STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III

Appeal No. 2020AP742-CR

STATE OF WISCONSIN,
Plaintiff-Respondent,

-vs.-

LISA RENA LANTZ,
Defendant-Appellant.

ON APPEAL FROM THE FEBRUARY 22, 2017, JUDGMENT OF CONVICTION AND THE MARCH 23, 2020, ORDER DENYING LANTZ'S WIS. STAT. § (RULE) 809.30 POSTCONVICTION MOTION, THE HONORABLE JOHN P. ZAKOWSKI PRESIDING
BROWN COUNTY CASE NUMBER 2016CF482

DEFENDANT-APPELLANT'S BRIEF AND SHORT APPENDIX

Respectfully submitted by:

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STATEMENT OF THE ISSUES

First issue: Multiplicity problem in Lantz's sentences

Background

Lantz was prosecuted for her involvement in a long-running drug conspiracy. The State charged her with a single count of conspiracy and two separate counts of solicitation. It is undisputed that the solicitations made up part of the conspiracy. She was convicted and sentenced for the conspiracy and the two solicitations.

Issue

Whether Lantz's solicitation sentences violate the constitutional prohibition against multiple punishments and should be vacated when because the overarching conspiracy incorporated her two solicitations?

The circuit court concluded that there was no multiplicity problem. This Court should reverse.

Second issue: Ineffective assistance related to multiplicity claim

Background

Lantz's trial counsel did not argue that her solicitation sentences violated the multiplicity doctrine. Postconviction, trial counsel testified that he did not contest the issue because he did not see it as a problem,.

Issue

If an objection was required to contest the constitutionality of Lantz's solicitation sentences, whether trial counsel's failure to do so amounts to ineffective assistance?

The postconviction court concluded that there was no multiplicity problem, and thus that counsel was not

ineffective. If the failure to object waived the issue, this Court should reverse on ineffective assistance grounds.

Third issue: Erroneous exercise of sentencing discretion

Issue

Whether Lantz's twenty-seven-year term of imprisonment was an erroneous exercise of the sentencing court's discretion where, among other things, the court rejected mitigating facts in Lantz's background and inaccurately characterized Lantz as being unable to be drug-free when she had been for years?

The circuit court concluded that it had not erred. This Court should reverse.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Client would welcome oral argument if it is of interest to the panel. Publication of the instant case may be appropriate because it presents a question not before directly decided by Wisconsin's appellate courts: whether sentencing for both an overarching conspiracy and an included solicitation violates the multiplicity doctrine.

STATEMENT OF THE CASE

Lisa Lantz was charged with multiple drug-related offenses arising out of her role in a Drug Trafficking Organization led by Bill Yang. (R.11:5.) The trouble began for Lantz when she let R.S. move into her house, where she lived with her husband Edward. (R.40:3.) It was 2014 and Lantz had been clean from drugs for years. (*Id.*) Lantz and Edward had health problems, so R.S. was helpful to have in the house. (*Id.*) However, R.S. also reintroduced drugs into Lantz's life, specifically methamphetamine. (*Id.*)

The situation became worse when Lantz let Roger's friend Boua Yang move into the house. (*Id.*) Boua had been homeless and living in her car. (*Id.*) With Boua in the house, so came more exposure to drug use. (*Id.*) Around October of 2015, Lantz tried smoking methamphetamine and suffered a relapse, which became a downward spiral. (*Id.*) Lantz was addicted again. (*Id.*) She began to buy small amounts of methamphetamine regularly from Boua. (*Id.*, R. 11:15, R.123:23; A-Ap 38.)

At the start of 2016, Lantz kicked Boua out of the house for stealing a significant amount of money from her husband Edward. (R.11:15, R.40:3.) But while Boua was gone, Lantz's addiction was not. (R.40:3.) She began to buy from directly from Bill and would "middle" in order to support her habit, which meant she started buying larger quantities from Bill that she would sell to others. (*Id.*, R.11:15).

After three months, in March of 2016, Edward had enough of the situation and told Lantz that either she had to either stop using drugs or he would seek a divorce. (R.40:3.) Lantz realized that she had to stop or she would end up dead. (*Id.*:3-4). Even her adult-aged daughter, who also used drugs, was a negative presence in her life. (*Id.*, R.11:16-17.) Lantz was in the process of trying to quit when on March 22, 2016, the police raided the house

pursuant to a search warrant related to the surveillance of Bill Yang, which led to her drug-related charges in the instant case. (R.11:12, R.40:3.)

In its charges, the State alleged that beginning in January, Lantz began to have regular contact with Bill Yang by text message and phone call. (R.11:7-11). Yang's phone had been wiretapped. (*Id.*:8-11; R.123:14; A-Ap 29.) Based on information gathered by the wiretap and Lantz's own statement to police, Lantz would purchase methamphetamine from Bill about 3 or 4 times per week. (R.11:7-11, 14-15; R.123:23-24; A-Ap 38-39). It was estimated that she would purchase about one or two "8 balls" each time and sometimes an ounce. (R.11:7-11, 14-15, R.40:4, R.123:23-24; A-Ap 38-39). Among these contacts, the State alleged that exchanged messages were followed by observations of Bill at Lantz's home on two occasions, February 27 and March 13, 2016. (R.11:9-11). While others involved in this Drug Trafficking Organization also "middled" like Lantz, it was Lantz among others who had regular contact with Bill, which led to a charge of delivering over 50 grams of methamphetamine over the entire six-month period. (*Id.*:5-11, R.123:18-19; A-Ap 33-34.)

Charges and Plea hearing

The State charged Lantz with: (1) conspiring to deliver over 50 grams of methamphetamine from September 1, 2015, to March 22, 2016; (2) soliciting the delivery of between 3 and 10 grams of methamphetamine on February 27, 2016; (3) soliciting the delivery of between 3 and 10 grams of methamphetamine on March 13, 2016; and (4) maintaining a drug trafficking place. (R.11:4, R.22:1-4.) There were also charges for items found in the home, including controlled substances and drug paraphernalia. (R.11:3-4, R.22:3-4.)

On November 14, 2016, Lantz decided to enter a no-contest plea to the charges of conspiracy, solicitation, and maintaining a drug house. (R.121:2). The remaining charges would be dismissed and read-in at sentencing. (*Id.*:7). The State also agreed to dismiss any sentence enhancers for Lantz's prior drug-related conviction. (*Id.*:6). The Court accepted the probable cause portion of the criminal complaint as a factual basis, accepted her no-contest plea, and found her guilty. (*Id.*:2-7). The State asked the court to order a presentence investigation, which the judge allowed. (*Id.*:8).

