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DISTRICT I

October 21, 2025

To:

Hon. Jeffrey A. Wagner
Circuit Court Judge
Electronic Notice

Hector Salim Al-Homsi
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Mitchell A. Boose 461558
Fox Lake Correctional Institution
P.O. Box 147
Fox Lake, WI 53933

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

2024AP382-CR

State of Wisconsin v. Mitchell A. Boose (L.C. # 2007CF2496)

Before White, C.J., Colón, P.J., and Donald, J.

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).

Mitchell A. Boose, pro se, appeals the 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.

This is Boose's fourth appeal before this court. *See State v. Boose (Boose I)*, No. 2009AP848-CR, unpublished slip op. (WI App Mar. 2, 2010); *State v. Boose (Boose II)*,

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

No. 2011AP2050, unpublished slip op. (WI App Oct. 16, 2012); *State v. Boose (Boose III)*, No. 2015AP2446-CR, unpublished op. and order (WI App Apr. 26, 2017). The facts underlying Boose’s convictions for first-degree reckless homicide while armed and possession of a firearm as a felon were provided in our prior opinions and will not be restated.

For purposes of this appeal, it suffices to state that the circuit court sentenced Boose for the aforementioned crimes in 2008. In 2023, Boose filed the postconviction motion underlying this appeal. In his motion, Boose asserted that his 2002 blood disorder diagnosis is a new factor justifying sentence modification. Boose additionally asserted that his accomplishments during his time in prison were relevant to the court’s determination as to whether to grant his motion.

The postconviction court denied Boose’s motion without a hearing, concluding that he failed to show a new factor. This appeal follows.

A circuit court may modify a defendant’s sentence upon a showing of a new factor. *State v. Harbor*, 2011 WI 28, ¶35, 333 Wis. 2d 53, 797 N.W.2d 828. The analysis involves a two-step process: (1) the defendant must demonstrate by clear and convincing evidence that a new factor exists; and (2) the defendant must show that the new factor justifies sentence modification. *Id.*, ¶¶36-38. A new factor is a fact or set of facts highly relevant to the imposition of sentence, but not known to the court at the time of sentencing, either because it was not then in existence or because it was unknowingly overlooked by all of the parties. *Id.*, ¶¶35, 40. “[I]f a court determines that the facts do not constitute a new factor as a matter of law, ‘it need go no further in its analysis’ to decide the defendant’s motion.” *Id.*, ¶38 (citation omitted).

Whether a particular fact or set of facts constitutes a new factor is a question of law. *Id.*, ¶36. If a new factor is present, the circuit court must exercise its discretion to determine whether

that new factor justifies modification of the defendant's sentence. *Id.*, ¶37. We review that decision for an erroneous exercise of discretion. *Id.*, ¶33.

Boose has not established by clear and convincing evidence that his pre-existing blood disorder constitutes a new factor. The State highlights the fact that Boose's mother referenced his blood disorder at his sentencing hearing and indicated that it made Boose susceptible to bleeding. In his postconviction brief and on appeal, Boose acknowledges that he was diagnosed in 2002, well before the underlying crimes occurred. Boose knew of his condition but opted not to mention it in his sentencing comments. A fact in existence at the time of sentencing is new only if it has been overlooked by *all* of the parties; information known by the defendant at the time of sentencing is not a new factor. *State v. Crockett*, 2001 WI App 235, ¶14, 248 Wis. 2d 120, 635 N.W.2d 673; *State v. Kluck*, 210 Wis. 2d 1, 7, 563 N.W.2d 468 (1997).

Moreover, Boose failed to sufficiently explain why his medical condition is "highly relevant" to his sentence. In this regard, Boose offers only a conclusory statement that his condition is highly relevant because it relates to his character. We do not develop arguments for parties. *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (explaining that this court does not address unsupported and undeveloped arguments).

In his postconviction motion, Boose asked the circuit court to consider his good performance in prison. He does not renew the claim on appeal; consequently, we deem it abandoned. *A.O. Smith Corp. v. Allstate Ins. Cos.*, 222 Wis. 2d 475, 491, 588 N.W.2d 285 (Ct. App. 1998). Were it not abandoned, we would have concluded that Boose's rehabilitative progress is not a new factor that warrants sentence modification. It is well established that postsentencing rehabilitation is not a new factor. See *State v. Champion*, 2002 WI App 267,

¶¶6, 17, 258 Wis. 2d 781, 654 N.W.2d 242, *abrogated on other grounds by Harbor*, 333 Wis. 2d 53.

Therefore,

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.

Samuel A. Christensen
Clerk of Court of Appeals