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STATE OF WISCONSIN
C O U R T O F A P P E A L S
DISTRICT I

Case No. 2021AP1083-CR

STATE OF WISCONSIN,
Plaintiff-Respondent,

v.

JAMES J. SOCHA,
Defendant-Appellant.

ON APPEAL FROM AN ORDER DENYING A MOTION
FOR SENTENCE MODIFICATION ENTERED IN THE
MILWAUKEE COUNTY CIRCUIT COURT, THE
HONORABLE MILTON L. CHILDS, SR., PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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INTRODUCTION

James J. Socha pleaded no contest to operating a motor vehicle while under the influence of an intoxicant (OWI) in 2005. He admitted to having nine prior convictions, so the circuit court sentenced him for OWI as a fifth or subsequent offense.¹

Fifteen years later, Socha moved for new factor sentence modification, claiming that six of the nine prior convictions used to enhance his 2005 sentence were later voided or vacated, and that the State failed to adequately prove his three other convictions. He sought commutation of his sentence under Wis. Stat. § 973.13, and an amended judgment of conviction for OWI as a first offense.²

The circuit court denied Socha's motion, noting that the circuit court in 2005 had imposed a valid sentence for OWI as a fifth offense based on Socha's admission to having at least four prior (nine) convictions at the time. This Court should affirm. Socha is not entitled to commutation of his sentence under Wis. Stat. § 973.13. He is not serving a maximum sentence or a sentence that exceeds the allowable maximum for his offense, so that statute does not apply. And Socha is not entitled to sentence modification because he has not shown a new factor. If Socha were entitled to any remedy, it would be resentencing. However, he expressly rejects resentencing. Since Socha is not entitled to either sentence modification or commutation, this Court should affirm.

¹ At the time, the same potential penalties applied for any fifth or subsequent OWI. The State therefore only had to prove that Socha had four or more prior offenses.

² Socha is currently making similar claims in two pending appellate cases, 2021AP0957-CR in District II, and 2021AP2116-CR in District I.

ISSUES PRESENTED

1. Is Socha entitled to commutation of his sentence under Wis. Stat. § 973.13 and an amended judgment of convicting him of OWI as a first offense?

The circuit court answered “no.”

This Court should answer “no” and affirm.

2. Is Socha entitled to new factor sentence modification?

The circuit court answered “no.”

This Court should answer “no” and affirm.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests neither oral argument nor publication, as the arguments are fully developed in the parties’ briefs, and the issues presented involves the application of well-established principles to the facts presented.

STATEMENT OF THE CASE AND FACTS

Socha pleaded guilty to OWI in 2005. (R. 58:31–46.) The criminal complaint alleged that he had nine prior convictions. (R. 2.) The report of the presentence investigation (PSI) listed the nine convictions. (R. 15:3–4.) When the circuit court accepted Socha’s guilty plea, it said that he was subject to the penalties for a fifth or subsequent offense. (R. 58:41–43.) When the court later sentenced Socha for OWI as a fifth or subsequent OWI offense it noted that it was Socha’s tenth offense. (R. 91:11.) The court imposed six years of imprisonment, including two years of initial confinement and four years of extended supervision. (R. 91:21.)

Socha completed the Earned Release Program in 2007, so his remaining term of initial confinement was converted to extended supervision. (R. 29.) His supervision was then revoked, and he was ordered reconfined for the remaining time on his sentence. (R. 32.) In 2014, the circuit court recognized that the four years of extended supervision it had initially imposed exceed the maximum three years, so it commuted Socha's sentence from four years of extended supervision to three years. (R. 45; 46.) In 2015, Socha moved for resentencing, but the circuit court denied his motion. (R. 52; 53.)

In 2020, Socha moved for sentence modification, alleging new factors. (R. 58.) The alleged "new factors" were that in 2010 six of the nine prior convictions used for sentence enhancement in this case were voided or vacated, and that the PSI was not competent proof of his other prior convictions because it contained the violation dates rather than the conviction dates. (R. 58.) Socha asked that his sentence be modified and commuted, and that judgment be entered for OWI as a first offense. (R. 58:6.)

The circuit court denied Socha's motion, concluding that he failed to establish a new factor warranting sentence modification. (R. 72.) The court found that "at the time of sentencing in this case, the defendant stood convicted of nine prior OWIs and that those offenses were substantiated by the PSI and/or defense counsel's admission." (R. 72:6.) The court concluded that the sentencing court imposed sentenced "on a *correct* set of facts," and that Socha's "postconviction attempt to change the facts is improper, and frankly, manipulative." (R. 72:9.) The court therefore denied Socha's motion in a written order. (R. 72:10.) Socha now appeals. (R. 83.)

