STATE OF WISCONSIN

IN SUPREME COURT

Case No. 2021AP809-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JUNIOR L. WILLIAMS-HOLMES,

Defendant-Appellant-Petitioner.

ON REVIEW FROM A DECISION OF
THE COURT OF APPEALS AFFIRMING A
JUDGMENT OF CONVICTION AND AN ORDER
DENYING A MOTION FOR POSTCONVICTION RELIEF,
BOTH ENTERED IN THE CIRCUIT COURT FOR
KENOSHA COUNTY, THE HONORABLE
BRUCE E. SCHROEDER, PRESIDING

BRIEF OF THE PLAINTIFF-RESPONDENT

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INTRODUCTION

Circuit courts and the Department of Corrections are charged with vital but distinct roles affecting persons released into the community on probation or extended supervision. Besides dictating the supervision's duration, circuit courts must set appropriate conditions, which the department is tasked with enforcing. And while the authority to administer probation or extended supervision lies exclusively with the department, a circuit court retains the statutory authority to modify existing supervision conditions to ensure they serve the probationary program envisioned at sentencing.

Defendant-Appellant-Petitioner Junior L. Williams-Holmes's argument defies these principles and the statutory provisions supporting them. He asks this Court to infringe upon the circuit court's sentencing discretion by modifying his supervision conditions so that he may live with women and unrelated children with permission from only the Department of Corrections and not the court that imposed his sentence. Like the court of appeals, this Court should reject that invitation with the same clarification that the "permission" Williams-Holmes must seek of the circuit court should be requested and obtained through the statutory provisions that authorize postconviction supervision condition modifications.

ISSUE PRESENTED

Did the circuit court maintain the authority to require Williams-Holmes to return to it to seek authorization to reside with women or unrelated children during his supervision?

The circuit court answered yes.

The court of appeals answered yes.

This Court should answer yes.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

By granting review, this Court has signified that oral argument and publication are warranted.

SUPPLEMENTAL STATEMENT OF THE CASE[1]

By his 37th birthday, Williams-Holmes had already amassed a lengthy criminal record spanning three decades. (R. 20:7–8.) A tenacious thief with a propensity for violence, he spent much of his early adult life in jail or prison following convictions for burglary, driving a vehicle without the owner's consent, aggravated assault, substantial and misdemeanor batteries, and disorderly conduct as an act of domestic violence. (R. 20:7–8.)

Unfortunately, the risk of continued imprisonment did not curtail Williams-Holmes's abusive behavior. While still on probation for his last felony battery conviction, and with an imposed and stayed prison sentence hanging over his head, he repeatedly assaulted his cohabitating girlfriend, striking her in the head and face, slamming her body to the floor, dragging her around the room, and preventing her from calling the police. (R. 1:5–7; 20:7.)

Charged with a slew of crimes for some of those violent assaults, Williams-Holmes ultimately reached an agreement with the State where he pleaded guilty to false imprisonment, misdemeanor bail jumping, and two counts of battery, each as a repeat offender. (R. 7; 21:1; 56:2.) The circuit court imposed

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[1] Williams-Holmes's record citations throughout his brief appear to reference the circuit court record number visible at the top of each document page, rather than the appellate index number listed at the bottom of each document page. Consistent with its prior practice, the State cites to the appellate index number for each of its record citations.

prison sentences for two of those convictions, followed by consecutive terms of probation for the remaining convictions. (R. 57:15–16.)

The court ordered common supervision conditions for Williams-Holmes's probation and extended supervision. (R. 22:2, 4; 57:16–17.) Based on his domestic violence history, the court ordered that Williams-Holmes not "reside with any member of the opposite sex without the permission of the Court, nor reside with any child who is not related to [him] by blood without the permission of the Court." (R. 57:16.)

Aggrieved by that obligation, Williams-Holmes moved for postconviction relief, requesting that the court modify the condition to require that he obtain permission from the Department of Corrections ("DOC")—rather than the court—before living with women or nonbiological children. (R. 40.) Supporting that request, he insisted the court's desire to decide if he lived with women or nonbiological children while supervised in the community improperly intruded upon DOC's statutory authority to administer and enforce the rules of supervision. (R. 40:2.)

