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WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

November 23, 2021

To:

Hon. Joseph R. Wall
Circuit Court Judge
Electronic Notice

John Barrett
Clerk of Circuit Court
Milwaukee County
Electronic Notice

John D. Flynn
Electronic Notice

Kara Lynn Janson
Electronic Notice

Reymond Gollier Jr. 513857
Wisconsin Secure Program Facility
P.O. Box 1000
Boscobel, WI 53805-1000

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

2018AP1984-CR State of Wisconsin v. Reymond Gollier, Jr. (L.C. # 2006CF3847)

Before Donald, P.J., Dugan and Graham, 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).

Reymond Gollier, Jr., *pro se*, appeals an order denying his motion for postconviction relief. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. WIS. STAT. RULE 809.21 (2019-20).[1] We affirm the order of the circuit court.

[1] All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

In 2007, Gollier pled guilty to one count of second-degree reckless homicide while armed and one count of recklessly endangering safety while armed. According to the complaint, Gollier told police that on the day of the shooting, a vehicle pulled up to him and asked about purchasing marijuana that he was selling. When one of the individuals in the car asked him where his money was, Gollier suspected he was about to be robbed, pulled out his handgun, and started firing at the vehicle. Two passengers inside the car were shot, and one ultimately died as a result of his injuries.

In 2010, we affirmed Gollier's convictions and the order denying his motion for postconviction relief. *See* ***State v. Gollier***, No. 2009AP1718-CR, unpublished slip op. (WI App Sept. 8, 2010). The Wisconsin Supreme Court denied review.

Eight years later Gollier filed the underlying postconviction motion, arguing that the existence of new factors justified sentence modification. Gollier complained that the circuit court relied on inaccurate information when it sentenced him, specifically the "narrative" that his offenses involved the sale of marijuana. Gollier acknowledged that he confessed to the narrative, but asserted in his motion that it was "fictitious." He highlighted incident reports reflecting that when they were interviewed by the police, the surviving witnesses denied that the stop related to marijuana.

Gollier additionally argued that his accomplishments while incarcerated were new factors warranting sentence modification. The circuit court denied the motion, and this appeal follows.

"We need finality in our litigation." ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). Therefore, any claim that could have been raised in a prior postconviction motion or direct appeal cannot form the basis for a subsequent motion under WIS.

STAT. § 974.06 unless the defendant demonstrates a sufficient reason for failing to raise the claim earlier. ***Escalona***, 185 Wis. 2d at 185. Whether a defendant's claim is procedurally barred by ***Escalona*** presents a question of law that we review *de novo*. ***State v. Tolefree***, 209 Wis. 2d 421, 424, 563 N.W.2d 175 (Ct. App. 1997).

A motion based on a new factor is not subject to the ***Escalona*** bar, *see* ***State v. Grindemann***, 2002 WI App 106, ¶19 n.4, 255 Wis. 2d 632, 648 N.W.2d 507; however, there must be an actual 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, 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). Whether a fact or set of facts constitutes a new factor is also a question of law that we review *de novo*. *See* ***id.***, ¶33.

Applying these principles, we are satisfied that the circuit court properly denied Gollier's postconviction motion. By Gollier's own acknowledgment, he was "a co-author of this particular narrative [because] at that time I believed that I must carry out this lie [that the crime involved a sale of marijuana] as my truth[,]" which he now contends he can no longer do. We are not persuaded that Gollier's claim that he was sentenced under a "distorted narrative" constitutes a new factor. From the beginning, Gollier would have known about what he now contends was a lie; therefore, it cannot be said that *all* of the parties unknowingly overlooked this fact. *See* ***State v. Crockett***, 2001 WI App 235, ¶14, 248 Wis. 2d 120, 635 N.W.2d 673 (explaining that the facts at issue were not new factors because "[a]lthough the [circuit] court may have 'unknowingly overlooked' [them], Crockett does not claim that he was unaware of them as well" (citation omitted)). Insofar as Gollier additionally accuses the circuit court of

relying upon inaccurate information at sentencing, that is a constitutional claim subject to the ***Escalona*** bar, *see* ***State v. Tiepelman***, 2006 WI 66, ¶9, 291 Wis. 2d 179, 717 N.W.2d 1, and Gollier has not demonstrated a sufficient reason for failing to raise it earlier.[2] As summed up by the State, "Gollier knew whether the information was inaccurate because he was its source."

Gollier further contends that the circuit court ignored his rehabilitative progress when it did not acknowledge the certificates he submitted, which he contends show a development in his character along with a desire to be rehabilitated and productive. Gollier asserts that the circuit court conceded this argument by failing to address it. We disagree and instead conclude that the court implicitly rejected this claim.[3]

"While encouraging rehabilitation is laudable, it is not the purpose of sentence modification." ***State v. Kluck***, 210 Wis. 2d 1, 8, 563 N.W.2d 468 (1997). Consequently, "courts of this state have repeatedly held that rehabilitation is not a 'new factor' for purposes of sentencing modification." ***Id.*** at 7; *see also* ***State v. Prince***, 147 Wis. 2d 134, 136, 432 N.W.2d 646 (Ct. App. 1988) ("Changes in attitude and prison rehabilitation are not new factors justifying sentence modification."). Gollier's argument in this regard fails.

[2] Gollier asks that we take into account his *pro se* status and suggests that we take "a more liberal approach" to his claim. However, we have repeatedly held that ignorance of the law is not a sufficient excuse to challenge a judgment of conviction multiple times. If it were, the procedural bar of ***Escalona*** and WIS. STAT. § 974.06(4) would be eviscerated, as many, if not most, collateral challenges are raised by *pro se* litigants.

[3] Gollier suggests that the circuit court "was ultimately in agreement with [this claim]" given that it did not otherwise address it. He relies solely on ***Charolais Breeding Ranches, Ltd. v. FPS Securities Corp.***, 90 Wis. 2d 97, 279 N.W.2d 493 (Ct. App. 1979), as support. Gollier's reliance is misplaced. ***Charolais*** holds that "*[r]espondents* on appeal cannot complain if propositions of appellants are taken as confessed which they do not undertake to refute." ***Id.*** at 109 (emphasis added).

Finally, we address Gollier's argument that he is entitled to a new trial in the interest of justice. He asks for this relief pursuant to WIS. STAT. § 752.35, which allows this court to reverse a judgment "if it appears from the record that the real controversy has not been fully tried, or that it is probable that justice has for any reason miscarried[.]" *See* ***id.*** Gollier asserts that the real controversy was not fully tried because he was sentenced under a false narrative that the case related to the sale of marijuana, and he asks that we correct the resulting miscarriage of justice.

We exercise our discretionary power to grant a new trial "infrequently and judiciously." ***State v. Ray***, 166 Wis. 2d 855, 874, 481 N.W.2d 288 (Ct. App. 1992). Setting aside whether such a request is proper at this juncture, Gollier has not convinced us that this is the type of exceptional case warranting an exercise of our discretionary powers. *Compare* ***State v. Davis***, 2011 WI App 147, ¶35 n.7, 337 Wis. 2d 688, 808 N.W.2d 130, *with* ***State v. Allen***, 159 Wis. 2d 53, 55-56, 464 N.W.2d 426 (Ct. App. 1990).

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.

Sheila T. Reiff
Clerk of Court of Appeals