STATE OF WISCONSIN

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

DISTRICT I

Case Nos. 2019AP000017-CR & 2019AP000018-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

PARIS MARKESE CHAMBERS,

Defendant-Appellant.

On Appeal from a Judgment of Conviction and an Order Denying Postconviction Relief, Both Entered in the Milwaukee County Circuit Court, the Honorable Christopher T. Dee Presiding

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BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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ISSUE PRESENTED

1. Is Paris Chambers entitled to sentence modification or resentencing because his global prison sentence is unduly harsh and unconscionable?

   The circuit court answered no.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The briefs will fully address the issue presented, so Mr. Chambers does not request oral argument. *See* Wis. Stat. § 809.22(2)(b). He does not request publication because this appeal can be resolved by applying established legal precedent to the facts. *See id.* § 809.23(1)(b)1., 3.

STATEMENT OF FACTS

Mr. Chambers grew up under harsh circumstances, to say the least. He never knew his father, and barely knew his mother. (61:22-23; App. 122-23). When Mr. Chambers was six years old, his mother died of an apparent drug overdose right in front of him. (61:23; App. 123). Mr. Chambers and his biological siblings were then put in foster care and split up. (61:23; App. 123). While in foster care, Mr. Chambers was physically abused by being beaten with belts and straps. Eventually, he was placed in a

supportive adoptive home with non-relatives. (61:23-24; App. 123-24). His adoptive family consisted of a mother, grandfather, sister, and two foster siblings. However, his adoptive grandfather—who was the closest person to a father figure that Mr. Chambers had ever known in his life—was shot and killed in 2010. (16:3; App. 172).

A psychological evaluation revealed that Mr. Paris was a "deprived, struggling child," who displayed indicators of Attention Deficit Hyperactivity Disorder (ADHD), depression, and poor cognitive development. (16:2; 61:24; App. 124, 171). Despite these mental health issues, however, Mr. Chambers' adoptive mother had stopped getting him necessary treatment and therapy. (61:24; App. 124).

Despite his rough childhood, Mr. Chambers had no prior criminal record of any kind—no juvenile record, no criminal record, and no history of violence. (61:24-25; App. 124-25). He was also on track to graduate from Ronald Reagan High School, one of the top public schools in Milwaukee. (61:25-26; App. 125-26). He also planned on attending college after graduation. (61:27; App. 127).

Shortly before the offenses charged in these cases, Mr. Chambers' adoptive mother had kicked him out of their home over an argument about disobeying curfew. (61:33-34; App. 133-34).

Allegations of the criminal complaints

On January 25, 2016, the State filed a criminal complaint in Milwaukee County Case No. 16-CF-286 (Appeal No. 2019AP000018) charging Paris Chambers with two counts of theft (value $2,500 to $5,000), as party to a crime. (1:1).[1] The complaint alleged that on January 22, 2016, Mr. Chambers, who was seventeen years old at the time, went out with his friend, Earl Blackmon, who was also seventeen. At a certain point, the two decided to steal a car. They saw a silver PT Cruiser, and Mr. Blackmon used a screwdriver to open the driver's side window and reached inside to unlock the door. The two then got in the car, with Mr. Blackmon in the driver's seat. Mr. Blackmon used the screwdriver to start the vehicle and drove the car to pick up another friend, a juvenile, R.N. (1:1-2).

While driving around, the three friends saw a blue Dodge Neon. Mr. Blackmon again used the screwdriver to open and start that car. He then drove the Neon with Mr. Chambers in the passenger seat, while R.N. drove the PT Cruiser. Mr. Blackmon subsequently crashed the Neon into another car. He and Mr. Chambers then got into the PT Cruiser. R.N., however, collided with another car a few blocks away. All three then fled on foot, but an armed

[1] All citations to the circuit court record are to the record for Appeal No. 2019AP000018-CR unless otherwise noted.

citizen ordered Mr. Chambers back to the scene. (1:1-2).

Following his initial appearance on January 25, 2016, Mr. Chambers was released on bond. (54:6). Thereafter, on February 9, 2016, the State filed a second criminal complaint in Milwaukee County Case No. 16-CF-613 (Appeal No. 2019AP000017-CR) charging Mr. Chambers with the following counts: (Count 2)[2] attempted operation of a vehicle without the owner's consent, as party to a crime; (Count 3) criminal damage to property, as party to a crime; (Count 6) operating a vehicle without the owner's consent, as party to a crime; (Count 7) criminal damage to property, as party to a crime; (Count 8) felony bail jumping; and (Count 9) felony bail jumping. (2019AP000017-CR, 1:1-3).