The circuit court issued a written order and supporting memorandum denying Williams-Holmes's motion. (R. 44; 46.) The court began by rejecting Williams-Holmes's claim that DOC retains "exclusive control" over probationers and those released on extended supervision, quoting *Linse*[2] for this Court's recognition that circuit courts maintain "wide latitude in their sentencing determinations," with discretion to not only add supervision conditions for probationers but to also review or modify supervision rules established by DOC after sentencing has concluded. (R. 46:1–2.)

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[2] *State ex rel. Taylor v. Linse*, 161 Wis. 2d 719, 469 N.W.2d 201 (Ct. App. 1991).

In the same vein, the court rejected Williams-Holmes's contention that DOC was "solely responsible" for controlling offenders and sanctioning rule violations. (R. 46:2.) On the contrary, the court pointed out that DOC possessed only limited sanctioning power and was required to "apply to the court for extended conditional confinement of a probationer." (R. 46:2.) The court also observed that, by statute, circuit courts were permitted to modify conditions of probation "at any time." (R. 46:2 (citing Wis. Stat. § 973.09(3)(a).)

The court of appeals affirmed that decision, albeit with some clarification. *State v. Williams-Holmes*, 2022 WI App 38, 404 Wis. 2d 88, 978 N.W.2d 523. In assessing whether the circuit court maintained the authority to order the offending condition, the court examined statutory provisions governing powers of the circuit courts and DOC to impose, administer, and modify supervision conditions. (Pet-App. 10–11.)

Ultimately, the court concluded that the challenged condition was lawful only to the extent that the "permission" to live with women or nonbiological children that the circuit court envisioned would be effectuated through the statutory processes outlined in Wis. Stat. §§ 973.09(3) and 302.113(7m). (Pet-App. 12–13.) Conversely, the court clarified that informal "permission" like that discussed in an e-mail between the circuit court and DOC agent in another case constituted an impermissible "usurping" of DOC's statutory authority to administer supervision. (Pet-App. 11–12.)

Williams-Holmes moved the court to reconsider its decision, insisting that the court had effectively rewritten the condition "contrary to the circuit court's intent," that the court's decision "fail[ed] to account for the impracticalities of forcing defendants through the statutory process to modify overreaching terms of supervision," and "erroneously distinguishe[d] 'modifying' conditions of supervision from 'administering" those conditions." (Williams-Holmes's Mot. to

Reconsider 1). The court of appeals denied Williams-Holmes's motion.

Williams-Holmes petitioned for review, which this Court granted.

STANDARD OF REVIEW

Williams-Holmes challenges a circuit court's statutory authority to compel a person released into the community on probation or extended supervision to return to it should he seek modification of a condition of supervision. This poses a question of statutory interpretation, which this Court reviews de novo with the "benefit from the analyses of the circuit court and the court of appeals." *Saint John's Communities, Inc. v. City of Milwaukee*, 2022 WI 69, ¶ 14, 404 Wis. 2d 605, 982 N.W.2d 78 (citation omitted).

ARGUMENT

Williams-Holmes's challenged supervision condition, as clarified by the court of appeals, does not intrude upon DOC's exclusive authority to administer probation or extended supervision.

Disregarding the broad discretion circuit courts hold at sentencing, Williams-Holmes asks this Court to ignore the probationary program envisioned by the judge who sentenced him and modify his judgment of conviction so that he need only ask DOC to live in any home he wishes. (*See* Williams-Holmes's Br. 10.) The court of appeals properly rejected that invitation, and this Court should, too. The legislature vested circuit courts with authority to impose suitable conditions of supervision and modify those conditions, if appropriate. Because the circuit court satisfied the former with willingness to entertain the latter, this Court should affirm.

A. Circuit courts maintain broad discretion in imposing and modifying supervision conditions to further its probationary program, and DOC is charged with enforcing those conditions.

Defining the separation of powers between respective government branches, this Court has explained "the legislature has constitutional authority to offer probation as an alternative to sentencing, the judiciary has authority to impose probation, and the executive branch has the authority to administer probation." *State v. Horn*, 226 Wis. 2d 637, 648, 594 N.W.2d 772 (1999).

