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DISTRICT I

November 3, 2026

To:

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Circuit Court Judge
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Clerk of Circuit Court
Milwaukee County Safety Building
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You are hereby notified that the Court has entered the following opinion and order:

2025AP762-CR State of Wisconsin v. Angela Marie Oliver (L.C. # 2024CF2269)

Before Donald, 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).

Angela Marie Oliver appeals a judgment of conviction for operating a motor vehicle while intoxicated (OWI) as a sixth offense. She also appeals an order denying her motion for postconviction relief. Oliver seeks sentence modification on two grounds. First, she asserts the existence of a new factor, namely, a determination by the Department of Corrections (DOC) that she is not suitable for admission to the Wisconsin substance abuse program (SAP), a prison treatment program. Second, she asserts that her evenly bifurcated four-year term of imprisonment is unduly harsh. The circuit court rejected those claims, and Oliver renews them here. 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 summarily affirm.

Pursuant to a plea agreement, Oliver pled guilty to OWI as a sixth offense. In exchange, the State agreed to recommend an evenly bifurcated four-year term of imprisonment and an $1,800 fine.[2] Oliver was free to argue for a different sentence. The matter proceeded to sentencing, where Oliver faced a maximum penalty of 10 years of imprisonment and a $25,000 fine, a presumptive minimum of 18 months of initial confinement, and a mandatory minimum of 1 year of initial confinement. *See* WIS. STAT. §§ 346.63(1), 346.65(2)(am)5., 939.50(3)(g); ***State v. Shirikian***, 2023 WI App 13, ¶¶24-27, 406 Wis. 2d 633, 987 N.W.2d 819. Because Oliver had a blood alcohol concentration (BAC) of .222 at the time of the offense, she also faced a mandatory minimum $1,800 fine. *See* § 346.65(2)(am)5., (2)(g). Oliver asked the circuit court either to impose the mandatory 1-year minimum term of initial confinement, or, alternatively, allow her to serve an 18-month term concurrently with the confinement that she was already serving following revocation of her extended supervision for her fifth OWI conviction. She also asked the circuit court to find her eligible for SAP.

The circuit court made extensive sentencing remarks before pronouncing sentence. The circuit court considered the gravity of the offense, finding that Oliver committed her instant sixth OWI while on extended supervision for her fifth and that her BAC was "high." The circuit court found that the crime was further aggravated by the unremitting and repetitive nature of Oliver's

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

[2] The plea agreement also included some charge concessions and provided that the State would recommend certain limitations on Oliver's driving privileges.

criminal driving behavior, which continued even after she had served a prison term for similar conduct. The circuit court also noted with concern that Oliver was arrested in a school parking lot and that when police approached her, she drove her car forward and then in reverse, creating a risk of harm to the police and to the public.

The circuit court acknowledged that Oliver had a troubled past, had experienced physical abuse, and that she struggled with an alcohol addiction. The circuit court recognized that she nonetheless had developed professional skills as a cosmetician and that she provided emotional support to those around her. Ultimately, however, the circuit court concluded that Oliver's recidivism and the risks that her criminal behavior posed to the community required her to serve a longer term of initial confinement than the presumptive 18-month minimum. Accordingly, the circuit court imposed the evenly bifurcated four-year term of imprisonment that the State recommended. The circuit court further concluded that Oliver's revocation sentence for her fifth OWI was a "bill [she] needed to pay" and therefore ordered her to serve a consecutive sentence in this case. The circuit court also imposed the mandatory minimum $1,800 fine and found Oliver eligible for SAP after serving 18 months of initial confinement.

Oliver moved for sentence modification. She asserted that, although she was eligible for SAP, the DOC would not admit her to the program because she would not have enough time to complete it during the 6 months of confinement remaining after she served her first 18 months. She argued that her inability to participate in SAP constituted a new factor warranting a sentence modification. Separately, she asserted that her sentence was unduly harsh in light of her character strengths and her nearly three years of stability between her most recent release from prison in August 2021, and her arrest in this case in May 2024. The circuit court denied the motion, and Oliver appeals.

Oliver first renews her claim that a new factor warrants sentence modification. 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, 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, ¶40, 333 Wis. 2d 53, 797 N.W.2d 828 (citation omitted). A two-prong analysis governs the claim. ***Id.***, ¶36. The defendant must demonstrate by clear and convincing evidence that a new factor exists. ***Id.*** This presents a question of law for our de novo review. ***Id.***, ¶33. If a new factor exists, the defendant must demonstrate that it justifies sentence modification. ***Id.***, ¶38. This determination rests in the circuit court's discretion. ***Id.***, ¶33. The defendant must satisfy both prongs of the analysis to prevail. ***Id.***, ¶38.

According to Oliver, her inability to participate in SAP constitutes a new factor. Inmates who successfully complete that program may obtain early release from initial confinement. ***State v. Lynch***, 2006 WI App 231, ¶4, 297 Wis. 2d 51, 724 N.W.2d 656; WIS. STAT. § 302.05(3)(c)2.; *but see* ***State v. Gramza***, 2020 WI App 81, ¶3, 395 Wis. 2d 215, 952 N.W.2d 836 (holding that an inmate must complete any mandatory minimum term of initial confinement before the person may be granted early release from the confinement portion of a sentence). A circuit court determines at sentencing whether a defendant is eligible for SAP and when such eligibility begins. *See* WIS. STAT. § 973.01(3g);[3] ***State v. White***, 2004 WI App 237, ¶2, 277 Wis. 2d 580, 690 N.W.2d 880. However, the DOC determines whether an otherwise eligible defendant is suitable for admission to the program. *See* ***State ex rel. Treat v. Puckett***, 2002 WI App 58, ¶7,

[3] The Wisconsin substance abuse program was formerly known as the earned release program. Effective August 3, 2011, the legislature renamed the program. *See* 2011 Wis. Act 38, § 19; WIS. STAT. § 991.11. Both names remain in use. *See, e.g.*, WIS. STAT. §§ 302.05; 973.01(3g).

