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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

Case No. 2015AP1636-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

GREGORY SEAN GORAK,

Defendant-Appellant.

ON APPEAL FROM AN ORDER DENYING
RECONSIDERATION OF DENIAL OF MOTION FOR
SENTENCE MODIFICATION ENTERED IN THE CIRCUIT
COURT OF MILWAUKEE COUNTY, THE HONORABLE
WILLIAM S. POCAN, PRESIDING

BRIEF AND SUPPLEMENTAL APPENDIX OF
PLAINTIFF-RESPONDENT

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BRIEF OF PLAINTIFF-RESPONDENT

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State does not request oral argument or publication. This case may be resolved by applying well-established legal principles to the facts of this case.

SUPPLEMENTAL STATEMENT OF THE CASE

The State charged Gregory Gorak with multiple crimes for a course of conduct occurring in July 2006.(2) Gorak subsequently pled guilty to possession of a molotov cocktail (count two), carrying a concealed weapon (count three), and burglary (count four) (2, 15, 16). Milwaukee County Circuit Court Judge William Sosnay sentenced Gorak as follows: on count two, six years of imprisonment divided as three years of initial confinement and three years of extended supervision (15:1); on count three, nine months incarceration (16); and on count four, a ten-year term comprised of five years of initial confinement and five years of extended supervision (15:1).

Gorak was also convicted of a federal weapons offense and—the day before the state court sentenced Gorak—was sentenced to a 118-month prison term (44:5-6).

At Gorak's sentencing on the state charges, a central issue was whether to make Gorak's state sentences run concurrently with his approximately ten-year federal sentence. In fact, the prosecutor recommended that the state sentences be concurrent to the federal (44:5). Gorak's counsel, not surprisingly, agreed, and made a strong pitch for imposing a sentence that would be less than the federal term and concurrent to it, so that Gorak would be released upon completion of his federal sentence (44:33-34, 44-45).

Judge Sosnay agreed to make the sentences on counts three and four concurrent with the federal sentence (44:63-64), but refused to do so with respect to count two, the Molotov cocktail crime:

I've also considered as to this particular crime [i.e. count two] whether to impose a concurrent or a consecutive sentence. This court is going to order that this sentence be consecutive to the federal sentence that you received. I am

imposing this as a consecutive sentence because I do believe if I were to give concurrent time here I would depreciate the seriousness of this. Someone who goes to this extent who engages in this type of crime, and this was a separate matter for the reasons that you obviously were going to do this, the court believes that the sentence as consecutive is appropriate and it will – will not diminish the seriousness of this.

(44:63).

The judgment, as promptly amended to correct an error,¹ provided that the count two sentence was “[c]onsecutive to any other sentence,” and the count four sentence was “[concurrent] with any other sentence” (17:1). The judgment also recognized that Gorak was entitled to 276 days of jail credit on count four (*id.*)

Gorak subsequently filed a motion seeking an additional forty-two days of jail credit, and seeking to have the jail credit apply to count two as well as count four (27:1). As support, Gorak cited the prosecutor’s recommendation for concurrent sentences (27:4); he ignored Judge Sosnay’s express rejection of that recommendation.

The circuit court agreed that Gorak was entitled to jail credit on the count four sentence, and amended the judgment accordingly (29:1).² The court declined, however, to extend the jail credit to the count two sentence because it is a consecutive sentence (*id.*) (capitalization omitted).

¹ The original Judgment of Conviction mistakenly provided that the count 4 sentence was consecutive to the other sentences, rather than concurrent (15:1).

² The nine-month count three sentence, considering the jail credit, was essentially a “time-served disposition” (30). Thus count three is not relevant to this appeal.

On October 10, 2008, the circuit court again amended the judgment to impose a "corrected sentence" (38:1). With respect to the count two sentence, that judgment replaced the phrase "consecutive to any other sentence" with "consecutive to federal sentence" (29:1; 38:1). As for the count four sentence, the amended judgment replaced the phrase "concurrent with any other sentence" with "concurrent with counts two and three and with the federal sentence" (*id.*) (capitalization omitted).

An institution registrar with the Department of Corrections wrote to Judge Sosnay and recommended that the judgments be modified because, in the registrar's view, they now contained an improper split sentence, "with a portion served consecutive and a portion served concurrent to another sentence" (40:1). The registrar cited as authority *State v. Bagnall*, 61 Wis. 2d 297, 212 N.W.2d 122 (1973). A handwritten note on the copy of the letter in the record states: "JOC shall remain as is. Bagnall not applicable" (40:1).

