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DISTRICT II

February 4, 2026

To:

Hon. Michael P. Maxwell
Circuit Court Judge
Electronic Notice

Monica Paz
Clerk of Circuit Court
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Brandon A. Morgan, #707207
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Waupun, WI 53963-0351

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

2024AP1405	State of Wisconsin v. Brandon A. Morgan (L.C. #2020CF1234)
2024AP1406	State of Wisconsin v. Brandon A. Morgan (L.C. #2020CF1309)

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).

Brandon A. Morgan appeals, pro se, from identical circuit court orders, entered in each of these cases, denying his motion for sentence modification and postconviction relief. Morgan argues the court's sentence was unduly harsh, that he has alleged new factors sufficient to warrant sentence modification, and that both his trial counsel and postconviction counsel were ineffective. Based upon our review of the briefs and Record, we conclude at conference that this

case is appropriate for summary disposition.[1] *See* WIS. STAT. RULE 809.21 (2023-24).[2] We affirm.

The State charged Morgan with one count of attempting to flee or elude an officer in one criminal case and four counts of felony bail jumping and five counts of burglary or attempted burglary in another. Morgan pled guilty to attempting to elude and pled no contest to two burglary counts and one count of bail jumping pursuant to a global agreement. The remaining charges were dismissed and read in. The circuit court ordered a pre-sentence investigation (PSI) report.

During his PSI interview, the PSI writer noted Morgan "had a very nonchalant attitude about his present situation giving the impression he doesn't really care about the potential outcome." The writer indicated that Morgan "is likely to rationalize his criminal behavior" and "is unlikely to accept responsibility for his actions and may minimize the seriousness and consequences of his criminal behavior." The report further noted Morgan "didn't appear to have any outward remorse for the offenses[.]"

At the sentencing hearing, the circuit court asked defense counsel whether there were inaccuracies within the PSI report or any other issues that needed to be addressed, and defense counsel indicated there were not. Defense counsel stated Morgan had not personally viewed the PSI report but that counsel had reviewed the document with him "verbally[.]"

[1] On January 20, 2026, pursuant to WIS. STAT. RULE 809.20, Morgan filed a motion for advancement of case for decision/order. Based upon the release of this opinion in the ordinary course of appellate practice, we deny the motion as moot.

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

Weighing the sentencing factors, the circuit court concluded "the severity of the offenses here is very high[,]" noting Morgan crashed while trying to escape police, and that he repeatedly targeted the same victims "over and over and over again[.]" The court also expressed concern regarding Morgan's character and the fear that Morgan would continue to pose a "risk to the community[,]" due to the statements that he made to the PSI writer during his interview.

The circuit court imposed consecutive sentences for the fleeing and two burglary counts, consisting of five and one-half years of initial confinement and eight years of extended supervision. On the felony bail-jumping count, the court imposed a concurrent sentence of two years of initial confinement and two years of extended supervision. The court found Morgan eligible for the Challenge Incarceration Program but not for the Substance Abuse Program.

After sentencing, the Wisconsin Department of Corrections (DOC) created an inmate classification report for Morgan, which indicated Morgan is "[h]igh" priority for substance abuse disorder programming. The report reflects Morgan stated he had used alcohol and marijuana heavily following his brother's death in 2020. In January 2023, Morgan filed a postconviction motion in which he requested the circuit court determine him eligible for substance abuse programming on the basis that the DOC report was a new factor.

The circuit court denied the motion after concluding the DOC report was not a new factor. The court found that, while the DOC's "diagnosis … is perhaps new, … th[e] knowledge that [Morgan] had [on which the diagnosis was based] is not new." Morgan appealed, and this court affirmed, concluding the DOC's determination that drug and alcohol treatment was a high priority for Morgan was "an altered view of the same facts known and reviewed by the sentencing court," and thus not a new factor. ***State v. Morgan***, Nos. 2023AP1061-CR and

2023AP1062-CR, unpublished op. and order at 4 (WI App Mar. 27, 2024); *see also* ***State v. Grindemann***, 2002 WI App 106, ¶¶24-25, 255 Wis. 2d 632, 648 N.W.2d 507.

Morgan filed a pro se motion for sentence modification in December 2023, and then filed an "Amended Motion for Sentence Modification and/or Postconviction Relief" in April 2024. In the amended motion, Morgan argued he was entitled to a reduction in sentence because the sentencing court erroneously exercised its discretion in imposing an unduly harsh sentence, that new sentencing factors existed, that trial counsel was ineffective in not seeking a continuance to review the PSI report in person with Morgan and in not obtaining information to correct or otherwise mitigate damaging information in the PSI report, and that postconviction counsel was ineffective for not asserting a claim for ineffectiveness of trial counsel on that basis in the original postconviction motion. The circuit court issued a written order denying the amended motion, concluding Morgan had not asserted the existence of a new factor, that his argument "about the sentence being harsh [was] without merit," and that Morgan's trial and postconviction attorneys "p[er]formed their duties within their responsibilities[.]" Morgan appeals.

