



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](http://www.wicourts.gov)

**DISTRICT I**

May 31, 2023

To:

Hon. Janet C. Protasiewicz  
Circuit Court Judge  
Electronic Notice

Sonya Bice  
Electronic Notice

Anna Hodges  
Clerk of Circuit Court  
Milwaukee County Safety Building  
Electronic Notice

Mark A. Schoenfeldt  
Electronic Notice

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

---

2021AP1663-CR

State of Wisconsin v. Jatavious Kawan Webster  
(L.C. # 2015CF2582)

Before Brash, C.J., White 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).**

Jatavious Kawan Webster appeals a judgment convicting him of one count of hit and run, involving a death. He also appeals an order denying his motion for postconviction relief. Webster argues that the circuit court erroneously exercised its discretion when it increased his sentence. After reviewing the briefs and record, we conclude that summary disposition is appropriate. *See* WIS. STAT. RULE 809.21 (2021-22).<sup>1</sup> Upon review, we affirm.

---

<sup>1</sup> All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Webster pled guilty to hit and run, involving a death. The circuit court sentenced him to eighteen years of imprisonment, consisting of twelve years of initial confinement followed by six years of extended supervision. Webster moved for postconviction relief, arguing that he did not understand the elements of the crime when he entered his plea. The circuit court granted Webster's motion, vacated his conviction, and allowed him to withdraw his plea. Subsequently, Webster again pled guilty. Webster was sentenced by a different circuit court judge to twenty-five years of imprisonment, consisting of fifteen years of initial confinement followed by ten years of extended supervision. Webster again moved for postconviction relief, arguing that the circuit court erroneously exercised its sentencing discretion. The circuit court denied the motion. This appeal follows.<sup>2</sup>

Webster contends that the circuit court erroneously exercised its discretion when it imposed a longer sentence. Webster contends that the increased sentence was presumptively vindictive and a violation of his due process rights. See *North Carolina v. Pearce*, 395 U.S. 711, 726 (1969), *overruled in part by Alabama v. Smith*, 490 U.S. 794 (1989).

We first note that Webster heavily relies on two Wisconsin cases, *State v. Martin*, 121 Wis. 2d 670, 360 N.W.2d 43 (1985), and *Grobarchik v. State*, 102 Wis. 2d 461, 307 N.W.2d 170 (1981). Webster's reliance on these cases is misplaced. The cases concern resentencing to correct sentences that could not be carried out as a matter of law. *Martin*, 121 Wis. 2d at 688; *Grobarchik*, 102 Wis. 2d at 474. *Martin* explains that in situations where the circuit court's

---

<sup>2</sup> The Honorable M. Joseph Donald presided over Webster's first plea hearing and sentencing. The Honorable Carolina Maria Stark presided over Webster's first postconviction motion. The Honorable David A. Hansher presided over Webster's second plea hearing. The Honorable Janet C. Protasiewicz presided over Webster's sentencing after his second conviction and his second postconviction motion, both of which are the subject of this appeal.

dispositional plan is frustrated because the sentence cannot be effectuated as a matter of law, the resentencing court should attempt “to implement the original dispositional scheme reflected by the record in the first sentencing proceeding.” See *Martin*, 121 Wis. 2d at 688; see also *Grobarchik*, 102 Wis. 2d at 474. Unlike *Martin* and *Grobarchik*, Webster’s first case was vacated, and thus rendered void. After Webster was convicted a second time, the circuit court was not beholden to the original proceedings.

Turning to whether Webster is entitled to a presumption that his increased sentence was vindictively imposed by the circuit court, it is well-established that due process “requires that vindictiveness against a defendant for having successfully attacked his first conviction must play no part in [a subsequent] sentence he receives[.]” See *Pearce*, 395 U.S. at 725. The Wisconsin Supreme Court has further explained “that a reasonable likelihood of vindictiveness exists only if there is a realistic possibility that the sentencing court, after being reversed, may engage in self-vindication and retaliate against the defendant for having successfully pursued appellate relief.” *State v. Naydihor*, 2004 WI 43, ¶37, 270 Wis. 2d 585, 678 N.W.2d 220. “Whether an increased sentence imposed upon a defendant after a successful appeal violates a defendant’s right to due process under the federal and state constitutions is a question of law that we review de novo.” *State v. Church*, 2003 WI 74, ¶17, 262 Wis. 2d 678, 665 N.W.2d 141.

The circuit court judge who initially sentenced Webster was not the same circuit court judge who sentenced Webster after he was convicted for a second time. In addition, Webster’s first conviction was not vacated because of an error by the circuit court judge who sentenced Webster after his second conviction. It reasonably follows that the circuit court judge had no motive to impose a longer sentence to retaliate against Webster. See *Naydihor*, 370 Wis. 2d 585, ¶37. As the Wisconsin Supreme Court explained in *Naydihor*:

[T]his is not a case where an appellate court reversed a conviction due to a circuit court error and the same circuit court that erred resentenced the defendant. The judge that resentenced Naydihor was not the same judge that originally sentenced him; nor was the resentencing court the court in which the error that led to resentencing took place. We conclude that under the facts of this case ... no presumption of vindictiveness is warranted because the reasons justifying the prophylactic *Pearce* presumption are not present.

*Id.*, ¶48. We conclude that no presumption of vindictiveness applies here.

Moreover, even if the *Pearce* presumption applied, it was rebutted by new objective information justifying Webster's increased sentence—the fact that he never received a driver's license, with the attendant training and skills testing that would have been required to do so—before the fatal and reckless car crash that killed one person and seriously injured another person. The circuit court's sentence of twenty-five years was supported by the facts and the applicable law. For these reasons, we conclude that the circuit court properly exercised its sentencing discretion.

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.

---

*Sheila T. Reiff*  
*Clerk of Court of Appeals*