**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**December 9, 2008**

**David R. Schanker**
**Clerk of Court of Appeals**



**Appeal Nos. 2008AP429-CR**
**2008AP430-CR**

**Cir. Ct. Nos. 1996CF964496**
**1996CF964555**

**STATE OF WISCONSIN** **IN COURT OF APPEALS**
**DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**CHARLES LONDON WILLIAMS,**

**DEFENDANT-APPELLANT.**

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APPEAL from orders of the circuit court for Milwaukee County: KEVIN E. MARTENS, Judge. *Affirmed.*

Before Curley, P.J., Fine and Kessler, JJ.

¶1 PER CURIAM. Charles London Williams, *pro se*, appeals from circuit court orders denying his motions for sentence modification and for

reconsideration.[1] The circuit court concluded that Williams failed to demonstrate a new factor, and we affirm.[2]

## BACKGROUND

¶2 In 1997, Williams pled guilty to two crimes committed in September 1996: (1) burglary; and (2) armed burglary as a habitual criminal. *See* WIS. STAT. §§ 943.10(1)(a) & (2)(b), 939.62 (1995–96). At the time of the pleas, the circuit court cautioned Williams that armed burglary was a "serious felony" within the meaning of WIS. STAT. § 973.0135 (1995–96), and that the circuit court was therefore required to determine his parole eligibility. *See* § 973.0135(2) (1995–96).

¶3 At sentencing, the circuit court described the offenses as "very serious," it characterized Williams as "a very dangerous person," and it determined that the community needed protection from Williams's criminal activity. In light of the various factors outlined on the record, the circuit court imposed a twenty-five year sentence for the armed burglary conviction and a consecutive ten-year sentence for the burglary conviction. The circuit court then implemented the statutory mandate of WIS. STAT. § 973.0135(2) (1995–96), stating:

> [y]ou are to serve to your mandatory release date. This is not a case where the defendant is a good risk for parole of

[1] The State filed the charges underlying this appeal in two separate criminal complaints, but the cases were resolved in a single sentencing proceeding. Williams filed a sentence modification motion and a motion to reconsider in each case. We consolidated Williams's instant appeals from the orders denying relief on our own motion.

[2] The Honorable Diane S. Sykes presided over Williams's original sentencing. The Honorable Kevin E. Martens presided over Williams's sentence modification motions.

> any sort and so the parole board shall not determine your eligibility. You will not be eligible for parole until your mandatory release date, which is two-thirds of a twenty-five year sentence.

¶4 In 2008, Williams moved for sentence modification, contending that the sentencing court was unaware of the law governing presumptive mandatory release. *See* WIS. STAT. § 302.11(1g) (2005–06).[3] Pursuant to § 302.11(1g), the parole commission may deny presumptive mandatory release to an inmate serving a sentence for a serious felony, including armed burglary, committed between April 20, 1994, and December 31, 1999. ***Id.*** An inmate subject to § 302.11(1g) may be kept confined after completing two-thirds of a sentence if the inmate poses a danger to the public or has refused necessary counseling or treatment. Sec. 302.11(1g)(b). Williams proffered his exposure to confinement beyond his mandatory release date as a new factor warranting sentence modification. The circuit court rejected the claim, and this appeal followed.

## DISCUSSION

¶5 To obtain sentence modification based on a new factor, a defendant must prove by clear and convincing evidence that a new factor exists. ***State v. Delaney***, 2006 WI App 37, ¶¶7, 9, 289 Wis. 2d 714, 718–719, 712 N.W.2d 368, 370–371. If the defendant succeeds in that proof, he or she must demonstrate that the new factor warrants sentence modification. ***Id.***, 2006 WI App 37, ¶7, 289 Wis. 2d at 719, 712 N.W.2d at 370.

> [T]he phrase "new factor" refers to 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,

[3] All further references to the Wisconsin Statutes are to the 2005–06 version unless otherwise noted.

> 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.

***Rosado v. State***, 70 Wis. 2d 280, 288, 234 N.W.2d 69, 73 (1975). An alleged new factor cannot be a mere change in circumstances but must "'frustrate[] the purpose of the original sentence.'" ***State v. Trujillo***, 2005 WI 45, ¶13, 279 Wis. 2d 712, 723, 694 N.W.2d 933, 938 (citation omitted). Whether a fact or set of facts constitutes a new factor is a question of law that we review *de novo*. *See* ***id.***, 2005 WI 45, ¶11, 279 Wis. 2d at 721, 694 N.W.2d at 938.

¶6 Williams failed to establish a new factor as that term is defined by ***Rosado*** and its progeny. First, WIS. STAT. § 302.11(1g) (1993–94) took effect on April 21, 1994. *See* 1993 Wis. Act 194, § 2; *see also* WIS. STAT. § 991.11 (1993–94). Thus, the law governing presumptive mandatory release was "in existence" when Williams was sentenced in 1997.[4] *See* ***Rosado***, 70 Wis. 2d at 288, 234 N.W.2d at 73. Second, Williams has not demonstrated that the circuit court "overlooked" the existing law. *See* ***ibid.*** Indeed, the circuit court's statement that Williams would be eligible for parole on his mandatory release date implies an awareness that Williams would not necessarily be freed on that date.

¶7 To the extent that Williams asks us to presume that a circuit court is unfamiliar with statutes that go unmentioned during a sentencing proceeding, we reject that contention as absurd. Such an argument has no logical stopping point. *See* ***State v. Tappa***, 2002 WI App 303, ¶14 & n.3, 259 Wis. 2d 402, 409–410 & n.3, 655 N.W.2d 223, 226–227 & n.3 (court will reject an argument that leads to

[4] The legislature amended WIS. STAT. § 302.11(1g) on several occasions after the statute was initially enacted, but the amendments are not material to the issue presented on appeal.

unworkable and impractical extremes). We subscribe to the proposition that circuit courts, like lawyers and laymen, are presumed to know the law. *See* ***Tri-State Mech., Inc. v. Northland Coll.***, 2004 WI App 100, ¶10, 273 Wis. 2d 471, 478, 681 N.W.2d 302, 305.

¶8 Our analysis need continue no further to resolve this appeal. Nonetheless, for the sake of completeness we consider whether the parole commission's authority to confine Williams beyond his presumptive mandatory release date "'frustrates the purpose of the original sentence. '" *See* ***Trujillo***, 2005 WI 45, ¶13, 279 Wis. 2d at 723, 694 N.W.2d at 938 (citation omitted).

¶9 The circuit court's stated purposes in imposing sentence were punishment and deterrence. The circuit court explained that Williams required "substantial punishment," and that the community "needs to be protected from any further crimes by [Williams] in the future." The circuit court further stated that it intended to send "a message of deterrence" to Williams specifically, and to the community generally, conveying the consequences of committing repetitive criminal acts. The circuit court's sentencing purposes are not frustrated by denying Williams release to parole.

¶10 Williams nonetheless contends that "the circuit court did sentence Williams with the expectation that he could receive an early parole from the parole board." We disagree. The circuit court expressly concluded that Williams was not a good risk for parole "of any sort." Accordingly, the circuit court ordered that Williams first be eligible for parole on his mandatory release date. Parole rules that may keep Williams confined after his mandatory release date do not "frustrate" the circuit court's efforts to prevent Williams's release before his

mandatory release date. *See* ***ibid.*** For the foregoing reasons, Williams has not demonstrated a new factor warranting sentence modification.

*By the Court.*—Orders affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.