

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 1, 2005

Cornelia G. Clark
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. 04-1610-CR
04-1611-CR
STATE OF WISCONSIN**

**Cir. Ct. No. 02CF000207
02CF000252**

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JASON T. PROCKNOW,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Eau Claire County:
PAUL J. LENZ, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Jason Procknow appeals an order denying his motion to modify sentences imposed for uttering a forgery and eluding an officer. The trial court concluded that diagnosis and allegedly successful treatment of

Procknow's bi-polar disorder did not constitute a "new factor" that would support a sentence modification. We affirm that decision.

¶2 Before sentencing, the trial court was informed that Procknow used cocaine and methamphetamines at the time of the police chase, that his mother speculated that Procknow felt "invincible," and that Procknow had a history of a suicide attempt. Procknow told the sentencing court, "I seem to have no impulse control over my actions." After being diagnosed and treated for bi-polar disorder and significantly reducing the number of conduct reports in prison, Procknow moved to modify his sentences alleging that the diagnosis and successful treatment of his disorder constitutes a new factor.

¶3 Whether a set of facts is a new factor is a question of law that this court decides without deference to the trial court. *See State v. Michels*, 150 Wis. 2d 94, 97, 441 N.W.2d 278 (Ct. App. 1989). A new factor is a fact or set of facts highly relevant to the imposition of sentence, but not known to the sentencing court because it was not in existence at the time or because it was unknowingly overlooked. *See State v. Kluck*, 210 Wis. 2d 1, 7, 563 N.W.2d 468 (1997). A new factor must be a development that frustrates the purpose of the original sentence. *State v. Champion*, 2002 WI App 267, ¶4, 258 Wis. 2d 781, 654 N.W.2d 242.

¶4 The diagnosis and allegedly successful treatment of Procknow's bi-polar disorder does not constitute a new factor. Post-sentencing rehabilitation is not a new factor because it does not frustrate the purpose of the initial sentence. *Id.*, 258 Wis. 2d 781, ¶13. Indeed, trial courts sentence a defendant with the hope that rehabilitation will occur. *See State v. Crochiere*, 2004 WI 78, ¶22, 273 Wis. 2d 57, 681 N.W.2d 524.

¶5 Rehabilitation through diagnosis and treatment of a mental illness is not accorded any special significance as a new factor. A post-sentencing psychiatric report that contradicts earlier reports is not a new factor. *See State v. Slagowski*, 2001 WI App 112, ¶11, 244 Wis. 2d 49, 629 N.W.2d 50. If misdiagnosis is not a new factor, placing a psychological label on existing behavior traits known before sentencing is not a new factor. Procknow's allegedly successful treatment is thus comparable to successful post-sentencing alcohol treatment, which has been determined not to constitute a new factor. *Kluck*, 210 Wis. 2d at 3.

By the Court.—Order affirmed.

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