252 Wis. 2d 404, 643 N.W.2d 515; WIS. ADMIN CODE § DOC 302.39(3), (4) (Nov. 2024). Oliver argues that the DOC's decision to exclude her from SAP constitutes a new factor and warrants sentence modification.

Oliver fails to satisfy the first prong of the new factor analysis because she does not show that participation in SAP was "highly relevant" to the imposition of her sentence. We rely on a sentencing court's "'actual words'" to determine whether an alleged new factor was highly relevant to the sentencing decision. ***State v. Carroll***, 2012 WI App 83, ¶10, 343 Wis. 2d 509, 819 N.W.2d 343 (citation omitted). Here, the court briefly mentioned SAP twice during sentencing, once to state that Oliver would be eligible "after serving a period of time," and again when the court stated that she would be eligible for SAP "after 18 months of initial confinement." These passing mentions did not suggest that participation in SAP was a significant sentencing consideration, let alone highly relevant to the sentence imposed.

Moreover, a circuit court has an additional opportunity during postconviction proceedings to clarify its sentencing remarks and to state the factors considered when imposing sentence. ***State v. Fuerst***, 181 Wis. 2d 903, 915, 512 N.W.2d 243 (Ct. App. 1994). In this case, the circuit court's postconviction order explicitly clarified that "the court did not factor [Oliver's] participation in the substance abuse program into the length of [Oliver's] initial confinement or the consecutive designation." Because participation in SAP was not highly relevant to the sentence selected, Oliver's inability to participate is not a new factor within the meaning of ***Harbor***. Further discussion of this issue is not required. *See* ***id.***, 333 Wis. 2d 53, ¶38.

Oliver next contends that the circuit court erroneously rejected her claim that she received an unduly harsh sentence. When a circuit court concludes that it imposed a sentence

that was not unduly harsh, we review that decision for an erroneous exercise of discretion. ***State v. Grindemann***, 2002 WI App 106, ¶30, 255 Wis. 2d 632, 648 N.W.2d 507. A sentence is unduly harsh "only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." ***Id.***, ¶31 (citation omitted). A sentence well within the statutory limits, however, is presumptively not unduly harsh. ***Id.***, ¶32. Here, the four-year term of imprisonment that the circuit court imposed was far less than the maximum ten-year term of imprisonment that Oliver faced. Accordingly, she cannot prevail unless she overcomes the presumption that her sentence is not unduly harsh.

Oliver argues that her sentence is unduly harsh "due to all of the mitigating factors in the case," including the positive aspects of her character and her not-quite-three years of pro-social conduct following her release from prison in 2021. We reject this argument. A circuit court exercises its sentencing discretion guided by well-established standards. *See* ***State v. Gallion***, 2004 WI 42, ¶¶37-38, 270 Wis. 2d 535, 678 N.W.2d 197. The circuit court must consider the mandatory sentencing factors of "the gravity of the offense, the character of the defendant, and the need to protect the public," and may also consider a wide range of other factors relating to the defendant, the offense and the community. *See* ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. However, the weight to assign to the relevant factors rests in the circuit court's discretion, and the circuit court is not required to give mitigating factors overriding significance. ***State v. Stenzel***, 2004 WI App 181, ¶16, 276 Wis. 2d 224, 688 N.W.2d 20. Thus, in a case such as this one, a circuit court may recognize a defendant's outstanding qualities and nonetheless impose a stiff sentence to emphasize the gravity of drunk driving, which society views as a "scourge" and a "plague." *See* ***id.***, ¶¶12-13, 15.

The circuit court's sentencing remarks here reflect that the circuit court considered the mandatory sentencing factors along with other appropriate factors that it deemed relevant in fashioning a sentence for Oliver. Specifically, the circuit court considered the gravity of the offense, noting Oliver's elevated BAC, and discussed the risk that Oliver posed to the police and to the public by driving a car while significantly impaired. The circuit court also recognized that Oliver had faced substantial obstacles and nonetheless had worked to battle her addiction and to achieve professional goals. The circuit court found, however, that Oliver's repetitive, dangerous behavior behind the wheel required a prison sentence somewhat longer than the presumptive mandatory minimum because the court did not "have any assurance whatsoever that ... anything has changed .... [T]here is a protection of the community factor that comes in here."

The circuit court thus considered proper factors, did not consider any inappropriate factors, and imposed a sentence well within the maximum permitted by law for a defendant who has repeatedly committed the same dangerous crime. Accordingly, the circuit court did not erroneously exercise its discretion by rejecting Oliver's claim that her sentence was unduly harsh. *See* ***State v. Pal***, 2017 WI 44, ¶36, 374 Wis. 2d 759, 893 N.W.2d 848. For all the foregoing reasons, we affirm.

IT IS ORDERED that the judgment and order 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