Presentence investigation

In the presentence investigation, the Department of Corrections Agent (hereinafter "DOC agent") explained that she had interviewed Lantz, reviewed records of the Brown County District Attorney and the Brown County Drug Task Force, reviewed the records of the jail and the Department of Corrections, reviewed the records of other law enforcement agencies, and contacted Investigator Brian Messerschmidt about the case multiple times. (R.40:4, 22). She also conducted risk assessments. (*Id.*:17-22).

In addition to the facts of the case outline above, the DOC agent also presented Lantz's history. (*Id.*:5-16.) Unfortunately, the problems in Lantz's life were not only confined to the six-month period preceding her arrest. (*Id.*:10-15.) As a child, Lantz suffered sexual abuse. (*Id.*:9). When Lantz was between the ages of four and nine, her step-grandfather sexually abused her on multiple occasions. (*Id.*) Lantz had never receiving counseling for the sexual abuse she had suffered in the past and expressed an interest with the DOC agent of receiving it now. (*Id.*:4).

Lantz was also exposed to other forms of abuse from those close to her and her mental health has suffered. (*Id.*:13). Lantz's father was an alcoholic and Lantz was

exposed to his verbal and physical abuse in the house. (*Id.*:10). Later in life, the father of one her own children was verbally and emotionally abusive with Lantz. (*Id.*:13). Subsequently, Lantz suffered years-long bout of depression. (*Id.*). Lantz has also been diagnosed with bipolar disorder and posttraumatic stress disorder, and requires medication for these issues. (*Id.*).

On top of mental health issues, Lantz also has a history of physical issues. (*Id.*). She has had several major back surgeries, as well as neck surgeries and carpal tunnel surgery. (*Id.*). She has received treatment for cancer and had a partial hysterectomy. (*Id.*). Lantz was also diagnosed with Lupus and fibromyalgia. (*Id.*). She also has high blood pressure. (*Id.*).

Of course, Lantz also has a long history of drug addiction. (*Id.*:14-15). The DOC Agent reported that Lantz struggled with alcohol and drugs beginning in her teens. (*Id.*:14). Lantz's addiction has been with controlled substances including cocaine, methamphetamine, and heroin. (*Id.*). By the age of 20, Lantz started using cocaine, which turned into daily abuse. (*Id.*). It led her to sell in order to support her habit. (*Id.*). Eventually she was charged and convicted of delivering cocaine in 2004. (*Id.*). She was placed into treatment, which was successful at first. (*Id.*:14-15). When she relapsed, she was sent to prison in 2005. (*Id.*). Since that time, including after her release from prison, she remained substance free until R.S. moved in. (*Id.*:15). Her criminal background involved delivery of cocaine, her involvement in a robbery during the time of her cocaine abuse, and retail theft later in 2012. (*Id.*:5-7).

Given this information, the DOC agent recommended terms of probation. (*Id.*:20-21). The agent reasoned that the Lantz's prior history of offenses, while serious, were not extensive. (*Id.*:20). She had battled drug abuse for a long time, and her prior offenses were in some way related to getting drugs, using drugs or selling drugs.

(*Id.*). While not perfect, the DOC agent reported that Lantz had performed well on supervision at times. (*Id.*). The DOC agent recognized that Lantz had a lengthy period of abstinence, and thus Lantz was capable of living a drug and crime free lifestyle. (*Id.*). The DOC agent recognized that Lantz can minimize her responsibility and failed to show remorse for the impact of her offenses on others, but the DOC agent also noted that Lantz accepted responsibility for what happened and the negative impact it had on her family. (*Id.*). The agent concluded that Lantz needed to address all of her issues, including her physical health, drug issues, as well as her PTSD and past history of sexual and emotional abuse. (*Id.*).

Sentencing

After the presenting investigation was prepared, the State was given a continuance over objection to allow Investigator Brian Messerschmidt to testify at the sentencing hearing. (R.122:2-12). The parties held a sentencing hearing on February 15, 2017. (R.123:1; A-Ap 16).

The State called Investigator Brian Messerschmidt to testify about the Yang operation and Lantz's involvement in it. (*Id.*:5-61; A-Ap 20-76). He testified to the facts contained in the probable cause portion of the complaint about Lantz's specific actions, where Lantz fit into the organization, as well as the extensive nature of the Yang operation. (*Id.*)

The State argued against the DOC agent's recommendation. (*Id.*:62-63; A-Ap 77-78). The State argued this case involved a "crime of duration…of longevity," which "the legislature recognizes" considering it carried "such a significant penalty." (*Id.*:63; A-Ap 78). The State argued that Lantz minimized her involvement in the operation, as well her other conduct in the past including the retail theft, which appeared to

be blaming her daughter. (*Id.*:65-66; A-Ap 80-81). She had opportunities in the past, but the State argued that "she hasn't learned her lesson." (*Id.*:65; A-Ap 80). The State argued that Lantz had delivered before and in the instant case, and so there was nothing to indicate that she would "change her ways." (*Id.*:66; A-Ap 81). Ultimately, the State recommended the following: 16 years on the conspiracy charge, with eight years confinement and eight years of extended supervision; for both solicitation counts four years each, with two years of initial confinement and two years of extended supervision; and for the drug house three years, with one year of initial confinement and two years of extended supervision. (*Id.*:64). The State recommended, however, that these terms would be served concurrently. (*Id.*).

Defense counsel reiterated much of the facts presented by the DOC agent in the presentence investigation. (*Id.*:73-79; A-Ap 88-94). Counsel did not argue that Lantz was not involved or about the consequences of the drug operation on others. (*Id.*:73; A-Ap 88). However, counsel argued that while some in the operation where making lots of money, Lantz's involvement was fueled by her addition. (*Id.*:72-73; A-Ap 87-88). Counsel informed the court that Lantz had schooling and was gainfully employed, including as a business owner and as an artist. (*Id.*:74; A-Ap 89). She has tried to serve as counselor to others facing addiction and assisting veterans with benefit issues. (*Id.*:75; A-Ap 90). Defense counsel also read letters from Lantz's husband Edward and a friend (*Id.*:80-84; A-Ap 95-99). Counsel also read a statement from Lantz, which reiterated her remorse over her relapse, the fear she had of hurting someone, and losing her family because of it. (*Id.*:84-86; A-Ap 99-101).

