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DISTRICT I

December 26, 2024

To:

Hon. Danielle L. Shelton
Circuit Court Judge
Electronic Notice

Sonya Bice
Electronic Notice

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

Lew A. Wasserman
Electronic Notice

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

2023AP691-CR

State of Wisconsin v. Breon L. Crawford (L.C. # 2019CF1404)

Before Donald, P.J., Geenen and Colón, 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).

Breon L. Crawford appeals from an order denying his motion “to revise eligibility for programing [sic].” 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).¹ The order is summarily affirmed.

In April 2021, Crawford pled guilty to one count of possession of a firearm by a felon. The circuit court imposed and stayed a sentence of ten years’ imprisonment and placed Crawford

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

on probation for five years. During the sentencing hearing, Crawford's attorney asked the court if Crawford's probation were revoked, "would he be eligible for programming?" The circuit court responded, "No, he needs to be looking at five years in prison, five years after that." Crawford did not pursue an appeal under WIS. STAT. RULE 809.30. Crawford's probation was subsequently revoked.

In April 2023, Crawford filed a "motion to revise sentence credit and motion to revise eligibility for programing [sic]." He argued that "the sentencing court abused its discretion in determining he was not eligible for programming."² The circuit court granted partial sentence credit, which Crawford does not revisit on appeal. The circuit court also denied the motion to revise Crawford's sentence, explaining that the sentencing court "appropriately considered the relevant sentencing factors" and "reached a reasonable and justifiable eligibility determination based on his overall sentencing rationale, particularly given defendant's history of past failures on supervision." That is, the circuit court was satisfied that "the record demonstrates a proper exercise of sentencing discretion." Crawford appeals.

A defendant can seek sentence modification in two ways. *State v. Noll*, 2002 WI App 273, ¶9, 258 Wis. 2d 573, 653 N.W.2d 895. The first is via WIS. STAT. § 973.19, although that is not applicable in this case because the time limits in that statute have expired.

² The Honorable Joseph A. Wall accepted Crawford's plea and imposed sentence. The Honorable Danielle L. Shelton reviewed and denied the April 2023 motion.

Also, the supreme court replaced the phrase "abuse of discretion" with "erroneous exercise of discretion" more than thirty years ago. See *City of Brookfield v. Milwaukee Metro. Sewer. Dist.*, 171 Wis. 2d 400, 423, 491 N.W.2d 484 (1992).

The second option for sentence modification “is to move for discretionary review, invoking the ‘inherent power’ of the circuit court.” *Noll*, 258 Wis.2d 573, ¶11 (citation omitted); *State v. Harbor*, 2011 WI 28, ¶35, 333 Wis. 2d 53, 797 N.W.2d 828 (“Within certain constraints, Wisconsin circuit courts have inherent authority to modify criminal sentences.”). The court cannot modify a sentence based on reflection and second thoughts; it may, however, modify a sentence upon the defendant’s showing of a new factor. *Harbor*, 333 Wis. 2d 53, ¶35.

“The existence of a new factor does not automatically entitle the defendant to sentence modification.” *Id.*, ¶37. Rather, if a new factor is present, the circuit court exercises its discretion to determine whether that new factor justifies modification of the sentence. *Id.* To prevail, the defendant must demonstrate both the existence of a new factor and that the new factor justifies sentence modification. *Id.*, ¶38. Accordingly, if a court determines that the facts do not constitute a new factor as a matter of law, the analysis can end there. *Id.*

Crawford’s “motion to revise eligibility” does not articulate a new factor. It is strictly a challenge to the sentencing court’s original exercise of discretion. The circuit court concluded that the record demonstrates a proper exercise of sentencing discretion, which is an implicit conclusion that even if a new factor existed, sentence modification was not warranted. We agree with that assessment.

Therefore,

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.

Samuel A. Christensen
Clerk of Court of Appeals