Whether placing a defendant on probation or imposing a bifurcated prison sentence, a circuit court also maintains broad discretion in setting community supervision conditions. *State v. King*, 2020 WI App 66, ¶ 20, 394 Wis. 2d 431, 950 N.W.2d 891; *State v. Hoppe*, 2014 WI App 51, ¶ 7, 354 Wis. 2d 219, 847 N.W.2d 869; Wis. Stat. §§ 973.01, 973.09(1)(a). Protecting that exercise of discretion, this Court has routinely upheld conditions guaranteed to impact important facets of a defendant's day-to-day life—even those that have the practical effect of curtailing constitutional rights—as long as the conditions were both reasonable and appropriate. *See, e.g.*, *State v. Rowan*, 2012 WI 60, ¶¶ 11–19, 341 Wis. 2d 281, 814 N.W.2d 854 (upholding condition allowing police to search defendant's person, vehicle, or residence for firearms at any time, without reasonable suspicion); *State v. Oakley*, 2001 WI 103, ¶¶ 20–21, 245 Wis. 2d 447, 629 N.W.2d 200 (upholding condition prohibiting defendant from having more children unless he proved ability to support current and expected children); *State v. Sepulveda*, 119 Wis. 2d 546, 557, 350 N.W.2d 96 (1984) (upholding condition requiring probationer to admit himself to Mendota Mental Health Institute for "intensive care and treatment").

Once a circuit court places a defendant on probation or sentences him to prison with a term of extended supervision, "[t]he adversary system has terminated and the administrative process, vested in the executive branch of the government, directed to the correctional and rehabilitative processes of the parole and probation system has been substituted in its place." *Horn*, 226 Wis. 2d at 650 (quoting *State ex rel. Johnson v. Cady*, 50 Wis. 2d 540, 546, 185 N.W.2d 306 (1971)).

Whether immediately placed on probation or released on extended supervision after a term of prison confinement, an offender is deemed "in the custody of the department" and "subject . . . to the control of the department under conditions set by the court and rules and regulations established by the department for the supervision of probationers, parolees and persons on extended supervision." Wis. Stat. § 973.10(1). Thereafter, DOC is tasked with administering probation and extended supervision, which includes sanctioning violations of supervision conditions. Wis. Stat. § 301.03(3).

While a sentencing hearing's end marks a line where one government branch's work generally stops and another's begins, a circuit court does not lose the ability to ensure its sentencing goals are honored during a person's supervision. While Williams-Holmes might be quick to accuse a circuit court of meddling in another government branch's duties, this Court has recognized, despite the effect it is bound to have on a person's everyday life, that "inherent within the probation statute *is the court's continued power to effectuate the dual purposes of probation*, namely, rehabilitating the defendant and protecting society, *through the court's authority to modify or extend probationary terms*." *Sepulveda*, 119 Wis. 2d at 554 (emphasis added); *see also State v. Hays*, 173 Wis. 2d 439, 445, 496 N.W.2d 645 (Ct. App. 1992).

Codifying that judicial authority, the legislature has explicitly permitted circuit courts to modify existing supervision conditions after a person's term of probation or extended supervision has already commenced. Wis. Stat. §§ 302.113(7m)(a), 973.09(3)(a). Unsurprisingly, circuit courts have at times invoked that authority to modify supervision conditions when DOC either fails to act or acts contrary to the court's anticipated "probationary program." *See, e.g.*, *State ex rel. Taylor v. Linse*, 161 Wis. 2d 719, 725, 469 N.W.2d 201 (Ct. App. 1991) (affirming a circuit court's modification of a DOC rule prohibiting probationer from traveling into Eau Galle, Wisconsin, during the term of his supervision).

The court of appeals squarely rejected the notion that allowing circuit courts to veto inconsistent DOC rules would "create an administrative nightmare with the courts continually interfering with and modifying specifical rules of supervision imposed by the department." *Id*. Rather, the court observed that circuit courts were unlikely to "rush to oversee the special rules of supervision imposed by the department," and if they did, the legislature was in the best position to solve that problem. *Id*. at 725–26.

B. Requiring Williams-Holmes to petition the court for permission to reside with women or unrelated children violates no state statute, appellate authority, or the separation of powers doctrine.

Troubled by Williams-Holmes's history of violence and the evident risk he posed to others following his eventual release from custody, the circuit court fashioned a sentence barring him from living with women and unrelated children unless he returned to the court and proved he was "going to be a responsible individual." (R. 57:16–17.) While the circuit court could have been clearer describing the mechanism by which Williams-Holmes must obtain its "permission" to live

with women and children, this Court should affirm because the offending condition, as clarified by the court of appeals, constituted a sound exercise of sentencing discretion violating neither state statute, Wisconsin caselaw, nor the separation of powers doctrine.