In his ruling, the judge rejected the DOC's agent recommendation (*Id.*:87; A-Ap 102). While recognizing that the author was a "darn good agent," the judge disagreed, adding that "It's almost like a disservice and I

look at this recommendation and that's what it's worth to this court." (*Id.*:86-87; A-Ap 101-02). The judge reasoned that "obviously, this is a prison case and it's a significant prison case. It has to be a prison case." (*Id.*:87; A-Ap 102).

The judge did recite some of the mitigating aspects of Lantz's background. (*Id.*:87-88; A-Ap 102-03). The judge mentioned that she was a talented artist, that she was a good wife to her husband, the work she had done on behalf of veterans, and that she was smart. (*Id.*).

But the positives ended there. (*Id.*:89; A-Ap 104). The judge refocused on the unknown persons who were sold drugs as a result of Lantz's involvement in the conspiracy. (*Id.*). The judge reasoned that "meth dealers at any level [are] more dangerous than a lot of violent offenders." (*Id.*). The judge told Lantz that she should have known the dangerous impact of the conspiracy on the users involved. (*Id.*:88-89; A-Ap 103-04). The judge recounted the negative effects of methamphetamine abuse, including emotional problems and damaging cognitive abilities, as well as brain damage. (*Id.*:90-92; A-Ap 105-07). The judge focused on Lantz's activity during the conspiracy such as asking Bill for drugs and that people were waiting. (*Id.*). The judge also considered it aggravating that instead of skiing and shopping like other mothers, she had been doing drugs with her daughter. (*Id.*:95; A-Ap 110).

Lantz's daughter was in her mid to late twenties at the time. (R.40:8, 3-4). Although Lantz's daughter had not been charged for any offenses related to the drug activity, she was taken into custody and interrogated, during which time she claimed that Lantz used social security and other benefit funds to fund her addiction. (R.11:15-17). The judge referenced these claims at sentencing. (R.123:95-96; A-Ap 110-11).

The judge reasoned that while others involved in the conspiracy received bigger sentences, those individuals did not have a background like Lantz. (*Id.*:96; A-Ap 111). The judge considered that Lantz was not working at time and had a drug conviction in her past. (*Id.*:96-97; A-Ap 111-12). The judge noted her addiction and mental health issues, and that she had been "assaulted." (*Id.*:97-98; A-Ap 112-13). But the judge remarked that "a lot of people have terrible things when they're growing up, but they don't turn to this lifestyle." (*Id.*:98; A-Ap 113). The judge reasoned that rehabilitation had not "worked yet," and, "when you're out in the real world you can't stay off the drugs." (*Id.*:98-99; A-Ap 113-14).

The judge sentenced Lantz to 27 years imprisonment. Specifically, the sentence was as follows: 12 years on the conspiracy charge, with four years confinement and eight years of extended supervision; for both solicitation counts six years each, with two years of initial confinement and four years of extended supervision; and for the drug house three years, with 18 months of initial confinement and 18 months of extended supervision. (*Id.*:100; A-Ap 115). The judge ordered all of these terms to be served consecutively. (*Id.*).

Lantz subsequently filed a postconviction motion challenging her sentence. (R.86:1-2.) She made two arguments. (*Id.*) First, she argued that the sentencing court erroneously exercised its discretion by disregarding mitigating information and erroneously stating that she had been unable to go drug free. Her sentence thus did not reflect the minimum period of confinement necessary to satisfy the court's sentencing goals. (*Id.*:11-18.) Second, she argued that her sentence was unconstitutional insofar as she was separately sentenced both for an overarching conspiracy to distribute drugs and two unique instances of soliciting the sale of drugs within that conspiracy. (*Id.*:19-28.) She argued that punishing both the conspiracy and the underlying solicitation violated the multiplicity doctrine,

which prohibits multiple punishments for the same criminal act. (*Id.*) To ensure preservation of that issue if necessary, Lantz also argued that her trial attorney was ineffective insofar as he had not objected to her sentence on multiplicity grounds. (*Id.*:29-30.)

The circuit court held a hearing at which Lantz's trial counsel testified as the only witness. (*See* R.125:2; A-Ap 123.) He explained that he did not challenge Lantz's sentence because he did not see a multiplicity problem. (*Id.*:10-11; A-Ap 131-32.) However, trial counsel also admitted that if a viable issue existed by which he could have reduced her exposure at sentencing, litigating it would have been consistent with his goal to get Lantz the lowest possible sentence. (*Id.*)

In a written decision, the circuit court denied Lantz's motion. The court denied disregarding mitigating information and stood by its opinion that Lantz had shown an inability to lead a drug free life (R.98:4-7; A-Ap 8-11.) The court also denied Lantz's multiplicity claim: "After reviewing the plain language of the statues and the legislature's statement of intent, the court believes it is proper to impose separate punishments even though the solicitation occurred in the same time frame as the conspiracy." (*Id.*:11; A-Ap 15.) Having reached that conclusion, the court also found that Lantz's trial counsel had not been ineffective: he need not have raised an unwinnable argument. (*Id.*:12.)

Lantz appeals. (R.103.)

ARGUMENT

I. This Court should vacate Lantz's convictions for individual solicitations on specific dates for delivery of smaller amounts of methamphetamine where she was already punished for conspiring to deliver a large amount of methamphetamine over a six-month period.

It was unconstitutional for Lantz to be punished for conspiring to deliver a large amount of methamphetamine over a six-month period, while also being punished for soliciting deliveries directly related to the same conspiracy on specific dates within the same six-month period. The State could *charge* Lantz with individual solicitations and a continuous-offense charge covering the same period. *See* Wis. Stat. § 939.65 (2017) (allowing prosecution under more than one section); *and see State v. Moffett*, 2000 WI 130, ¶12, 239 Wis.2d 629, 619 N.W.2d 918 (it is not a problem to charge a defendant with multiple charges of conspiracy and being a party to a crime, whereas a conviction is a different matter). However, considering the applicable statutes and nature of the proscribed conduct, it is clear that the legislature did not authorize double punishment for conspiring to deliver and soliciting the delivery of the same controlled substance. Thus, Lantz's punishment for individual solicitations, when she was already punished for the more serious offense conspiring to deliver an aggregate amount, violates the due process clause. This Court should therefore vacate her convictions, or at the very least vacate her plea where she did not enter a knowing, intelligent, and voluntary waiver of her rights.