The complaint alleged that on January 26, 2016, Mr. Blackmon and Mr. Chambers stole a silver Jeep Liberty. On January 28, 2016, Mr. Blackmon was driving the Jeep Liberty with Mr. Chambers in the passenger seat. The two again decided to steal another vehicle because the Jeep Liberty was running low on gas. They saw a blue Dodge Durango in the parking lot of an apartment complex. Mr. Blackmon attempted "pop" the ignition, but was unable to do so. The two then drove around the parking lot shooting BB guns at other vehicles. (2019AP00017-CR, 1:4-5).

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[2] Counts 1, 4, and 5 pertained to only Mr. Blackmon. (2019AP000017, 1:1-2).

The complaint further alleged that on February 3, 2016, Mr. Blackmon drove the Jeep Liberty with Mr. Chambers again in the passenger seat to General Mitchell International Airport. In the airport parking lot, the two broke into numerous vehicles in search of property to steal. They also shot BB guns at numerous vehicles, breaking windows. Sheriff's deputies ultimately located forty vehicles that had damage to the windows or exteriors. (2019AP00017-CR, 1:5-6).

Mr. Blackmon later drove the Jeep Liberty out of the parking structure and ran over the curb to avoid paying for parking. An officer on patrol saw the vehicle and attempted to initiate a traffic stop. Mr. Blackmon, however, ran a red light and drove away at a high rate of speed. The officer initially pursued, but ultimately terminated pursuit. Also on February 3, 2016, deputies discovered that a red Ford F150 had been stolen from the airport parking lot. (2019AP00017-CR, 1:5-6).

On February 4, 2016, officers were dispatched in response to seven calls concerning BB gun damage to houses and cars. All callers reported seeing a large red truck drive off. With respect to one of these incidents, a homeowner reported that she was in her living room when she heard the sound of glass breaking. She then felt something hit the left side of her face and saw broken glass on the ground. Deputies later located the red F150 in the parking lot of a McDonald's. Mr. Blackmon and Mr. Chambers were arrested at that location. Following their

arrest, they both admitted to stealing the Jeep Liberty and Ford F150, as well as to causing the other damage to the vehicles at the airport. Mr. Chambers explained that he does not know how to drive, so Mr. Blackmon always drove. (2019AP00017-CR, 1:6-7).

Finally, the complaint alleged as read-in charges that Mr. Blackmon and Mr. Chambers had damaged nineteen other vehicles at the airport between January 30 and February 2, 2016. It also alleged that they had damaged seven vehicles at St. Luke's Hospital on January 30, 2016. (2019AP00017-CR, 1:7).

The plea and sentencing hearings

On July 14, 2016, Mr. Chambers entered guilty pleas to all the charges against him. (60:26-28). In exchange, the State agreed to read in the uncharged conduct described in the complaint in Case No. 16-CF-613. It also agreed to recommend a prison sentence, but leave the length to the court's discretion. (60:2-3). The Honorable Mark A. Sanders presided over the plea hearing. (60).

On August 16, 2016, the court, the Honorable Christopher T. Dee now presiding,[3] conducted Mr. Chambers' sentencing hearing. As agreed, the State recommended a prison sentence, but left the length to the court's discretion. (61:21; App. 121).

[3] The case was reassigned to Judge Dee due to Milwaukee County's judicial rotation system.

The prosecutor asserted "that anything other than a prison sentence would unduly depreciate the seriousness of these countless offenses." (61:20-21; App. 121). Defense counsel asked the court to impose and stay a one-year jail sentence and place Mr. Chambers on probation. (61:21; App. 121). As counsel noted, Mr. Chambers was only seventeen years old at the time of these offenses, and he was still a junior in high school. (61:22, 25-26; App. 122, 125-26). He had not even learned to drive yet. It was thus Mr. Blackmon who always drove, including when he fled from the police in the Jeep Liberty. (2019000017, 1:7; *see also* 61:27, 37-39; App. 127, 137-39). Counsel therefore asked the court to "consider Mr. Chambers' inherent immaturity" in imposing sentence. (61:22; App. 122).

Defense counsel told the court that Mr. Chambers' adoptive mother had kicked him out of their home shortly before these offenses occurred, and thus he had no support and was reliant on friends. (61:33-34; App. 133-34). This made him particularly vulnerable to negative peer influences and resulted in a situation that quickly spiraled out of control.

