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SUPREME COURT

STATE OF WISCONSIN

IN SUPREME COURT

No. 2021AP809-CR

STATE OF WISCONSIN,

Plaintiff -Respondent,

v.

JUNIOR L. WILLIAMS-HOLMES,

Defendant-Appellant-Petitioner.

RESPONSE TO PETITION FOR REVIEW

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INTRODUCTION

The State opposes Junior L. Williams-Holmes's petition for review. The court of appeals applied the correct principles of law and standard of review when it affirmed his judgment of conviction and the order denying his postconviction motion to amend that judgment. *State v. Williams-Holmes*, 2022 WI App 38, __ Wis. 2d __, __ N.W.2d ___. (Pet-App. 3–15.) The petition does not meet the criteria enumerated in Wis. Stat. § (Rule) 809.62(1r). Therefore, Williams-Holmes has not shown any "special and important reasons" warranting review by this Court. Wis. Stat. § (Rule) 809.62(1r).

THIS COURT SHOULD DENY THE PETITION FOR REVIEW BECAUSE IT DOES NOT SATISFY THE CRITERIA IN WIS. STAT. § 809.62(1r).

This Court should deny Williams-Holmes's petition. Williams-Holmes's lengthy criminal history, which included dated and recent domestic violence convictions, led the circuit court to order probation and extended supervision conditions that barred him from residing with women or nonbiological children unless the court so authorized. (R. 57:13–16.) A sound exercise of discretion, the court refused to modify that condition when Williams-Holmes claimed that it unlawfully intruded upon the Department of Corrections' statutory authority to control and monitor individuals placed on probation and extended supervision. (R. 46:1–3.)

The court of appeals affirmed, and in doing so, clarified to circuit courts across the state how the challenged condition could be enforced lawfully or unlawfully. (Pet-App. 10–15.) The court confirmed that the challenged condition was lawful if any contemplated changes concerning the individuals with whom Williams-Holmes could reside were effectuated through Wis. Stat. §§ 973.09(3) or 302.113(7m), which permit courts to modify probation and extended supervision conditions. (Pet-App. 12.)

For probation, this would require a circuit court to make any changes to a condition "for cause and by order." (Pet-App. 7, 10 (quoting Wis. Stat. § 973.09(3)).) Similarly, it would require an offender or the Department of Corrections to "petition" the circuit court to seek changes to an extended supervision condition. (Pet-App. 10 (quoting Wis. Stat. § 302.113(7m)).) But if a circuit court were to require an offender to seek its "permission" outside those mechanisms, thereby engaging in "informal oversight," "regulation," or "supervision," that would unlawfully intrude on the Department of Corrections' authority to "administer" supervision. (Pet-App. 11.)

That was a sound conclusion supported by the authority cited. Nevertheless, Williams-Holmes petitions for review, arguing that this Court must "clarify the relative authority of the circuit court and the DOC over individuals on probation and extended supervision." (Williams-Holmes's Pet. at 4.) In support, he complains that "[t]he court of appeals' published opinion erroneously permits a circuit court to make itself the de facto probation agent" and "invites circuit courts to impose invasive conditions prohibiting defendants from all types of lawful conduct, then requiring the defendant to return to the circuit court to amend the condition on a situation-by-situation basis, instead of permitting the DOC to administer the supervision." (Williams-Holmes's Pet. at 4–5.)

Williams-Holmes's overstated concerns do not establish that additional review is warranted. Admittedly, the State requested publication below because the court of appeals had previously examined the same sort of condition ordered in this case but seemingly decided inconsistently whether the ordered condition was lawful in a series of unpublished cases that could not be cited, even for their persuasive value. But the court of appeals has now squarely confronted the question posed in this case, and it arrived at a conclusion that is both logical and simple: requiring an offender to seek a court's

approval for an exemption from an earlier supervision condition is lawful *only* if effectuated through the statutory mechanisms established by the Legislature.