Whether Lantz's sentence violates the multiplicity doctrine presents a question of statutory interpretation.

A. Due process is violated where, against the will of the legislature, an individual is punished multiple times for the same act.

Both the Fifth Amendment to the United States Constitution and our Wisconsin Constitution protect an individual from twice being placed in jeopardy for a single offense. U.S. Const. Amend. V; Wis. Const. Art. I, § 8; *State v. Ziegler*, 2012 WI 73, ¶59, 342 Wis.2d 256, 816 N.W.2d 238. Double jeopardy protects individuals in three circumstances: (1) against a second prosecution for the same offense after acquittal; (2) against a second prosecution for the same offense after conviction; and (3) against multiple punishments for the same offense. *State v. Sauceda*, 168 Wis.2d 486, 492, 485 N.W.2d 1 (1992). The challenge raised here involves multiple punishments for the same offense, or multiplicity. *State v. Grayson*, 172 Wis. 2d 156, 159, 493 N.W.2d 23 (1992) (multiple convictions and punishments arising from a single criminal act are impermissible).

When assessing a multiple-punishment claim, or multiplicity, courts use a two-prong test. *Ziegler*, 2012 WI 73, ¶60. First, a court considers whether the charged offenses were identical in law and fact under the "elements-only" test. *Id.* (*citing Blockburger v. United States*, 284 U.S. 209, 304 (1932)). Second, the court considers whether the legislature authorized cumulative punishments. *Id* ¶¶61-62 (citations omitted). If the offenses are identical in law and fact under the first prong, there is a presumption that the legislature did not intend for cumulative punishments at the second prong. *Id* ¶61 (citations omitted). If the offenses are not identical under the first prong, the burden is on the challenger at the second prong to show that the legislature did not authorize cumulative punishments. *Id* ¶62 (citations omitted); *State v. Davison*, 2003 WI 89, ¶45, 263 Wis.2d 145, 666 N.W.2d 1. If under this later scenario a defendant's multiple sentences are not same in law and fact, but "contravene the will of the legislature," it does

not violate the double jeopardy clause, but an individual's constitutional right to due process. *Ziegler*, 2012 WI 73, ¶62; *Davison*, 2003 WI 89, ¶46; U.S. Const. Amends. V, XIV; Wis. Const. Art. I, § 8.

B. Lantz's sentences for soliciting the delivery of smaller amounts of methamphetamine on two specific dates violate her right to due process where she was simultaneously punished for the ongoing offense of conspiring to deliver the aggregated amount of methamphetamine over the entire six-month period.

In this case, Lantz attacks the two sentences for solicitation to deliver more than three grams but less than 10 grams of methamphetamine on two specific dates (February 27, 2016, and March 13, 2016), when she was sentenced to the significantly more punitive offense that aggregated all of her activity over a six-month period (more than 50 grams of methamphetamine), from September 1, 2015, to March 22, 2016. (R.11:1-4, R.22:1-3). There is no doubt that the two solicitations were part of Lantz's single intent and design to further the conspiracy for which she was also punished. This is plain from the probable cause section of the criminal complaint where the facts relating to the solicitation are the most direct evidence of the larger conspiracy. (R.11:1-18). Thus, the solicitations were not unrelated to the conspiracy; they constitute actions directly in furtherance of a single intent and design to sell methamphetamine for Bill Yang.

Moreover, there is nothing to suggest that Lantz ever conspired to deliver 50 grams of methamphetamine at one time. Instead it was an aggregated offenses that combined her activities, including the solicitation charges, into one large count. As the State itself argued at sentencing, the conspiracy count was "a crime of duration, it's a crime of longevity, it's something much

more significant…[o]bviously the legislature recognizes it…[t]hat's why it's such a significant penalty with significant incarceration time." (R.123:63; A-Ap 78).

But despite the fact that the solicitation shared the same intent and design as the overarching conspiracy count, Lantz concedes that they do not strictly meet the test for being identical in law. All three offenses involve the delivery of methamphetamine, but a difference in elements arises between the solicitation and the conspiracy offenses. A crime of solicitation required proof that Lantz "advised" another to commit the delivery. *See* Wis. Stat. § 939.30 (2017). Whereas the crime of conspiracy required Lantz to "agree" with another to commit the delivery. *See* Wis. Stat. § 939.31 (2017); Wis. Stat. § 961.41(1x) (2017). The difference is small, especially in the context of this case, but Lantz concedes that these two offenses, while appearing to be "lesser" than one another, do not strictly meet the identical elements test under *Blockburger*, because each offense has an element not present in the other. *See Ziegler*, 2012 WI 73, ¶60 (two offenses are identical in law only if one offense does not require proof of any fact in addition to those which must be proved for the other offense).

However, Lantz can nonetheless meet her burden under the second prong of the test for multiplicity because applicable statutes show that the legislature did not authorize cumulative punishments in this case. That question is one of statutory interpretation, which this Court reviews de novo. *Grayson*, 172 Wis. 2d at 160, 493 N.W.2d 23.

Under the second prong of a multiplicity claim, the court considers four factors when determinizing whether the legislature authorized multiple punishments: (1) all applicable statutory language; (2) legislative history and context of the statutes; (3) the nature of the proscribed conduct; and (4) the appropriateness of multiple

punishments for the conduct. *Ziegler*, 2012 WI 73, ¶63 (citations omitted).

i. Applicable statutory language.

Under Wis. Stat. § 971.365, entitled "crimes involving certain controlled substances," the legislature allows prosecutors to combine multiple violations of the controlled substances act, such as deliveries into a single charge, if "the violations were pursuant to a single intent and design." The result of this is to subject individuals to higher class felonies by adding up a series of lower amount deliveries into a single delivery charge for a large amount, but again, only where the series of individual felonies are part of the same intent and design. This limitation on a cumulative charge, for only circumstances involving ongoing scheme with a "single intent and design," illustrates the legislature's will to allow prosecutors to punish individuals for larger schemes, even where the individual components of the scheme were much smaller.