As defense counsel explained:

> [This] kind of reminded him of back when he was in foster care and that tenuousness, that balance beam, You Honor, living with other people and having to live by their rules, eat when they eat. If one of them asks you to come out and do some crimes with him, you have a different level of

> persuasion. He was at a stage where he doesn't have any money. He doesn't have any income because his adoptive mother isn't supporting him. So you think about breaking into cars. It's an easy way to make money on the surface of it, right? He was like, a 17-year-old idea of no way will I be caught. You do one. Boy, that was easy. I got away with it. You do another.

(61:34; App. 134).

After hearing the parties' recommendations and arguments, the court began its sentencing explanation by discussing the seriousness of the offenses and the need to protect the public. It noted that the crimes in these cases had a number of effects on the victims. They had damaged their sense of trust and security in being able to park their cars near their homes, places of employment, and other locations. (61:45-46; App. 145-46). They had also, the court stated, resulted in considerable hassle and inconvenience. (61:46; App. 146). Some people had to deal with body shops and insurance agents, and others had to take the bus to work or get rides from friends. (61:46-47; App. 146-47).

The offenses had also, according to the court, inflicted a "deep wound" on the City of Milwaukee. (61:48; App. 148). The crimes at the airport, in particular, had done "great damage to the reputation of the airport" and were "incredibly disabling to an entire community," the court stated. (61:48-49; App. 148-49).

Next, the court discussed the issue of deterrence. It pointed out that after Mr. Chambers had been arrested and released in Case No. 16-CF-286, he committed numerous other offenses. (61:49; App. 149). The court said, "there has to be a message sent that we just can't have widespread and wanton destruction like this." (61:49; App. 149).

Regarding Mr. Chambers' background, the court acknowledged that his father abandoned him when he was very young, and that his mother died when he was only six. (61:50; App. 150). The court described these events as "unfortunate." (61:50; App. 150). It also acknowledged that Mr. Chambers had been in foster care after the death of his mother, which it stated is "not a party for any child." (61:50; App. 150). In addition, the court noted that Mr. Chambers suffered from depression and ADHD. It concluded, however, that neither of these mental health issues was particularly relevant to these cases. (61:50-51; App. 150-51). The court further concluded that Mr. Chambers had already been given "tremendous breaks" in light of the numerous uncharged offenses that were dismissed and read-in. (61:52-53; App. 152-53). While it acknowledged that he had no prior criminal record, the court stated it believed this "was taken into account in the DA's charging decisions." (61:53; App. 153). The court stated it did not think Mr. Chambers had intended to hurt anyone, but nevertheless, his actions put numerous people, including himself, at risk. (61:53; App. 153).

The court then offered the following concluding remarks:

> I can't in good conscience put you on probation, even though this is kind of your first entrée into the criminal justice world. There are just too many incidents. You've received a tremendous break already, quite frankly. And again, because of the repeated, repeated, repeated nature of this, I'm not finding you eligible for earned release credit or the Boot Camp, and I won't sign an expunction. There is just too much of this, way too much. One or two things, I could kind of get that, but you have so much responsibility here for so much damage to so many people, that would unduly depreciate the seriousness of all this.
>
> And again, I tend to agree with your attorney that prison and that sort of thing ought to be reserved for more violent offenders, but you've just done too much here, it can't be avoided.

(61:54-55; App. 154-55).

Shortly thereafter, the court imposed sentence. In Case No. 16-CF-286, the court imposed the following consecutive sentences: on Count 1, one year initial confinement and two years of extended supervision; and on Count 2, one year of initial confinement and two years of extended supervision. (61:55; App. 155). In Case No. 16-CF-613, the court imposed the following sentences, again all consecutive: on Count 2, one year of initial confinement and two years of extended supervision; on Count 3, 150 days in the House of Corrections; on

Count 6, eighteen months of initial confinement and two years of extended supervision; on Count 7, 150 days in the House of Corrections; on Count 8, two years of initial confinement and three years of extended supervision; and on Count 9, two years of initial confinement and three years of extended supervision. (61:55; App. 155).

Mr. Chambers' global sentence therefore totaled eight-and-a-half years of initial confinement and fourteen years of extended supervision, plus an additional 300 days of jail time, two-thirds of which will be served in prison.[4] *See* Wis. Stat. § 302.11(1). Mr. Chambers' global term of confinement will therefore be just over nine years in length.

