STATE OF WISCONSIN

IN SUPREME COURT

No. 2021AP0859

STATE OF WISCONSIN,

Plaintiff-Appellant,

v.

LYNNE M. SHIRIKIAN,

Defendant-Respondent-Petitioner.

RESPONSE OPPOSING PETITION FOR REVIEW

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INTRODUCTION

Lynne M. Shirikian pled guilty to operating a motor vehicle while under the influence of an intoxicant (OWI) as a fifth offense. Under Wis. Stat. § 346.65(2)(am)5., a circuit court sentencing a person for that crime is generally required to impose a bifurcated sentence with "not less than one year and 6 months" of initial confinement in prison. But if the court finds that "the best interests of the community will be served and the public will not be harmed," can impose "a term of confinement less than one year and 6 months." Wis. Stat. § 346.65(2)(am)5.

The circuit court in this case imposed a bifurcated sentence of three years of initial confinement and two years of extended supervision. But it stayed the sentence and ordered Shirikian to serve only 9 months in jail rather than at least one year in prison. The primary issue in this case is whether the sentence was lawful. The State moved for resentencing, asserting that the sentence was unlawful. The circuit court denied the State's motion, and the State appealed the order denying resentencing. The court of appeals reversed. *State v. Shirikian*, 2023 WI App 13, __Wis. 2d __, __N.W.2d __. (Pet-App. 3–26.) It concluded that Shirikian's sentence was unlawful because the circuit court was not authorized to: "(1) stay the sentence; (2) place Shirikian on probation; or (3) allow her to serve nine months in jail rather than a minimum of one year in prison." *Id.* ¶ 43. The court of appeals remanded the case with instructions to impose a lawful sentence. *Id.* ¶ 44.

Shirikian now petitions this Court for review on three issues: (1) "Does § 346.65(2)(am)5. authorize a circuit court to stay a properly imposed bifurcated sentence and place the defendant on probation with less than one year of conditional jail time?"; (2) "Does a defendant have a 'legitimate expectation of finality' in a sentence imposed under a

reasonable interpretation of a sentencing statute, even if that interpretation is later held to be incorrect, so as to implicate the constitutional right to be free from double jeopardy?"; and (3) "Was the State's appeal untimely for failure to comport with Wis. Stat. § 974.05(1)(c)'s requirement that an appeal of '[j]udgment and sentence or order of probation not authorized by law' 'shall be initiated within 45 days of entry of the judgment or order appealed from'?" (Pet. 8.)

Review on these issues is unnecessary and unwarranted. First, as the court of appeals correctly determined, since Wis. Stat. § 346.65(2)(am)5 requires a circuit court to impose a bifurcated sentence with at least a mandatory minimum one-year term of initial confinement in prison, the court may not stay the sentence or place the person on probation and order less than one year of confinement in a place other than prison. *Shirikian*, 2023 WI App 13, ¶ 43. The court of appeals' well-reasoned, published decision is binding authority that guides circuit courts that impose sentences under Wis. Stat. § 346.65(2)(am)5. Second, Shirikian points to no authority even suggesting that a person improperly sentenced has a legitimate expectation of finality in her illegal sentence. And third the State's appeal was not untimely under Wis. Stat. § 974.05(1)(c) because the State did not appeal under that statute. It moved for resentencing and timely appealed the order denying its motion under Wis. Stat. § 974.05(1)(a). Shirikian does not assert that the State did not properly move for resentencing or could not appeal from the order denying resentencing. Review by this Court is therefore unnecessary and unwarranted.

ARGUMENT

I. Wisconsin Stat. § 346.65(2)(am)5. requires a circuit court to impose a bifurcated sentence with at least one year of initial confinement in prison; a court is not authorized to stay the sentence, place the person on probation, or allow the person to serve less than one year in a place other than prison.

A. As the court of appeals recognized, the plain language of Wis. Stat. § 346.65(2)(am)5. requires a bifurcated sentence with a mandatory minimum term of initial confinement in prison.

The statute that governs sentencing for OWI as a fifth or sixth offense, Wis. Stat. § 346.65(2)(am)5., provides that any person who violates Wis. Stat. § 346.63(1) "is guilty of a Class G felony and shall be fined not less than $600." Wis. Stat. § 346.65(2)(am)5. The statute establishes how a court is required to sentence the person:

> The court shall impose a bifurcated sentence under s. 973.01, and the confinement portion of the bifurcated sentence imposed on the person shall be not less than one year and 6 months. The court may impose a term of confinement that is less than one year and 6 months if the court finds that the best interests of the community will be served and the public will not be harmed and if the court places its reasons on the record.

