

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 19, 2012

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2011AP1809-CR

Cir. Ct. No. 2000CF2738

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

YVETTE C. SIMMONS-SHERRELL,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
DENNIS P. MORONEY, Judge. *Affirmed.*

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

¶1 PER CURIAM. Yvette C. Simmons-Sherrell, *pro se*, appeals an order denying her motion for sentence modification. She argues that her sentence should be reduced because new sentencing laws enacted after her conviction reduce the maximum penalty for the crime she committed. We affirm.

¶2 A defendant is entitled to resentencing if he or she shows the existence of a “new factor.” *State v. Harbor*, 2011 WI 28, ¶35, 333 Wis. 2d 53, 72, 797 N.W.2d 828, 837 (citation omitted). 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.*, 2011 WI 28, ¶40, 333 Wis. 2d at 74, 797 N.W.2d at 840 (citation omitted).

¶3 Simmons-Sherrell contends that the reduced maximum confinement penalties under sentencing laws enacted since her conviction constitute a new factor, entitling her to sentence modification. The supreme court rejected this very argument in *State v. Trujillo*, 2005 WI 45, ¶2, 279 Wis. 2d 712, 715, 694 N.W.2d 933, 934–935 (*abrogated on other grounds by Harbor*, 2011 WI 28, 333 Wis. 2d 53, 797 N.W.2d 828). It held that reduced maximum confinement penalties under the new sentencing laws do not constitute a new factor for those sentenced under the prior laws. *Ibid.* Simmons-Sherrell thus fails to show that she is entitled to sentence modification.

By the Court.—Order affirmed.

This opinion will not be published.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

