STATE OF WISCONSIN

C O U R T O F A P P E A L S

DISTRICT IV

STATE OF WISCONSIN

Plaintiff – Respondent

VS

Appeal No. 14-AP-982-CR
Circuit Court Case No. 2011CM000512

JAIME R. ANDERSON

Defendant – Appellant

ON REVIEW OF A DECISION AND ORDER DENYING THE DEFENDANT'S PETITION FOR SENTENCE ADJUSTMENT, ENTERED ON FEBRUARY 11, 2014
In the Monroe County Circuit Court,
The Honorable Mark L. Goodman, Presiding

PLAINTIFF – RESPONDENT'S BRIEF

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STATEMENT OF ISSUES

ANDERSON'S POSITION AS THE ISSUE PRESENTED:
DID THE CIRCUIT COURT ERR IN CONCLUDING THAT ANDERSON WAS STATUORILY INELIGIBLE FOR SENTENCE ADJUSTMENT UNDER WIS. STAT. §973.195?

STATE'S POSITION RELATED TO ANDERSON'S VIEW OF THE ISSUES:
THE CIRCUIT COURT DID NOT ERR AS THE CIRCUIT COURT TREATED ANDERSON AS IF HE WAS ELIGIBLE FOR SENTENCE ADJUSTMENT UNDER WIS. STAT. §973.195.

STATE POSITION AS TO WHAT THE ISSUE PRESENTED IS:
HAS ANDERSON RAISED ANY ISSUES WHICH ARE APPROPRIATE FOR THE COURT OF APPEALS TO ADDRESS?

STATE'S POSITION: NO.

POSITION ON ORAL ARGUMENT AND PUBLICATION

Neither publication of this court's opinion nor oral arguments are necessary in this case. The issues presented are adequately addressed in the brief. The defendant claims this case presents the Court with an opportunity to contribute to legal literature, it does not, as the defendant was treated as if he was eligible for sentence adjustment. Additionally the defendant claims this is a case of substantial and continuing public interest, this is simply not the case. There is no need or reason for public under Wis. Stat. §809.23.

STATEMENT OF FACTS

The State has no pertinent objection to the Statement of the Case as presented in the Appellant's Brief. Therefore, the State sees no value and regurgitating or repeating a recitation of the procedure of the case.

ARGUMENT

I. THE DEFENDANT'S APPEAL IS WITHOUT MERIT BECAUSE THE DEFENDANT WAS TREATED AS IF HE WAS ELIGIBLE FOR SENTENCE ADJUSTMENT.

The appellant spends an entire brief arguing that criminal defendants in Wisconsin sentenced to prison on misdemeanors should be eligible to petition the sentencing Court for sentence adjustment. The State asserts that to some legal observers or criminal law academics this may constitute an interesting or novel question, however, it does not constitute an interesting or novel question on this particular case because in this particular case the defendant, Anderson, was allowed to petition for and was treated as if he was eligible for sentence adjustment. If Anderson or his attorneys desire clarification from the Court of Appeals, on whether misdemeanants sentenced to prison are eligible to petition for

sentence adjustment, then Anderson and his attorneys should appeal a case where the defendant was actually denied the right to petition for sentence adjustment.

A review of the procedure of the case exhibits that Anderson was treated as if he was eligible for sentence adjustment. Anderson's petition for sentence adjustment was filed with the Court. *See Anderson Br. App. pg 2.* If the Court had denied the petition at that point and attached a letter stating the defendant was ineligible for sentence adjustment, then perhaps Anderson's appeal would have merit(the purported issue/issues would still be moot but may present an actual issue/issues for the Court of Appeals to address), however, the Court did not outright deny the petition but rather held the petition for further consideration as is allowed under Wis. Stat. §973.195(1r)(c). *See Id.* The Court then followed the procedure related to petitions for sentence adjustment under Wis. Stat. §973.195. *See Anderson Br. App. pg 2 and Wis. Stat. §973.195.* The Court notified the District Attorney of the inmate's petition as is required under Wis. Stat. §973.195(1r)(c). *See Anderson Br. App. pg. 2.* The District Attorney was given an opportunity to respond to the inmate's (Anderson's) petition. *Id.* The District Attorney, objected to the petition. *Id.* Based on this objection and according to Wis. Stat. §973.195(1r)(5)(c) the Court "shall" deny Anderson's petition. The Court did deny the petition as it was supposed to do under the statute. *See Anderson Br. App. pg. 2.* The State acknowledges that the findings of the Court in *State v. Stenklyft*, 2005 WI 71, 281 Wis. 2d 484, 697 N.W. 2d 452, limited the forcefulness of the "shall requirement" to more of a, directive that the Court should deny the petition if the Circuit Court agrees with the objection, requirement. However, the State asserts the findings of the Court in *Stenklyft*, did not modify the language of the statute, nor did the Court in *Stenklyft* find that the opinion of the District Attorney should not be given significant weight. Anderson attempts to argue that the decision to deny Anderson's petition was based solely on the Court's conclusion that sentence adjustment only applies to defendant convicted of Class C through I felonies. *Anderson. Br. App. pg. 4.*

Anderson appears to completely overlook the fact that the District Attorney had objected to the petition.

