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STATE OF WISCONSIN
IN SUPREME COURT

No. 2021AP1083-CR, 2021AP2116-CR

STATE OF WISCONSIN,

Plaintiff-Respondent-Petitioner,

v.

JAMES J. SOCHA,

Defendant-Appellant.

PETITION FOR REVIEW

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TABLE OF CONTENTS

INTRODUCTION.....	5
ISSUES PRESENTED FOR REVIEW	6
STATEMENT OF CRITERIA FOR REVIEW	7
STATEMENT OF THE CASE.....	8
ARGUMENT.....	13
I. This Court should grant review, reverse the court of appeals' decision, and clarify that the proper mechanism to challenge an enhanced sentence on the ground that a predicate prior conviction has been vacated is a motion for resentencing, not a motion for sentence modification.	13
A. Sentence modification and resentencing are distinct.	13
1. Sentence Modification.....	13
2. Resentencing	14
B. A motion for resentencing is the appropriate mechanism for a defendant to challenge an enhanced sentence for OWI on the ground that a prior predicate conviction has been vacated.	15
C. Sentence modification is not an appropriate mechanism for a defendant to challenge an enhanced sentence for OWI on the ground that a prior predicate conviction has been vacated.	16
II. The circuit courts properly denied Socha's motions for sentence modification.	19

TABLE OF AUTHORITIES

Cases

<i>Rosado v. State</i> , 70 Wis. 2d 280, 234 N.W.2d 69 (1975).....	13, 14
<i>State v. Carter</i> , 208 Wis. 2d 142, 560 N.W.2d 256	13, 19
<i>State v. Franklin</i> , 148 Wis. 2d 1, 434 N.W.2d 609 (1989).....	14
<i>State v. Harbor</i> , 2011 WI 28, 333 Wis. 2d 53, 797 N.W.2d 828	8, <i>passim</i>
<i>State v. Hegwood</i> , 113 Wis. 2d 544, 335 N.W.2d 399 (1983).....	13, 14, 15, 17
<i>State v. James J. Socha</i> , Nos. 2021AP1083-CR, 2021AP2116-CR, 2023 WL 3064514 (Wis. Ct. App. April 25, 2023)	5, <i>passim</i>
<i>State v. Johnson</i> , 158 Wis. 2d 458, 463 N.W.2d 352 (Ct. App. 1990)	14
<i>State v. Lechner</i> , 217 Wis. 2d 392, 576 N.W.2d 912 (1998).....	14
<i>State v. Tiepelman</i> , 2006 WI 66, 291 Wis. 2d 179, 717 N.W.2d 1	14, 16
<i>State v. Wood</i> , 2007 WI App 190, 305 Wis. 2d 133, 738 N.W.2d 81	8, <i>passim</i>
<i>United States ex rel. Welch v. Lane</i> , 738 F.2d 863 (7th Cir. 1984)	16
<i>United States v. Tucker</i> , 404 U.S. 443 (1972).....	14, 15, 16

Statutes

Wis. Stat. § 346.65..... 18
Wis. Stat. § 346.65(2) 5, 12, 17, 19
Wis. Stat. § 346.65(2)(am)..... 7, 18
Wis. Stat. § 346.65(2)(am)4..... 18
Wis. Stat. § 346.65(2)(am)7..... 18
Wis. Stat. § 809.62(1r)..... 7
Wis. Stat. § 809.62(1r)(b) 7
Wis. Stat. § 809.62(1r)(c)..... 7

INTRODUCTION

James J. Socha was convicted of operating a motor vehicle while under the influence of an intoxicant (OWI) in two cases and was sentenced for a fifth offense in one case and a tenth offense in the other. It appears that after sentencing, some of the prior convictions used for sentence enhancement were vacated. Rather than seeking to be resentenced, Socha moved for sentence modification in each case. The circuit courts in each case denied Socha's motion, exercising their discretion to determine that sentence modification was not justified. But in an authored 2-1 opinion, the court of appeals reversed the two decisions and remanded the cases with instructions to determine which prior convictions have been vacated and then to "impos[e] sentences within the range of the applicable subsections of Wis. Stat. § 346.65(2), based on the [correct] number of [] prior OWI convictions." *State v. James J. Socha*, Nos. 2021AP1083-CR, 2021AP2116-CR, 2023 WL 3064514 (Wis. Ct. App. April 25, 2023) ¶ 39 (Pet-App. 3–32)

