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DISTRICT IV

May 29, 2026

To:

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Circuit Court Judge
Electronic Notice

Kathleen Henry
Electronic Notice

Jeff Okazaki
Clerk of Circuit Court
Dane County Courthouse
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Kathleen E. Wood
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You are hereby notified that the Court has entered the following opinion and order:

2024AP1856-CR State of Wisconsin v. Daniel T. Rabideau (L.C. # 2021CF281)

Before Graham, P.J., Nashold, and Taylor, 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).

Daniel Rabideau appeals a judgment of conviction and an order denying his postconviction motion for sentence modification based on the existence of a new factor. The sole issue presented on appeal is whether the motion for sentence modification should have been granted. Based on 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 Because Rabideau has not established the existence of a new factor that justifies sentence modification, we summarily affirm.

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

According to the criminal complaint, Rabideau repeatedly punched and strangled his girlfriend, referred to in this opinion as A.B., in Rabideau and A.B.'s shared residence. Rabideau then told A.B. she could not go into work because he was worried that, if she did, she would tell people that Rabideau caused her injuries. After a physical struggle, Rabideau took A.B.'s car keys so that she could not leave, and multiple times he physically prevented A.B. from leaving the residence. Rabideau was charged with strangulation and suffocation, false imprisonment, misdemeanor battery, and disorderly conduct. All counts were charged as acts of domestic abuse and with repeater enhancers.

Consistent with the parties' plea agreement, Rabideau pled guilty to misdemeanor battery and disorderly conduct as acts of domestic abuse, and the repeater enhancers were dismissed. Rabideau also pled guilty to false imprisonment as an act of domestic abuse and as a repeater. The circuit court found Rabideau guilty of battery and disorderly conduct, and, in accordance with the parties' joint sentencing recommendations, placed him on probation for three years. The court withheld adjudication of the false imprisonment count, which was to be dismissed if Rabideau successfully completed his probation without revocation and committed no new crimes.

In setting the conditions of Rabideau's probation, the circuit court instructed Rabideau to obtain an alcohol and other drug abuse (AODA) assessment and any appropriate follow-up treatment. The court also prohibited Rabideau from using or possessing alcohol or controlled substances without a valid prescription and from living anywhere that alcohol is present. Additionally, the court prohibited Rabideau from acts or threats of violence, and required Rabideau to participate in domestic violence counseling and counseling for post-traumatic stress disorder.

Ten days after being sentenced, Rabideau was again charged with disorderly conduct and battery as acts of domestic abuse against A.B. Accordingly, the circuit court held an adjudication and sentencing hearing to address the false imprisonment count on which the court had withheld judgment.

At the hearing, the circuit court found Rabideau guilty of the false imprisonment count. The State recommended that the court sentence Rabideau to a year in jail. The State summarized Rabideau's past history of domestic violence against A.B., including convictions of domestic battery in 2015 and 2017. The State also informed the court that, at the time of the newly charged conduct, Rabideau was alleged to have been heavily intoxicated; told A.B. to "only do[] what she's told to do"; struck A.B. in the chest; "put his hands around [A.B.'s] neck, squeezed, and made it difficult [for A.B.] to breathe"; and stated "something to the effect of, 'You know I could kill you.'" The State also represented to the court that, in a separate case, Rabideau had been charged with domestic felony intimidation of a victim, as a domestic violence repeater, based on recorded phone calls that Rabideau allegedly made while in jail on the new charges. During one phone call, Rabideau allegedly told A.B., "Don't give any statements to anybody, okay? I don't know if you've talked with [Rabideau's brother] yet, but I'm sure he wants to fucking kill you." The State further alleged that in the phone calls Rabideau instructed A.B. to recant her statements, to contact Rabideau's attorney because A.B. needed "to be advised exactly what the fuck to say to [the probation officer]," and not to let the police take photos of her because any photos would be evidence to "stack up how much time they're gonna give me."

Rabideau's attorney stated that Rabideau had undergone AODA treatment but that he had relapsed and needed additional resources. Counsel stated that Rabideau needed intensive outpatient treatment, "needs supervision and ... a structured plan," and needs "to learn the

coping strategies that are going to work for him.” Counsel asked the circuit court to “create an accountability mechanism with more . . . appropriate resources as can be ordered by the [c]ourt.”

