

RECEIVED
07-20-2022
CLERK OF WISCONSIN
SUPREME COURT

STATE OF WISCONSIN
IN SUPREME COURT

No. 2021AP1943-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JAMMIE L. BLOUNT,

Defendant-Appellant-Petitioner.

RESPONSE TO PETITION FOR REVIEW

JOSHUA L. KAUL
Attorney General of Wisconsin

CHRISTINE A. REMINGTON
Assistant Attorney General
State Bar #1046171

Attorneys for Plaintiff-Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-8943
(608) 294-2907 (Fax)
remingtonca@doj.state.wi.us

The State opposes Jammie L. Blount's petition for review. The court of appeals applied the correct principles of law and standards of review when it affirmed the judgment of conviction and the circuit court order denying postconviction relief. *See State v. Jammie L. Blount*, No. 2021AP1943-CR, 2022 WL 2064596 (Wis. Ct. App. June 8, 2022) (not recommended for publication). The petition does not meet the criteria enumerated in Wis. Stat. § (Rule) 809.62(1r). Thus, Blount has not shown any "special and important reasons" warranting review by this Court. *See* Wis. Stat. § (Rule) 809.62(1r).

**THIS COURT SHOULD DENY THE PETITION FOR
REVIEW BECAUSE IT DOES NOT SATISFY THE
CRITERIA IN WIS. STAT. § (RULE) 809.62(1R).**

This Court should deny Blount's petition. On appeal, Blount sought sentence modification, arguing that the circuit court erred when it corrected an illegal sentence. The court of appeals denied Blount's claims.

Blount's petition does not meet the criteria for review. Blount merely disagrees with the court's conclusion and seeks error correction, which this Court does not do. Error correcting is not a special or compelling reason for this Court to accept review of this case. *See State v. Minued*, 141 Wis. 2d 325, 328, 415 N.W.2d 515 (1987) (it is not the supreme court's institutional role to perform error-correcting functions). This Court is primarily concerned with the institutional functions of our judicial system, while the court of appeals is charged primarily with error correcting in individual cases. *See State ex rel. Swan v. Elections Bd.*, 133 Wis. 2d 87, 93–94, 394 N.W.2d 732 (1986).

Blount's petition demonstrates no need for this Court to clarify or harmonize the law. *See* Wis. Stat. § (Rule) 809.62(1r)(c). Blount claims the court of appeals' decision conflicts with *State v. Gruetzmacher*, 2004 WI 55, 271 Wis. 2d

585, 679 N.W.2d 533. (Pet. 4.) But there is no conflict. In *Gruetzmacher*, this Court clarified that a circuit court can correct errors in sentencing when a good faith mistake was made and the court promptly recognizes the error. *Gruetzmacher*, 271 Wis. 2d 585, ¶¶ 36–38. The new sentence must reflect the circuit court’s intent. *Id.* ¶ 36.

Here, that is what happened. The circuit court planned to place Blount on probation and extended supervision for a lengthy period because it concluded that Blount needed it. *Blount*, 2022 WL 2064596, ¶ 6. When the circuit court initially wanted to place Blount on concurrent probation, both parties agreed it was illegal. *Id.* ¶ 4. The court then made the probation consecutive. *Id.* To the extent that the consecutive nature constituted a new sentence, it reflected the circuit court’s intent. It was consistent with *Gruetzmacher* and not in conflict. There is no reason for this court to reexamine *Gruetzmacher*.

Next, Blount argues that this Court should clarify that the circuit court needed to exercise its discretion when it corrected an illegal sentence. (Pet. 4.) There is no need for this Court to examine that question. Of course, at any sentencing hearing, the circuit court must exercise its discretion. *State v. Gallion*, 2004 WI 42, ¶ 49, 270 Wis. 2d 535, 678 N.W.2d 197. There is no need to reexamine this long-standing practice.

Blount also seeks review to reexamine *Gallion* to hold that the minimum amount of supervision time should be imposed. (Pet. 5.) But circuit courts already have discretion over the actual length of a probationary term. *State v. Wicks*, 168 Wis. 2d 703, 707, 484 N.W.2d 378. There is no need for this court to clarify the law.

Finally, Blount argues that this Court should clarify that an erroneous exercise of sentencing discretion can be fixed by sentence modification rather than through resentencing. (Pet. 5–6.) A circuit court may modify a

sentence to correct errors at any time, when a new factor is presented, or if the sentence is unduly harsh. *State v. Crochiere*, 2004 WI 78, ¶ 12, 273 Wis. 2d 57, 681 N.W.2d 524, abrogated by *State v. Harbor*, 2011 WI 28, 333 Wis. 2d 53, 797 N.W.2d 828. This Court should not accept Blount's invitation to expand the situations where sentence modification is allowed. There must be finality in a sentence. *Crochiere*, 273 Wis. 2d 57, ¶ 12. Blount does not demonstrate a need to harmonize or clarify the law.

Importantly, the court of appeals' decision is not in conflict with controlling law. See Wis. Stat. § (Rule) 809.62(1r)(d). It applied settled law to the facts of Blount's case. Blount's petition does not demonstrate a need for this Court to consider establishing, implementing, or changing a policy within its authority. Wis. Stat. § (Rule) 809.62(1r)(b). Nor does it present a real and significant question of state or federal constitutional law. Wis. Stat. § (Rule) 809.62(1r)(a). Similarly, Blount's petition does not demonstrate a need to reexamine current law. Wis. Stat. § (Rule) 809.62(1r)(e).

In sum, Blount's petition lacks a special or important reason for this Court to review the court of appeals' decision. Because there is no significant question of state or federal constitutional law, this Court should deny the petition. The court of appeals applied clearly established law to the facts and arrived at the correct result.

CONCLUSION

This Court should deny Blount's petition for review.

Dated this 20th day of July 2022.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin



CHRISTINE A. REMINGTON
Assistant Attorney General
State Bar #1046171

Attorneys for Plaintiff-Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-8943
(608) 294-2907 (Fax)
remingtonca@doj.state.wi.us

FORM AND LENGTH CERTIFICATION

I hereby certify that this response conforms to the rules contained in Wis. Stat. §§ (Rules) 809.19(8)(b), (bm) and 809.62(4) for a response produced with a proportional serif font. The length of this petition or response is 868 words.

Dated this 20th day of July 2022.



CHRISTINE A. REMINGTON
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 20th day of July 2022.



CHRISTINE A. REMINGTON
Assistant Attorney General