Sentence modification is not the correct process. The court of appeals opinion strips away the circuit courts' discretion to determine whether a new factor justifies sentence modification. Unsurprisingly, and as the dissenting opinion recognized, the majority did not even apply the test for sentence modification—it applied a test akin to one for resentencing Socha based on his number of countable convictions. *Socha*, 2023 WL 3064514 ¶ 48 (Brash, J. dissenting). This case presents an opportunity for this Court to clarify the differences between sentence modification—a matter of a circuit court's discretion—and resentencing, which is not. And it presents an opportunity to reinforce that the proper mechanism for a defendant who received an

enhanced sentence for OWI but had a prior conviction vacated is resentencing, not sentence modification.¹

ISSUES PRESENTED FOR REVIEW

1. Where a defendant with an enhanced OWI sentence seeks to challenge that sentence on the ground that a prior predicate offense was vacated, is the proper mechanism a motion for sentence modification or a motion for resentencing?

The circuit courts did not answer. They addressed Socha's motion for sentence modification and exercised their discretion to deny the motions.

The court of appeals concluded that Socha properly challenged his sentences in motions for sentence modification.

This Court should grant review and clarify that the proper mechanism to challenge an enhanced sentence for OWI on the ground that a predicate prior conviction has been vacated is a motion for resentencing, not a motion for sentence modification.

2. Did the circuit courts apply the correct standard in considering Socha's motions for sentence modification?

The court of appeals answered "no," and reversed the circuit courts' decisions. Rather than determine whether the circuit courts properly exercised their discretion in denying Socha's motions, it reversed the circuit courts' decisions, and instructed the courts to impose new sentences.

¹ Socha petitioned this Court for review in case number 2021AP957-CR. That petition is currently pending in this Court.

This Court should grant review and reverse. The circuit courts properly denied Socha's motions because even if he can show that some of his prior convictions were vacated, that change is not a "new factor" under which modification of his sentences is justified.

STATEMENT OF CRITERIA FOR REVIEW

This case warrants review because it satisfies the criteria set forth in Wis. Stat. § 809.62(1r).

First, review is appropriate to clarify the law by establishing that the proper mechanism to challenge an enhanced sentence on the ground that a predicate prior conviction has been vacated is a motion for resentencing, not a motion for sentence modification. Wis. Stat. § 809.62(1r)(b), (c). The court of appeals concluded that such a challenge is properly made in a motion for sentence modification. And the court mixed and matched the relevant standards. The majority opinion did not review the circuit courts' decisions for an erroneous exercise of discretion—it remanded with instructions that if any of Socha's prior convictions have been vacated, the circuit courts must impose a new sentence. The court of appeals stripped the circuit courts of their discretion and required a new sentence under a different subsection of the OWI sentencing statute, Wis. Stat. § 346.65(2)(am). In other words, the court ordered the circuit courts to resentence Socha if any of his prior convictions had been vacated.

This Court should grant review and establish that a defendant's challenge to an enhanced sentence on the ground that a predicate prior conviction has been being vacated, requiring the defendant to be sentenced under a different subsection of Wis. Stat. § 346.65(2)(am), must be made in a motion for resentencing.

Second, review is appropriate because the court of appeals' opinion conflicts with opinions of this Court and the court of appeals. In *State v. Harbor*, 2011 WI 28, ¶¶ 36–38, 333 Wis. 2d 53, 797 N.W.2d 828, this Court reaffirmed that to get sentence modification, a defendant must (1) demonstrate by clear and convincing evidence that a new factor exists; and (2) show that the alleged new factor justifies sentence modification. A determination that there is or is not a new factor is reviewed independently. *Id.* ¶ 33. Whether a new factor warrants sentence modification is reviewed for an erroneous exercise of discretion. *Id.*

Here, the court of appeals did not review the circuit courts' determinations that sentence modification is unwarranted for an erroneous exercise of discretion, or even independently determine whether there was a new factor. Instead, the court remanded for the circuit courts to impose new sentences if any Socha's convictions were vacated. *Socha*, 2023 WL 3064514, ¶ 39. The court of appeals failed to follow *Harbor*. It treated Socha's motions for sentence modification as motions for resentencing. But under *State v. Wood*, 2007 WI App 190, 305 Wis. 2d 133, 738 N.W.2d 81, a court cannot do that unless the defendant agrees. Here, Socha explicitly and adamantly rejected resentencing, so the court of appeals should simply have affirmed the circuit court orders denying his motions for sentence modification. This Court should grant review and reverse the circuit court's decision.