The state did exactly this for Lantz's case. Nowhere among the State's purported facts supporting the charges did Lantz conspire to deliver over 50 grams of methamphetamine at one time. Instead, the State charged the conspiracy based on activities over an entire six-month period, with concentration on multiple individual purchases for far less than 50 grams. Thus, it is clear that the conspiracy charge was meant to punish Lantz for the aggregate amount of individual offenses that totaled the 50 grams (or more) of methamphetamine, as the State argued at sentencing.

The fact that the legislature allows prosecutions for a larger scheme with individual components undermines the idea that persons should also be punished for both. This is supported by subsection (2) of the same statute authorizing cumulative prosecutions. Under subsection (2) of Wis. Stat. § 971.365, a prosecutor is prohibited from

charging a person who was either convicted or acquitted for conduct presented in an earlier trial. In other words, the legislature bars prosecution for conduct that was already prosecuted. Therefore, where it is the will of the legislature to not punish people for conduct related to controlled substances twice, multiple punishments for the same conduct would also be against the will of the legislature.

Another situation akin to the instant case is found under Wis. Stat. § 961.45 (2017), which is entitled "bar to prosecution." This statute commands that if controlled substances violation is a violation of another jurisdiction, a conviction or acquittal in that other jurisdiction "for the same act" is a bar to prosecution in Wisconsin. Wis. Stat. § 961.45. Like the statute referenced above (Wis. Stat. § 971.365), it shows the legislature's will to prevent a person from begin punished twice for same acts related to a controlled substance violation. In fact, when reviewing this statute, the Wisconsin Supreme Court in *State v. Hansen* concluded that this was a broader protection than the strict "elements only" test. *State v. Hansen*, 2001 WI 53, ¶44, 243 Wis.2d 328, 627 N.W.2d 195. The Court noted that the legislature used the term "same act" as opposed to "offense," and therefore the legislature barred prosecution for "acts" or conduct that had already been tried against the same individual elsewhere, whether they are the same offense in law or not. *Id.* ¶¶16-42. Notably, the same word "act" appears in Wis. Stat. § 971.365. It would illogical to find that Wisconsin would not want individuals punished twice for the same acts prosecuted elsewhere, but allow the same double-punishment in its own State.

In sum, these statues show that as the legislature allows for more significant punishments when several individual controlled substance offenses are part of a single intent and design, the legislature sought to bar punishing the same acts or conduct relating to controlled substance violations twice.

ii. Legislative history and context.

In 2001, when the Court in *Hansen* considered the legislative intent behind the bar to multiple prosecutions for the same acts underlying controlled substance violations, it remarked that there was "frustratingly little" in the drafting records relating to that specific statute. *Hansen*, 2001 WI 53, ¶19. Lantz has also found little in the history that reveals the will of the legislature on this issue beyond what is mentioned above, but what has been uncovered supports her view.

One notable fact is that the original statute for controlled substance conspiracy offenses (Wis. Stat. § 961.41(1x)) and the statute allowing multiple controlled substance violations to prosecuted as single crime (Wis. Stat. § 971.365) were enacted at the same time. 1985 Wis. Act 328, §§ 9m, 22m. This history reflects a knowledge on the part of the legislature that a conspiracy charge could accumulate multiple offenses in a single crime, while also recognizing the second subsection of Wis. Stat. § 971.365 that bars prosecution of the same acts twice.

iii. The nature of the proscribed conduct.

The third factor focuses on whether the facts are separated in time and nature or whether the acts involved separate harms. *State v. Steinhardt*, 2017 WI 62, ¶33, 375 Wis.2d 712, 896 N.W.2d 700. By allowing the State to charge someone with an overall conspiracy for multiple individual offenses, it is by nature encapsulating the acts that are the same in time and nature. As described already, Wis. Stat. § 971.365 provides for a cumulative charge when all the violations are part of a single intent and design, which is no different than being the same in nature. As for time, where the State expands the time to cover more offenses, it is inevitably the same in time as well. This case is an example. In order for the State to pursue a larger

punishment, it sought to cover Lantz's conduct over a six-month period, including the dates of the individual solicitations. (R.11:1-18). Thus, not only are the solicitations part of the same intent and design, they are also the same in time and nature as the overarching conspiracy charge. Likewise, where the legislature allows for the State to punish multiple harms as one large harm, and bars prosecution for the same acts already tried under Wis. Stat. § 971.365(2), the solicitations were not separate harms form the overarching conspiracy.

iv. The appropriateness of multiple punishments.

The fourth factor focuses on whether multiple actions were involved. *Steinhardt*, 2017 WI 62, ¶34. Certainly, the solicitations were multiple acts and the conspiracy involved multiple acts. As covered already, the nature of the conspiracy charge in this case, as permitted by Wis. Stat. § 971.365, used multiple instances to accumulative into one single offense involving more than 50 grams of methamphetamine. Lantz never conspired one delivery of 50 grams of methamphetamine, so logically the State charged her with an offense covering six months of time. Therefore, the overarching conspiracy was an act that it itself involved multiple acts, including the solicitations. Consequently, where the acts of solicitation were part of the act of conspiring over six-months, the conspiracy is not a "multiple act" separated from the solicitations. *Compare Steinhardt*, 2017 WI 62, ¶34 (act of commission and act of omission, while part of the same sexual assault, were nonetheless multiple actions).

In sum, while Lantz's conviction for conspiracy may not be identical in law and fact to the solicitation convictions, it is nonetheless not authorized by the legislature. Therefore, punishing Lantz for the both the conspiracy and solicitation counts violates her right to double jeopardy.

C. Where Lantz's two convictions for solicitation violate her due process rights, they should be vacated or, at the very least, she should be resentenced.

Generally, a no-contest plea waives constitutional errors. *State v. Multaler*, 2002 WI 35, ¶54, 252 Wis.2d 54, 643 N.W.2d 437. However, an exception exists for double-jeopardy violations, which are not waived and may be challenged directly, if it can be resolved on the record that was before the court at the time of the plea. *State v. Kelty*, 2006 WI 101, ¶24, 294 Wis.2d 62, 716 N.W.2d 886.