Anderson further fails to explain how he was denied the opportunity to petition for sentence adjustment. The fact the Court allowed Anderson to file a petition and then forwarded that petition to the District Attorney exhibits that in reality the Court treated Anderson's petition differently than a petition from a person who was convicted of a Class C through I felony. The only fact Anderson can point to which indicates Anderson was denied eligibility for sentence adjustment is an irrelevant written dicta statement from the Court. Had the Court simply denied the petition without a reason (which the Court is allowed to do) then there would be no issue. Anderson takes a statement that was not required to be made by the Court and expands it into an argument that the only reason for the denial of the petition was that the Court did not believe the defendant was eligible to petition. If that was the only reason Anderson's petition was denied, then why did the Court send the petition to the District Attorney for his input? Anderson has failed to and the State asserts will continue to fail to point to any evidence which shows that Anderson was denied the ability to petition for sentence adjustment. The fact of the matter is that Anderson was allowed to petition for sentence adjustment. Therefore, the issue of whether a defendant sentenced to prison on misdemeanors is eligible for sentence adjustment is not even presented in the present case and Anderson's appeal should be denied.

II. THE COURT'S EXPLANATION OF THE DENIAL OF THE PETITION FOR SENTENCE ADJUSTMENT IS IRRELEVANT DICTA, THEREFORE DOES NOT WARRANT ANY CONSIDERATION BY THE COURT OF APPEALS.

The entirety of the Anderson's brief appears to hinge on the statement from the Court in denying Anderson's petition for sentence adjustment. As the State understands the Anderson's argument, Anderson asserts he was

denied an opportunity at his statutory right to petition for sentence adjustment because the Circuit Court erred in finding him ineligible for sentence adjustment. Anderson apparently bases this argument on the letter from the Circuit Court stating that Anderson was not statutorily eligible for sentence adjustment. The State asserts the Circuit Court's statement that Anderson was statutorily ineligible for sentence adjustment was irrelevant dicta, has no legal meaning and therefore does not raise any issues which are worth any consideration.

The attached explanation from the Court stating a reason for denial of the petition for sentence adjustment is dicta and is irrelevant because neither the explanation nor the reasoning within the explanation had any bearing on the ultimate outcome of the petition. The sending of the petition by the Court to the District Attorney, exhibits that no matter what the opinion of the Court was as to Anderson's eligibility, the Court treated Anderson as if he was eligible to petition for sentence adjustment. Once the Court sent the petition to the District Attorney and the District Attorney objected to the petition, the Court's opinion on whether Anderson was eligible for sentence adjustment became irrelevant as the Court was obligated (or more appropriately stated "directed" per the Court in *Stenklyft*) to deny the petition under Wis. Stat §973.195(5)(c). Additionally there is no requirement that the Court attach any reason for denial of a petition for sentence adjustment. *See WIs. Stat. §973.195*. Therefore, any statement by the Court, related to the Anderson's eligibly for sentence adjustment is irrelevant dicta.

The State further submits the Court could have attached a statement denying the petition for the most unexplainable of reasons (for instance a statement that said Anderson's petition was being denied because the Green Bay Packers did not win the Super Bowl in 2014) and it would have no more bearing on the present case than the statement that was attached by the Court. If Anderson were eligible to petition for sentence adjustment, which the State asserts the Circuit Court treated him as though he was, then the Circuit Court was directed by the legislature to deny the petition when the District Attorney objected to the

petition, therefore, any other explanation related to the denial of the petition was irrelevant dicta and does not raise any issues which warrant review. Given the Court's statement related to the denial of the petition was irrelevant dicta, Anderson's appeal should be denied.

III. ANDERSON'S CASE DOES NOT PRESENT THE ISSUES HE IS ASKING THE COURT TO MAKE NEW LAW ON. THEREFORE HIS APPEAL SHOULD BE DENIED.