Wis. Stat. § 346.65(2)(am)5.

As the court of appeals determined, under the plain language of Wis. Stat. § 346.65(2)(am)5., a circuit court is required to impose a bifurcated sentence for a person convicted of OWI as a fifth or sixth offense. *Shirikian*, 2023 WI App 13, ¶ 25. And under Wis. Stat. § 973.01(2), a

bifurcated sentence necessarily includes a term of confinement in prison. *Id.*

As the court of appeals recognized, Wis. Stat. § 346.65(2)(am)5. provides a presumptive minimum of eighteen months of initial confinement, and an exception if the court finds that (1) "the best interests of the community will be served"; and (2) "the public will not be harmed." *Shirikian*, 2023 WI App 13, ¶¶ 26–27 (citation omitted). The court concluded that "the statutory language is clear that if the court determines that the exception applies, the court must still comply with the statute's first mandate—that the court impose a bifurcated sentence." *Id.* ¶ 27. And since the confinement portion of a bifurcated sentence necessarily means confinement in prison, when Wis. Stat. § 346.65(2)(am)5. authorizes a court to impose "a term of confinement that is less than one year and 6 months," it means less than one year and six months but at least one year in prison. *Id.* ¶ 28 (citation omitted) (emphasis omitted).

B. As the court of appeals determined, since a circuit court is required to impose a bifurcated sentence with at least one year of initial confinement in prison, it may not stay the sentence and place the person on probation with conditional jail.

Under Wisconsin law, unless a statute prohibits probation, a sentencing court may withhold sentence or impose sentence but stay its execution and place a person on probation. Wis. Stat. § 973.09(1)(a). The court of appeals concluded that since a circuit court is required to impose a bifurcated sentence with at least one year of initial confinement in prison, it may not stay the sentence and place the person on probation. *Shirikian*, 2023 WI App 13, ¶¶ 33–39. The court relied on *State v. Lalicata*, 2012 WI App 138, 345 Wis. 2d 342, 824 N.W.2d 921, and *State v. Williams*, 2014 WI 64, 355 Wis. 2d 581, 852 N.W.2d 467. In *Lalicata*, the court

concluded that a statute that requires a circuit court to impose a bifurcated sentence including a mandatory minimum term of confinement prohibits the court from staying the sentence and placing the person on probation. *Lalicata*, 345 Wis. 2d 342, ¶ 14. The statute at issue in *Lalicata* was Wis. Stat. § 939.616(1r), which required that a court "shall" impose a term of confinement of at least 25 years. The court of appeals concluded that because the statute states that a court "shall" impose a particular sentence, it does not allow a court to withhold sentence. *Lalicata*, 345 Wis. 2d 342,. ¶ 15. And if a court cannot withhold sentence, it follows that a court also cannot stay a sentence it imposes. *Id.* The court concluded that by requiring a court to impose a sentence with a minimum period of confinement, Wis. Stat. § 939.616(1r) prohibits probation. *Id.* ¶ 14.

In *Williams*, 355 Wis. 2d 581, this Court applied *Lalicata* in the context of Wis. Stat. § 346.65(2)(am)6., the statute prescribing the sentence for OWI as a seventh, eighth, or ninth offense. This Court noted that under *Lalicata*, "a mandatory minimum bifurcated sentence is inconsistent with permitting probation." *Id.* ¶ 34. And this Court recognized that bifurcated sentences "necessarily involve time in prison." *Id.* ¶ 35.

The statute at issue in this case, Wis. Stat. § 346.65(2)(am)5., requires that a court "shall impose a bifurcated sentence." And it requires that the mandatory minimum term of confinement of the sentence is "not less than one year and 6 months," except that if the court makes the requisite findings, it may impose a term of confinement that is less than one year and 6 months. *Id.* As the court of appeals recognized, under the reasoning of *Lalicata* and *Williams*, Wis. Stat. § 346.65(2)(am)5. requires a court to impose a bifurcated sentence with at least a minimum term of confinement. *Shirikian*, 2023 WI App 13, ¶¶ 35–36. The court may not withhold sentence, and it may not stay the

sentence and place the person on probation. *Id.* And since the court is required to impose at least one year of initial confinement, the defendant must serve the time in prison. *Id.* ¶ 25; Wis. Stat. § 973.01(2).