Gorak appealed the circuit court's denial of his motion to apply the jail credit to his count two sentence, and this court affirmed (50; A-Ap. 28-34). The court identified the issues as "whether Gorak was entitled to sentence credit on the six-year sentence (imposed for his possession of a Molotov cocktail), whether that sentence was imposed illegally, and whether the trial court violated Gorak's rights to equal protection and due process by denying him the sentence credit he seeks" (50:1-2; A-Ap. 28-29).

Among other things, Gorak asserted that the count two sentence was a "split sentence" because it is both consecutive to the federal sentence and concurrent to the other state sentences, and therefore unlawful under *Bagnall*, 61 Wis. 2d at 312 (50:6; A-Ap. 33). Because sentence credit cannot be given jointly to consecutive, as opposed to concurrent, sentences, Gorak sought to have the count two sentence declared to be concurrent on the

ground that "it effectively was imposed concurrently to the other state court (burglary and carrying a concealed weapon) sentences" (50:6; A-Ap. 33).

This court rejected Gorak's claims. It held that the count two sentence was plainly consecutive to the federal sentence, and was not an illegal split sentence (50:6; A-Ap. 33). The court also rejected Gorak's equal protection and due process claims (50:7; A-Ap. 34).

In February 2010, Gorak filed a "Motion for Sentence Structure Clarification and For Judicial Order To Award Credit For Post-Sentencing Confinement" (60). The motion asked the circuit court to order DOC to credit him, on his count two sentence, with "the time he had been in custody since his sentencing on 6/8/07" (60:2). Judge Dennis Cimpr denied his motion, concluding the motion did not challenge "the sentence structure" but DOC's implementation of it, and that the court "has no jurisdiction to order the Department to alter its sentence computation in any manner" (61:2). Gorak's recourse, according to the court, was to pursue "civil action against the Department (i.e. petition for writ of habeas corpus)" (*id.*).

In April 2011, a DOC institution records supervisor wrote the circuit court for clarification of Gorak's sentence (74). The impetus for the letter was a decision by the federal Bureau of Prisons designating Gorak's federal sentence as retroactive, giving Gorak credit on his federal sentence for his time in state custody (74:2). After noting that based upon the federal action Gorak was "currently serving Count 4 [of the state case] *and* his federal sentence," the letter closes with a request for "clarification about when the 6-year sentence for Count 2 should begin" (*id.*).

Gorak responded to the letter by asserting that "his count two sentence has been fully served" because count four was

designated as concurrent to count two (75:1). Gorak also claimed that requiring him to “re-serve the count II term” would constitute double jeopardy (75:2).

Gorak acknowledged that “[t]he DOC alone retains [the] right to calculate the proper sentence and has sufficient statutory and case law doctrine at its disposal to properly administer Gorak’s sentences without further input from the circuit or appellate courts” (75:3). He stated that if DOC did not calculate his sentence correctly, he would “seek remedy via a writ of habeas corpus as directed by Judge Cimpl in 2010” (*id.*).

Judge Cimpl responded by ordering that the judgment be amended (78). The order summarized the situation and the solution as follows:

The sentence on count four was ordered to run concurrently with the defendant’s federal sentence and concurrent with count two. Count two was ordered to run consecutive to the defendant’s federal sentence. Because the federal sentence is much longer than the sentence imposed in count four, count four will never run concurrently with count two. The court will remedy the situation by removing the language ‘concurrent with count two’ from the sentence imposed in count four so that it will only run concurrent with the federal sentence. When the federal sentence is over, count two will commence to run.

(78; A-Ap. 10).

The court then amended the judgment accordingly on May 11, 2011 (79; A-Ap. 7-9).

Gorak did not appeal the order. Instead, he moved to vacate it (80). Gorak asserted the following claims:

[T]he amendment was an abuse of judicial discretion and an abuse of process, that the amendment violates Gorak's 5th Amendment Constitutional right against double jeopardy and his 6th and 14th Amendment rights of equal protection and due process of law, that the sentence now is an illegally split sentence, and finally, that the amendment violates Gorak's legitimate expectation of finality in his imposed state sentences and actually increases the length as well.

(81:1-2).

The circuit court denied Gorak's motion in an order dated October 4, 2011 (85; A-Ap. 11-13). Judge Cimpl concluded that "[if] the defendant believes that count two has already been served, his remedy is to file a petition for writ of *habeas corpus*. Furthermore, if the defendant believes that this court's May 6, 2011 order is illegal, his remedy was to appeal it" (85:2; A-Ap. 12).

