motion was procedurally barred because Williams again failed to allege a sufficient reason for failing to raise this claim in his earlier postconviction motions. The State then asserted that, in any event, Williams did not establish the sentencing court was biased. The court again denied Williams' motion, adopting the State's rationale as its own.

On appeal, Williams, now pro se, renews his argument that he is entitled to sentence modification because the circuit court's sentencing comments revealed it was biased. In response, the State first argues we should affirm the circuit court because Williams' motion for sentence modification is either untimely or procedurally barred. Williams did not file a reply brief to respond to the State's arguments, and we deem them conceded. *See Schlieper v. DNR*, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994) (propositions asserted by a respondent on appeal and not disputed by the appellant in the reply brief are taken as admitted).

In any event, we conclude Williams’ motion for sentence modification is untimely. If a defendant wishes to challenge his sentence after sentencing, the defendant may either move for sentence modification within 90 days of sentencing, WIS. STAT. § 973.19(1)(a), or may file a postconviction motion with sentence modification as an issue within 60 days of the service of the transcript, § 973.19(1)(b), WIS. STAT. RULE 809.30(2)(h). After these statutory time limits have passed, a defendant may still invoke the inherent power of the circuit court to modify his sentence, but only based on the existence of a “new factor.” *State v. Noll*, 2002 WI App 273, ¶11, 258 Wis. 2d 573, 653 N.W.2d 895 (citation omitted) (“The court exercises its inherent power to modify a sentence only if a defendant demonstrates the existence of a ‘new factor’ justifying sentence modification.”). 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.” *Rosado v. State*, 70 Wis. 2d 280, 288, 234 N.W.2d 69 (1975).

Here, Williams argues he is entitled to sentence modification because the circuit court’s sentencing comments revealed it was biased. This information was available at the time of sentencing and is therefore not a “new factor” justifying sentence modification. Because Williams does not allege a new factor, he cannot invoke the court’s inherent authority to modify his sentence years after sentencing. *See Noll*, 258 Wis. 2d 573, ¶11. Instead, a sentence modification motion must follow the deadlines set forth in section WIS. STAT. § 973.19(1). *Id.*, ¶10. Because Williams’ motion was filed years after the WIS. STAT. § 973.19(1) deadlines lapsed, his motion is untimely. The court appropriately denied his motion.

Further, even if we construed Williams' sentence modification motion as another WIS. STAT. § 974.06 motion, Williams' claim would be procedurally barred. Section 974.06(4) prohibits a defendant from bringing a § 974.06 motion if the defendant has already brought a prior postconviction motion or direct appeal, and the defendant does not demonstrate a sufficient reason for failing to raise the issue earlier. *See* § 974.06(4); *State v. Escalona-Naranjo*, 185 Wis.2d 168, 185, 517 N.W.2d 157 (1994). In his current motion, Williams offered no explanation as to why he failed to raise the issue of judicial bias in his original postconviction motion. He has therefore not demonstrated a sufficient reason for failing to raise this issue earlier, and his motion is barred under § 974.06(4) and *Escalona-Naranjo*. The circuit court appropriately denied his motion.

Therefore,

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