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**SUPREME COURT**

STATE OF WISCONSIN

IN SUPREME COURT

Case No. 2022AP001270-CR

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STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JONATHON S. GEIGER,

Defendant-Appellant-Petitioner.

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PETITION FOR REVIEW

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## ISSUE PRESENTED

Mr. Geiger was placed on probation in 2015. Later, in 2017, his probation was revoked and a sentencing after revocation hearing was scheduled. The Department of Corrections erroneously released Mr. Geiger from custody prior to that hearing and he did not appear. Consequently, a warrant was issued. Mr. Geiger was subsequently arrested in Arizona and extradited back for sentencing after revocation. After Mr. Geiger was sentenced, the state filed a motion requesting that the circuit court order Mr. Geiger to pay \$3,264.40 in extradition costs. The circuit court granted that motion.

Did the circuit court exceed the scope of authority granted by § 973.06(1)(a) when it ordered Mr. Geiger to pay the cost of extraditing him for the sentencing after revocation hearing?

The circuit court ordered Mr. Geiger to pay the extradition fees. The court of appeals affirmed.

## CRITERIA FOR REVIEW

“The right to recover costs is not synonymous with the right to recover the expense of litigation. Such right is statutory in nature, and to the extent that the statute does not authorize the recovery of specific costs, they are not recoverable.” *State v. Amato*, 126 Wis. 2d 212, 217, 376 N.W.2d 75 (Ct. App. 1985).

By statute, circuit courts have discretion to require a defendant to pay “the fees and disbursements of the agent appointed to return the defendant from another state or country,” if such fees are “incurred in connection with the arrest, preliminary examination and trial of the defendant.” Wis. Stat. § 973.06(1)(a).

The plain language of Wis. Stat. § 973.06(1)(a) does not authorize the recovery of costs related to extradition for sentencing after revocation. Nor does it authorize the imposition of costs in an order separate from the defendant’s sentence. *See State v. Perry*, 215 Wis. 2d 696, 700, 573 N.W.2d 876 (Ct. App. 1997) (“the payment of costs not imposed at sentencing cannot be ordered at a later time.”); *See also State v. Grant*, 168 Wis. 2d 683, 484 N.W.2d 370 (Ct. App. 1992).

In this case, the circuit court ordered Mr. Geiger to pay the costs of extraditing him from Arizona to Wisconsin for his sentencing after revocation hearing. The costs were imposed in an independent order, entered six years after his original sentencing and seven months after the judgment of conviction on revocation of probation was signed and filed. In upholding the circuit court’s order, the court of appeals read words into the statute and parted ways with well-established law. Consequently, review is warranted under Wis. Stat. § 809.62(1r)(c)2.&(d).

## STATEMENT OF THE CASE AND FACTS

On July 14, 2014, the state filed a criminal complaint charging Jonathon S. Geiger with one count of lewd and lascivious behavior and one count of exposing genitals or pubic area. (1:1). The case was eventually resolved with a plea agreement, pursuant to which Mr. Geiger pled guilty to Count 2, exposing genitals, in exchange for the state agreeing to dismiss and read-in Count 1, as well as a separate case. (28:3; 61:1-2).

The circuit court accepted Mr. Geiger's plea on June 24, 2015, a presentence investigation report was ordered, and the matter was set over for sentencing. (28:13).

On September 17, 2015, the circuit court withheld sentence and placed Mr. Geiger on probation for three years. (14:1; 34).

Mr. Geiger's probation was subsequently revoked and a sentencing after revocation hearing was scheduled for July 5, 2017. (19; 127). Mr. Geiger, however, had been erroneously released from custody prior to that hearing and did not appear. (127:2-4; 143:11). A warrant for his arrest was issued. (91; 140:9).

In July of 2021, Mr. Geiger was arrested in Arizona and extradited back to Wisconsin. (148:9-10). Sentencing after revocation was held on September 28, 2021. The circuit court imposed one and a half years of

confinement and two years of extended supervision. (106:1; 108).

At the sentencing after revocation hearing, the state requested that the cost of transporting Mr. Geiger from Arizona be ordered and reduced to judgment. (108:36). The circuit court expressed doubt as to whether Mr. Geiger should be responsible for those costs and whether they could be added to the judgment. (108:36-37). In response, the prosecutor asked for time to provide the court with some authority supporting its request. (108:37). Thereafter, the state filed a motion to modify the judgment of conviction to include the cost of extraditing Mr. Geiger from Arizona, citing Wis. Stat. § 973.06(1)(a) as authority for the court to do so. (109).