Gorak did not appeal this order either.

But he did file a petition for writ of habeas corpus with this court in October 2011 (Case No. 2011AP2308-W) (R-Ap. 101-106). The petition asserted three grounds for relief, including an "illegally split sentence on ct. 4" and a double jeopardy violation (R-Ap. 105). Gorak acknowledged that all of these grounds were presented in his motion to vacate, and that the split sentence issue had been raised in his previous appeal, but only as to count two, not count four (R-Ap. 106).

This court denied Gorak's petition in September 2012 (84; R-Ap. 107-108). It concluded that "[b]ecause Gorak previously raised the issues he now brings before us, we will not consider them" (84:2; R-Ap. 108).

Gorak then supplemented his petition "to clarify" that his petition claims included "the violation of federal rights guaranteed by the U.S. Constitution" (86:1). This clarification, Gorak explained, was to preserve his ability to seek habeas relief in federal court (*id.*). Gorak then detailed his claims of double jeopardy, ineffective assistance of counsel, and violations of due process and equal protection (86:3-6).

In yet another filing the same date (November 8, 2012), Gorak filed an addendum to his motion for reconsideration of this court's denial of his habeas petition (87). The basis of that addendum was a letter dated October 15, 2012, from a DOC records supervisor, which Gorak asserted supported his argument that his sentence was "illegally split" and that it was impermissible for him "to be serving a term of initial incarceration simultaneously with a term of extended supervision on the same case" (87:1).

This court rejected his motion for reconsideration in December 2012 (88). The Wisconsin Supreme Court ultimately denied Gorak's petition for review in August 2014 (97).

Meanwhile, in an order dated November 14, 2013, this court denied Gorak's motion to extend the deadlines for appealing the 2011 order amending the judgment and the denial of his motion to vacate that order (90). The court observed that Gorak's "direct appeal rights lapsed" and could not be reinstated (90:1-2). Gorak again moved for reconsideration, which this court denied by order dated February 27, 2014 (95).

Undeterred by the failure of his habeas petition and his inability to appeal the amended judgment of which he complains, Gorak then tried another vehicle, namely a "Wis. Stat. § 973.19 Discretionary Review Sentence Modification Motion", which he filed in January 2015 (98). Gorak's motion

asserted that the October 15, 2012, letter from DOC (which was the basis for his motion for reconsideration in this court), constituted a "new factor" authorizing the modification of his sentence (98:5). He again argued, as he had in his habeas petition (R-Ap. 110), that the count four sentence was an illegal split sentence (98:7). And in an addendum to his motion, Gorak revived his constitutional claims, and asked the court to "nullify the May 2011 Amendment and deem Ct. II fully served" (98-Addendum, p. 11).³

The circuit court, this time Judge William Poca, denied the motion for sentence modification:

The defendant is attempting to manipulate Judge Cimpl's order in an apparent effort to reinstate a specific order that count four is concurrent to count two so that he can argue that he already served his confinement on count two before he was placed in federal custody. The defendant could *not* have served his confinement on count two because that count was expressly ordered consecutive to the federal sentence, and therefore, the court rejects the defendant's claim that he did.

(100:2; A-Ap. 15).

Gorak did not appeal this order.

Instead, Gorak moved for reconsideration (101). The State responded by arguing that Gorak's claims were barred because of his prior litigation (103). For his part, Gorak replied that the prior appeal had held only that the count two sentence was not a split sentence; it did not address the count four

³ The lengthy addendum to Gorak's motion follows the motion (108), but is neither separately numbered nor included in the record index, which lists only six pages for the motion (119:5).

sentence, which Gorak contended only became “impermissibly split” because of the May 2011 amendment (105:1).

Judge Pohan held a hearing, at which a DOC records supervisor testified (118). Gorak made a number of filings with the circuit court before and after the hearing, the last of which he entitled “Defendant’s Evidentiary Hearing Argument In Support Of His Sentence Modification Motion” (113). The two argument headings in that document were as follows: 1) “The 2011 amendment order was imposed without authority or jurisdiction and therefore is invalid and void ab initio”; and 2) “Count four is now being served in an illegally split manner” (113:3, 10) (capitalization omitted).

Judge Pohan denied the motion for reconsideration (114; A-Ap. 17-27). This appeal followed (116).

