OFFICE OF THE CLERK
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 II

December 8, 2021

To:

Hon. Timothy D. Boyle
Circuit Court Judge
Electronic Notice

Samuel A. Christensen
Clerk of Circuit Court
Racine County
Electronic Notice

Patricia J. Hanson
Electronic Notice

Loryn Lange Limoges
Electronic Notice

Raymond R. Davila, #168130
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:

2020AP1874-CR State of Wisconsin v. Raymond R. Davila (L.C. #2011CF749)

Before Gundrum, P.J., Neubauer and Grogan, 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).

Raymond R. Davila filed a postconviction motion seeking (1) modification of his sentence on the basis that the emergence of COVID-19 has created a "possible death sentence" for him in prison and constitutes a "new factor" and (2) withdrawal of his plea on the basis that his counsel performed ineffectively "by not disclosing the possibility of GPS monitoring" for

him pursuant to WIS. STAT. § 301.46(2m)(am) (2019-20).[1] The circuit court denied Davila's motion without a hearing, and he appeals pro se. 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. For the following reasons, we affirm.

For sentence modification, a defendant "bears the burden of establishing the existence of a new factor by clear and convincing evidence." ***State v. Samsa***, 2015 WI App 6, ¶14, 359 Wis. 2d 580, 859 N.W.2d 149 (2014). 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, even though it was then in existence, it was unknowingly overlooked by all of the parties." ***Id.*** (emphasis added; citation omitted). "Whether a new factor exists presents a question of law subject to de novo review." ***Id.***

At Davila's sentencing hearing, the circuit court sentenced Davila based upon the seriousness of the offense—repeatedly sexually assaulting the fourteen-year-old daughter of his girlfriend and getting her pregnant—and the risk he poses to the public.

> The type and nature of the assaults, the time frame over which they occurred, the relationship [Davila] had with the victim, the age of the victim, and the control and manipulation that Mr. Davila exercised over the victim during the period of time he occupied the same home because of his relationship with the victim's mother

[1] Davila also sought appointment of counsel for his postconviction motion, on the basis that "[E]nglish is his second language" and "[t]he prison law library is 100% [E]nglish and the language barrier inhibits [him] from properly representing himself." Because Davila failed to develop any legal argument in support of his request for counsel, either before the circuit court or before us, we consider it no further. *See* ***ABKA Ltd. P'ship v. Board of Rev.***, 231 Wis. 2d 328, 349 n.9, 603 N.W.2d 217 (1999) ("[We] will not address undeveloped arguments.").

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

> and not the least of which would be the fact that as a result of one of the assaults … the victim bec[ame] pregnant, adds to the seriousness of the situation. Mr. Davila in no way took any steps for protection to avoid [conception], in any way whatsoever.
>
> All of those factors when I reviewed it cause me to conclude that it's the risk that [Davila] creates that [is] an important factor to me. His absolute disregard for anything but his pleasure and as indicated particularly aggravating because of the age of the victim.
>
> ….
>
> This was a particularly terrible situation and crime because of the facts and circumstances that I've uttered.
>
> ….
>
> [I]t's the risk and the terrible nature of this crime … with this child having absolutely no way to escape the situation and Mr. Davila taking the advantage, the criminal advantage of this child throughout that relationship over a number of years.
>
> ….
>
> I think Mr. Davila would … act just as recklessly, just as criminally if given the same facts again. He may understand how wrongful his acts are but I do not think, nor do I imagine he would act any differently today than he did when these acts were originally committed.

Neither Davila's personal health conditions nor the healthy or unhealthy nature of conditions in the prison system were in any way a consideration of the court in imposing sentence; thus, the emergence of COVID-19 and potential health consequences for Davila related to that do not constitute "a fact or set of facts" that are "highly relevant to the imposition of sentence." *See* ***id.*** Davila failed to meet his burden to establish the existence of a "new factor" justifying sentence modification. *See* ***id.***

With regard to Davila's request for withdrawal of his plea on the basis that his counsel performed ineffectively, Davila claims in his postconviction motion that counsel was ineffective

because he failed to disclose to Davila "the possibility of GPS monitoring" for him pursuant to WIS. STAT. § 301.46(2m)(am). On appeal, he fails to develop an argument in support of his ineffective assistance of counsel claim, and we therefore deny it on that basis alone. *See* ***ABKA Ltd. P'ship v. Board of Rev.***, 231 Wis. 2d 328, 349 n.9, 603 N.W.2d 217 (1999) ("[We] will not address undeveloped arguments."). That said, we note that his claim is dependent upon his apparent belief that under § 301.46(2m)(am) he "could have been placed on lifetime GPS monitoring as opposed to serving a 25 year prison sentence." As the circuit court noted, however, this statute "has no relevance as to his sentence."

IT IS ORDERED that the order of the circuit court 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