In sentencing Rabideau, the circuit court identified and discussed the three sentencing considerations it found to be most relevant: the gravity of the offense, Rabideau’s character, and the protection of the public. Among other things, the court considered Rabideau’s pattern and history of abuse of A.B. and the fact that he continued to victimize A.B. from jail, which the court considered “a remarkable showing of [Rabideau’s] character [while] sober.” The court also considered programs that could benefit Rabideau, including AODA treatment and domestic violence counseling. The court stated that it would not sentence Rabideau to jail because “nothing good will come from a year in jail. You’ll be sitting there and you will get no treatment, you will get no services, nothing. It is a waste.” The court also told Rabideau that A.B. “deserves a period of time, more than nine months, of safety from you” and that A.B. “has had to endure your violence and your abuse for so many years with the court just entering little bits of jail time or probation to no avail.” The court sentenced Rabideau to three years of initial confinement in prison and three years of extended supervision.

Rabideau filed a postconviction motion for sentence modification on the false imprisonment count. Rabideau argued that there was a lack of available behavioral improvement programs at the prison in which he was incarcerated, and that the lack of access to the programs constituted a new factor that justified sentence modification. The circuit court denied Rabideau’s motion. The court concluded that the current unavailability of behavioral improvement programs in prison was not a new factor. The court also concluded that even if the current unavailability of behavioral improvement programs in the prison system were a new factor, it

would not justify sentence modification because “[t]he gravity of the offense, [Rabideau’s] character, and the protection of the public warrant the sentence” that Rabideau received.

On appeal, Rabideau argues that the circuit court erroneously exercised its discretion in denying Rabideau’s request for sentence modification based on a new factor. A new factor is “‘a fact or set of facts highly relevant to the imposition of sentence, but not known to the trial judge at the time of original sentencing[.]’” *State v. Harbor*, 2011 WI 28, ¶40, 333 Wis. 2d 53, 797 N.W.2d 828 (quoted source omitted). The defendant bears the burden of establishing the existence of a new factor by clear and convincing evidence. *Id.*, ¶36. Whether the facts presented by a defendant constitute a new factor is a question of law that we review independently. *Id.*

If a new factor is established, the defendant is not automatically entitled to sentence modification. *Id.*, ¶37. Rather, the circuit court has discretion to determine whether the new factor justifies sentence modification. *Id.* We will sustain the court’s exercise of discretion “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) (alteration in original; quoted source omitted).

Rabideau argues that the circuit court’s main sentencing objective was that Rabideau receive behavioral improvement programs in prison, and that his lack of access to the programs in prison constitutes a new factor that justifies sentence modification. In support of his argument, Rabideau points to the court’s statements that it was not sentencing Rabideau to jail because he would receive no treatment and services in jail and would just be “sitting there” and

“wasting time.” Rabideau also points to the court’s remarks that Rabideau’s sentence would give him time to go through AODA programming, domestic violence counseling, and other programs prior to his release back into the community.

The State responds that Wisconsin courts have routinely held that the unavailability of prison programming does not constitute a new factor and that, even if the current unavailability of programming could be considered a new factor in some circumstances, it is not a new factor here because it was not “highly relevant” to sentencing. The State further argues that, even assuming a new factor exists, Rabideau has failed to satisfy the second part of the new factor analysis—that is, he failed to show that the circuit court erroneously exercised its discretion in declining to modify his sentence.

We conclude that Rabideau has failed to establish that the circuit court erroneously exercised its discretion in determining that modification of Rabideau’s sentence was not warranted. Therefore, we do not address whether the current unavailability of programming constitutes a new factor in this case.

In denying Rabideau’s postconviction motion, the circuit court noted that in sentencing Rabideau the court “considered not only programs that could benefit [Rabideau], but the gravity of his offense, including the context of years of violence against [A.B.], his character when intoxicated and when sober, including attempting to get [A.B.] to lie, and the protection of the public.” Accordingly, the court stated that “[e]ven if the current unavailability of behavioral improvement programs in the prison system were a new factor, it would not justify sentence modification” because the “gravity of the offense, [Rabideau’s] character, and the protection of the public warrant the sentence that [the] [c]ourt imposed.” The record establishes that the court

weighed these considerations heavily when it imposed Rabideau’s sentence, and under the circumstances, the court reasonably determined that the other considerations would weigh in favor of the sentence Rabideau received, even if the court had considered the alleged lack of programming Rabideau would receive in prison.

Rabideau asserts that the unavailability of rehabilitation programming while he is in prison justifies sentence modification because, without the programming, Rabideau will be “doing exactly what the [circuit] [c]ourt did not want: spending three years in confinement getting no treatment, wasting his time.” However, as we have explained, the court determined that the lack of available programming, even if it were a new factor, did not justify sentence modification. The court’s exercise of discretion in denying the motion for sentence modification was demonstrably made and based upon the facts appearing in the record, and in reliance on the appropriate and applicable law. Rabideau fails to meet his burden of establishing that the court erroneously exercised its discretion.

Accordingly,

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