ARGUMENT

This appeal represents the latest in a long string of attempts by defendant-appellant Gregory Gorak to circumvent the explicit intent of the sentencing court and effectively reduce his sentence by three years. The record clearly shows that Judge Sosnay intended Gorak to spend thirteen years in prison, on his federal and state sentences combined. That is precisely why the court ordered that count two would be consecutive to Gorak’s ten-year federal sentence.

Despite Judge Sosnay’s clear intent, through the years Gorak has attempted—through a prodigious volume of court filings—to negate his sentence on count two so that he would be freed upon completion of his federal sentence. For multiple reasons, this latest effort must fail.

I. Gorak Cannot Appeal the Denial Of His Reconsideration Motion Because It Merely Rehashed the Issues He Raised In His Motion For Sentence Modification, From Which Gorak Did Not Appeal.

An order denying reconsideration of a prior ruling is appealable only if the reconsideration motion presents issues other than those already decided on the original motion. *Ver Hagen v. Gibbons*, 55 Wis. 2d 21, 26, 197 N.W.2d 752 (1972). Where the motion under review “presented the same issues which the trial court decided” in response to an earlier motion, “we conclude that the appellants are not entitled to appeal from the order denying their motion for rehearing.” *Id.* Among the rationales for this rule is the obvious principle that “if an appeal were allowed in such a case, the statute limiting the time for appeal would be wholly nullified.” *Id.*

This rule disposes of Gorak’s appeal. Gorak did not appeal the order denying his motion for sentence modification (98); instead, he has appealed only the denial of his motion for reconsideration of the circuit court’s denial of that motion (101) (Gorak’s brief at 2).

But the only new issue Gorak raised in his motion for reconsideration, as Judge Pohan observed, was Gorak’s claim that his trial counsel rendered ineffective assistance by advising him, prior to his guilty plea, “that the [consecutive] nature of the count two designation could not be enforced and was merely advisory” (101:5; 114:6; A-Ap. 22). Gorak does not pursue this issue on appeal.

Except for his ineffective assistance claim, Gorak’s reconsideration motion merely re-argued the issues he raised in his original motion (98; 101). Thus, this court lacks jurisdiction over his appeal from the order denying reconsideration.

II. Gorak Cannot Challenge the Validity of the May 2011 Amended Judgment of Conviction Because He Previously Litigated His Claims, Or Could Have Done So.

Immediately after Judge Cimpl amended the Judgment of Conviction in May 2011, Gorak launched a vigorous and unrelenting legal campaign to overturn it, as detailed above. He has waged his unsuccessful campaign in both the circuit court and in this court, and through this appeal seeks to renew his challenge to the validity of the amended judgment. Under settled law, he cannot do so.

Gorak's previous attempts and opportunities to have the amended judgment vacated precluded his renewed effort through his "sentence modification" motion in January 2015. Although Judge Pohan did not rely on this ground, it is black-letter law that this court can affirm the circuit court on grounds not presented to it. *State v. Holt*, 128 Wis. 2d 110, 124-25, 382 N.W.2d 679 (Ct. App. 1985), *superseded by Wis. statute on other grounds*.

In his motion to vacate the May 11, 2011 amended judgment—filed in September 2011—Gorak argued that the amendment had made the count four sentence an invalid "split sentence" (80:17-18). Gorak also argued that the amended judgment contained various constitutional infirmities, including double jeopardy and violations of equal protection and due process rights (80:1, 14-17). He did not appeal the denial of his motion.

Gorak asserted the same claims in his later habeas petition filed in this court. He explicitly included not only the "split sentence" claim, but the constitutional claims as well (86:3-5; R-Ap. 105). Gorak also expressly raised his assertion that the statutes did not allow the simultaneous service of

extended supervision and confinement (87). In denying Gorak's claims, this court cited the fact that Gorak had already raised his claims and could not relitigate them (84; R-Ap. 107-08). The court also rejected Gorak's motion for reconsideration (88).

This court has long recognized that "[a] matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue." *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991). This appeal exemplifies the problem *Witkowski* addresses.

In a transparent effort to overcome his failure to appeal either the order amending the judgment or the order denying his motion to vacate the amended judgment, Gorak entitled his most recent motion "Wis. Stat. § 973.19 Discretionary Review Sentence Modification Motion" (98). In his decision denying Gorak's motion for reconsideration of the court's denial of this motion, Judge Pocan recognized that, despite the title, in effect this was Gorak's "second motion to vacate Judge Cimpl's May 6, 2011 order" (114:3; A-Ap. 19). See *bin-Rilla v. Israel*, 113 Wis. 2d 514, 521, 335 N.W.2d 384 (1983) (court looks to the substance of a filing, not the label).