STANDARD OF REVIEW

Whether facts presented constitute a new factor is a question of law, reviewed independently. *State v. Harbor*, 2011 WI 28, ¶ 33, 333 Wis. 2d 53, 797 N.W.2d 828. “The determination of whether that new factor justifies sentence modification is committed to the discretion of the circuit court,” and is reviewed “for erroneous exercise of discretion.” *Id.*

ARGUMENT

The circuit court properly denied Socha’s motion for sentence modification.

A. Introduction.

Socha moved for sentence modification, seeking commutation of his sentence under Wis. Stat. § 973.13 from OWI as a fifth or subsequent offense to OWI as a first offense—a civil offense. He made it clear in his motion that he is not seeking resentencing and does stipulate that his motion for sentence modification can be treated as a motion for resentencing.

However, as the circuit court recognized, and as the State will explain, Wis. Stat. § 973.13 does not apply in this case. And the appropriate remedy—if Socha is entitled to a remedy—is resentencing, not sentence modification. If Socha were resentenced, even without the six convictions he has had voided or vacated, he still would have at least four prior convictions, and still would properly be sentenced for OWI as a fifth or subsequent offense, just like he was in this case. Since Socha does not seek or agree to resentencing, the circuit court’s order denying his motion for sentence modification should be affirmed.

B. Socha is not entitled to commutation of his sentence under Wis. Stat. § 973.13 because that statute does not apply here.

Socha argues that his motion for sentence modification for a new factor should be construed as a motion for commutation of his sentence under Wis. Stat. § 973.13. (Socha's Br. 7–16.) He claims that he is entitled under Wis. Stat. § 973.13 to have his sentence for OWI as a fifth or subsequent offense commuted to the maximum sentence for OWI as a first offense. (Socha's Br. 11.)

However, Socha is not entitled to relief under Wis. Stat. § 973.13, which provides that “In any case where the court imposes a maximum penalty in excess of that authorized by law, such excess shall be void and the sentence shall be valid only to the extent of the maximum term authorized by statute and shall stand commuted without further proceedings.” “Section 973.13, as it pertains to sentencing a repeat offender, applies only when the State fails to prove the prior conviction necessary to establish the habitual criminal status (by proof or by admission) or when the penalty given is longer than permitted by law for a repeater.” *State v. Mikulance*, 2006 WI App 69, ¶ 18, 291 Wis. 2d 494, 713 N.W.2d 160 (citing *State v. Flowers*, 221 Wis. 2d 20, 28–29, 586 N.W.2d 175 (Ct. App. 1998); *State v. Spaeth*, 206 Wis. 2d 135, 155–56, 556 N.W.2d 728 (1996)).

Section 973.13 does not apply in this case for at least three reasons. First, the sentencing court did not impose “a maximum penalty” or a sentence “in excess of that authorized by law.” By its plain text, section 973.13 applies only when a court “imposes a maximum penalty.” See *State v. Finley*, 2016 WI 63, ¶ 74, 370 Wis. 2d 402, 882 N.W.2d 761: “Wis. Stat. § 973.13, which commutes a sentence imposed that exceeds the maximum statutory penalty, does not provide a remedy in the instant case, in which the sentence initially imposed (although at the plea colloquy the circuit court advised

otherwise) did not exceed the maximum statutory penalty.”
Id.

Here, Socha is not serving a sentence that exceeds the statutory maximum, or even a maximum sentence. The trial court sentenced him for OWI as a fifth offense, a Class H felony with a maximum sentence of six years, including a maximum of three years of initial confinement and a maximum of three years of extended supervision. (R. 91:10; Wis. Stat. §§ 346.65(2)(am)5., 939.50(1)(h), (3)(b) (2005–06)). The court imposed a six year-sentence with two years of initial confinement and four years of extended supervision. (R. 91:21.) When the Department of Corrections later notified the court that the four-year term of extended supervision exceeded the maximum term of three years (R. 44; Wis. Stat. 973.01(2)(9d)5. (2005–06), the court commuted the term of extended supervision to three years. (R. 45.) The amended judgment of conviction reflects a five-year sentence, with two years of initial confinement and three years of extended supervision. (R. 46.) Socha’s sentence is not a maximum sentence because it is only five years long (two years of initial confinement and three years of extended supervision) rather than six. Section 973.13 therefore does not apply. *Finley*, 370 Wis. 2d 402, ¶ 74.