The State does not dispute that in certain unique situations Courts of Appeal or the Wisconsin Supreme Court should review cases in which the issues are moot in the case actually appealed, but the issues are likely to repeat themselves and evade review. However, the present case is not such a case. Anderson is creating an issue where one does not exist. Anderson is obviously unimpressed by the current the state of the law related to inmates sentenced to prison on misdemeanors. The problem for Anderson and his appeal is that, he was not denied the ability to petition for sentence adjustment. There is an appropriate procedure to change law within the state. Appealing a case where the defendant was not denied the right to petition for sentence adjustment is not an appropriate means by which to change or clarify the law relating to petitions for sentence adjustment. Obviously, Anderson has attempted to select a case in which Anderson felt the Court denied the right to petition for sentence adjustment on a misdemeanor prison sentence. The problem Anderson has is that in his case he was allowed to petition for sentence adjustment on a misdemeanor prison sentence. This petition was simply denied. Anderson's focus and argument on the statement from the sentencing Court is misguided, as the sentencing Court treated Anderson as if he was eligible. Given the Court treated Anderson as if he was eligible for sentence adjustment the Court in a position of being directed by the legislature to deny the petition based on the objection of the District Attorney. If the appellant does not agree with or desires a change in the current state of the law

the appellant should either 1. Petition and advocate in front of the Wisconsin legislature or 2. Appeal a case in which the defendant was actually denied the right to petition for sentence adjustment on a misdemeanor prison sentence. It would be an absurd result that a defendant or any party for that matter, could appeal a case on an issue/issues that were not present in his case. It would be additionally absurd if parties were/are allowed to appeal every single dicta type statement made by a Court. Undoubtedly across this State millions of dicta type statements are made by Courts every year. Likely many of these statements may be incorrect or controversial statements on unsettled areas of the law, however, this does not mean that every single time a Court makes a statement that a party should or is allowed to appeal and ask the Court of Appeals to scold the Circuit Court related to the dicta statement. Anderson's appeal does not raise any issues related to the new law he wants the Court to make, therefore, his appeal should be denied.

IV. EVEN IF THE COURT FINDS ANDERSON HAS PRESENTED REVIEWABLE ISSUE/ISSUES ANDERSON'S APPEAL SHOULD BE DENIED BECAUSE THE SENTENCE ADJUSTMENT STATUTE DOES NOT APPLY TO MISDEMEANANTS SENTENCED TO PRISON.

A. THE SENTENCE ADJUSTMENT STATUTE DOES NOT APPLY TO MISDEMEANTANTS SENTENCED TO PRISON .

Misdemeanants sentence in to prison in Wisconsin do not meet the eligibility requirements to petition for sentence adjustment. Therefore, misdemeanants are not eligible to petition for sentence adjustment under Wis. Stat. 973.195. Anderson notes in his brief the two basic eligibility requirements for sentence adjustment are "(1) …must be 'serving a sentence under s. 973.01 for a crime other than a Class B felony…(2) the inmate must serve 'at least he applicable percentage of the term of confinement'" *Br. App. Pg. 5-6.* Anderson

further notes in his brief that the legislature took the time in Wis. Stat. §973.19(1g) to differentiate the eligible percentage of sentence completed for application for class C, D, and E felonies and Class F, G, H, I felonies. *See Id. at 6.* The legislature did not however specify or indicate any applicable percentage for misdemeanants sentenced to prison. If the legislature desired for misdemeanants to be eligible for sentence adjustment they would have taken the time to define an applicable percentage. Anderson argues that the failure to provide an applicable percentage for misdemeanants is simply an oversight by the legislature, this seems highly unlikely given the legislature took the time to designate an applicable percentage for seven other classifications of crimes. The legislature's decision to not an include an applicable percentage for those convicted of misdemeanors to apply for sentence adjustment is indicative of the legislature's desire that misdemeanants not be eligible for sentence adjustment. Furthermore, because there is no applicable percentage which applies to misdemeanants sentenced to prison, misdemeanants sentenced to prison are not eligible to petition for sentence adjustment.

B. IT IS NOT SURPRISING THAT THE LEGISLATURE CHOSE TO NOT MAKE MISDEMEANANTS ELIGIBLE FOR SENTENCE ADJUSTMENT.

It is not surprising that the legislature chose to treat misdemeanants differently than felony offender as misdemeanants sentence to prison are in an inherently different situation than felony offenders being sentenced to prison. Given that misdemeanant defendants are in an inherently different situation than felony offenders sentenced to prison, misdemeanant defendants should be treated differently than felony offenders sentenced to prison. Given the inherent differences of misdemeanant and a felon being convicted to prison the mere fact that lower class felonies are eligible to petition for sentence adjustment, is not and should not be indicative that the legislature intended for misdemeanants to be

eligible to petition for sentence adjustment. Anderson's argument as such and his argument related to the application of sentence adjustment to TIS-II sentences or any felony sentence as being similarly situated as habitual misdemeanants sentenced to prison should be discounted. Anderson fails to acknowledge or discuss the major factors which differentiate misdemeanants sentenced to prison and any of the classification of crimes for which defendants are eligible for sentence adjustment. Those facts being that misdemeanants being sentenced to prison are being sentenced on misdemeanors not felonies and are per se criminal repeaters. Obviously throughout the rest of the statutes the legislature has determined that those who qualify as criminal repeaters should be treated differently than those convicted who are not criminal repeaters. Additionally throughout the rest of the statutes the legislature has determined that those convicted of felonies should be treated differently than those convicted of misdemeanors. It is not surprising then that the legislature chose to treat misdemeanants who qualify as repeaters, differently than they chose to treat those convicted of felonies.

