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DISTRICT III

February 17, 2026

To:

Hon. Robert R. Russell
Circuit Court Judge
Electronic Notice

Nicholas DeSantis Electronic Notice

Thomas S. Barker
Clerk of Circuit Court
Lincoln County Courthouse
Electronic Notice

Laura M. Force
Electronic Notice

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

2024AP2441-CR

State of Wisconsin v. Adam R. Hess (L. C. No. 2018CF47)

Before Stark, P.J., Hruz, and Gill, 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).

Adam R. Hess appeals from a judgment of conviction entered after the revocation of his probation and 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 For the reasons that follow, we summarily affirm.

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

In March 2018, the State charged Hess with exposing genitals to a child and disorderly conduct, both counts as a repeater. The criminal complaint alleged that Hess had exposed his genitals to a ten-year-old neighbor who was walking past his van with her seven-year-old sister. The complaint further alleged that Hess “had previously exposed his naked body” to the ten-year-old child “on numerous occasions” and that police had received a prior complaint about Hess “masturbating in his window.”

Hess entered a guilty plea to the exposing genitals charge, pursuant to a plea agreement, and the disorderly conduct charge was dismissed and read in.² Consistent with the parties’ joint recommendation, the circuit court withheld sentence on the exposing genitals charge and placed Hess on probation for four years, consecutive to his sentence in Lincoln County Case No. 2018CF116.³

Hess began serving his term of probation in this case in June 2023, but his probation was revoked in August 2023 based on several rule violations, including the possession of methamphetamine. Hess therefore returned to the circuit court for sentencing after revocation on the exposing genitals charge.⁴ At the sentencing after revocation hearing, the State recommended three years of initial confinement followed by three years of extended supervision.

² The plea agreement also encompassed a second case against Hess, Lincoln County Case No. 2018CF116, in which Hess entered a guilty plea to one count of stalking (victim under age 18), as a repeater, and 3 additional charges were dismissed and read in. The charges in Case No. 2018CF116 were based on allegations that, while released on bond in the instant case, Hess had followed a 13-year-old girl through a grocery store and touched her buttocks.

³ The Honorable Jay R. Tlusty presided over Hess’s original sentencing hearing.

⁴ The Honorable Robert R. Russell presided over Hess’s sentencing after revocation hearing and subsequently denied Hess’s postconviction motion for sentence modification.

In support of that recommendation, the State emphasized the need for protection of the public, citing Hess's lengthy criminal record, which included several sex crimes, and the fact that Hess had committed multiple violations of his rules of probation just one week after signing those rules. Hess's counsel, in turn, recommended six to nine months of jail time, arguing that Hess's "biggest issue right now is addiction to methamphetamine," for which he could receive treatment in the community.

The circuit court followed the State's recommendation and sentenced Hess to three years of initial confinement followed by three years of extended supervision. During its sentencing remarks, the court began by emphasizing the seriousness of the offense. The court then observed that Hess had not taken advantage of opportunities to "get ... help" in the community and that he had over 20 violation reports since his release from prison in 2021, which showed that he was "just not getting it." As a result, the court stated that following the defense's recommendation would unduly depreciate the severity of Hess's actions.

The circuit court next explained that its "[n]umber one" objective in sentencing Hess was "protecting the public from crimes like this." Based on Hess's poor track record on extended supervision and probation, the court concluded that the only way to protect the public from Hess was a period of confinement in prison.

The circuit court then stated that its "number two" sentencing objective was "allowing ... Hess to get the treatment that he needs in a confined setting." The court found that there was "no way" Hess would "comply with any programming in the community," reasoning that Hess was "given a long period on supervision to do that" and "didn't take advantage of what was offered to [him]." The court stated, "[W]hile you're in a confined setting, you will be

offered programming and I would hope that there's better success with that programming in prison than the Department of Corrections had with you on probation." The court made Hess eligible for both the Substance Abuse Program and the Challenge Incarceration Program.

Finally, the circuit court identified "punishment" as its third sentencing objective, stating that while Hess's sentence "isn't all about punishment," "[t]here has to be a punitive measure to what the Court does." Ultimately, the court stated:

Your prior record coupled with the serious nature of this offense all weigh in favor of a prison sentence. Your degree of culpability for this offense, which is high. The need for close rehabilitative control, which is high. The Court has considered the young age of the victims for this crime. Again, a jail sentence just makes no sense to this Court, a jail sentence would be served within short order and it would put you in the community, ... and quite frankly, I don't think that's where you need to be until you get some counseling and treatment in the prison system.

The court later entered an amended judgment of conviction reducing the extended supervision portion of Hess's sentence to two years, the maximum amount permitted by statute.