Postconviction proceedings

Mr. Chambers subsequently filed a Rule 809.30 postconviction motion seeking sentence modification on the grounds that: (1) he had been diagnosed with post-traumatic stress disorder (PTSD) post-sentencing, which helped to explain his "reckless or self-destructive behavior," as this one of the

[4] Pursuant to Wisconsin law, this jail time will be served in prison. *See* Wis. Stat. § 973.03(2) ("A defendant sentenced to the Wisconsin state prisons and to a county jail or house of corrections for separate crimes shall serve all sentences whether concurrent or consecutive in the state prisons."). The mandatory release date for both jail sentences will be two-thirds of the sentence. *See* Wis. Stat. § 302.11(1). Mr. Chambers' total term of confinement will therefore be just over nine years.

hallmarks of PTSD (47:8-17); and (2) his global sentence was unduly harsh and excessive (47:17-20). Specifically, he requested that the court modify his sentences on Counts 8 and 9 in Case No. 16-CF-613 by making those sentence concurrent with his other sentences. (47:1, 20). This would have had the effect of reducing his total prison sentence from eight-and-a-half years of initial confinement and fourteen years of extended supervision to four-and-a-half years of initial confinement and eight years of extended supervision (plus 300 days in jail). In addition, he requested that the court further modify his sentences to make him eligible for the Substance Abuse Program and the Challenge Incarceration Program. (47:1, 20). In the event the circuit court denied his request for sentence modification, Mr. Chambers requested resentencing on the grounds that his global sentence was unduly harsh and excessive. (47:2, 20).

The circuit court issued a written decision and order denying Mr. Chambers' motion in its entirety. (51; App. 163-69). Regarding his new factor claim, the court concluded that Mr. Chambers' PTSD was not highly relevant to his sentences and did not justify sentence modification. (51:3-6; App. 165-68). Regarding his claim that his sentences were legally harsh and excessive, the court stated that "based on all of the facts and circumstances of these cases, the sentences imposed are not unduly harsh or unconscionable. The court perceives no erroneous exercise of discretion in sentencing and denies the defendant's request to modify or resentence the defendant on this case." (51:6; App. 168).

This appeal follows.

ARGUMENT

I. This court should modify Mr. Chambers' sentences or order resentencing because his global prison sentence is unduly harsh and unconscionable.

A. General legal principles.

The Wisconsin legislature has "vested a discretion in the sentencing judge, which must be exercised on a rational and explainable basis." *McCleary v. State*, 49 Wis. 2d 263, 276, 182 N.W.2d 512 (1971). That discretion has limits, however. "It flies in the face of reason and logic, as well as the basic precepts of our American ideals, to conclude that the legislature vested unbridled authority in the judiciary when it so carefully spelled out the duties and obligations of the judges in all other aspects of criminal proceedings." *Id.* "Discretion is not synonymous with decision-making. Rather, the term contemplates a process of reasoning." *Id.* at 277. Accordingly, it is a well-settled principle that appellate courts retain the authority to review whether sentencing discretion has been appropriately exercised. *Id.*; *State v. Harris*, 2010 WI 79, ¶30, 326 Wis. 2d 685, 786 N.W.2d 409.

The Wisconsin Supreme Court has recognized that a circuit court erroneously exercises its discretion when it imposes sentences that are unduly

harsh or unconscionable. *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). A sentence is unduly harsh or unconscionable when it "is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." *State v. Grindemann*, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507 (citing *Ocanas*, 70 Wis. 2d at 185).

"Wisconsin courts have inherent authority to modify criminal sentences." *State v. Harbor*, 2001 WI 28, ¶35, 333 Wis. 2d 53, 797 N.W.2d 828. A court cannot modify a sentence based upon mere reflection; however, it can modify a sentence when it determines the sentence is unduly harsh or unconscionable, even if no new factor is present. *Id.*, ¶35 n.8.

B. Standard of review.

Mr. Chambers asserts that this court should independently review the record in this case to determine whether his sentences are unduly harsh or unconscionable, without deference to the trial court's postconviction determination. Mr. Chambers acknowledges that this court has stated that it "reviews a trial court's conclusion that a sentence it imposed was *not* unduly harsh and unconscionable for an erroneous exercise of discretion." *State v. Giebel*, 198 Wis. 2d 207, 220, 541 N.W.2d 815 (Ct. App. 1995). That standard is circular and illogical, however.