C. Shirikian's argument that a circuit court is authorized to stay the required bifurcated sentence, place the person on probation, and order as little as one day of confinement that need not be served in prison, is incorrect.

Shirikian acknowledges that under Wis. Stat. § 346.65(2)(am)5., a court sentencing a person for OWI as a fifth or sixth offense is required to impose a bifurcated sentence. (Pet. 10.) And she acknowledges that under Wis. Stat. § 973.01(2) a bifurcated sentence "consists of a term of initial confinement in prison followed by a term of extended supervision." (Pet. 10.) But she argues that under the exception in Wis. Stat. § 346.65(2)(am)5., which says that "[T]he court may impose a term of confinement that is less than one year and 6 months," the confinement can be served in prison, the county jail, a Huber facility, a work camp, or a tribal jail. (Pet. 12, 17, 23.) And she argues that a court is authorized to stay the sentence, impose probation, and order the person confined for less than one year. (Pet. 22.)

Shirikian's argument depends on "a term of confinement less than one year and 6 months" in the exception in Wis. Stat. § 346.65(2)(am)5. meaning something other than "a term of initial confinement in prison." But it does not. As the court of appeals recognized, when read "in the context of the statute itself," the phrase "a term of confinement less than one year and 6 months" plainly refers to the term of confinement portion of the bifurcated sentence the court is required to impose. *Shirikian*, 2023 WI App 13, ¶¶ 27–28. As the court of appeals observed, "the first sentence of WIS. STAT. § 346.65(2)(am)5 specifically refers to 'the

confinement portion of the bifurcated sentence[.]'" *Shirikian*, 2023 WI App 13, ¶ 28. When the second sentence then "refer[s] to 'a term of confinement,'" it does not do so "in isolation." *Id.* "Rather, the phrase 'a term of confinement' in the second sentence is directly tied to the presumptive eighteen-month mandatory minimum identified in the first sentence: 'The court may impose *a term of confinement that is less than one year and 6 months*[.]'" *Id.* As the court of appeals recognized, "the one year and six month term of confinement must be imposed as part of a bifurcated sentence per the clear and unambiguous statutory language," and the phrase "'term of confinement,' as used in the second sentence, when read 'in the context in which it is used[,] not in isolation but as part of a whole[,]' must also refer back to the mandatory bifurcated sentence." *Id.* (citing *State ex rel. Kalal v. Circuit Court for Dane Cty*, 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110.

Shirikian does not explain how, when read in context, the "term of confinement" in the exception can mean anything but the term of confinement portion of the required bifurcated sentence. She ignores the context of the statute and looks to other statutes like the probation statute, Wis. Stat. § 973.09(1)(a), (d), (4), that use the term "confined" as including things other than confinement in prison. (Pet. 22–25.) But Shirikian does not identify any statute that uses "term of confinement" to mean anything other than the initial confinement in prison portion of the bifurcated sentence. And she does not identify any statute that requires a bifurcated sentence (which she acknowledges Wis. Stat. § 346.65(2)(am)5. does) that uses "confinement" to mean anything other than initial confinement in prison.

Shirikian argues that the "term of confinement" under the exception does not mean "the term of confinement in prison" because the statute does not say "in prison." (Pet. 23–24.) But the first sentence in Wis. Stat. § 346.65(2)(am)5. requires that "the confinement portion of the bifurcated

sentence shall be not less than one year and 6 months." It does not say that "the confinement *in prison* portion of the bifurcated sentence shall be not less than one year and 6 months." But there is no dispute that, although Wis. Stat. § 346.6592)(am)5. does not say "in prison," the "confinement" must be in prison. Similarly, the "term of confinement" under the exception is confinement in prison.

Shirikian also does not explain why, if the Legislature wanted to authorize a court to impose probation with conditional jail time, rather than initial confinement in prison, it would not have said that. The Legislature did just that in Wis. Stat. § 939.617, which provides a mandatory minimum sentence for certain child sex offenses. The statute states that "Except as provided in subs. (2) and (3) . . . The term of confinement in prison portion of the bifurcated sentence shall be at least 5 years for violations of s. 948.05 or 948.075 and 3 years for violations of s. 948.12." Wis. Stat. § 939.617(1). The statute then sets forth an exception that allows a court to not impose the mandatory minimum sentence: "(2) If the court finds that the best interests of the community will be served and the public will not be harmed and if the court places its reasons on the record, the court may impose a sentence that is less than the sentence required under sub. (1) *or may place the person on probation* under any of the following circumstances: . . ." Wis. Stat. § 939.617(2) (emphasis added).

