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CLERK OF WISCONSIN
SUPREME COURT

STATE OF WISCONSIN

IN SUPREME COURT

No. 2021AP1596-CR

STATE OF WISCONSIN,

Plaintiff-Appellant,

v.

KAYDEN R. YOUNG,

Defendant-Respondent-Petitioner.

RESPONSE TO PETITION FOR REVIEW

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ARGUMENT

This case does not warrant this Court's review for two reasons. First, the court of appeals correctly applied longstanding principles of statutory interpretation to reach the proper construction of Wis. Stat. § 973.048, which, when applied to these facts, allowed—but did not require—the circuit court to revisit whether Young should be exempted from the sex offender registry pursuant to Wis. Stat. § 301.45(1m) when it sentenced him after his probation was revoked. Second, this case involves a rare factual scenario that is unlikely to arise often in the future, and if it does arise, the court of appeals' opinion clearly directs circuit courts how to appropriately apply the law.

Young pled no contest to second-degree sexual assault of a child in Marathon County Case No. 2013CF875. (Pet-App. 5.) The circuit court withheld sentence and placed him on probation for four years. (Pet-App. 5.) Young sought exemption from the mandatory sex offender requirement for that offense pursuant to the “underage sexual activity” exemption found in Wis. Stat. § 301.45(1m). (Pet-App. 6.) The court found the four statutory factors were met but “limited the duration of the exemption to six months in order ‘to see how [Young] does on probation.’” (Pet-App. 6.)

Young did extremely poorly on probation, and, by the time that six months had expired, he “was in the midst of probation revocation proceedings.” (Pet-App. 6.) The circuit court thus declined to issue any orders on sex offender registration until the revocation proceedings concluded. (Pet-App. 6.) Young's probation was revoked, and in November of 2015, he was before the court for sentencing on the second-degree sexual assault charge. (Pet-App. 6.) The court sentenced him to five-and-a-half years of initial confinement and six years of extended supervision. (Pet-App. 6.) It also

ordered Young to register as a sex offender pursuant to Wis. Stat. § 973.048(2m).¹ (Pet-App. 6.)

Young thereafter contended that, because the circuit court found that he met the criteria for the underage sexual activity exemption when it originally placed him on probation, those findings were controlling and it could not order him to register as sex offender when it sentenced him after revocation.

The court of appeals disagreed, because the statutory language states that the registry requirement must be imposed “[i]f a court imposes a sentence or places a person on probation for a violation” of one of the listed crimes unless the underage sexual activity exception applies. (Pet-App. 10 (citation omitted).) Young had been placed on probation when the circuit court granted him the exemption, but he had not been sentenced. (Pet-App. 10–11.) The statute thus required the circuit court to order the registry requirement when Young *was* subsequently sentenced for the violation, unless it again found Young qualified for the exemption, because it was “impos[ing] a sentence” at that time. (Pet-App. 10–11 (citation omitted).) In other words, “at a sentencing after revocation of probation, a circuit court has a renewed obligation to examine

¹ This case’s posture is somewhat convoluted because Young did not appeal the circuit court’s order requiring him to register as a sex offender. Instead, after Young was released from initial confinement and began his extended supervision in 2019, the State charged him with one count of knowingly failing to abide by the registry requirements. Young moved to dismiss the charge on the grounds that the circuit court’s initial order exempting him for only six months was unlawful, and that after the circuit court found the exemption applied, he was thereafter exempted permanently. The circuit court agreed and dismissed the charge, and the State appealed. These details are irrelevant to the real issue at the heart of this case, which is the proper interpretation of Wis. Stat. § 973.048. The State mentions them here simply to inform the Court of the history of the proceedings but does not discuss them in the text to avoid unnecessarily lengthening this response.

the imposition of sex offender registration because it *is* sentencing the defendant.” (Pet-App. 12 ¶ 21.) Any new order issued at this time “would simply supersede its prior order, as it is more recent in time, thereby considering all circumstances then in existence, which are plainly the most relevant circumstances with respect to” the circuit court’s determination whether it is necessary that the person register for public protection, the fourth criteria listed for qualification for the underage sexual activity exemption. (Pet-App. 12 ¶ 21); Wis. Stat. § 301.45(1m).

The court of appeals observed that Wis. Stat. § 973.048 is part of the sentencing code and dictates that each time a court either sentences a defendant for one of the listed violations or places the defendant on probation, it must engage in the applicable statutory analyses in that statute. (Pet-App. 15–16.) The circuit court thus did not err in requiring Young to register when it sentenced him after his probation was revoked, and if Young wanted to avoid the registration requirement, “he was permitted to file another motion seeking application of the exception under Wis. Stat. § 301.45(1m)(b).” (Pet-App. 17.)

The court of appeals additionally observed that this resulted from the “fairly unique” posture of this case, in which the defendant had been convicted of one of the crimes for which registration was required, was less than four years older than the victim, and was placed on straight probation without an imposed and stayed sentence. (Pet-App. 16–17, 17 n.8.) It reiterated that a new order for registration or exempting the person from registration imposed at sentencing supersedes any prior order issued when placing the person on probation, but “if in a particular case the circuit court and the parties do not again address sex offender registration at a sentencing after revocation of probation,” any previous order regarding sex offender registration imposed at the time of probation “remains valid and effective.”

(Pet-App. 16–17.) A court’s failure to revisit the issue at sentencing after revocation “gives no reason for anyone to later use that omission as a means to collaterally attack the earlier, permanent order.” (Pet-App. 17.)

That is the only valid reading of Wis. Stat. § 973.048(2m). The statute requires the court to order registration if it is imposing a sentence for one of the enumerated violations. Wis. Stat. § 973.048(2m). A person who has been placed on probation has not been sentenced. *State v. Dowdy*, 2010 WI App 158, ¶ 26, 330 Wis. 2d 444, 792 N.W.2d 230. Ergo, if the person’s probation is revoked and they are returned to the court for sentencing, the statute requires the circuit court to order registration or exempt the person from the requirement under Wis. Stat. § 301.45. The court of appeals looked to the plain language of the statute and reached the only reasonable construction that can be reached.

CONCLUSION

This Court should deny Young's Petition for Review.

Dated this 9th day of December 2024.

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 1137 words.

Dated this 9th day of December 2024.

Electronically signed by:

Lisa E.F. Kumfer
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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 Supreme Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 9th day of December 2024.

Electronically signed by:

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