Again, in *Ocanas*, the Wisconsin Supreme Court held that a circuit court erroneously exercises its discretion when it imposes a sentence that is unduly harsh or unconscionable. *Ocanas*, 70 Wis. 2d at 185. Accordingly, if a circuit court imposes a sentence that is, in fact, legally harsh and excessive, it has already erroneously exercised its discretion from the start. If that same court then concludes on postconviction review that its sentence was not legally harsh and excessive, it makes little sense to ask whether the court properly exercised its discretion in doing so, because the underlying sentence already represents an erroneous exercise of discretion.

Consequently, whether a particular sentence is unduly harsh and excessive is better viewed as a question of law, since it turns on whether a particular sentence meets an applicable legal standard. *Cf. State v. Rizzo*, 2002 WI 20, ¶19, 250 Wis. 2d 407, 640 N.W.2d 92 ("Whether a given set of facts meets a particular legal standard is a question of law for our independent review."). Again, if a sentence meets the applicable legal standard (i.e., is unduly harsh or unconscionable), the trial court has by definition erroneously exercised its discretion. This court should therefore independently review the sentencing record to determine whether Mr. Chambers' sentences are unduly harsh or unconscionable.

C. Mr. Chambers' sentences are utterly shocking and violate the judgment of reasonable people.

When viewed separately, none of Mr. Chambers' individual sentences necessarily shock the conscience. In the aggregate, however, they are utterly shocking and unconscionable. Mr. Chambers' global prison sentence amounts to nearly *an entire decade* behind bars. That is completely disproportionate to his offenses and should offend the judgment of any reasonable person.

1. To be sure, Mr. Chambers' offenses were numerous, as well as serious. But they still must be considered in context. These were not large scale robberies or violent offenses. They were low-level property crimes. And they were committed by teenagers. As defense counsel noted at sentencing, "this was teenage joy-riding. This was teenagers breaking windows and rifling through cars, playing with BB guns." (61:35; App. 135).

Mr. Chambers and Mr. Blackmon did not confront or threaten any of their victims. They did not use their BB guns for purposes of an armed robbery or carjacking, and they did not try to shoot at anybody. They were shooting at the windows of cars and houses. In fact, all indications are that they were actively trying to avoid contact with other people.

It is true that one woman was hit in the cheek with a BB or piece of glass as a result of their actions.

But there is no indication that either Mr. Chambers or Mr. Blackmon were trying hit her. There is also no indication she was seriously hurt. Thus, although their actions were certainly immature and careless, they were not intended to physically hurt anyone. The near-decade total term of confinement imposed in these cases is therefore shockingly disproportionate to what are almost entirely property damage offenses.

2. The global sentence is even more shocking when one considers Mr. Chambers' background, which is highly mitigating. At the time of his offenses, Mr. Chambers was a seventeen-year-old high school student. He had never lived on his own. He had never voted. He did not even know how to drive a car. Therefore, although he was an adult for purposes of criminal court, *see* Wis. Stat. § 938.02(1), (10m), he was really a juvenile in every other respect.

The United States Supreme Court has recognized that, "[a]s compared to adults, juveniles have a 'lack of maturity and an underdeveloped sense of responsibility'; they 'are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure'; and their characters are 'not well formed.'" *Graham v. Florida*, 560 U.S. 48, 68 (2010) (quoting *Roper v. Simmons*, 543 U.S. 551, 569 (2005)). Accordingly, "the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes." *Miller v. Alabama*, 567 U.S.

460, 472 (2012). Juveniles not only have "diminished culpability," they also have a "heightened capacity for change." *Id.* at 471, 479. They are therefore "less deserving of the most severe punishments." *Graham*, 560 U.S. at 68 (2010).

Not only does Mr. Chambers' diminished culpability and heightened capacity for change make him less deserving of a lengthy and severe sentence, that type of sentence will be particularly detrimental to him precisely because of his young age. Criminology research and new findings from the field of neuroscience suggest that being surrounded by antisocial peers throughout one's twenties is not ideal if the goal is to reduce recidivism. We used to think that the human brain stopped developing during adolescence, but advances in neuroscience have allowed researchers to observe that essential brain structures and functions are still developing well into our twenties.[5]

Findings suggest that the risky and reckless behaviors associated with adolescence do not cease at age eighteen, due in part to the still underdeveloped areas of the brain that are essential to: (1) accurately appraise risky situations; and (2) exert control over