The circuit court addressed the issue at several hearings and eventually granted the motion, ordering Mr. Geiger to pay \$3,264.40 in extradition costs. (128; 143; 145; 144; App. 14-30). The court explained its position that “arrest” in § 973.06(1)(a) was not “limited solely to [Mr. Geiger’s] initial arrest.” (143:7-9; App. 21-23). The circuit court also found that § 973.06(1)(a) applied because Mr. Geiger had notice of the hearing, did not appear, was picked up on the court’s arrest warrant, and brought back from another state. (143:12-14; App. 26-28). Finally, the circuit court explained that it didn’t think that “Barron County should be responsible” for the costs incurred due to the Department of Corrections’ error in releasing Mr. Geiger. (143:12; App. 26).

The circuit court signed an order making Mr. Geiger responsible for the costs. (128; App. 14). An amended judgment of conviction adding the costs of extradition was also filed. (130; App. 12-13).

Mr. Geiger appealed, arguing that the circuit court lacked authority to order him to pay the extradition costs.

In an unpublished decision, the court of appeals affirmed. *State v. Geiger*, No. 2022AP1270-CR, unpublished slip op. (WI App. July 11, 2023)(App. 3-11). The court of appeals found that the plain language of the statute allowed the circuit court to impose the costs at issue in this case. *Id.*, ¶10. (App. 6-7). Further, it ruled that the proceeding at which Mr. Geiger was placed on probation was not a sentencing because probation was not a sentence and therefore, the circuit court could impose costs at the sentencing after revocation. *Id.*, ¶¶12-13. (App. 7-8). Finally, the court of appeals rejected Mr. Geiger’s argument that the costs were improperly ordered because they were imposed in an order separate from the sentence, stating that his case was “materially distinguishable” from the cases on which he relied. *Id.*, ¶¶14-20. (App. 8-11).

This petition for review follows.

## ARGUMENT

**This court should grant review and hold that § 973.06(1)(a) does not allow circuit courts to impose extradition costs incurred for sentencing after revocation.**

The order requiring Mr. Geiger to pay extradition costs must be vacated. The circuit court acted without authority when, long after sentencing, it ordered that Mr. Geiger be responsible for paying the costs to extradite him from Arizona for his sentencing after revocation hearing. The court's order was improper for two reasons: first, the costs of extradition for postconviction proceedings, such as sentencing after revocation, are not among those enumerated in the statute; second, the costs were not imposed at the time of sentencing.

While affirming the circuit court, the court of appeals read words into the statute and ignored well-established case law. Consequently, this court should grant review and clarify: 1) that the plain language of § 973.06(1) prohibits courts from imposing extradition costs for postconviction proceedings such as sentencing after revocation; and, 2) that any costs imposed must be ordered as part of the disposition at the original sentencing proceeding, regardless of whether the defendant is placed on probation or sentenced to jail.



A. The order in this case is improper as the costs to extradite a defendant for sentencing after revocation are not among those listed in § 973.06(1)(a).

Section 973.06(1), Wis. Stats., “details those costs taxable against a defendant and prohibits the imposition of any others.” *State v. Amato*, 126 Wis. 2d 212, 215, 376 N.W.2d 75 (Ct. App. 1985). While extradition expenses are among the costs which may be imposed on a criminal defendant, the statute is clear that such expenses must be incurred in connection with “the arrest, preliminary examination and trial of the defendant.”<sup>1</sup> See Wis. Stat. § 973.06(1)(a); *State v. Perry*, 215 Wis. 2d 696, 711, 573 N.W.2d 876.

Whether the circuit court had authority under § 973.06(1)(a) to order Mr. Geiger to pay the extradition costs is a question of law this court reviews de novo. *State v. Peterson*, 163 Wis. 2d 800, 802, 472 N.W.2d 571 (Ct. App. 1991); *State v. Ferguson*,

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<sup>1</sup> Wis. Stat. § 973.06(1)(a) states:

Except as provided in s. 93.20, the costs, fees, and surcharges taxable against the defendant shall consist of the following items and no others:

(a) The necessary disbursements and fees of officers allowed by law and incurred in connection with the arrest, preliminary examination and trial of the defendant, including, in the discretion of the court, the fees and disbursements of the agent appointed to return a defendant from another state or country.