As the court of appeals has recognized, "§ 939.617 shows that the legislature knew very well how to create exceptions allowing probation for crimes that ordinarily trigger a minimum sentence of confinement." *Lalicata*, 345 Wis. 2d 342, ¶ 12. That the Legislature did not explicitly create an exception in Wis. Stat. § 346.65(2)(am)5. allowing probation for OWI as a fifth or sixth offense supports the plain language reading of the statute requiring a bifurcated sentence with at least one year of initial confinement in prison.

Since Wis. Stat. § 346.65(2)(am)5. plainly requires a court to impose a bifurcated sentence with at least one year of initial confinement in prison, Shirikian's sentence, which ordered her confined for only nine months in jail, was illegal. And since Shirikian's argument that a court is authorized to impose as little as one day of confinement (that need not be served in jail) is wrong, her argument that a court may stay the required bifurcated sentence and order probation is also wrong.

Shirikian argues that a circuit court may stay a sentence under Wis. Stat. § 346.65(2)(am)5. She relies on Wis. Stat. § 973.15(8)(a), which authorizes a court to stay a sentence "for legal cause," or "under s. 973.09(1)(a)." (Pet. 18.) She argues that the legal cause authorizing a court to stay a sentence "is the sentencing exception in § 346.65(2)(am)5. that permits the circuit court to impose 'a term of confinement that is less than one year and 6 months if the court finds the best interests of the community will be served and the public will not be harmed.'" (Pet. 19.) But as the court of appeals recognized, "The stay the circuit court imposed here was not a stay pending appeal or for a 'legal cause' authorized by § 973.15(8)(a)1. Rather, the stay the circuit court imposed here was to put Shirikian on probation—a sentence our law does not authorize for a fifth- or sixth-OWI offender." *Shirikian*, 2023 WI App 13, ¶ 34.

Shirikian argues that Wis. Stat. § 973.09(1)(a) authorizes a circuit court to stay a sentence under Wis. Stat. § 346.65(2)(am)5. But Wis. Stat. § 973.09(1)(a). applies only if probation is not prohibited for a particular offense by statute. Here, probation is prohibited because Wis. Stat. § 346.65(2)(am)5. requires a bifurcated sentence with a mandatory minimum term of initial confinement in prison. As the court of appeals recognized, a statute that requires a court to impose a bifurcated sentence including a mandatory minimum term of confinement prohibits the court from

staying the sentence and placing the person on probation. *Shirikian*, 2023 WI App 13, ¶¶ 35–36 (citing *Lalicata*, 345 Wis. 2d 342, ¶¶ 14–15). "[A] mandatory minimum bifurcated sentence is inconsistent with permitting probation[.]" *Shirikian*, 2023 WI App 13, ¶ 35 (quoting *Williams*, 355 Wis. 2d 581, ¶ 34) (in turn citing *Lalicata*, 345 Wis. 2d 342, ¶ 11).

Shirikian argues that *Lalicata* does not apply in this case because it did not involve Wis. Stat. § 973.09(1)(d), which provides:

> If a person is convicted of an offense that provides a mandatory or presumptive minimum period of one year or less of imprisonment, a court may place the person on probation under par. (a) if the court requires, as a condition of probation, that the person be confined under sub. (4) for at least that mandatory or presumptive minimum period.

Wis. Stat. § 973.09(1)(d). Shirikian claims that Wis. Stat. § 973.09(1)(d) "*expressly authorizes* probation here." (Pet. 20.)

Shirikian's reliance on Wis. Stat. § 973.09(1)(d) is misplaced for two reasons. First, Wis. Stat. § 973.15(8)(a)2. authorizes a court to stay a sentence "under s. 973.09(1)(a)." It does not authorize a court to stay a sentence under Wis. Stat. § 973.09(1)(d). Second, Wis. Stat. § 973.09(1)(d) applies only to offenses with "a mandatory or presumptive minimum period of one year or less of imprisonment." Wis. Stat. § 973.01(1)(d). "Under the 'truth-in-sentencing' law, a sentence to imprisonment consists of a 'term of confinement' and a 'term of extended supervision.'" *State v. Volk*, 2002 WI App 274, ¶ 28, 258 Wis. 2d 584, 654 N.W.2d 24. Wisconsin Stat. § 346.65(2)(am)5. requires a mandatory minimum of one year of initial confinement. A court also must impose at least three months of extended supervision (25% of the term of initial confinement) for a total of 15 months of imprisonment. Since the minimum period of imprisonment is

longer than one year, section 973.09(1)(d) does not apply. *Shirikian*, 2023 WI App 13, ¶¶ 37–39.