Contrary to Williams-Holmes's complaints, the court of appeals' opinion does not "invite" or even allow lower courts to blindly impose "invasive conditions" prohibiting "lawful conduct." (Williams-Holmes's Pet. at 4.) A court must still impose only "conditions which appear to be reasonable and appropriate." Wis. Stat. § 973.09(1)(a). While courts maintain broad discretion in crafting those conditions, conditions must further the court's probation or extended supervision goals, i.e., rehabilitation and public protection. *State v. Agosto*, 2008 WI App 149, ¶ 12, 314 Wis. 2d 385, 760 N.W.2d 415.

Nothing in the court of appeals' opinion changes that. If a circuit court imposes an arbitrary and invasive condition that improperly infringes upon an offender's participation in lawful activities, he remains free to challenge the court's exercise of sentencing discretion. But the condition Williams-Holmes challenges has already been deemed "reasonable and appropriate" for repeat domestic violence offenders like him. *State v. Luckett*, No. 2009AP2679-CR, 2010 WL 1567169, ¶¶ 3, 11, 18 (Wis. Ct. App. Apr. 21, 2010) (unpublished). The only notable difference here is that the circuit court left the door open to relaxing the condition to Williams-Holmes's benefit, and the court of appeals simply clarified that any condition change must be effectuated through Wis. Stat. §§ 973.09(3) and 302.113(7m).

Williams-Holmes contends that this single caveat—a stated willingness to relax the condition if he presented a suitable request—transformed the otherwise lawful condition to the unlawful judicial administration of supervision that intrudes upon the Department of Corrections' authority to "manage the day-to-day functions of . . . supervision." (Williams-Holmes's Pet. at 9.) In support, he offers outlandish hypothetical conditions that a court would never impose, like

barring an offender from seeking employment or participating in rehabilitative programming, and he suggests that requiring offenders to seek a modification would convert a judge into probation agent. (Williams-Holmes's Pet. at 11.)

Not so. The circuit court ordered Williams-Holmes "not to reside with any member of the opposite sex" or any child not related by blood without the court's permission. (R. 57:16.) The court of appeals clarified that this "permission" must be obtained by way of a request under Wis. Stat. §§ 973.09(3) or 302.113(7m). (Pet-App. 12.) If Williams-Holmes elects to take the appropriate steps that convince the court he is capable of living with women and children without abusing them, then the challenged condition, as clarified by the court of appeals, could be modified to either create an exception or possibly remove the condition's restrictions, altogether.

Contrary to Williams-Holmes's position, that is not administering probation. (Williams-Holmes's Pet. at 10.) It is exercising authority that the Legislature conferred upon the courts under Wis. Stat. §§ 973.09(3) and 302.113(7m), and Williams-Holmes's complaints about the "impracticality" or difficulties defendants face if required to comply with those statutes does not somehow convert an appropriate probation or extended supervision condition into an unlawful one. And unless this Court is inclined to grant review and hold that courts are unable to exercise that statutory authority, further review or clarification by this Court are unnecessary.

CONCLUSION

The court of appeals correctly affirmed Williams-Holmes's judgment of conviction and the order denying postconviction relief, and additional review is unwarranted.

Dated this 25th day of August 2022.

Respectfully submitted,

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FORM AND LENGTH CERTIFICATION

I hereby certify that this response conforms to the rules contained in Wis. Stat. §§ (Rules) 809.19(8)(b), (bm) and 809.62(4) for a response produced with a proportional serif font. The length of this response is 1,125 words.

Dated this 25th day of August 2022.

JOHN W. KELLIS
Assistant Attorney General

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. §§ (RULES) 809.19(12) and 809.62(4)(b) (2019-20)

I hereby certify that:

I have submitted an electronic copy of this response, excluding the appendix, if any, which complies with the requirements of Wis. Stat. §§ (Rules) 809.19(12) and 809.62(4)(b) (2019-20).

I further certify that:

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

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

Dated this 25th day of August 2022.

JOHN W. KELLIS
Assistant Attorney General