To begin, it's imperative to recognize what Williams-Holmes does and does not dispute. In his brief filed with this Court, just like one of his briefs filed in the court of appeals, he has expressly disavowed any challenge to the circuit court's authority to impose a condition prohibiting him from living with women or unrelated children. (Williams-Holmes's Br. 11; Williams-Holmes's Court of Appeals Br. 7.)

That concession is surely not surprising. Given his atrocious criminal history, a condition barring a violent offender like Williams-Holmes from residing with women and unrelated children is certainly "reasonable and appropriate." Wis. Stat. § 973.09(1). Not only is it both reasonable and appropriate, but it also passes constitutional muster, having survived prior overbreadth challenges. *State v. Luckett*, No. 2009AP2679-CR, 2010 WL 1567169, ¶¶ 1, 11–16 (Wis. Ct. App. Apr. 21, 2010) (unpublished). And Wisconsin courts are not alone in that assessment. *See, e.g.*, *Belt v. State*, 127 S.W.3d 277 (Tex. App. 2004) (upholding condition prohibiting probationer from living with children under the age of 18).

Obligated to consider not only his rehabilitative needs and the gravity of his offenses but also the need to protect the public from unchecked domestic violence, *State v. Gallion*, 2004 WI 42, ¶ 44, 270 Wis. 2d 535, 678 N.W.2d 197, the circuit court's decision to order a condition prohibiting Williams-Holmes from living with women and unrelated children was certainly rational, and he does not dispute that, (Williams-Holmes's Br. 11). Rather, his problem with the condition is that it contemplates future modification from the beginning. (Williams-Holmes's Br. 24.) In his view, that structure

improperly invites "the circuit court's involvement in the day-to-day management of the condition," in violation of statutes that vest DOC with the exclusive authority to administer probation and extended supervision, Wisconsin caselaw, and general separation of powers principles. (Williams-Holmes's Br. 11–13, 16–17, 20, 24–25.)

But the condition does nothing of the sort.

For starters, it certainly violates no statute. On the contrary, it contemplates Williams-Holmes's use of existing statutes that allow probationers and individuals released on extended supervision to seek modification of their supervision conditions. Wis. Stat. §§ 302.113(7m), 973.09(3). As the court of appeals observed, the circuit court could lawfully require Williams-Holmes to seek its "permission" to live with women and unrelated children by complying with the procedures set forth in those two statutes as it would "merely amount to a statutorily authorized modification of the conditions of supervision." *Williams-Holmes*, 404 Wis. 2d 88, ¶ 18. That interpretation makes practical sense, too; the legislature that vested DOC with exclusive control over probationers still enacted statutes permitting courts to later modify conditions, reinforcing its power to take action affecting those people's lives well after their supervision has begun.

The main problem with Williams-Holmes's argument is that he labels any circuit court action that might affect his day-to-day life as "administering" his probation and extended supervision. (*See* Williams-Holmes's Br. 12, 14–15, 17.) But the circuit court's willingness to relax one of his supervision conditions if he can demonstrate an ability to live with women and children without harming or assaulting them hardly constitutes day-to-day *administration* or *management* of probation or extended supervision.

Williams-Holmes's characterization of the condition as the court's improperly *administering* his supervision plainly

derives from his exaggerated concern that he will be forced to communicate with the court about his living arrangements on a day-to-day basis. (*See* Williams-Holmes's Br. 14–15, 17, 24.) But nothing in the court's sentencing comments or written order anticipates micromanagement rising to the level of "administering" supervision. Under no circumstances will the court assume the role of a de facto probation agent, requiring Williams-Holmes to remain in constant communication to seek permission to live with Jane and her son on Monday, with Mary and her daughter on Thursday, and with Lisa and her sister on Saturday. Rather, upon proving that he can suppress his violent tendencies toward women and children, Williams-Holmes can obtain a modification to his supervision conditions that will allow him to live with any women or children he chooses. That is not administering supervision; it is using the statutory authority the legislature has afforded to modify supervision conditions.

