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DISTRICT I

January 13, 2026

To:

Hon. Jeffrey A. Wagner
Circuit Court Judge
Electronic Notice

Angela Conrad Kachelski Electronic Notice

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

Kathleen E. Wood
Electronic Notice

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

2024AP1523-CR State of Wisconsin v. Duane F. Miller (L.C. # 2008CF3020)

Before White, C.J., Colón, P.J., and Geenen, 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).

Duane F. Miller appeals from an order denying his postconviction 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.

Miller was sentenced in 2008 after pleading guilty to first-degree reckless homicide. The charge stemmed from an incident where Miller pointed a gun at the victim outside of a

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

Milwaukee bar and fired. Police officers recovered seven bullet casings at the scene. The victim died as a result of multiple gunshot wounds.

The circuit court sentenced Miller to 36 years of initial confinement and 20 years of extended supervision.² In doing so, the court explained its rationale and indicated that this was a “mindless shooting.” Additionally, the court remarked that this was “as close to intentional homicide as one can get” and that what Miller did was carry out an execution—“this was clearly a cold-blooded killing.” The court refuted the claim that Miller’s actions were related to self-defense.

The circuit court acknowledged mitigating factors in Miller’s case, including his challenging childhood, characterized by parental neglect and a lack of stability. The court noted that, while Miller’s childhood may have influenced his actions, it also underscored why he remained a danger to the community. The court stated that the issue of Miller’s childhood was either unfixable or could not be easily or quickly remedied.

In weighing the various sentencing considerations, the circuit court explained, “it is the seriousness of the crime and the costs of the crime that are clearly the most important.” The court stated that the purpose of the sentence was “to impose fair punishment on Mr. Miller for the awful act that he committed on behalf of the larger community [as well as] the surviving family and [the victim],” while also attempting to deter others.

² The Honorable John Franke presided over Miller’s plea and sentenced him. We refer to him as the circuit court. The Honorable Jeffrey A. Wagner issued the order denying Miller’s motion for sentence modification. We refer to him as the postconviction court.

In 2024, Miller filed the underlying postconviction motion for sentence modification. He asked the postconviction court to reduce his initial confinement time from 36 years to 22 years based on the following new factors: (1) his post-sentencing mental health issues and eventual diagnosis with post-traumatic stress disorder; and (2) his repressed memories of abuse, which were not revealed until he underwent therapy in 2022.

The postconviction court denied Miller's motion without a hearing. In its written decision, the court detailed various arguments and remarks that were made during Miller's sentencing hearing and concluded "the information presented in [Miller]'s postconviction motion simply does not justify sentence modification." Miller's character and background, the court explained, were not what drove the length of the sentence. The court continued:

Instead, the [circuit] court was extremely clear that the seriousness of the crime and the "costs of the crime" were the most significant sentencing considerations. The [circuit] court specified that the defendant's actions in this case constituted a "truly aggravated reckless homicide," for which it had "a hard time justifying anything less than a maximum sentence given the gravity of the crime." Even so, the court did not impose the full sentence available to it.

And now, despite the tragic, additional information about the abuse the defendant suffered at his parents' hands and the conditions with which he has been diagnosed, the court finds that sentence modification is not warranted. The defendant's diagnoses and the abuse he has recently recalled through his efforts in therapy provide more context to the defendant's character, but that information does not change the seriousness of the crime or the costs of the crime for the victim and the victim's family.

This appeal follows.

"Deciding a motion for sentence modification based on a new factor is a two-step inquiry." *State v. Harbor*, 2011 WI 28, ¶36, 333 Wis. 2d 53, 797 N.W.2d 828. Whether a "fact or set of facts" "constitutes a 'new factor' is a question of law." *Id.* A "new factor" is a fact

“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).

If a new factor exists, the defendant is not automatically entitled to sentence modification. *Harbor*, 333 Wis. 2d 53, ¶37. “Rather, if a new factor is present, the circuit court determines whether that new factor justifies modification of the sentence. In making that determination, the circuit court exercises its discretion.” *Id.* (citation omitted). We will sustain the court’s decision “if it is the product of a rational mental process and is ‘demonstrably ... made and based upon the facts appearing in the record and in reliance on the appropriate and applicable law.’” *State v. Verstoppen*, 185 Wis. 2d 728, 741, 519 N.W.2d 653 (Ct. App. 1994) (omission in *Verstoppen*; citation omitted).

For purposes of this appeal, the State assumes that Miller presented new factors for the postconviction court to consider. We will do the same. Consequently, the only question is whether new factors justify modification of Miller’s sentence.

Miller argues that the circuit court erroneously exercised its discretion by focusing only on the severity of the original offense. He contends that, at sentencing, the circuit court was concerned about his background, and because the new factors offer additional information about that background, Miller claims that they “should have been considered in the calculation of the postconviction court regarding whether to grant a modification.”

As detailed above, the postconviction court did consider the additional information Miller presented before concluding that it did not justify sentence modification. Miller’s dissatisfaction

with the weight the postconviction court gave to his new factors is not grounds for this court to overturn its decision as erroneous exercise of discretion.

The postconviction court considered the facts in the record and explained that, in light of all of the facts, the sentence imposed remained the fair sentencing disposition. We conclude that the court properly exercised its discretion when it denied Miller's motion for sentencing modification.

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*