Second, contrary to Socha’s assertion (Socha’s Br. 7–11), the State did not fail to prove his prior convictions. A defendant’s admission to prior convictions is sufficient to prove them for purposes of sentence enhancement. *State v. Loayza*, 2021 WI 11, ¶ 38, 395 Wis. 2d 521, 954 N.W.2d 358. Here, as the circuit court recognized, in 2005 when Socha pleaded guilty and was sentenced, the State alleged that he had nine prior convictions, and Socha, through defense counsel, admitted that he had nine convictions. (R. 57:4–6.)

Third, the circuit court did not impose a penalty longer than permitted by law. The maximum sentence for an OWI as a fifth or subsequent offense was six years of imprisonment. Wis. Stat. §§ 346.65(2)(am)5., 939.50(3)(h) (2005–06.) After Socha pleaded guilty to OWI and admitted to having nine prior offenses, the court imposed a six-year sentence for OWI as a fifth or subsequent offense. (R. 91:21.) But that six-year sentence was later commuted to five years—less than the maximum allowed by law. (R. 45; 46.) Because Socha admitted to nine prior convictions, and he is serving a sentence shorter than the maximum for OWI as a fifth or subsequent offense, Wis. Stat. § 973.13 does not apply.

C. Socha has not shown a new factor that warrants resentencing.

A circuit court may modify a defendant's sentence upon a showing of a new factor. *Harbor*, 333 Wis. 2d 53, ¶ 35. A new factor consists of facts “highly relevant to the imposition of sentence, but not known to the trial judge at the time of original sentencing, either because it was not then in existence or because, even though it was then in existence, it was unknowingly overlooked by all of the parties.” *Id.* ¶ 40 (quoting *Rosado v. State*, 70 Wis. 2d 280, 288, 234 N.W.2d 69 (1975)).

A defendant seeking sentence modification “must demonstrate both the existence of a new factor and that the new factor justifies modification of the sentence.” *Harbor*, 333 Wis. 2d 53, ¶ 38. A defendant who asserts that a new factor warrants sentence modification “has the burden to demonstrate by clear and convincing evidence the existence of a new factor.” *Id.* ¶ 36 (citing *State v. Franklin*, 148 Wis. 2d 1, 8–9, 434 N.W.2d 609 (1989)).

Socha was sentenced for OWI as a fifth or subsequent offense. (R. 91:21.) In his motion for new factor sentence modification, Socha argued that the new factor warranting sentence modification is that none of the nine convictions should have been counted to enhance the sentence for his 2005 OWI conviction, and he should have been sentenced for a first offense. (R. 58:6.) The circuit court denied Socha's motion, concluding that he did not show a new factor that warrants sentence modification. (R. 72.)

On appeal, Socha argues that he is entitled to sentence modification because "six of the nine prior convictions seemingly relied on to enhance Mr. Socha's felony OWI sentence were void ab initio, and three others in the PSI were shown not to exist as recorded." (Socha's Br. 17.) He claims that this is a new factor warranting sentence modification in the form of sentence commutation. (Socha's Br. 17–21.)

However, as the circuit court recognized, Socha has not shown a new factor that warrants sentence modification. When the circuit court sentenced Socha in 2005, the PSI listed nine prior convictions from: Ohio in 1989, 1990, 1991, 1992, and 1992; Wisconsin in 1993 and 1993; and Illinois in 1998 and 1999.³ (R. 15:3–4.) Socha claims that six of those nine prior convictions were later declared void ab initio. He is incorrect. Socha did convince an Ohio court to declare four of his Ohio convictions—from 1989, 1991, 1992, and 1992 declared void ab initio, not because Socha was not convicted of drunk driving or was denied the right to counsel, but because the records in those cases did not include proper captioning, judicial signatures, or timestamps of other "indication of journalization." (R. 46:19–20, 24–26.) But those

³ The PSI also stated that Socha had a pending case in Ozaukee County where sentencing was to be imposed on May 17, 2005. (R. 15:4.)

are the only convictions that were later declared void ab initio, so that they were void at the time of sentencing in this case.