STATEMENT OF THE CASE

Case Number 2021AP1083-CR

Socha pleaded guilty to OWI in 2005. (R. 58:31–46.)² The criminal complaint alleged that he had nine prior convictions. (R. 2.) The report of the presentence investigation

² Citations to the appellate record in this petition are to the record in case number 2021AP1083-CR unless otherwise specified.

(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, it noted that it was really 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 exceeded 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; Pet-App. 33–78) 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.) Socha expressly rejected resentencing. (R. 58:8 n.1.)

The circuit court, the Honorable Milton Childs, Sr., presiding, denied Socha’s motion, concluding that he failed to establish a new factor warranting sentence modification. (R. 72; Pet-App. 79–88.) 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 sentence "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.)

Case Number 2021AP2116-CR

The State charged Socha with OWI as a tenth or subsequent offense in 2008. (R. 2021AP2116-CR, 106; 252.) Socha moved to collaterally attack seven of his prior convictions (R. 233), but the circuit court denied his motion (R. 2021AP2116-CR, 90). He was tried in 2011, and a jury found him guilty of OWI. (R. 2021AP2116-CR, 141:118–19.) At sentencing, Socha again challenged his prior convictions. (R. 2021AP2116-CR, 140:23–32.) The circuit court found that Socha had at least eleven prior convictions, so it entered judgment of conviction for OWI as a twelfth offense and sentenced him for a tenth or subsequent offense. (R. 2021AP2116-CR, 140:22, 30, 33.)

After sentencing, Socha moved for postconviction relief, again seeking to collaterally attack some of his prior convictions and alleging that the State failed to adequately prove his prior convictions. (R. 2021AP2116-CR, 130.) The circuit court denied his motion. (R. 2021AP2116-CR, 123.) The court of appeals affirmed the judgment of conviction and the order denying Socha's motion for postconviction relief. (R. 2021AP2116-CR, 113.) It concluded that the circuit court had properly denied Socha's collateral attack on his prior convictions, and that the State proved at least nine prior convictions, so Socha was properly sentenced for OWI as a tenth or subsequent offense. (R. 2021AP2116-CR, 113:3–6.) This Court denied Socha's petition for review. (R. 2021AP2116-CR, 113:6–11.)

In 2021, the circuit court granted Socha's motion to amend the judgment of conviction to indicate that he was sentenced for OWI as a tenth or subsequent offense rather than for a twelfth offense. (R. 2021AP2116-CR, 41.) But the court noted that "The amendment does not change the fact that the court found that the defendant had at least eleven prior convictions for operating while under the influence of an intoxicant prior to imposing a sentence." (R. 2021AP2116-CR, 43; 44.)

Later in 2021, Socha moved for new factor sentence modification. (R. 2021AP2116-CR, 45; Pet-App. 89–100.) He again asserted that the State had failed to adequately prove nine or more prior convictions. (R. 2021AP2116-CR, 45:4–5.) He also asserted that four of his prior convictions from Ohio had subsequently been declared void ab initio and. (R. 2021AP2116-CR, 45:6.) Socha sought sentence modification and commutation of the sentence "to penalties applicable to a misdemeanor second offense OWI." (R. 2021AP2116-CR, 45:7–8.) He explicitly rejected resentencing. (R. 2021AP2116-CR, 45:3, 8–9 n.1.) The circuit court, the Honorable Glenn H. Yamahiro, presiding, denied Socha's motion. (R. 2021AP2116-CR, 64; Pet-App. 101–105.) It noted that in the 2015 decision, the court of appeals concluded that the State proved at least nine prior convictions, and it concluded that the decision was "the law of the case." (R. 2021AP2116-CR, 64:1.) The circuit court also concluded that Socha failed to prove a new factor justifying sentence modification. (R. 2021AP2116-CR, 64:5.)

The court of appeals' decision

The court of appeals consolidated Socha's two appeals and reversed the circuit court's decisions in the two cases in an authored 2-1 decision not recommended for publication. The court of appeals did not determine whether Socha demonstrated by clear and convincing evidence that a new factor exists, or whether the circuit courts erroneously

exercised their discretion in concluding that if there was a new factor it would not warrant sentence modification. The court instead concluded that Socha “sufficiently alleged a new factor—that some of his prior OWI convictions have been vacated by other courts after his sentencing in the case now before the court.” *Socha*, 2023 WL 3064514, ¶ 31. The court remanded with directions for the circuit court “to reopen Socha’s motions for sentence modification and determine which, if any, of Socha’s prior OWI convictions were lawfully vacated and to exercise their discretion in imposing sentences within the range of the applicable subsections of § 346.65(2) based on Socha’s correct number of prior OWI convictions.” *Id.* ¶ 38.