As the court of appeals recognized, Wis. Stat. § 346.65(2)(am)5. requires a mandatory period of at least one year of initial confinement in prison. It does not authorize a court to stay the sentence, place the person on probation, order less than one year of confinement, or allow the confinement to be served anywhere but prison. The court's published, binding, and correct decision provides the necessary guidance for circuit courts to properly impose sentence for violations of OWI as a fifth or sixth offense. Review by this Court is therefore unnecessary.

II. The court of appeals correctly concluded that resentencing Shirikian to a lawful sentence will not violate her right to be free from double jeopardy.

The court of appeals concluded that "Because Shirikian's sentence was not lawful, she has no legitimate expectation of finality in it, and resentencing her does not violate double jeopardy." *Shirikian*, 2023 WI App 13, ¶ 42. Shirikian argues that the court of appeals "invented" a "bright-line rule" that conflicts with this Court's decisions. (Pet. 27.) She asks this Court to grant review and hold that "a defendant can have a 'legitimate expectation of finality' in a sentence based on a circuit court's *reasonable interpretation* of a statute—even if a court of appeals later holds that a different interpretation is better, thus rendering the circuit court's interpretation technically 'unlawful.'" (Pet. 28.)

But the court of appeals did not "invent" a rule. It relied on three federal cases which all concluded that a defendant has no legitimate expectation of finality in an unlawful sentence. *Id.* (citing *United States v. Rourke*, 984 F.2d 1063, 1066 (10th Cir. 1992); *United States v. Jackson*, 903 F.2d 1313, 1316 (10th Cir. 1990); *United States v. Kane*, 876 F.2d

734, 737 (9th Cir. 1989). Notably, Shirikian does not cite any case in any jurisdiction holding to the contrary—that a person has, or even may have, a legitimate expectation of finality in an unlawful sentence.

The court of appeals' "rule" is not in conflict with decisions of this Court. Shirikian points out that in *State v. Robinson*, 2014 WI 35, 354 Wis. 2d 351, 847 N.W.2d 352, this Court said that whether a defendant has a legitimate expectation of finality in a sentence "must be evaluated in light of the circumstances in each particular case," on factors including "the completion of the sentence, the passage of time, the pendency of an appeal, or the defendant's misconduct in obtaining sentence." *Id.* ¶ ¶ 34, 38 n.9.

However, *Robinson* involves resentencing after the imposition of a *lawful* sentence. *Robinson*, 354 Wis. 2d 351, ¶¶ 40–41. The other cases Shirikian points to also concern resentencing after a lawful sentence. *State v. Gruetzmacher*, 2004 WI 55, ¶ 40, 271 Wis. 2d 585, 679 N.W.2d 533; *State v. Jones*, 2002 WI App 208, ¶¶ 3, 7, 257 Wis. 2d 163, 650 N.W.2d 844. *State v. Willett*, 2000 WI App 212, ¶ 6, 238 Wis. 2d 621, 618 N.W.2d 881.

In *Jones*, like in this case, the court of appeals adopted a rule from a federal case for a specific circumstance: "The rule we adopt in Wisconsin, therefore, is that when a defendant makes a fraudulent representation to the sentencing court and the court accepts and relies upon that representation in determining the length of the sentence, the defendant has no reasonable expectation of finality in the sentence." 257 Wis. 2d 163, ¶ 14 (citing *United States v. Bishop*, 774 F.2d 771 (7th Cir. 1985)).

As this Court has noted, "[A] circuit court should not be tethered in every instance to a sentence that is based on a mistake of law." *Robinson*, 354 Wis. 2d 351, ¶ 42. "The Constitution does not require that sentencing should be a game in which a wrong move by the judge means immunity for the prisoner." *Id.* (quoting *United States v. DiFrancesco*, 449 U.S. 117, 135 (1980).

Here, the circuit court's "wrong move" was imposing an illegal sentence. When a sentence is "not in accord with the law," resentencing is "the proper method to correct it." *Shirikian*, 2023 WI App 13, ¶ 44 (quoting *Grobarchik v. State*, 102 Wis. 2d 461, 470, 307 N.W.2d 170 (1981)).