While Lantz's challenge focuses on the second party of the multiplicity test involving due process violations, Lantz argues that it is not waived for the same reasons that due process violations are not waived. In *Multaler*, the State argued that the defendant's plea waived a multiplicity challenge because the defendant never argued that it was double-jeopardy violation. *Multaler*, 2002 WI 35, ¶54. The Court rejected the State's argument "because at least one of the links in the State's chain may be problematic" where the defendant never expressly conceded it was not a double-jeopardy violation. *Id.* ¶55. There were other arguments raised by the defendant to counter the waiver argument, but this was the basis reached by the court in *Multaler*. *Id.* ¶55 n.6. While Lantz's multiplicity claim is argued as a due process violation, she nonetheless argues that her plea did not waive this challenge. The only difference between Lantz's challenge and a double-jeopardy violation is that solicitation and conspiracy are not identical in law. However, the two offense are closely related, the charges here identical in fact where they are part of the same intent and design, and the harm is identical where Lantz is being punished twice for the same act against the will of the legislature.

Moreover, further fact finding is not necessary because this claim can be resolved on the record. *See Kelty*, 2006 WI 101, ¶24. The factual basis for the Lantz's no-contest plea was the probable cause portion of the criminal complaint. (R.121:3-4, 6). The facts and argument presented at sentencing also provide the record necessary to resolve the issue. Consequently, as agued above, Lantz did not waive her claim that the convictions for the solicitation counts was a violation of her constitutional right against multiple punishments, and this Court should vacate them.

II. If Lantz waived her ability to contest her sentence on multiplicity grounds by not raising the issue in trial court proceedings, her counsel rendered ineffective assistance.

The right to effective assistance of counsel is constitutionally guaranteed. U.S. Const. Amend. VI; Wis. Const. Art. I, § 7, *Strickland v. Washington*, 466 U.S. 668, 685-86 (1984); *State v. McDowell*, 2004 WI 70, ¶30, 272 Wis.2d 488, 681 N.W.2d 500. A defendant seeking to prove ineffective assistance must show both that counsel's performance was deficient and that the defendant was prejudiced by such deficiency. *Strickland*, 466 U.S. at 687.

To prove deficiency, a defendant must show that counsel's performance fell below "an objective standard of reasonableness." *State v. Franklin*, 2001 WI 104, ¶13, 245 Wis. 2d 582, 629 N.W.2d 289 (quotation and quoted authority omitted). An attorney's decision, even if "strategic," must nonetheless be valid and have a basis in law and fact. *State v. Domke*, 2011 WI 95, ¶41, 337 Wis.2d 268, 805 N.W.2d 364; *State v. Thiel*, 2003 WI 111, ¶51, 264 Wis. 2d 571, 685 N.W.2d 305. A prudent lawyer must be skilled and versed in the criminal law, and any strategic or tactical decisions must be rational and based on the facts and the law. *State v. Felton*, 110 Wis. 2d 485, 502-03, 329 N.W.2d 161, 170 (1983).

Proof of prejudice requires proof of "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Franklin*, 2001 WI 104, ¶ 14 (quotation and quoted authority omitted). "A defendant need not show that counsel's deficient conduct more likely than not altered the outcome in the case." *Strickland*, 466 U.S. at 693. Instead, it is merely "a probability sufficient to undermine confidence in the outcome" of the proceeding. *Id*. at 694.

On appeal, "the ultimate determination of whether counsel's performance was deficient and prejudicial to the defense are questions of law which [appellate court's] review[] independently." *Thiel*, 2003 WI 111, ¶23 (quotation, textual alteration, and authority omitted). The postconviction court's factual findings, however, are reviewed for clear error. *State v. Jenkins*, 2014 WI 59, ¶38, 355 Wis. 2d 180, 848 N.W.2d 786.

In Lantz's case, her trial attorney testified that he did not raise the multiplicity issue because he did not see it as viable. If this Court concludes that Lantz is correct and the multiplicity claim would entitle her to relief, her counsel was wrong about the law, constituting deficient performance. *See Hinton v. Alabama*, 571 U.S. 263, 273-74 (2014). An objectively reasonable lawyer is skilled and versed in the law that is relevant to matters at hand. *Id.* Effective criminal defense "lawyers must take pains to guarantee that their training is adequate and their knowledge up-to-date in order to fulfill their duty as advocates." *ABA Stds. Crim. Justice: Prosecution & Defense Function*, Commentary to Std. 4-1.2 at 123 (3d ed. 1993); *see also Strickland*, 466 U.S. at 688-89 (ABA standards "are guides to determining what is reasonable"). To avoid being deficient, an attorney's decisions must be based upon the facts and law upon which an ordinarily prudent lawyer would rely. *Strickland*, 466 U.S. at 688; *see ABA Stds.*, Commentary to Std. 4-5.1 at 197 ("The lawyer's duty to be informed on the law is equally

important" to "[t]he duty . . . to investigate the facts of the case."). "An attorney's ignorance of a point of law that is fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance under *Strickland*." *Hinton*, 571 U.S. at 274.

Lantz's trial counsel offered no strategic reason for not arguing the multiplicity issue *other than* his opinion that the issue lacked merit. But trial counsel also admitted, if a viable issue existed by which he could have reduced her exposure at sentencing, litigating it would have been consistent with his goal to get Lantz the lowest possible sentence. After all, imposing sentences that the legislature has not authorized by definition subjected Lantz to additional punishment. Thus, if this Court agrees that a multiplicity problem exists, Lantz's counsel was deficient for not litigating it. The lengthier sentence that Lantz received because of those counts is proof of prejudice. Trial counsel's failure to prevent the unauthorized sentences for the solicitation offenses undermines confidence in the outcome of the sentencing proceedings. He was ineffective.

III. Lantz should be resentenced. When handing down her severe sentence the trial court, among other things, disregarded mitigation information about Lantz's background and erroneously stated that she was unable to be drug-free.

The circuit court abused its discretion at sentencing by considering mitigation information in Lantz's background as aggravating instead. Specifically, Lantz's sexual abuse when she was a little girl and the verbal and emotional abuse she suffered up through her own relationships, was brushed aside. Likewise, Lantz's decades long battle with addiction, in light of the abuse she suffered, her mental health issues, and physical issues, was turned into an aggravating factor, when the sentencing court believed that others who had these

same issues chose not to lead the same lifestyle. Finally, the sentencing court ignored Lantz's amenability to rehabilitation by saying she could not stay off drugs, when she had been clean for years. For these reasons, among others, Lantz's sentence was not the minimum amount of custody necessary to effectuate the applicable sentencing goals, and therefore, this Court should vacate Lantz's sentence and order resentencing.