Citing *Witkowski*, this court has already held that Gorak is barred from further challenges to the validity of the amended judgment (84; R-Ap. 107-08). This ruling bars the first and third claims Gorak asserts in his brief, namely that the count four sentence is a split sentence (Issue I, Gorak's brief at 24-29), and that Gorak's sentence violates various constitutional rights (Issue III, Gorak's brief at 37-43).

The same bar applies to at least part of his second claim, namely that Gorak's "sentence structure or service" violates various statutes and administrative code provisions (Gorak's brief at 29-37). To the extent this claim challenges the validity of

the sentence structure imposed by the amended judgment, it is similarly precluded.⁴ Gorak either expressly raised these arguments previously (*see* (87)), or could have done so.

Further, under settled principles a defendant cannot bring successive postconviction motions absent an adequate reason for not bringing new claims earlier. Interpreting Wis. Stat. § 974.06(8), the Wisconsin Supreme Court held “[s]uccessive motions and appeals, which all could have been brought at the same time, run counter to the design and purpose of the legislation.” *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994).

Although Gorak’s motion was not brought under Wis. Stat. § 974.06, the same principles apply here with equal force. The amended judgment has not changed since Judge Cimpl’s order in May 2011. Gorak was obliged to appeal that order if he believed it was illegal; at a minimum, he should have included all of his grounds for invalidating the order in his motion to vacate the order. His failure to do so precludes him from adding new theories to his longstanding campaign against the amended judgment.

The State has limited its briefing to the procedural bar issue. If this court should hold that Gorak is not procedurally barred from raising his appellate claims, the State requests an opportunity to file a supplemental brief addressing the merits of Gorak’s claims. *See State v. Tillman*, 2005 WI App 71, ¶ 13 n.4, 281 Wis. 2d 157, 696 N.W.2d 574.

⁴ Gorak also challenges DOC’s interpretation and implementation of his sentence, which the State will address in the next section of this brief.

III. To the Extent Gorak Challenges the Department of Corrections' Implementation of His Sentence, His Remedy Is An Action Against DOC.

In addition to challenging the validity of the amended judgment—which he can no longer do for the reasons stated above—Gorak also contends that DOC's administration of his sentence conflicts with various statutes (Gorak's brief at 30-37). In fact, the "new factor" cited by Gorak as the basis for his January 2015 sentence modification motion was a 2012 letter from DOC explaining "how it intends to administer his two undischarged sentences pursuant to the 06 May 2011 Amendment Order of Judge Cimpl" (98:5). The letter, dated October 15, 2012, was a response to Gorak's inquiry about how his state and federal sentences were running, in connection with each other (98-Exh. K).

Gorak focuses on DOC's statement in the letter that Gorak's extended supervision on count four began to run at the time he completed his confinement period (July 20, 2011), and will continue through his federal confinement and into a portion of his confinement when he is back in state custody on count two—finally being discharged on July 20, 2016 (98-Exh. K). Gorak argues that this implementation of his sentence is contrary to state law, which provides that extended supervision "must be served **after** state incarceration" (Gorak's brief at 31).⁵

⁵ Gorak's complaint about the calculation of his extended supervision is rather puzzling. Far from being prejudiced by DOC's implementation of his sentence, Gorak benefits from having his extended supervision on count four served before he is discharged from confinement on count two. Otherwise, Gorak would be on extended supervision for a longer period of time after his discharge from confinement on count two.

Declining to direct DOC as to how to administer Gorak's sentence, Judge Pocan observed:

[T]he purpose of the Cimpl amendment was merely to clarify for the DOC that count two was to run consecutive to the defendant's federal sentence, as intended by Judge Sosnay. The defendant's claim that the supervision terms are not running consecutively raises an issue about his sentence computation, over which the court has no jurisdiction. If the defendant believes that his sentence computation is erroneous, he is obliged to address the matter to the Wisconsin DOC and/or to the Federal Bureau of Prisons.

(114:8; A-Ap. 24).

Judge Pocan was right. Gorak's complaints about DOC's administration of his sentence must be addressed through an action against DOC—not through a sentence modification motion (114:8; A-Ap. 24). *See, e.g., State ex rel. Darby v. Litscher*, 2002 WI App 258, ¶ 1, 258 Wis. 2d 270, 653 N.W.2d 160 (challenge to sentence computation by DOC).