Just as Williams-Holmes cannot establish that the offending condition violates any state statute, he also cannot show that it violates any Wisconsin caselaw. While he has diligently compiled appellate decisions in which the court of appeals struck down actions by the same circuit court judge who sentenced him here, none have any bearing on the issue before this Court. He cites *Horn*, *State v. Burchfield*, 230 Wis. 2d 348, 602 N.W.2d 154 (Ct. App. 1999), and *State v. Schell*, 2003 WI App 78, 261 Wis. 2d 841, 661 N.W.2d 503, for where the circuit court improperly straddled the line between judicial and executive roles by deciding that it was authorized to revoke probation, declaring the statutes vesting DOC with revocation authority unconstitutional and dictating how a sheriff's office must administer a probationer's jail term. (Williams-Holmes's Br. 13–16.)

Those decisions do not help Williams-Holmes for the same reason that his statutory argument fails. The whole

point he attempts to make from those cases assumes the premise he must prove: that what the circuit court did by ordering the condition in his case constituted administering his probation and extended supervision. But *Horn*, *Burchfield*, and *Schell* do not support that underlying premise; those cases just reinforce that the responsibilities statutorily vested to DOC and other executive entities—revoking a probationer's probation or deciding how an inmate will serve his jail sentence—are responsibilities left to the executive branch, not the judicial branch.

Nothing in *Horn*, *Burchfield*, or *Schell* even hints that a court's exercise of its statutory authority under Wis. Stat. §§ 302.113(7m) or 973.09(3) constitutes administering probation or extended supervision, regardless of the impact the modified conditions may have on the affected individual's day-to-day life. While *Horn* described a general line at sentencing where the judicial branch's work often ends and the executive branch's begins, *Horn*, 226 Wis. 2d at 650, the case did not address the judiciary's statutory ability to modify conditions after sentencing has concluded. Indeed, if a court exercising its authority under Wis. Stat. §§ 302.113(7m) or 973.09(3) constitutes unlawful intrusion upon DOC's responsibilities, then *Linse*, which empowered courts to use that authority to modify those DOC supervision rules deemed inconsistent with its probationary plan, was clearly wrongly decided. In short, Williams-Holmes offers no caselaw prohibiting the circuit court from considering any future requests as part of a sentence modification motion.

Additionally, requiring Williams-Holmes to petition the circuit court for permission to live with women and unrelated children does not violate the separation of government powers; rather, it reinforces it. He correctly points out that circuit courts would lack authority to place an offender on probation or extended supervision and set conditions of each

but for the legislature enacting statutes authorizing as such, (Williams-Holmes's Br. 12), yet he seemingly ignores that the same legislature that vested DOC with exclusive authority to administer probation and extended supervision also vested circuit courts with the authority to set or modify supervision conditions after DOC assumed control over the offender. Wis. Stat. §§ 301.03(3), 302.113(7m), 973.09(3).

Presumably, the legislature knew what it was doing when it enacted those statutes that created probation and extended supervision, authorized courts to order either, empowered DOC to administer either, and granted courts authority to modify supervision conditions after DOC had assumed control over the offender. In that way, the above-referenced statutes afford circuit courts and DOC some vital checks on the other's authority, permitting courts to impose or modify conditions after-the-fact to ensure that its sentencing vision is honored while simultaneously entrusting the department to dictate how those conditions will best be enforced.

Moreover, to the extent that Williams-Holmes suggests that his supervision condition presents due process problems, his concerns are overblown. He points to *Hays*, 173 Wis. 2d 439, for the due process protections a defendant maintains when a court intends to modify supervision conditions. (Williams-Holmes's Br. 19–20.) Given those requirements, he complains that the condition makes it "truly impractical" and "redundant" for him to seek modification as the court of appeals contemplated. (Williams-Holmes's Br. 19.)

His argument is unpersuasive for several reasons. First and foremost, the circuit court's willingness to modify his supervision conditions *to relax* his residential limitations *to his benefit* does not implicate the same due process concerns as in *Hays*, where the anticipated modification was *more* intrusive, forcing a probationer to sit in jail for six months. In

that case, it was appropriate to safeguard a probationer's due process rights given the additional restrictions placed on his liberty. Even so, neither impracticality nor redundancy renders a supervision condition unlawful, and if the court must hold a hearing with testimony every time Williams-Holmes wishes to live with a different woman, that is a small price for him to pay to live with those who he has battered and falsely imprisoned in the past.

Finally, the supervision condition, as ordered, is not rendered unlawful by the outlandish hypotheticals Williams-Holmes poses. Conditions must be "reasonable and appropriate," Wis. Stat. § 973.09(1)(a), and the theoretical conditions he suggests—barring a recovering addict from participating in rehabilitative programming or preventing a penniless thief from seeking employment—would never be upheld under the existing statute that already prevents a court from imposing unreasonable conditions; there is no reason to strip the court of the power to exercise broad discretion and modify conditions in a lawful manner.

