OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

December 17, 2025

To:

Hon. Bryan D. Keberlein
Circuit Court Judge
Electronic Notice

Desiree Bongers
Clerk of Circuit Court
Winnebago County Courthouse
Electronic Notice

Laura M. Force
Electronic Notice

Kathleen E. Wood
Electronic Notice

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

2024AP974-CR State of Wisconsin v. Bart M. Klein (L.C. #2022CF327)

Before Gundrum, 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).

Bart M. Klein appeals from a judgment of conviction entered after he pled guilty to ten counts of possession of child pornography contrary to WIS. STAT. § 948.12(1m) (2023-24)[1] and from an order of the circuit court denying his motion for postconviction relief without an evidentiary hearing. Klein argues he established the existence of a new factor relevant to sentencing and that the court therefore erred in denying his postconviction motion for sentence modification without a hearing. Based upon our review of the briefs and Record, we conclude at

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

conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm.

The Complaint states the following. In late April 2022, police received a tip from the National Center for Missing and Exploited Children indicating that a file depicting the sexual assault of a child was linked to an IP address the Oshkosh Police Department determined to be associated with Klein. Officers executed a search warrant for Klein's residence and seized an electronic tablet containing 30 videos of child pornography. During the investigation, Klein went to the Oshkosh Police Department and turned his cell phone over to law enforcement. A detective noticed that prior to handing it over, Klein began deleting photos off the phone, and during the detective's initial review of the phone's contents, he noted "that Klein was having a conversation with a juvenile male party and Klein was pretending to be a juvenile." The State charged Klein with ten counts of possession of child pornography, and Klein pled guilty to all ten counts.

At sentencing, the circuit court noted various mitigating factors, including Klein's history of being bullied and assaulted multiple times, Klein's cooperation and willingness to enter pleas, his "remorse and repentance[,]" his employment history, his apparent ability "to understand some of his deficiencies," and that he has "a family that he truly cares for[.]" The court also acknowledged that while Klein did not have "a significant number of [prior] convictions," the nature of his prior convictions was "significant[,]" and that "this case is more significant than most possession of child pornography cases … [because] there was some active engagement with what appeared to be a juvenile." However, the court was concerned Klein may not possess "a full understanding of what's occurred and what [his] role was in it" and that Klein "wasn't able to complete [sex offender] treatment based on his cognition." Klein's having "attempt[ed]

to delete things [on his phone] while talking with the detective" also concerned the court, as it indicated that Klein "knew what he was doing was wrong and yet [had] engaged in that course of conduct." Having considered the foregoing, the court sentenced Klein to nine years of initial confinement and ten years of extended supervision on each count, with each count running concurrent to the others but consecutive to any other sentences Klein was serving.[2]

In April 2024, Klein filed a motion for postconviction relief pursuant to WIS. STAT. RULE 809.30(2)(h) seeking modification of his sentence based on what he alleged was a new factor—Dr. Ryan Mattek's postsentencing psychosexual examination and report, which Klein asserted "demonstrates that [Klein] is unlikely to reoffend sexually if he receives a sufficient course of sex offender treatment and makes positive life changes." The circuit court entered an order denying Klein's motion because "no new factor exists warranting sentencing modification." Klein appeals.

"A circuit court has the 'inherent power' to modify a previously imposed sentence after the sentence has commenced, but it may not reduce a sentence merely upon 'reflection' or second thoughts." ***State v. Grindemann***, 2002 WI App 106, ¶21, 255 Wis. 2d 632, 648 N.W.2d 507 (internal citation omitted). It may modify a sentence, however, when presented with a new factor. ***Id.*** (citation omitted). "Whether a fact or set of facts presented by the defendant constitutes a 'new factor' is a question of law" we review independently. ***State v. Harbor***, 2011 WI 28, ¶33, 333 Wis. 2d 53, 797 N.W.2d 828. If an appellant demonstrates a new factor exists,

[2] The circuit court initially sentenced Klein to 9 years of initial confinement and 15 years of extended supervision on each count; however, the court later amended the term of extended supervision to 10 years, as that was the maximum allowed.

"[t]he determination of whether that new factor justifies sentence modification is committed to the discretion of the circuit court, and we review such decisions for erroneous exercise of discretion." ***Id.***

We must review whether Klein identified a new factor that would warrant an evidentiary hearing and, if he did identify a new factor, whether the circuit court erroneously exercised its discretion in denying his motion. Klein contends the postsentencing psychological evaluation and subsequent report provided "new information or the correction of misinformation related to his sex offender evaluations, risk level[,] and potential for rehabilitation." Specifically, he asserts the report indicated that "he [is] unlikely to reoffend sexually if he were to receive a sufficient course of sex offender treatment" and "that he is likely to be successful in treatment, despite having cognitive challenges that affected his earlier treatment." He characterizes this information regarding "the existence of effective treatment methods—and the applicability of such treatments to [Klein]" as "significant new information that the court did not have at the time of sentencing." Klein also asserts the court erroneously exercised its discretion when it denied his motion because it did not hold a hearing, and did nothing more than "sign[] a two-sentence order" the State submitted in opposition to his motion. We reject his contentions.

First, a "new factor" is a "fact or set of facts highly relevant to the imposition of sentence, but not known to the [circuit court] 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). In ***State v. Sobonya***, we explained that an expert's "postsentencing report is not a 'fact or set of facts' that were not in existence or unknowingly overlooked by the parties at the time of sentencing; the postsentencing report is an expert's opinion based on previously known or

knowable facts." 2015 WI App 86, ¶7, 365 Wis. 2d 559, 872 N.W.2d 134. Here, the only purported new fact or factor Klein points to is Dr. Mattek's expert opinion from the postsentence psychosexual evaluation; however, Klein fails to identify any new information upon which Dr. Mattek based his opinion. Rather, Dr. Mattek's opinion was based "on previously known or knowable facts." *See* ***id.*** Accordingly, even if we assume "the nonconclusory facts alleged in [the] postconviction motion are true[,]" *see* ***State v. Schueller***, 2024 WI App 40, ¶28, 413 Wis. 2d 59, 10 N.W.3d 423, those allegations are nevertheless insufficient to establish a new factor under the circumstances presented here.[3]

Second, because Klein failed to establish the existence of a new factor, he was not entitled to a hearing, and the circuit court therefore did not erroneously exercise its discretion in denying Klein's motion. *See* ***Harbor***, 333 Wis. 2d 53, ¶38 ("[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." (citation omitted)). Klein failed to prove any court error. Accordingly, we affirm.

Therefore,

[3] Moreover, we note that the State Public Defender's office provided a sentencing memorandum on Klein's behalf that indicated Klein "would be a good candidate for the adaptive Sex Offender Treatment program[.]" This cuts against Klein's argument that Dr. Mattek's report, in essence, provides new information regarding Klein's ability to successfully complete sex offender treatment. That distinguishes this case from ***State v. Schueller***, 2024 WI App 40, 413 Wis. 2d 59, 10 N.W.3d 423, which Klein relies upon. In ***Schueller***, "[t]here was no argument or evidence presented at the [sentencing] hearing regarding the treatment options, if any, that existed to reduce or resolve PTSD [Post-Traumatic Stress Disorder] symptoms, or the effectiveness of any such treatments." ***Id.***, ¶10. The lack of any such information at the sentencing hearing in ***Schueller*** was significant in regard to our conclusion that Schueller had established a new factor existed when he alleged facts that "if true, [would] establish … PTSD in veterans is now highly treatable and may even be curable, and that this set of facts was unknown to the sentencing court." ***Id.***, ¶2.

IT IS ORDERED that the judgment and order of the circuit court are 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