Socha also had his two Wisconsin convictions vacated in 2010, again not because he was not convicted of drunk driving or denied the right to counsel, but because the convictions were treated as civil first offenses in municipal courts in the Village of Whitefish Bay and the Village of River Hills in 1993, even though at the time of the first case Socha had been convicted of OWI multiple times. (R. 46:10, 14.) Socha's Whitefish Bay and River Hills convictions were vacated. But they were not declared void ab initio. Those convictions remained valid until they were vacated in 2010.⁴ At the time Socha pleaded guilty and was sentenced in this case, his two Wisconsin OWI convictions were valid. So even without the four Ohio convictions that were later declared void ab initio, Socha had at least five countable prior convictions when he was sentenced for a fifth or subsequent offense.

Socha claims that three other OWI convictions, one in Ohio in 1990 and two in Illinois in 1989 and 1999, "were shown to not exist as recorded" (Socha's Br. 17.) Again, he is incorrect. Socha asserts that since the PSI listed the violation dates, rather than the conviction dates for those offenses, the

⁴ In *City of Cedarburg v. Hansen*, 2020 WI 11, ¶ 51, 390 Wis.2d 109, 938 N.W.2d 463, the Wisconsin Supreme Court concluded that a municipal court has subject matter jurisdiction over a civil first offense OWI charge even when the person has a prior conviction so should be charged with a crime. The court concluded that a municipal court may lack competence over the charge, but that by waiting 13 years to challenge his municipal court judgments, the defendant forfeited his right to do so. *Id.* ¶¶ 52–53, 55. Wisconsin has since amended its law to disallow the voiding of OWI convictions because an OWI which should have been treated as a crime was erroneously treated as a civil first offense. Wis. Stat. § 800.09(4). Socha's civil judgments were vacated 17 years after they were entered, but before the decision in *Hansen* or the statutory amendment.

offenses did not exist and could not properly have been counted. (Socha's Br. 11.) But the convictions plainly exist, and the State proved the fact of those convictions when Socha, through defense counsel, admitted to them.

There are various methods of proving prior convictions for sentence enhancement. "[A] defendant's admission, whether given personally or imputed through counsel, is competent proof of prior . . . convictions." *Loayza*, 395 Wis. 2d 521, ¶ 38 (quoting *Spaeth*, 206 Wis. 2d at 148. "If an accused admits to a prior offense that admission is, of course, competent proof of a prior offense and the State is relieved of its burden to further establish the prior conviction." *Id.* (quoting *State v. Wideman*, 206 Wis. 2d 91, 104, 556 N.W.2d 737 (1996)).

Here, the criminal complaint stated that Socha had nine prior convictions. (R. 2.) At the plea hearing, the trial court noted that Socha was pleading to OWI as a fifth or subsequent offense, a crime which carried a maximum sentence of six years of imprisonment. (R. 58:41.) The PSI listed nine prior convictions, and at sentencing, Socha admitted to having nine prior convictions. (R. 72:5–6.) At the sentencing hearing, the court noted that it had read the PSI, and ensured that Socha had no changes or corrections to it. (R. 91:2.) Socha's defense counsel admitted that Socha "had nine prior O.W.I. offenses prior to this one today."⁵ (R. 91:6.) The trial court pointed out that a fifth or subsequent OWI was a felony, and said, "You are at your tenth." (R. 91:11.) As the circuit court recognized in denying Socha's current motion, "Given counsel's admission at sentencing, the defendant

⁵ At sentencing, Socha's defense counsel informed the court that Socha had been sentenced in Ozaukee County for an OWI he committed after the one in this case. (R. 91:4.) Socha therefore seemingly had at least ten prior convictions when he was sentenced in this case.

cannot be heard to challenge the reliability of the information in the PSI.” (R. 72:6.)

Socha argues that under *State v. Farr*, 119 Wis. 2d 651, 350 N.W.2d 640 (1984), the conviction date must be included on a PSI for the PSI to prove the fact of the prior conviction for sentence enhancement. (Socha’s Br. 8.) But as the circuit court recognized, *Farr* does not help Socha. (R. 72:4–5.) *Farr* concerned whether the State proved that the defendant was a repeater under Wis. Stat. § 939.62(1). *Farr*, 119 Wis. 2d at 643, 654. The issues in *Farr* were “whether the presentence report which contained the defendant’s ‘prior record’ met the status of an official report pursuant to sec. 973.12(1), Stats.,” and “whether the defendant admitted that he had been convicted of a felony during the five-year period immediately preceding the commission of the present burglary offense for which he was being sentenced and therefore relieved the state of its proof pursuant to sec. 973.12(1).” *Id.* at 652. The Wisconsin Supreme Court concluded that the PSI, which did not list the dates of the defendant’s prior convictions, was not an “official record,” under Wis. Stat. § 973.12, because it was insufficient to prove that the defendant had prior convictions within the prior five years. *Id.* at 658. The court also concluded that the defendant had not admitted his prior convictions for purposes of Wis. Stat. § 973.12(1). *Id.* at 659.