Anderson argues that given felonies are eligible for sentence adjustment then misdemeanors must also be eligible for sentence adjustment, this argument further fails because this argument is simply not logically consistent with the diverse way in which the legislature treats felonies in misdemeanors throughout the rest of the statutes. As argued above misdemeanants being sentenced to prison are not similar to any other defendant. They are the type of people who the criminal justice system has identified as posing a significant risk to public safety but have not committed a felony level offense. They by rule must qualify as criminal repeaters under Wis. Stat. §939.62(1)(a). Given they are criminal repeaters they are the type of people who are less likely to be amendable to rehabilitative efforts of criminal justice facilities. Additionally, because they are being sentence to prison the amount of time for which the sentencing Court can confine the defendant to protect the public is relatively limited. Undoubtedly, the

legislature was first and foremost concerned with rehabilitation when they created the sentence adjustment statute because the first factor the legislature directed courts to consider when considering sentence adjustment was the rehabilitative efforts of the defendant. *See Wis. Stat.* §973.195(1r)(b)1. Therefore, it is not surprising that the legislature did not make misdemeanants sentenced to prison eligible to petition for sentence adjustment, as misdemeanants sentence to prison fall into a unique category of criminal defendants sentenced to prison, they are the only criminal defendants sentenced to prison who all qualify as criminal repeaters.

V. CONCLUSION.

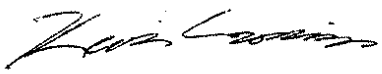
Anderson is attempting to make new law, however, the present case simply does not present the issue (whether a defendant sentenced to prison on misdemeanors is eligible to petition for sentence adjustment) Anderson wants the Court of Appeals to make new law on. The facts of Anderson's case exhibit that he was treated no differently than a person who had been sentenced to prison on a Class C through I felony. Anderson was given the opportunity to petition for sentence adjustment and the Circuit Court followed the procedure of the sentence adjustment statute in relation to Anderson's petition. Given the Circuit Court treated Anderson no differently than a person petition for adjustment on a Class C through I felony, the Circuit Court was in a position where the legislature had directed that the Court deny the petition once the District Attorney had objected. The later statement by the Circuit Court related to the eligibility of misdemeanants sentenced to prison and their eligibility to petition for sentence adjustment is irrelevant dicta and does not change the fact that Anderson was treated as if he

was eligible to petition for sentence adjustment, nor does it change the fact that his petition was properly denied by the Circuit Court. Whether misdemeanants are eligible to petition for sentence adjustment may or may not present an appropriate issue for this or another Court of Appeal to consider, however, this case does not present that issue. Therefore Anderson's appeal should be denied.

Additionally, even if the Court believes Anderson's case presents an issue that the Court should address related to whether misdemeanants who are sentenced to prison are eligible to petition for sentence adjustment, the Court should deny Anderson's appeal because the sentence adjustment statute does not specifically make misdemeanants eligible for sentence adjustment and therefore the sentence adjustment statutes does not apply to misdemeanants sentenced to prison.

Dated this 16th day of October, 2014.

Respectfully submitted,



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Plaintiff-Respondent,

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Circuit Court Case No. 2011CM000512

JAMIE R. ANDERSON,

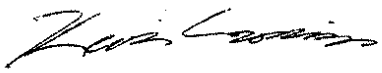
Defendant-Appellant.

CERTIFICATE OF COMPLIANCE WITH RULE 809.19 (8)

I hereby certify that this brief conforms to the rules contained in s. 809.19 (8) (b) and (c) in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes or footnotes, leading of minimum of 2 points, maximum of 60 characters per full line of body text. The length of this brief is 11 pages, 3,179 words.

Dated this 16th day of October, 2014.

Respectfully submitted,



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Plaintiff-Respondent,

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Defendant-Appellant.

CERTIFICATE OF COMPLIANCE WITH RULE 809.19 (12)

I hereby certify that:

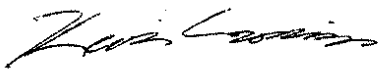
I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of s. 809.19 (12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 16th day of October, 2014.

Respectfully submitted,



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