A. A judge's discretion at sentencing is broad, but a sentence must impose only the minimum amount of custody necessary to effectuate applicable sentencing objectives.

Subject only to broad statutory ranges, the circuit courts largely control the amount of time a defendant will spend in confinement and under supervision. *Cunningham v. State*, 76 Wis. 2d 277, 282-83, 251 N.W.2d 65 (1977). A court's ability to exercise its discretion, while broad, does not mean unfettered decision-making. *Hartung v. Hartung*, 102 Wis.2d 58, 66, 306 N.W.2d 16 (1981), *citing McCleary v. State*, 49 Wis.2d 263, 182 N.W.2d 512 (1971). Instead, a discretionary act "must demonstrably be made and based upon the facts appearing in the record and in reliance on the appropriate and applicable law." *Hartung*, 102 Wis.2d at 66. Moreover, "a discretionary determination must be the product of a rational mental process by which the facts of record and law relied upon are stated and are considered together for the purpose of achieving a reasoned and reasonable determination." *Id.*

In addition, there are guard rails for the court's discretion at sentencing specifically. Perhaps most important is the rule that for "each case, the sentence imposed shall 'call for the minimum amount of custody or confinement which is consistent'" with the sentencing objectives." *State v. Gallion*, 2004 WI 42, ¶¶41-43, 270 Wis.2d 535, 678 N.W.2d 197, *quoting McCleary*, 49 Wis.2d at 276. Accordingly, a circuit court's exercise of discretion

must reflect a consideration of established criteria, including the character of the offender, the gravity of the offense, and the protection of the public. *Id.* ¶40. A court can exercise its discretion in how these factors are weighed, but the circuit court is nonetheless required to explain why the weight given to particular components of the sentence advance the specified objectives. *Id.* ¶¶41-43. Where the sentencing court's basis for the sentence is unreasonable or unjustified based on the record, the presumption of reasonableness is overcome, and resentencing should follow. *McCleary*, 49 Wis.2d at 278.

B. The sentencing court abused its discretion when significant mitigating information was before the court, including Lantz's ability to be rehabilitated, such that a sentence of 27 years imprisonment was more than the minimum necessary to achieve the sentencing goals.

In this case, the circuit court imposed a sentence that did not answer the "call for the minimum amount of custody or confinement which is consistent" with the applicable sentencing factors. *Gallion*, 2004 WI 42, ¶¶42-43 (citations omitted). It approached the maximum of the applicable scale. For counts two, three, and four Lantz received 15 years imprisonment out of a possible 15 years and 6 months; just short the maximum possible term. (R.22:1); Wis. Stat. § 939.50 (2017). While the sentencing court imposed a term of 12 years out of a possible 40 years for the overall conspiracy, by linking these sentences consecutive, Lantz received 27-years' imprisonment or over 2/3 of the possible sentence for the Class C felony. (R.22:1); Wis. Stat. § 939.50. In light of the higher-end sentence, there needed to be a sufficient justification why this was the minimum amount of custody, but the sentencing hearing lacks this justification.

One notable aspect is that Lantz's sentence went well beyond what the DOC agent and the State recommended. While the sentencing judge is certainly not bound to the recommendation of a presentence report, it is nonetheless a relevant factor in determining the type and length of sentence. *Ocanas v. State*, 70 Wis.2d 179, 188, 233 N.W.2d 457 (1975) (citations omitted). The DOC agent recommended withholding sentence and imposing an overall term of seven years' probation with a one year of jail. (R.40:20-21). Defense counsel concurred in this recommendation. (R.123:83; A-Ap 98). The resulting sentence of 27-years' imprisonment far exceeded the DOC's recommendation. But even the State's recommendation for Lantz was almost half of what was imposed. The State recommended 27 years as well, but with concurrent terms it was a recommendation of 16 years in the aggregate. (*Id.*:64; A-Ap 79). In other words, the sentencing court nearly doubled the State's recommended aggregate term of imprisonment.

Lantz does not contend that simply exceeding the recommendations of both the DOC agent and the State constitutes an erroneous exercise of discretion, but it is an indicator of a sentence that discretion was erroneously exercised. No one disputed the underlying facts of the presentence report. The sentencing court even noted that the author was a "darn good agent." (*Id.*:86; A-Ap 101). But obviously, the sentencing court paid absolutely no regard whatsoever to this recommendation of the DOC agent, which it referred to as a "disservice." (*Id.*:87; A-Ap 112). Consequently, the deviation between a term of probation to a term of 27 years imprisonment tends not to support an exercise of discretion that was "based upon the facts appearing in the record" or the product of a process where the facts relied upon "achieved a reasoned and reasonable determination," which was also the minimum amount of custody necessary.

The reasons given by the sentencing court to support this substantial deviation from the recommendation by

the DOC, and to a lesser degree the State as well, focused on the impact of methamphetamine and the unjustified disregard for mitigation in Lantz's background. (R.123:89-92; A-Ap 104-07). In any case involving the delivery of methamphetamine, the valid and serious concerns about the impact of methamphetamine on users and the community generally are going to arise. It is a valid consideration and will weigh in favor of the gravity of the offense, the character of the accused, and the protection of the public. But the sentence must account for more than the offense generally; it should focus on the person. *See Elias v. State*, 93 Wis.2d 278, 285, 286 N.W.2d 559 (1980) (the sentencing court has a responsibility "to acquire full knowledge of the character and behavior pattern of the convicted defendant before imposing sentence."). Consequently, the sentencing court erroneously exercised its discretion by noting but ultimately disregarding the mitigating aspects of Lantz and leaving her rehabilitative needs out, and thus the weight of the sentence relied only on punishing drug trafficking generally.

If anything, the facts given by the sentencing court regarding the dangers of methamphetamine cut both ways in this case. The court recounted the negative effects of methamphetamine abuse, including emotional problems and damaging cognitive abilities. (R.123:90-91; A-Ap 105-06). But this applies not only to those who were used the drugs that passed through Lantz, but Lantz herself. No one disputed that Lantz relapsed when the Yangs entered her life and that her involvement in the conspiracy was fueled by her relapse into drug addiction. If, as the sentencing court noted, methamphetamine users experience a damaged cognitive ability, it makes it harder to judge Lantz's character as purely aggravating when her choices made while in the throes of an addiction that the judge was seeking to address. Just as the sentencing court sought to punish Lantz for the unknown users out in the community, one of those victims was before it at that

time, although the sentence imposed does not reflect this reality.