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[5] (48:3; App. 180 (citing C. Ledel and C. Beaulieu, *Longitudinal Development of Human Brain Wiring Continues from Childhood into Adulthood*, 31(30) The Journal of Neuroscience, 10937-10947 (2011); Kim Veroude et al., *Changes in Neural Mechanisms of Cognitive Control during the Transition from Late Adolescence to Young Adulthood*, 5 Developmental Cognitive Neuroscience, 63-70 (2013))).

impulses toward potential reward (especially social reward). Consequently, those in this stage of life, referred to as emerging adulthood (age 18-25), still have trouble controlling impulses and making good decisions, and are very susceptible to peer influences.[6]

Studies have also shown that during emerging adulthood the brain is sensitive to "training-induced plasticity" and "environmentally stimulated structural changes." This means that a person's interactions with their environment can actually change the structure of their brain.[7]

The impact of environmental influences on the brain is consistent with what we know about neuroplasticity: that the structure and function of a person's brain is largely shaped by one's experiences. Our experiences can cause changes in neural connectivity (brain "networks"), can stimulate the generation of new neurons, and can lead to neurobiochemical changes. The brain possesses this potential for change throughout the lifespan,

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[6] (48:3; App. 180 (citing Ledel and Veroude, *supra* not 5)).

[7] (48:4; App. 181 (citing A. Schlegel et al., *White Matter Structure Changes as Adults Learn a Second Language*, 24(8) Journal of Cognitive Neuroscience, 1664-1670 (2012); T. Yang et al., *Short-Term Meditation Induces White Matter Changes in the Anterior Cingulate*, 107(35) Proceedings of the National Academy of Sciences, 15640-15652 (2010); Scholz et al., *Training Induces Changes In White-Matter Architecture*, 12(11) Nature Neuroscience, 1367-1368 (2009))).

although during adolescence and emerging adulthood it appears to be more sensitive to environmental cues.[8]

Researchers highlight the importance of "complex and demanding life experiences such as advanced education, full-time employment, independence, and new social/family relationships," which have a positive effect on brain development during emerging adulthood.[9] In a stage when individuals are refining their neurodevelopment and identity formation, and when environmental influences are so important, those involved in the criminal justice system present with a heightened risk of succumbing to negative peer influences, as well as a heightened opportunity for pro-social change. An individual's social surroundings will greatly impact his path toward one or the other.[10]

Thus, when a highly impressionable emerging adult is placed in an environment composed of high-risk offenders, there is bound to be a lasting negative impact on character development. In prison, the still developing emerging adult is more likely to be deprived of a prosocial, emotionally rewarding, and intellectually stimulating environment, thereby decreasing his chances for the reinforcement of meaningful positive rewards (e.g., a sense of self-

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[8] (48:4; App. 181 (citing E. Fuchs & G. Flugge, *Adult Neuroplasticity: More than 40 Years of Research*, Neural Plasticity (2014))).

[9] (48:4; App. 181 (quoting Ledel, *supra* note 5)).

[10] (48:4; App. 181).

work from a career, fulfillment from family relationships, etc.). Instead, the incarcerated young person may be inclined to pursue social rewards from antisocial others, thereby reinforcing antisocial beliefs and behaviors at the neural level.[11]

Furthermore, the longer one stays in prison, the worse the prognosis becomes. Prolonged prison sentences often lead to "institutionalization," or the incorporation of the norms of prison life into one's habits of thinking, feeling, and acting.[12] People in prison experience mental deterioration and apathy, endure personality changes, and become uncertain about their identities.[13] The incarceration experience promotes a sense of helplessness, greater dependence, and introversion, and may impair a person's decision-making ability.[14] The adaptations involved in institutionalization are "normal" reactions to "a set of pathological conditions that become problematic when they are taken to extreme lengths, or become chronic and deeply internalized."

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[11] (48:4-5; App. 181-82).

[12] (48:5, 7; App. 182, 184 (citing C. Haney, *The Psychological Impact of Incarceration: Implications for Post-Adjustment* (paper prepared for the "From Prison to Home" Conference, U.S. Dept. of Health and Human Servs., Jan. 30-31, 2002))).

[13] (48:5 (citing M. DeVeaux, *The Trauma of the Incarceration Experience*, 48 Harvard Civil Rights-Civil Liberties Law Review, 257-277 (2013))).

[14] (48:5 (citing DeVeaux, *supra* note 13)).