Shirikian proposes a rule that "a defendant can have a 'legitimate expectation of finality' in a sentence based on a circuit court's *reasonable interpretation* of a statute—even if a court of appeals later holds that a different interpretation is better, thus rendering the circuit court's interpretation technically 'unlawful.'" (Pet. 28.) But she does not point to any case in any jurisdiction that has adopted such a rule. And that rule would not help her because, as the court of appeals recognized, "the text of WIS. STAT. § 346.65(2)(am)5 is plain and has only one reasonable meaning." *Shirikian*, 2023 WI App 13, ¶ 24. The circuit court's contrary interpretation of Wis. Stat. § 346.65(2)(am)5. was not just wrong, it was clearly and unreasonably so, and it resulted in an illegal sentence.

Shirikian had no legitimate expectation in her bifurcated sentence being stayed, being placed on probation, and being allowed to serve only nine months in jail rather than at least one year in prison, because the circuit court was not authorized to do any of those things. Accordingly, her right to be free from double jeopardy will not be violated when she is resentenced lawfully. Review by this Court is therefore unnecessary and unwarranted.

III. The court of appeals correctly concluded that the State's appeal in this case was timely.

Shirikian asks this Court to grant review and hold that the State's appeal was untimely under Wis. Stat. § 974.05(1)(c), which authorizes the State to appeal from a "[j]udgement and sentence or order of probation not authorized by law." (Pet. 30–33.) But the State did not appeal the judgment of conviction under Wis. Stat. § 974.05(1)(c). It moved for resentencing and appealed the circuit court's order denying its motion under Wis. Stat. § 974.05(1)(a), which authorizes the State to appeal from a "Final order or judgment adverse to the state, whether following a trial or a plea of guilty or no contest, if the appeal would not be prohibited by constitutional protections against double jeopardy."

The court of appeals recognized that the State "could have appealed the judgment of conviction itself pursuant to § 974.05(1)(c)," but that "it was not prohibited from filing its resentencing motion and then appealing from the circuit court's denial of that motion." *Shirikian*, 2023 WI App 13, ¶ 15 n.9. And the court concluded that it had jurisdiction over this appeal because "the State timely appealed from the circuit court's April 1, 2021, written order" denying the State's motion for resentencing. *Id.*

Shirikian seems to argue that the State's motion for resentencing was really an improper motion for reconsideration filed to toll the time for filing a notice of appeal of the judgment of conviction. (Pet. 32.) But it wasn't. It was a motion for resentencing to correct an illegal sentence.

A circuit court may correct an illegal sentence at any time. *State v. Stenklyft*, 2005 WI 71, ¶ 60, 281 Wis. 2d 484, 697 N.W.2d 769; *State v. Trujillo*, 2005 WI 45, ¶ 10 n.8, 279 Wis. 2d 712, 694 N.W.2d 933; *Hayes v. State*, 46 Wis. 2d 93, 101, 175 N.W.2d 625 (1970); *State v. Crochiere*, 2004 WI 78,

¶ 12, 273 Wis. 2d 57, 681 N.W.2d 524. Since a circuit court can correct an illegal sentence at any time, it follows that a defendant can move for resentencing to ask the court to correct an illegal sentence after the time for a direct appeal. It likewise follows that the State is not limited to challenging an illegal sentence by appealing the judgment of conviction within 45 days of entry. The State can also challenge an illegal sentence by filing a motion for resentencing, as it did in this case. Here, the State moved for resentencing to give the circuit court an opportunity correct what it believes was an illegal sentence "As a general rule, resentencing is the proper method to correct a sentence which is not in accord with the law." *Grobarchik*, 102 Wis. 2d at 470.

Shirikian does not argue that it was improper for the State to move for resentencing or to appeal the order denying its motion for resentencing. And she has not shown that the court of appeals' conclusion that the State timely appealed the order denying its motion for resentencing was incorrect. Review on this issue is therefore unwarranted.

CONCLUSION

This Court should deny Shirikian's petition for review.

Dated: April 14, 2023.

Respectfully submitted,

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FORM AND LENGTH CERTIFICATION

I hereby certify that this petition or response conforms to the rules contained in Wis. Stat. §§ (Rules) 809.19(8)(b), (bm) and 809.62(4) for a petition or response produced with a proportional serif font. The length of this petition or response is 4636 words.

MICHAEL C. SANDERS
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 petition or 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 14th day of April 2023.

MICHAEL C. SANDERS
Assistant Attorney General