Judge Brash dissented. He pointed out that the majority opinion “fails to employ the two-prong test set forth in *Harbor*.” *Socha*, 2023 WL 3064514, ¶ 40 (Brash, J. dissenting). The dissent noted that the majority remanded the case for the circuit courts to determine whether Socha demonstrated a new factor even though whether a new factor exists is a matter of law reviewed independently. *Id.* And the dissent pointed out that it does not matter whether Socha demonstrated a new factor, because the circuit courts exercised their discretion and determined that even there was a new factor, it would not justify sentence modification. *Id.* The dissent noted that the majority opinion “is based on the premise that the lower courts make an error of law if they do not consider the ‘correct’ number of prior convictions for Socha when reviewing his motions for sentence modification.” *Id.* The dissent pointed out that “the Majority’s outcome is more akin to a decision on a motion for resentencing.” *Id.* However, since Socha “adamantly rejects the option of resentencing” *id.* ¶ 49, the dissent would have affirmed the circuit court’s decisions denying sentence modification. *Id.* ¶ 51.

ARGUMENT

I. This Court should grant review, reverse the court of appeals' decision, and clarify that the proper mechanism to challenge an enhanced sentence on the ground that a predicate prior conviction has been vacated is a motion for resentencing, not a motion for sentence modification.

A. Sentence modification and resentencing are distinct.

Sentence modification and resentencing are distinct concepts. “Sentence modification involves an entirely different line of authority than resentencing.” *State v. Carter*, 208 Wis. 2d 142, 560 N.W.2d 256 (abrogated on other grounds by *Harbor*, 333 Wis. 2d 53). However, numerous opinions by this Court and the court of appeals “have been somewhat imprecise in distinguishing between the requirements for, and effect of, sentence modification as opposed to resentencing. *Wood*, 305 Wis. 2d 133, ¶ 7. Whether a motion states a request for sentence modification based upon a new factor, or for resentencing on the grounds the original sentence is invalid, is a legal determination. *Id.* ¶ 4 (citing *State v. Hegwood*, 113 Wis. 2d 544, 546–47, 335 N.W.2d 399 (1983)).

1. Sentence Modification

A circuit court may modify a defendant's sentence for a new factor. *Harbor*, 333 Wis. 2d 53, ¶ 35 (citation omitted). “A new factor is one that was ‘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.* (quoting *Rosado v. State*, 70 Wis. 2d 280, 234 N.W.2d 69 (1975)). “Deciding a motion for sentence modification based on a new factor is a two-step inquiry. The defendant has the

burden to demonstrate by clear and convincing evidence the existence of a new factor.” *Id.* (citing *State v. Franklin*, 148 Wis. 2d 1, 8–9, 434 N.W.2d 609 (1989)).

“The existence of a new factor does not automatically entitle the defendant to sentence modification.” *Id.* ¶ 37 (quoting *Hegwood*, 113 Wis. 2d at 546). If a new factor is present, the circuit court exercises its discretion to determine whether that new factor justifies modification of the sentence. *Id.*

“Whether the fact or set of facts put forth by the defendant constitutes a ‘new factor’ is a question of law” reviewed independently. *Id.* (citing *Hegwood*, 113 Wis. 2d at 547). Whether a new factor justifies sentence modification “is committed to the discretion of the circuit court,” and is reviewed for an erroneous exercise of discretion. *Id.* ¶ 33 (citing *Hegwood*, 113 Wis. 2d at 546).

2. Resentencing

“A defendant has a constitutionally protected due process right to be sentenced upon accurate information.” *State v. Tiepelman*, 2006 WI 66, ¶ 9, 291 Wis. 2d 179, 717 N.W.2d 1 (citing *State v. Johnson*, 158 Wis. 2d 458, 468, 463 N.W.2d 352 (Ct. App. 1990); *United States v. Tucker*, 404 U.S. 443, 447 (1972)). “Whether a defendant has been denied this due process right is a constitutional issue that an appellate court reviews de novo.” *Id.* (citation omitted). “A defendant who requests resentencing due to the circuit court’s use of inaccurate information at the sentencing hearing ‘must show both that the information was inaccurate and that the court actually relied on the inaccurate information in the sentencing.’” *Id.* ¶ 21 (quoting *State v. Lechner*, 217 Wis. 2d 392, 419, 576 N.W.2d 912 (1998) (in turn quoting *Johnson*, 463 N.W.2d 352)). “Once actual reliance on inaccurate information is shown, the burden then shifts to the state to prove the error was harmless.” *Id.* ¶ 26. If a defendant shows