Whether the defendant has established the existence of a new factor for the purpose of a request for sentence modification is considered de novo. ***State v. Samsa***, 2015 WI App 6, ¶14, 359 Wis. 2d 580, 859 N.W.2d 149. "We need finality in our litigation." ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). Under WIS. STAT. § 974.06, a defendant is required to raise "all grounds regarding postconviction relief in his or her original, supplemental or amended [postconviction] motion" unless a "sufficient reason" exists for not doing so. ***Escalona-Naranjo***, 185 Wis. 2d at 177. Whether a defendant's claims are barred by procedural rules is a question of law this court determines de novo. *See* ***State v. Kletzien***, 2011 WI App 22, ¶9, 331 Wis. 2d 640, 794 N.W.2d 920.

The circuit court did not err when it denied Morgan's request for sentence modification because the sentence imposed was not unduly harsh and because a claim for sentence modification cannot be raised in a postconviction motion under WIS. STAT. § 974.06. Morgan asserts that the sentencing court erroneously exercised its discretion by not considering mitigating factors and not explaining its decision to impose consecutive sentences. A sentencing court properly exercises its discretion when it engages in a reasoning process that "depend[s] on facts that are of record or that are reasonably derived by inference from the record" and imposes a sentence "based on a logical rationale founded upon proper legal standards." ***McCleary v. State***, 49 Wis. 2d 263, 277, 182 N.W.2d 512 (1971).

Here, the circuit court properly considered the relevant factors, explained its rationale, and did not impose an unduly harsh sentence. The court imposed 5 and one-half years of initial confinement and 8 years of extended supervision, despite Morgan's total exposure of 19 and one-half years of initial confinement and 15 years of extended supervision. *See* ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449 ("A sentence well within the limits of the maximum sentence is unlikely to be unduly harsh or unconscionable."). Further, as the court recognized, the severity of Morgan's offenses was "very high." Morgan was involved in a police chase in which a minor was present in his vehicle and in which he ultimately crashed while traveling at a high rate of speed. Additionally, Morgan burglarized "the same place night after night[,]" effectively "revictimizing" the same individuals "over and over and over again[.]"

Additionally, the circuit court, in considering Morgan's character, noted it was "concerned" about the contents of the PSI report and stated "the person that's being interviewed usually tries to put their best foot forward, and here it sounds like you're trying to say well, that's not really me, yeah, I have issues and stuff but that's why I was so aggressive with this writer[.]"

The court indicated that, in its view, Morgan "didn't get it" and that "[s]ome of the attitudes" Morgan "expressed [in the PSI report] just don't seem to show that" Morgan has "gotten [criminal activity] out of [his] system[.]" The court considered the required sentencing factors. *See* ***State v. Fisher***, 2005 WI App 175, ¶20, 285 Wis. 2d 433, 702 N.W.2d 56 ("The court must consider three primary factors in sentencing: (1) the gravity of the offense, (2) the character of the offender, and (3) the need for protection of the public.").

Similarly without merit is Morgan's argument that the circuit court failed to satisfy the mandate in ***State v. Gallion*** that "[c]ourts must … identify the factors that were considered in arriving at the sentence and indicate how those factors fit the objectives and influence the decision[,]" on the basis that the court did not explicitly state the reason for imposing consecutive sentences. 2004 WI 42, ¶43, 270 Wis. 2d 535, 678 N.W.2d 197. Morgan "is not entitled to this degree of specificity." ***Fisher***, 285 Wis. 2d 433, ¶22. The ***Gallion*** court "sought to remedy … the mechanistic application of the three sentencing factors, in which a circuit court simply described the facts of the case, mentioned the three sentencing factors, and imposed a sentence." ***Fisher***, 285 Wis. 2d 433, ¶22. Here, the court explicitly considered the three mandatory sentencing factors and applied them to the facts of the case, concluding Morgan's offenses were severe, his character was concerning based upon his statements to the PSI report writer, and Morgan posed a continuing risk to the public.

Further, in addition to lacking merit, Morgan's claim for sentence modification was not properly before the circuit court because erroneous exercise of discretion in sentencing claims "cannot be raised under [WIS. STAT. §] 974.06 … when a sentence is within the statutory maximum or otherwise within the statutory power of the court." ***Smith v. State***, 85 Wis. 2d 650, 661, 271 N.W.2d 20 (1978). Instead, the proper avenue for relief is direct appeal or a motion for

sentence modification under WIS. STAT. § 973.19. ***Smith***, 85 Wis. 2d at 661. The court did not err in imposing Morgan's sentence and correctly concluded that Morgan's claims for sentence modification were procedurally barred.[3]

Next, Morgan failed to demonstrate that his favorable jail conduct and DOC anger management reports constitute a new factor for purposes of sentence modification. A defendant may seek modification of his sentence by demonstrating the existence of a new factor which warrants sentence modification. ***State v. Noll***, 2002 WI App 273, ¶11, 258 Wis. 2d 573, 653 N.W.2d 895. The defendant, however, must show that a new factor exists "by clear and convincing evidence" and "that the new factor justifies modification of the sentence." ***State v. Harbor***, 2011 WI 28, ¶¶36, 38, 333 Wis. 2d 53, 797 N.W.2d 828. A new factor is "a fact or set of facts highly relevant to the imposition of sentence" that is not known to the circuit court at the time of 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.***, ¶40 (citation omitted).