The situation here is entirely different than the one in *Farr*. First, unlike in *Farr*, Socha admitted to having to having nine prior offenses. The State did not rely on the PSI to prove those offenses. Second, the State was not attempting to prove that Socha was a repeater, or that his prior convictions were within a certain time period, and it made no difference whether the PSI was an official record under Wis. Stat. § 973.13. The State was only required to prove that Socha had four prior convictions after January 1, 1989. Wis. Stat. § 346.65(2)(am)5. (2005–06).

Socha asserts that the conviction dates were necessary because the State had to prove that his 2005 conviction for which he was being sentenced was a second conviction within ten years. (Socha's Br. 8.) However, contrary to Socha's assertion, the State was not required to prove that he had a prior conviction within ten years of the conviction for which he was being sentenced. To prove a second offense, the State would have had to prove a prior conviction within ten years. Wis. Stat. § 346.65(2)(am)2. (2005–06). But to prove a fifth or subsequent offense, the State only had to prove that Socha had four or more prior convictions after January 1, 1989, in his lifetime. Wis. Stat. § 346.65(2)(am)5. (2005–06.)

And even if the State had been required to prove a prior conviction within a certain time period, it is the date of violation, not the date of conviction, that determines whether the prior conviction was within ten years of the later conviction. Wis. Stat. § 346.65(2c). Obviously, since the violation dates of Socha's two Illinois convictions were within ten years of his 2005 conviction at issue in this case, the conviction dates were as well.

The criminal complaint alleged that Socha had nine prior convictions after January 1, 1989, and the PSI listed nine convictions, the violation dates for each of them after January 1, 1989. (R. 15:3–4.) Since all the violation dates were after January 1, 1989, all the corresponding convictions were properly alleged. And since the violation dates were after January 1, 1989, the conviction dates were as well.

The conviction dates may have been important had Socha and his counsel wished to challenge any of his convictions. But neither Socha nor his counsel challenged anything in the PSI including Socha's nine convictions. Even now, Socha does not assert that he somehow did not have notice that the State was using his 10/22/90 Ohio offense and his 10/03/98 and 02/14/99 Illinois' convictions for sentence enhancement. Socha, through his defense counsel, relieved

the State of its burden of proving those convictions by admitting them.

Socha claims that his admission to those three offenses was somehow insufficient to prove them. (Socha's Br. 10–11.) But as a matter of law, a defendant's admission to the fact of a prior offense is sufficient to prove the fact of the offense. *Loayza*, 395 Wis. 2d 521, ¶ 38 *Spaeth*, 206 Wis. 2d at 148; *Wideman*, 206 Wis. 2d at 104. Socha suggests that when he pleaded guilty to OWI he did not understand that his prior convictions would count to enhance his sentence. (Socha's Br. 10–11.) But Socha makes that claim for the first time on appeal. He did not say anything in his motion about not understanding that his prior convictions would be used to enhance the sentence for the OWI to which he was pleading guilty.

In addition, the record demonstrates that when he pleaded guilty, Socha knew exactly what he was doing. At the plea hearing, the court said that this was “a class-H felony” for a fifth or subsequent offense. (R. 58:11.) The court said, “And the penalty is a fine of not less than \$600 nor more than \$10,000 and imprisonment for not less than six months nor more than six years or both.” (R. 58:11.) Socha affirmed that he understood. (R. 58:11.)

Simply put, the circuit court told Socha that because of his prior convictions he would be sentenced for a fifth or subsequent offense, a felony, and that he would face up to six years of imprisonment. Socha's claim to that he somehow did not understand that his prior convictions would be counted for sentence enhancement is both waived and contrary to the record.