that the sentencing court relied on inaccurate information and the State cannot show that the reliance was harmless, the circuit court does not have discretion to deny the motion for resentencing. The defendant is entitled to resentencing. Whether a motion states a request “for resentencing because the original sentence is invalid, is a legal determination.” *Wood*, 305 Wis. 2d 133, ¶ 4 (citing *Hegwood*, 113 Wis. 2d at 546–47).

B. A motion for resentencing is the appropriate mechanism for a defendant to challenge an enhanced sentence for OWI on the ground that a prior predicate conviction has been vacated.

When this Court established the test for resentencing due to the sentencing court’s reliance on inaccurate information, it relied heavily on *Tucker*, 404 U.S. 443, a case in which the United States Supreme Court concluded that a defendant sentenced for armed bank robbery was entitled to resentencing.

In *Tucker*, the defendant admitted at trial that he had three prior felony convictions. *Id.* at 444. He later challenged two of those convictions, and they were found to be constitutionally invalid. *Id.* at 444–45. The defendant then challenged his conviction for armed bank robbery. *Id.* at 445. The district court rejected Tucker’s argument that he was entitled to a new trial. *Id.* The Ninth Circuit Court of Appeals agreed but held that the defendant was entitled to resentencing. *Id.* at 445–46. The Supreme Court affirmed. It concluded that “the sentencing judge gave specific consideration to the [defendant’s] previous convictions before imposing sentence upon him,” and that two of those convictions had later been found invalid. *Id.* at 447. The Court remanded the case for resentencing. *Id.* at 448–449 & n.8.

In *United States ex rel. Welch v. Lane*, 738 F.2d 863, 867–68 (7th Cir. 1984), the U.S. Court of Appeals for the Seventh Circuit relied on *Tucker* when it concluded that a defendant who was sentenced by a court that relied on inaccurate information that he had been previously convicted of armed robbery rather than robbery was entitled to resentencing.

In *Tiepelman*, this Court concluded that the same standard applied in *Tucker* and *Welch*—reliance by the sentencing court on inaccurate information when the reliance was not harmless—applies to resentencing claims in Wisconsin. *Tiepelman*, 291 Wis. 2d 179, ¶ 26. And under *Tucker*, 404 U.S. at 448–49 & n.8, a motion for resentencing is an appropriate mechanism to challenge an enhanced sentence when a prior conviction that the sentencing court relied upon is later vacated.

C. Sentence modification is not an appropriate mechanism for a defendant to challenge an enhanced sentence for OWI on the ground that a prior predicate conviction has been vacated.

A motion for resentencing is an appropriate mechanism for challenging a sentence for OWI on the ground that one or more prior convictions that were used to enhance the sentence have been vacated. At first blush, a motion for sentence modification may also seem to be an appropriate mechanism for such a claim because the sentencing court and parties did not know at the time of sentencing that convictions used to the enhance the sentence would later be vacated. But sentence modification is not an appropriate mechanism because whether a new factor justifies sentence modification is a matter of discretion for the circuit court. And logically, a sentence being later shown to be based on a mistake of law is not a new factor. But it is a reason that resentencing to correct

an invalid sentence might be warranted. *Wood*, 305 Wis. 2d 133, ¶ 4

When a defendant moves for sentence modification and proves that a new factor exists, sentence modification is not automatic. The circuit court is not required to modify the defendant's sentence. As Justice Abrahamson said in *Hegwood*, after concluding that a new factor existed, "this is not to say that the circuit court should modify the sentence. When the circuit court considers the defendant, the multiple offenses, the victim, the public interest, the sentence imposed, and other factors, it may decide not to modify the sentence." *Hegwood*, 113 Wis. 2d 544, 549 (Abrahamson, J. dissenting).

Here, the court of appeals remanded Socha's two cases to the circuit courts with instructions that if they find that any of Socha's prior convictions have been vacated, they must exercise their discretion to impose sentences within the range of the applicable subsections of Wis. Stat. § 346.65(2). In other words, if a new factor exists, sentence modification is automatic. But this standard was wrong: determining whether a new factor justifies modification of a defendant's sentence is a matter of discretion for the circuit court. *Harbor*, 333 Wis. 2d 53, ¶ 35.