This process is even more impactful on young inmates.[15]

Accordingly, the important factors associated with Mr. Chambers' young age—his diminished culpability, vulnerability to negative influences, and heightened capacity for change—cannot be overlooked. Nor can one overlook the fact that he had no prior criminal record. He therefore has never really a "second chance."

3. On top of all that, Mr. Chambers experienced a number of early childhood traumas that impacted his biological, psychological, and social development. Again, he was abandoned by his biological father and raised by a neglectful mother who died of a drug overdose right in front of him when he was only six years old. (16:3; 61:23; App. 123, 172). He was then separated from his biological siblings and placed in foster care. This caused him to grow up in an unstable and abusive environment that was void of structure, stimulation, and meaningful parental interaction. He also lacked a consistent father figure or male role model. In fact, the closest person he ever had to a father figure, his adoptive grandfather, was shot and killed in 2010. (16:3; App. 172).

Mr. Chambers also had not received adequate treatment to learn how to cope with the emotional repercussions of his traumatic childhood. As a result,

[15] (48:5; App. 182 (citing Haney, *supra* note 12)).

he makes impulsive and immature decisions and has a tendency to follow his peers into delinquency. (16:4-5; App. 173-74). In addition, Mr. Chambers' negative circumstances were exacerbated by the events leading up to his offenses. Again, his adoptive mother had kicked him out of the house, thereby thrusting him into a situation where he was even more susceptible to negative peer influences and impulses. (61:33-34; App. 133-34).

The lengthy prison sentence imposed in this case is particularly harsh given Mr. Chambers' traumatic childhood. As noted in his postconviction motion, the prison setting is not conducive to long-term trauma recovery, as inmates will often be tested and pushed to the edge on a regular basis. This constant state of hypervigilance is extremely detrimental to recovery, and the longer one stays in prison, the worse the prognosis.[16] (48:7; App. 184).

[16] Mr. Chambers is aware that this court cannot consider his post-sentencing PTSD diagnosis in evaluating whether his sentence is unduly harsh. *State v. Klubertanz*, 2006 WI App 71, ¶41, 291 Wis. 2d 751, 713 N.W.2d 116 (stating that a court's authority to review a sentence to determine whether it is unduly harsh "does not include the authority to reduce a sentence based on events that occurred after sentencing"). The circuit court, however, was aware at sentencing that Mr. Chambers had experiences numerous traumatic events during his childhood. It is therefore appropriate for this court to consider those traumas, as well as the potential "re-traumatization" effects that a lengthy prison sentence will have on Mr. Chambers in determining whether his sentence is legally harsh and excessive.

Indeed, for those who have experienced trauma earlier in life, the harsh nature of prison life may represent a kind of "re-traumatization" experience. (48:2; App. 179). People in prison are likely to report that their adaptations to the constant scrutiny of guards and the lack of privacy are psychologically debilitating. (48:2; App. 179). That is, "'some prisoners find exposure to the rigid and unyielding discipline of prison, the unwanted proximity to violent encounters and the possibility or reality of being victimized by physical and/or sexual assaults, the need to negotiate the dominating intentions of others, the absence of genuine respect and regard for their well being in the surrounding environment, and so on all too familiar.'"[17]

Time spent in prison may trigger traumatic memories as well as the disabling psychological reactions and consequences associated with past traumatic experiences. Prisoners with any type of trauma history may have symptoms—such as emotional numbing, dissociation, or hyper-responsiveness to perceived threats—that make it more difficult to adjust to the institution and deal with other inmates and staff. The threat of physical violence may trigger levels of unease and aggression directed at others.[18]

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[17] (48:2; App. 179 (quoting Haney, *supra* note 12)).

[18] (48:2; App. 179 (citing N. Miller & L. Najavits, *Creating Trauma-Informed Correctional Care: A Balance of Goals and Environment*, European Journal of Psychotraumatology (2012))).

Mr. Chambers' lengthy prison sentence is thus not conducive to his rehabilitation or recovery. Instead, Mr. Chambers would instead benefit from intensive trauma treatment. Unfortunately, the prison setting is not a safe, supportive environment for trauma recovery. The violation of one's personal space is at the root of many forms of trauma, and the cramped, crowded, and contentious prison setting is not conducive to the recovery process. Within this context, incarcerated victims of trauma are at a high risk of having trauma symptoms triggered, and may choose to forego participating in treatment during confinement due to the potential for increased symptoms and of being exposed as vulnerable. Instead, these individuals often display a tough exterior to keep others at a distance, and developing any sort of trusting relationship (therapeutic or otherwise) is highly unlikely in this setting. (48:2-3; App. 179-80).