Ultimately, Williams-Holmes fails to show that a condition prohibiting him from residing with women and children at this point constituted an erroneous exercise of sentencing discretion or that the court's willingness to revisit that condition violates statute, caselaw, or the separation of powers. Therefore, because the circuit court soundly exercised its discretion in sentencing Williams-Holmes and imposing appropriate supervision conditions, this Court should affirm.

C. There is no need for an unnecessary case remand to allow Williams-Holmes to bring claims he deliberately and expressly elected not to advance earlier.

Regardless of whether this Court strikes down the challenged condition as an infringement on DOC's authority to administer probation and extended supervision, Williams-

Holmes asks that his case be remanded to the circuit court to determine "whether it wants to manage the condition" as the court of appeals construed it and to allow him to bring a new, unrelated challenge to the overbreadth of the condition under the First Amendment. (Williams-Holmes's Br. 21–25.)

This Court should decline his request for two overarching reasons. First and foremost, remand would serve no purpose. Having finished the confinement portions of his consecutive prison sentences, Williams-Holmes has already been released back to the community and will likely complete his extended supervision terms within months of this Court's releasing its decision.[3] Williams-Holmes may petition the circuit court to modify his extended supervision conditions as Wis. Stat. § 302.113(7m)(a) allows, and if the court decides that the process is too cumbersome, it may remove the condition, altogether. And if Williams-Holmes wishes to seek changes to his probation condition after his extended supervision terms have concluded, the court is free to relax that condition, too, if it so wishes. Wis. Stat. § 973.09(3)(a).

Secondly, this Court should not reward gamesmanship. In his briefs filed in the court of appeals and now in this Court, Williams-Holmes disavowed any challenge to the circuit court's authority to impose a condition limiting his ability to reside with women or unrelated children. (Williams-Holmes's Br. 11; Williams-Holmes's Court of Appeals Br. 7.) Now hedging his bets, Williams-Holmes seemingly suggests that he might reverse course and bring such a claim if this Court declines to give him his way. (Williams-Holmes's Br. 22.)

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[3] According to the Wisconsin DOC inmate locator website, Williams-Holmes was released to the community on extended supervision on December 21, 2021, leaving him less than one year before his consecutive term of probation is set to begin. General Public – Offender Search, https://appsdoc.wi.gov/lop/home/home/ (last visited Jan. 23, 2023).

Williams-Holmes's wait-and-see strategy is foreclosed because nothing stopped him from bringing that alternative challenge in his initial postconviction motion and appeal, and doing so now would run afoul of Wisconsin's prohibition against serial postconviction litigation. Wis. Stat. § 974.06(4); *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). And even if he could somehow overcome the *Escalona-Naranjo* procedural bar, he should not be rewarded for explicitly refusing to challenge the court's authority to order a supervision condition prohibiting him from living with women or unrelated children—thus conceding the condition is proper—just to turn around and later claim that the court lacked the authority to order it.

In the end, our judicial system is not a game. This Court presumably meant what it said when it declared that "[w]e need finality in our litigation." *Escalona-Naranjo*, 185 Wis. 2d at 185. No finality is secured by remanding this case back to the circuit court to allow Williams-Holmes to bring new claims that he has repeatedly and expressly disavowed. Thus, not only should this Court affirm, but it should affirm without cluttering the circuit court's already overloaded docket with a needless remand.

CONCLUSION

This Court should affirm the court of appeals' decision that affirmed Williams-Holmes's judgment of conviction and the order denying postconviction relief.

Dated this 25th day of January 2023.

Respectfully submitted,

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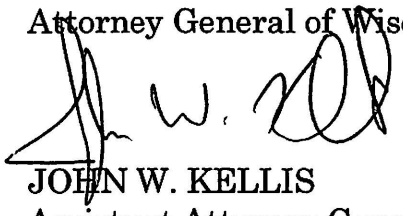

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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 4,309 words.

Dated this 25th day of January 2023.

JOHN W. KELLIS

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § (RULE) 809.19(12) (2019-20)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § (Rule) 809.19(12) (2019-20).

I further certify that:

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

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

Dated this 25th day of January 2023.

JOHN W. KELLIS