Moreover, Lantz's sentence reflects a concentration on her choices over the six-month period of the conspiracy charge. But to focus on that period of time to the detriment of her full history is contrary to a sentencing court's obligation to know and base its sentence on the full character of the person to be sentenced. *Elias*, 93 Wis.2d at 285.

Lantz was fifty-one years old at the time of sentencing. (R.40:1). As the DOC agent indicated, and defense counsel attempted to emphasize, Lantz battled a long history of drug abuse and was herself the victim of sexual and physical abuse. (*Id.*:13-15, 20). She was battling addiction for decades. (*Id.*:14-15). Despite the fact that instances of sexual and physical abuse occurred long ago, the DOC agent opined that these were still issues that needed to be addressed, and Lantz herself agreed. (*Id.*:4, 20). Likewise, on top of this underlying history of abuse was Lantz' mental health diagnosis of bipolar and posttraumatic stress disorder and other significant health issues, including cancer treatment. (*Id.*:13). While not excusable, it is therefore less surprising that Lantz had struggled with drug addiction for such a long period of time.

While briefly noting this history, the sentencing court disregarded it by saying "a lot of people have terrible things happen when they're growing up, but they don't turn to this lifestyle." (R.123:98; A-Ap 113). This is a cold statement about the suffering Lantz had endured for decades and the mitigation that should be provided by those who suffer from addiction. Perhaps some who have suffered abuse do not go on to become drug addicted, but that does not make it an aggravating factor. It is clearly mitigating for a person to become susceptible to addiction when he or she comes from a background that creates long-lasting harm, such as repeated sexual

abuse at such a young age, compared to someone who could make choices free from years of abuse and addiction. Thus, by making her mitigating background, which this Court agreed was "sad," into an aggravating circumstance it is another indicator of an abuse of discretion.

One related indicator that Lantz's sentence was an erroneous exercise of discretion was the belief that Lantz was not amenable to rehabilitation. The DOC agent wondered whether Lantz was willing to live a drug-free life, but there was no question she was capable. (R.40:20). The DOC agent noted Lantz's "lengthy periods of abstinence." (*Id.*:20). Before allowing people into their house in 2014, Lantz had been drug-free for several years. (*Id.*:15). Consequently, it was erroneous for the judge to reason that "apparently, when you're out in the real world you can't stay off the drugs." (R.123:99-100; A Ap 114-15). Relatedly, the judge said that rehabilitation had not worked. (*Id.*:99; A-Ap 114). Perhaps the sentencing court missed the fact Lantz had "lengthy periods of abstinence," or like other mitigating facts the court noted and disregarded it. Either way, the result it is another indicator of an erroneous exercise of discretion.

Perhaps more than anything, what led Lantz to challenge her sentence was the fact that consecutive terms were imposed, contrary to the recommendation of the State. The sentencing court ordered that all four sentences should be served consecutively. (*Id.*:99-100; A-Ap 114-15). Again, the sentencing court's decision to order to consecutive sentences is discretionary. *State v. Hall*, 2002 WI App 108, ¶8, 255 Wis.2d 662. 648 N.W.2d 41 (citations omitted). But, just as the length of sentence should be the minimum amount of custody, so should the decision to impose consecutive terms. *Id.* (citations omitted). Thus, the trial court "must provide sufficient justification for such sentences and apply the same factors concerning the length of a sentence to its

determination of whether sentences should be served concurrently or consecutively." *Id.* But here, no specific reasoning was given for rejecting the State's recommendation of concurrent terms and imposing consecutive terms instead, much less an explanation for why it was consistent with imposing the minimum amount of custody necessary.

In sum, the sentencing court erroneously exercised its discretion by failing to provide weight to the mitigating aspects of Lantz' background concerning her abuse and long history of battling drug addiction, and if anything, considering it as an aggravating consequence. The sentencing court appeared to believe that Lantz was not capable of living a drug-free lifestyle, when in fact the DOC agent indicating she had done so, and for long periods of time. The sentencing court punished Lantz for her choices, but appeared to disregard the mitigating impact on those actions because they were fueled by a relapse into methamphetamine use, which as the judge himself recognized, impacts cognitive functioning. Consequently, the sentencing court erroneously exercised its discretion by imposing a sentence exceeding the minimum amount of custody necessary to effectuate its sentencing goals.

Lantz asks this Court to hold that her sentence constitutes an erroneous exercise of the circuit court's discretion, and thus remand her case for resentencing.

CONCLUSION

Lantz makes two challenges to her sentence. First, she argues that she was twice punished for the same act because her solicitations were part of the overarching conspiracy in which she was involved. She was convicted and received separate, consecutive sentences one all three counts. Whereas the legislature did not authorize such punishment, Lantz's constitutional rights were violated. Instead of a fifteen-year prison sentence, she has a twenty-seven-year sentence. Lantz urges this Court to conclude that her sentence is presently unconstitutional and remand with directions that her sentences on the two solicitation counts be vacated.

Lantz's ineffective assistance claim is wholly prefaced on waiver-avoidance grounds. Namely, she argues that her attorney was ineffective only if his objection was *necessary to avoid waiver* of the meritorious multiplicity argument. If this Court concludes that the claim did not need to be raised to avoid its waiver, the effectiveness of her counsel is not in question.

Lantz's second challenge to her sentence is that the circuit court erroneously exercised its discretion by giving her a term of imprisonment longer than the minimum term necessary to serve its sentencing goals. She asks this Court to remand for a new sentencing hearing.

Dated this 10th day of August, 2020.

PINIX LAW, LLC
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Electronically signed by Matthew S. Pinix
By: Matthew S. Pinix

CERTIFICATION

I certify that this brief conforms to the rules contained in Section 809.19(8)(b) and (c) for a brief produced using a proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points, maximum of 60 characters per full line of body text. The length of this brief is 8,302 words, as counted by the commercially available word processor Microsoft Word.

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

A copy of this certificate has been filed with the Court and served on all opposing parties.

Dated this 10th day of August, 2020.

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CERTIFICATION OF APPENDIX CONTENT

I hereby certify that filed as a separate document from this brief is an appendix that complies with Section 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; and (3) 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 first names and last initials 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 10th day of August, 2020.

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