Neither the favorable jail conduct report nor the DOC anger management screening constitute new factors because they are not highly relevant to the imposition of sentence. The stated reason the circuit court found the PSI report to be damaging to its assessment of Morgan's character and attitude was the nature of Morgan's own statements to the PSI writer. It is unclear

[3] Morgan also raises a constitutional challenge under the Eighth Amendment of the United States Constitution that his sentence amounts to cruel and unusual punishment. However, this claim will not be discussed further because Morgan failed to articulate a reason, let alone a sufficient reason, that he did not raise this challenge in his original postconviction motion. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 ("We may decline to review issues inadequately briefed.").

how these concerns would be mitigated by favorable reports from the DOC because the court's reasoning was not based upon custodial conduct but upon Morgan's own attitudes.

Finally, Morgan asserts that his trial counsel rendered ineffective assistance when he failed to request a continuance for the purpose of reviewing the PSI report in person with Morgan and when he failed to investigate potential mitigating information, specifically, the favorable jail conduct report and the DOC anger management screening, which Morgan asserts demonstrates he was compliant while in custody. Morgan also asserts this claim is not procedurally barred due to the alleged ineffectiveness of his postconviction counsel, in his not pursuing the trial counsel ineffectiveness claim, and that it constitutes a sufficient reason for not bringing the claim in his original postconviction motion.

"In some instances, ineffective assistance of postconviction counsel may be a sufficient reason for failing to raise an available claim in an earlier motion or on direct appeal." ***State v. Romero-Georgana***, 2014 WI 83, ¶36, 360 Wis. 2d 522, 849 N.W.2d 668. However, bare allegations of ineffective assistance do not constitute a sufficient reason for failing to bring an earlier claim, instead, the defendant is required to make factual allegations demonstrating that counsel's "performance was deficient" and "that the deficient performance prejudiced the defense." ***State v. Balliette***, 2011 WI 79, ¶63, 336 Wis. 2d 358, 805 N.W.2d 334 (quoting ***Strickland v. Washington***, 466 U.S. 668, 687 (1984)). To show deficient performance, the defendant "must demonstrate that the claims he wishes to bring are clearly stronger than the claims … actually brought." ***Romero-Georgana***, 360 Wis. 2d 522, ¶4. To show prejudice, the defendant must also demonstrate that there was a reasonable probability that, had postconviction counsel brought the asserted claim, the requested relief would have been granted. ***Balliette***, 336 Wis. 2d 358, ¶70. Morgan has not made either of these showings.

Morgan characterizes the review of the PSI report between himself and trial counsel as Morgan being "forced to listen to his attorney's summary of the report" and Morgan "not actually see[ing] what was written[.]" Citing to ***State v. Anderson***, 222 Wis. 2d 403, 588 N.W.2d 75 (Ct. App. 1998), he suggests that Wisconsin law requires counsel to seek an adjournment whenever the defendant has not had an opportunity to personally review a PSI report. It is on this basis Morgan argues the claim that his trial counsel was ineffective for failing to request an adjournment was "clearly stronger" than the claim trial counsel actually raised. However, the Record reflects that Morgan was familiar with the contents of the PSI report. Further, the holding in ***Anderson*** is far narrower than Morgan's argument suggests.

In ***Anderson***, counsel for the defendant advised the sentencing court he had received the PSI report less than an hour prior to the sentencing hearing, and the report contained serious allegations about the defendant which had already been investigated and found to be inaccurate. 222 Wis. 2d at 405-06. However, when the court offered to adjourn the sentencing hearing in order to give the defense more time to prepare, the defendant declined to take that opportunity, and the court proceeded with sentencing. ***Id.*** at 406. Anderson received a "substantial sentence[,]" and this court determined that sentence was based in part upon some of the false information in the PSI report. ***Id.*** at 411. Under those circumstances, this court concluded that counsel was ineffective for failing to accept the sentencing's court offer to adjourn. ***Id.*** Nothing in ***Anderson*** suggests that counsel is per se ineffective when a defendant is not presented with an opportunity to personally review the contents of a PSI report.

Moreover, Morgan does not dispute counsel's statement that he reviewed the PSI report with Morgan "verbally[.]" Nor does Morgan allege what portion or portions of the PSI report counsel failed to convey to him. In addition, a review of the Record indicates the most damaging

aspect of the PSI report, from the circuit court's perspective, were Morgan's own statements to the PSI writer which the court concluded were indicative of poor character and a continuing "risk to the community." For these reasons, the claim that trial counsel was ineffective was not "clearly stronger" than the claim for sentence modification. Consequently, Morgan has not demonstrated there was a sufficient reason for failing to raise this claim in his original postconviction motion. Morgan's claims are procedurally barred, and the court did not err when it denied his motion for postconviction relief.

IT IS ORDERED that the orders of the circuit court are summarily affirmed pursuant to 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