Because Gorak's complaints about the implementation of his sentence are properly addressed to DOC—not to the sentencing court—the circuit court properly rejected them.

IV. The Circuit Court Did Not Erroneously Exercise Its Discretion In Rejecting Gorak's Motion.

Gorak next argues that the circuit court erroneously exercised its discretion by making errors of law in rejecting his motion for sentence modification (Gorak's brief at 43-48). This claim fails.

To support his contention, Gorak essentially reasserts his legal challenges to the validity of the May 2011 amended

judgment (Gorak's brief at 45-48). These have been addressed above.

Gorak also contends that until the amendment of the judgment in May 2011, DOC interpreted his count two sentence to have run concurrently with his count four sentence (Gorak's brief at 44). But Gorak's own court submissions prior to the amended judgment show otherwise.

For example, in February 2010, Gorak made a "Motion For Sentence Structure Clarification And For Judicial Order To Award Credit For Post-Sentencing Confinement" (60). The motion requested an order requiring DOC to "grant post-sentence confinement credit for the service of both his Count II and concurrent Count IV sentences" (60:2). Gorak's complaint that the DOC records supervisor at his prison "has now interpreted [the court of appeals decision] to imply Gorak has somehow not begun service of his Count II sentence after he was led to believe he had served over 40 months of it" (*id.*).

Contradicting his current claim that DOC agreed with his theory until Judge Cimpl amended the judgment in May 2011, Gorak faulted DOC for its "*incorrect* assumption that in order to comply with the JOC's consecutive designation, Gorak must serve his Count II term after serving his federal term" (60:3). Gorak attached to his motion a December 2009 letter from DOC, responding to an inquiry from Gorak about the status of his count two sentence, which stated that "as the judgment currently shows this sentence consecutive to the federal sentence, I can only show zero time served on Ct 2 at this time" (60-Exh. 103).

Similarly, in December 2010, Gorak moved this court for "clarification" of his sentence, on the ground that DOC had erroneously interpreted it to mean "that Gorak cannot receive any credit toward the service of his count 2 sentence until after

he has completed service of both his concurrent count 4 term and his federal term" (122:1).⁶ Gorak stated even more specifically that "[t]he DOC Records staff and Legal Counsel feel that the 12/22/09 Appeal Decision prohibits the count 2 from commencing until after I've served the concurrent 5 years on count 4 and after serving the 118-month federal sentence" (82:112).

Notwithstanding the emails and other scattered statements Gorak cites (Gorak's brief at 46-47), the record refutes Gorak's contention that the May 2011, judgment amendment caused DOC to alter its interpretation and implementation of his sentence.

In sum, Judge Pocan did not erroneously exercise his discretion in rejecting Gorak's attempt to circumvent Judge Sosnay's manifest intent at sentencing, or to overcome the procedural bar applicable to his claims.

V. The Court Should Disregard Gorak's Remaining Issues, Because He has Improperly Sought To Incorporate Them By Reference.

Gorak's final argument section consists of a single sentence seeking to incorporate arguments he made in a post-hearing motion he made in June 2015; he did so, he candidly acknowledges, because he had "exceeded his page allotment in this brief" (Gorak's brief at 49).

This court has rejected this tactic. *See State v. Flynn*, 190 Wis. 2d 31, 58, 527 N.W.2d 343 (Ct. App. 1994) (court will not address issues on appeal that are inadequately briefed). Hence Gorak has not properly presented these arguments for review.

⁶ The motion appears as record item 122, although the record index erroneously lists it as item 120.

CONCLUSION

For the reasons stated above, the court should affirm the circuit court's order denying Gorak's motion for reconsideration of the circuit court's ruling on his motion for sentence modification.

Dated this 18th day of February, 2016.

Respectfully submitted,

BRAD D. SCHIMEL
Attorney General



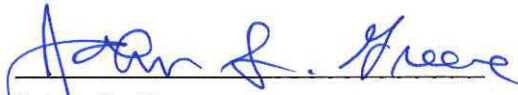
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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 4,674 words.



John S. Greene
Assistant Attorney General

CERTIFICATE OF COMPLIANCE
WITH WIS. STAT. § (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 Wis. Stat. § (Rule) 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 18th day of February, 2016.


John S. Greene
Assistant Attorney General