As the majority opinion saw it, if the circuit courts on remand find that any of Socha's prior convictions have been vacated, they must find that sentence modification is justified and must "impos[e] sentences within the range of the applicable subsections of WIS. STAT. § 346.65(2), based on" Socha's correct number of prior OWI convictions. *Socha*, 2023 WL 3064514 ¶ 39. As the dissenting opinion recognizes, the court of appeals' "outcome is more akin to a decision on a motion for resentencing." *Id.* ¶ 48 (Brash, J. dissenting).

A motion for sentence modification is particularly unsuitable for a claim like Socha's because a sentencing court's discretion in imposing sentence for OWI is limited to

imposing sentence within the parameters of the applicable subsection of Wis. Stat. § 346.65(2)(am). For instance, if a person has nine or more countable prior convictions, the court is required to impose sentence for a tenth or subsequent offense, a Class E felony under Wis. Stat. § 346.65(2)(am)7., with a maximum of 15 years of imprisonment including a mandatory minimum of at least four years of initial confinement in prison. If enough of the prior convictions are later vacated that the conviction would become a fourth offense under Wis. Stat. § 346.65(2)(am)4., the court cannot just modify the defendant's sentence within the parameters of Wis. Stat. § 346.65(2)(am)7. This would require resentencing under the appropriate subsection of Wis. Stat. § 346.65.

Resentencing rather than sentence modification is also appropriate in a case like this one because contrary to the court of appeals' decision, determining how many of Socha's prior convictions have been vacated will not result in a sentence based on Socha's correct number of prior OWI convictions. *Socha*, 2023 WL 3064514, ¶ 39. That is because Socha had more prior convictions at the time of sentencing than are reflected on his judgments of convictions.

Socha sought modification of his sentence for a fifth or subsequent offense in case number 2021AP1083-CR to a sentence for a first offense. (R. 58:6.) But when the circuit court sentenced Socha, it found that he had nine prior convictions. And he sought modification of his sentence for a tenth or subsequent offense in case number 2021AP2116-CR to a sentence for a second offense. (R. 58:6.) But at sentencing, the prosecutor informed the court that Socha was really on his fourteenth offense, and the court found that Socha had at least eleven prior convictions. And when the circuit court amended the judgment of conviction in 2021 to reflect OWI as a tenth or subsequent offense rather than a twelfth offense, it noted that it had previously found that Socha had at least eleven prior convictions.

To properly determine the number of convictions Socha should be sentenced for in his two cases, the circuit courts should consider all the relevant information and, as the court appeals said, “Impos[e] sentences within the range of the applicable subsections of WIS. STAT. § 346.65(2), based on” Socha’s correct number of prior OWI convictions. *Socha*, 2023 WL 3064514, ¶ 39. This requires resentencing, not sentence modification, because in resentencing a defendant, a court can consider all the relevant information and impose an appropriate sentence. *Carter*, 208 Wis. 2d 142 (abrogated by *Harbor*, 333 Wis. 2d 53, ¶¶ 47 n.11& 48).

II. The circuit courts properly denied Socha’s motions for sentence modification.

The circuit courts denied Socha’s motions for sentence modification in the two cases because they determined that even if Socha’s proved that some of his prior convictions had been vacated, modification of his sentences would not be justified. The court of appeals did not determine whether the circuit courts properly exercised their discretion in denying his claims, instead remanding for a determination of whether a new factor exists, and then ordering the court to modify Socha’s sentences if a new factor does exist.

The circuit courts were correct to deny Socha’s motions for sentence modification. While resentencing might be warranted if Socha were to prove that some of his prior convictions have been vacated, sentence modification is inappropriate and unjustified.

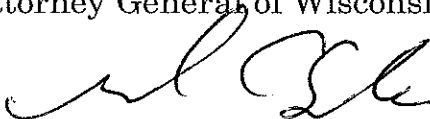
And as the dissenting opinion recognized, Socha “adamantly rejects the option of resentencing,” so “resentencing is foreclosed based on Socha’s request for modification only.” *Socha*, 2023 WL 3064514, ¶ 49–50 (Brash, J. dissenting); (R. 58:8; 2021AP2116-CR, 45:8).

This Court should therefore grant review, reverse the court of appeals' decision, and affirm the circuit courts' decisions denying Socha's motions.

Dated: May 24, 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 4371 words.



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**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 24th day of May 2023.



MICHAEL C. SANDERS
Assistant Attorney General