Hess subsequently filed a postconviction motion, arguing that new information regarding his treatment opportunities in prison constituted a new factor warranting sentence modification. More specifically, Hess asserted that he will not have the opportunity to participate in sex offender treatment while incarcerated because the institution where he is housed does not offer sex offender treatment that is modified for his learning disability. Hess also argued that he will not receive substance abuse treatment in prison "until the end of his sentence." Hess therefore asked the circuit court to "reduce the term of his initial confinement by around one year so that he can receive drug treatment in an incarcerated setting, and then resume treatment in the community for both his AODA and [sex offender treatment] needs."

The circuit court denied Hess's motion for sentence modification, following briefing by the parties and a nonevidentiary hearing. The court concluded that Hess had failed to prove the existence of a new factor by clear and convincing evidence. The court explained that when it sentenced Hess after the revocation of his probation, it did not order Hess to complete any specific treatment programs while incarcerated. Instead, the court "simply indicated that rehabilitation was the second sentencing objective that the Court consider[ed] in crafting a sentence" for Hess, whereas "[t]he first sentencing objective was protecting the public and the final sentencing objective was punishment." The court noted that Hess's sentence remained consistent with those latter two sentencing objectives. The court further explained that when a court sentences a defendant to prison and "considers rehabilitation as a sentencing objective," it "is always hopeful that the defendant will complete programming as part of the [court-ordered] sentence," but the court is also aware that, "realistically, this does not always happen" because "[t]reatment providers in the prison system are overwhelmed and understaffed, prisons are overcrowded, [and] defendant[s] are not always motivated to seek treatment."

Hess now appeals, arguing that the circuit court erred by denying his postconviction motion for sentence modification. A circuit court has inherent authority to modify a criminal sentence upon the defendant's showing of a new factor—that is, a fact or set of facts that is highly relevant to the imposition of sentence, but was not known to the judge at the time of the original sentencing, either because it was not then in existence or because it was unknowingly overlooked by all of the parties. *State v. Harbor*, 2011 WI 28, ¶¶35, 40, 333 Wis. 2d 53, 797 N.W.2d 828.

"Deciding a motion for sentence modification based on a new factor is a two-step inquiry." *Id.*, ¶36. First, the defendant must show the existence of a new factor by clear and

convincing evidence, which is a question of law. *Id.* Second, if the defendant has established the existence of a new factor, the circuit court must exercise its discretion to determine whether the new factor justifies modification of the defendant's sentence. *Id.*, ¶37.

Here, we conclude the circuit court properly determined, as a matter of law, that Hess failed to establish the existence of a new factor by clear and convincing evidence. Hess cites the apparent unavailability of sex offender treatment in his institution and the fact that he will not receive substance abuse treatment until the end of his sentence. The record does not support a determination, however, that either the availability or the timing of any specific treatment programs in prison was highly relevant to the imposition of Hess's sentence. *See id.*, ¶40.

Hess emphasizes that the circuit court listed treatment as its secondary objective when imposing his sentence. What the court actually stated, however, was that its secondary sentencing objective was for Hess "to get the treatment that he needs *in a confined setting.*" (Emphasis added.) Consistent with that objective, the court specifically found that there was "no way" Hess would "comply with any programming in the community," given his past failures to avail himself of treatment opportunities while on supervision. The court's emphasis on the need for treatment in a confined setting was consistent with the court's statement that the "only way" to achieve its primary sentencing objective of protecting the public was "to have [Hess] in a confined setting."

Furthermore, the record shows that the circuit court did not sentence Hess with any particular treatment programs in mind. While Hess asserts that he will be unable to complete sex offender treatment in his current institution, the court did not specifically refer to sex offender treatment during its sentencing remarks. With respect to substance abuse treatment, nothing in

the court's sentencing remarks suggests that the timing of that treatment was relevant to the court's decision to impose three years of initial confinement. Moreover, as the court confirmed in its decision denying Hess's postconviction motion, the court was well aware at the time of sentencing that Hess might not be able to participate in, or complete, any treatment programs while incarcerated, due to a variety of circumstances outside of the court's control. *See State v. Boyden*, 2012 WI App 38, ¶10, 340 Wis. 2d 155, 814 N.W.2d 505 (noting that the same judge who sentenced the defendant presided over the postconviction hearing, and therefore accepting the court's assertion that it was aware of certain information at the time of sentencing).

Ultimately, the circuit court's overarching goal when sentencing Hess was to protect the public, which the court believed required a three-year period of initial confinement. While the court stated a secondary objective of allowing Hess to receive treatment in a confined setting, the court did not specifically state an intent for Hess to complete sex offender treatment while incarcerated or to complete substance abuse treatment at a specific time during his period of initial confinement. Under these circumstances, Hess's proffered new information about the availability of particular treatment programs was not highly relevant to the imposition of his sentence. As such, Hess has failed to show the existence of a new factor, and the court properly denied his motion for sentence modification.

Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. 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