In addition, as the circuit court pointed out, Socha's challenge to the PSI is procedurally barred because he filed a motion for resentencing in 2015 and failed to raise the issue. (R. 72:6 n.4.) In his current motion for sentence modification, Socha provided no reason for not having raised this claim issue, so the claim is procedurally barred under Wis. Stat. § 974.06(4) and *State v. Escalona-Naranjo*, 185 Wis. 2d 169, 178, 517 N.W.2d 157 (1994).

Finally, even if Socha were even potentially entitled to relief, it would be resentencing, rather than sentence modification. The trial court sentenced Socha for OWI under the penalty provision applicable to fifth or subsequent offenses. A fifth or subsequent offense was a Class H felony, punishable by a bifurcated sentence of up to six years of imprisonment and a \$10,000 fine. Wis. Stat. § 346.65(2)(am)5.(2005–06). Socha's claim is that he should have been sentenced under an entirely different penalty provision—the one for first offenses, Wis. Stat. § 346.65(2)(am)1. (2005–06). The maximum penalty for a first offense was six months in the county jail and a fine of \$ 300. The circuit court could not simply modify the sentence for a fifth offense—a felony—to make it appropriate for a first offense—a civil forfeiture. The remedy, if Socha could show that his sentence was improper, would require the court “to completely re-do the invalid sentence.” *State v. Wood*, 2007 WI App 190, ¶ 9, 305 Wis. 2d 133, 738 N.W.2d 81. That would require resentencing, not sentence modification.

D. Socha is not seeking resentencing.

Socha devotes much of his brief on appeal to his argument that under *State v. Hahn*, 2000 WI 118, 238 Wis. 2d 889, 618 N.W.2d 528, he is not precluded from challenging his 2005 conviction even though he is not asserting that he was denied the constitutional right to counsel in that case. (Socha's Br. 12–16.) This Court need not address that issue

because even if Socha can properly challenge his sentence, as explained above, he is not entitled to commutation of his sentence or sentence modification. The remedy, if one exists and is warranted, would be resentencing. *Wood*, 305 Wis. 2d 133, ¶ 8. However, in his motion for sentence modification, Socha made it abundantly clear that although he is claiming that his sentence is illegal, he is not seeking resentencing: “The defendant seeks sentence modification not resentencing; his motion cannot be considered under another standard without stipulation.” (R. 58:8 n.1) (citing *Wood*, 305 Wis. 2d 133, ¶ 17; *Hayes v. State*, 46 Wis. 2d 93, 107, 175 N.W.2d 625 (1970) (overruled on other grounds)).

Socha may not want to be resentenced because while in 2005 the PSI only listed nine prior countable offenses, six of which Socha has subsequently had voided or vacated, it appears that he really had *more* than nine prior convictions at the time he pleaded guilty and was sentenced. The PSI listed five convictions in Ohio. (R. 15:3–4.) However, Socha’s DOT driving record lists two additional convictions from Ohio entered before he was sentenced in this case.⁶ (R. 67:6.) The PSI also listed two Illinois offenses. (R. 15:3–4.) However, Socha’s DOT driving record lists a third Illinois conviction entered before he was sentenced in this case. (R. 67:5.) In addition, as Socha’s defense counsel acknowledged in this case, at the time of sentencing, Socha had already been sentenced for yet another OWI conviction, in Ozaukee County. (R. 91:4.)

It therefore appears that Socha had at least 13 prior convictions when he was sentenced in this case in 2005, at least seven of which have not been voided or vacated. If Socha were entitled to any relief, it would be resentencing for OWI with the correct number of priors. Even without the four Ohio

⁶ Socha’s DOT driving record does not list the four Ohio convictions that were voided in 2010.

convictions and two Wisconsin convictions that Socha has had voided or vacated, he would still have at least four prior convictions. Even if the convictions that were not listed in the PSI were not counted, Socha would still have the 1990 conviction in Ohio, the 1998 and 1999 convictions in Ohio, and the 2005 conviction in Ozaukee County, for a total of four prior convictions. Accordingly, he would still properly be sentenced for a fifth offense. But since Socha steadfastly maintains that he does not agree to resentencing, he is not entitled to any relief.

CONCLUSION

This Court should affirm the circuit court's order denying Socha's new factor motion for sentence modification.

Dated: April 21, 2022.

Respectfully submitted,

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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 4598 words.

Dated this 21st day of April 2022.

Electronically signed by:

Michael C. Sanders

MICHAEL C. SANDERS

Assistant Attorney General

CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Court of Appeals Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

I further certify that a copy of the above document was mailed on April 21, 2022 to:

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Dated this 21st day of April 2022.

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