Given all these factors and circumstances, a total sentence of more than nine years' confinement is truly harsh and excessive. That sentence represents a staggering overreaction to property crimes committed by an immature, vulnerable seventeen-year-old child. It is a sentence that is totally devoid of compassion or mercy, one that will have a re-traumatizing effect on Mr. Chambers and do significant damage to his long-term prospects for trauma recovery and rehabilitation. It shocks the conscience and offends public sentiment.

Mr. Chambers therefore requests that this court modify his sentences "to prevent the continuation of [these] unjust sentences." *See State v. Crochiere*, 2004 WI 78, ¶11, 273 Wis. 2d 57, 681 N.W.2d 524.[19] Specifically, he requests that this court modify his sentences on Counts 8 and 9 in Case No. 16-CF-613 by making them concurrent with (rather than consecutive to) his other sentences. Again, this would have the effect of reducing Mr. Chambers' total sentence to four-and-a-half years of initial confinement and eight years of extended supervision (plus 300 days of jail time). Mr. Chambers would thus still have a relatively lengthy total prison sentence, as well as a lengthy total term of extended supervision. However, modifying his sentences in this manner would appropriately reduce the unduly harsh and excessive sentences imposed in these cases.

In addition, this court should modify Mr. Chambers' sentencing by making him eligible for the Substance Abuse Program (SAP) and the Challenge Incarceration Program (CIP). Mr. Chambers is someone who presents with a high level of need in several areas, including AODA,[20] anger

[19] This court has the authority to modify criminal sentences in on its own accord when they are legally harsh and excessive. *See McCleary v. State*, 49 Wis. 2d 263, 289-91, 182 N.W.2d 512 (1971) (reducing maximum sentence of ten years to five years).

[20] According to his DOC psychological records, prior to his incarceration Mr. Chambers drank alcohol three times a week, and used marijuana four times a week. (48:16).

management, and cognitive intervention. Because of his young age, Mr. Chambers would benefit from intensive programming as soon as possible. Within the Wisconsin Prison System, SAP and CIP offer the most intensive treatment of substance abuse and cognitive-behavioral problems associated with criminal behavior.[21] (48:6; App. 183). The programs are designed to treat alcohol and drug abuse, while also addressing criminal thinking and other significant risk factors, and developing a reentry plan that promotes stability and sobriety upon return to the community. (48:6-7; App. 183-84). Mr. Chambers would clearly benefit from participation in either of these programs. This court should therefore modify his sentences by making him eligible for SAP and CIP, as well.

However, if this court declines to modify Mr. Chambers' sentences itself, then it should remand the cases to the trial with instructions that the trial court modify his sentences to prevent the continuation of these unduly harsh and unconscionable sentences.

Finally, if this court determines that sentence modification is not the appropriate remedy, then it should vacate Mr. Chambers' current sentences and remand the case to the trial court for resentencing. Again, the Wisconsin Supreme Court has held that a

[21] For a more detailed description of Substance Abuse and Challenge Incarceration Programs, see the memorandum prepared by undersigned counsel's client services specialist. (48:6-7; App. 183-84).

circuit court erroneously exercises its discretion when it imposes sentences that are unduly harsh or unconscionable. *Ocanas*, 70 Wis. 2d at 185. Resentencing would therefore be an appropriate remedy in this case.

CONCLUSION

For these reasons, Mr. Chambers respectfully requests that this court reverse the circuit court's postconviction order denying his motion for sentence modification and order that his sentence be modified by making his sentences on Counts 8 and 9 in Case No. 16-CF-613 concurrent with his other sentences, and making him eligible for the Substance Abuse Program and Challenge Incarceration Program. Should the court decline to modify Mr. Chambers' sentences itself, then he requests that the court remand the cases to the circuit court for a determination of the appropriate sentence modification. Should the court conclude that sentence modification is not the appropriate remedy, then he requests that the court reverse the circuit court's postconviction order denying his motion for resentencing and remand the case for a resentencing hearing.

Dated this 11th day of March 2019.

Respectfully submitted,

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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 6,145 words.

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 § 809.19(12). I further certify that this electronic brief is identical in content and format to the printed form of the brief filed on or after 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 11th day of March 2019.

Signed:

LEON W. TODD
Assistant State Public Defender

CERTIFICATION AS TO APPENDIX

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with § 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under § 809.23(3)(a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 11th day of March 2019.

Signed:

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