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**DISTRICT II**

December 11, 2024

To:

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Circuit Court Judge  
Electronic Notice

Nathan Michael Jurowski  
Electronic Notice

Chris Koenig  
Clerk of Circuit Court  
Sheboygan County Courthouse  
Electronic Notice

Michael C. Sanders  
Electronic Notice

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

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2023AP796-CR

State of Wisconsin v. Corey Jerome Howell (L.C. #2020CF26)

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).**

Corey Jerome Howell appeals a judgment of conviction for possession of a firearm by a felon as a repeater and an order denying his postconviction motion seeking substance abuse program (SAP) eligibility based on a new factor. 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 (2021-22).<sup>1</sup> We affirm because, like the circuit court, we conclude Howell has failed to establish the existence of a new factor as a matter of law.

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

In 2021, Howell pled no contest to the firearm-possession offense. He was sentenced to three-and-one-half years' initial confinement and five years' extended supervision. The circuit court chronicled Howell's "long, sordid history of crimes that date back decades" during its sentencing remarks. The information presented in connection with the sentencing established that Howell had a history of drug- and firearm-related offenses, that Howell had consumed alcohol and narcotics before the car accident that led to the discovery of the firearm in this case, and that Howell had several medical conditions and was undergoing kidney dialysis. The court found it difficult to assess the degree of Howell's addiction or what his rehabilitative needs were. Relatedly, it rejected his eligibility for the SAP, concluding an early release would unduly depreciate the seriousness of the offense and would be inconsistent with the facts and with Howell's criminal history.

In 2023, Howell filed a motion seeking sentence modification in the form of SAP eligibility. His motion chronicled his kidney failure and asserted that the potentially detrimental health consequences of consuming alcohol or illegal drugs constituted a "new factor" that reduced the likelihood of future criminal conduct. Howell also alleged that if his kidney prognosis constituted a new factor, his attorney was constitutionally ineffective for failing to present it to the circuit court. The circuit court denied the motion, concluding Howell had failed to demonstrate the existence of a new factor.

To justify sentence modification, the defendant has the burden to demonstrate by clear and convincing evidence the existence of a new factor. *State v. Harbor*, 2011 WI 28, ¶36, 333 Wis. 2d 53, 797 N.W.2d 828. A new factor is a fact that is "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.*, ¶40 (citation omitted). Whether the fact or set of facts put forth by the defendant constitutes a “new factor” is a question of law, which we review de novo. *Id.*, ¶33.

Howell’s kidney disease is not a new factor. The circuit court was aware at the time of sentencing that Howell needed kidney dialysis. To the extent Howell sought sentence modification based on the course of his kidney disease, his request for the court to consider SAP eligibility was merely a recasting of known facts or an invitation to reweigh their significance, which is impermissible. See *State v. Grindemann*, 2002 WI App 106, ¶24, 255 Wis. 2d 632, 648 N.W.2d 507.

One variation of Howell’s argument appears to be that the “impact of the severity of his kidney disease” warrants a fresh look at his SAP eligibility. This “impact”—an apparent reference to the effect of his kidney disease on his ability to consume drugs and alcohol, and therefore on his recidivism risk—is still unknown, even after the postconviction proceedings. Howell merely presupposes that his crime of firearm possession by a felon was in some way animated by his consumption of such substances, such that the negative health consequences of consuming them would mitigate his future risk.

As the circuit court recognized, the nexus between crime and consumption is not apparent here. Drug and alcohol abuse was not a feature of either version of the story Howell told corrections officials about how he came to possess the gun. As the court stated during the postconviction proceedings, “[t]his case was not about chronic addiction, which resulted in crimes.”

Howell’s alleged reduced recidivism risk as a result of his kidney disease is not highly relevant to his sentence for a related reason. The circuit court’s sentencing analysis focused on the seriousness of the offense, protection of the public, punishment, specific deterrence from possessing firearms, and Howell’s prior criminal history. The court did not deny him SAP eligibility under the rationale that his use of drugs and alcohol posed a recidivism risk. Instead, the court stated: “His crimes are too serious, his history too long, his threat to the community too profound.” These comments hinted at the court’s earlier lengthy recitation of Howell’s prior offenses—including two firearms offenses, one of which involved Howell shooting at two men because he was disappointed in the amount of money he was able to rob from them.

Having concluded the alleged facts do not constitute a new factor as a matter of law, we need go no further in our analysis. *See Harbor*, 333 Wis. 2d 53, ¶38. However, we note that the circuit court concluded that even presuming there was a new factor, that new factor did not warrant sentence modification for the foregoing reasons. The court did not erroneously exercise its discretion in so holding. *See id.*, ¶33.

Therefore,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*