202 Wis. 2d 233, 237, 549 N.W.2d 718 (1996). “[S]tatutory interpretation ‘begins with the language of the statute. If the meaning of the statute is plain,’” the inquiry ordinarily stops there. *State ex. Rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. Further, “statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd results.” *Id.*, ¶46.

The plain language of the statute is unambiguous and prohibits the imposition of costs and fees incurred to transport a defendant from another state for sentencing after revocation. At sentencing, a circuit court is allowed to impose costs for the “fees and disbursements” related to the extradition of a defendant in connection with his “arrest, preliminary examination and trial.” Wis. Stat. § 973.06(1)(a). The events are listed in chronological order and end with the trial of the defendant; the statute mentions nothing about costs incurred in relation to the sentencing of a defendant, before or after, revocation of probation.

When read as a whole, it is apparent that the statute allows for costs incurred by officers to arrest and bring the defendant to trial – those related to the arrest, preliminary hearing, and trial – including the

costs of extradition from another state or country.<sup>2</sup> It does not allow for costs incurred by officers in connection with sentencing, or sentencing after revocation, as such costs are not specifically enumerated therein. *See Ferguson*, 202 Wis. 2d at 237-238 (“By its plain language, then, the costs taxable against a defendant under Wis. Stat. § 973.06(1)(c) are limited to the items enumerated therein.”). If the legislature had intended to allow the imposition of costs incurred in connection with the sentencing of a defendant, it would have said so. It would have been simple to add that event by writing, “[t]he necessary disbursements and fees of officers allowed by law and incurred in connection with the arrest, preliminary examination, trial *and sentencing* of the defendant.” It did not do so.

This reading of the statute is further supported by the context in which the language is used, as well as a review of surrounding statutes. All of the costs which may be taxed under § 973.06(1) are costs related to the crime for which the defendant was convicted or the preliminary hearing and trial in the case. *See* § 973.06(1) (allows the court to order costs for buy money, attorney fees, fees and travel of witnesses for preliminary examination and trial, etc.). None of the

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<sup>2</sup> Contrary to the court of appeals’ assertion, Mr. Geiger does not argue that the costs are limited to the initial arrest. Rather, he acknowledges that under the plain language of the statute, costs associated with arresting and/or transporting a defendant at any time prior to trial may be imposed. *See* Wis. Stat. § 973.06(1)(a).

costs listed relate to fees or disbursements incurred after the defendant has been convicted.

The plain language of § 973.06(1)(a) does not authorize the imposition of costs incurred to extradite a defendant for sentencing after revocation. Consequently, such costs are not recoverable and the order requiring Mr. Geiger to pay them must be vacated.

- B. The order in this case is improper as the extradition costs were imposed in a separate order after both the sentencing and sentencing after revocation hearings.

The costs allowed by statute are considered a component of the criminal disposition the circuit court imposes. *Amato*, 126 Wis. 2d at 216. It is well-settled that § 973.06 does not allow costs, including fees associated with extradition, to be imposed in an order separate from the sentence. *State v. Grant*, 168 Wis. 2d 683, 484 N.W.2d 370 (Ct. App. 1992); *Perry*, 215 Wis. 2d at 712; *See also State v. Campbell*, 2006 WI 99, ¶68, 294 Wis. 2d 100, 718 N.W.2d 649 (“Wisconsin Stat. § 973.06 authorizes a court to impose certain costs, fees, and surcharges upon a defendant as part of his sentence.”). In other words, costs – if imposed – must be ordered at the sentencing hearing and contained in the judgment of conviction.

The order requiring Mr. Geiger to pay extradition fees was entered subsequent to, and separate from, both the original judgment of conviction and the judgment of conviction after

revocation of probation. It was, therefore, clearly contrary to the authority provided by statute. *See Perry*, 215 Wis. 2d at 712.

The court of appeals rejected Mr. Geiger's arguments. It found that costs did not have to be imposed at the time of the sentencing in 2015 because Mr. Geiger was placed on probation, and therefore, not actually sentenced until his sentencing after revocation. *Geiger*, No. 2022AP1270-CR, ¶¶12-13 (App. 7-8).

With respect to the imposition of costs, however, a sentencing after revocation is not the equivalent of a sentencing hearing. The court's implication that whether a proceeding is a sentencing hearing depends on the disposition ultimately imposed, is clearly wrong. There can't be any real dispute that a defendant is placed on probation at a sentencing hearing after the court hears arguments regarding sentencing.

More importantly, courts have correctly recognized that "[c]osts and conditions of probation are routinely imposed against a convicted defendant as separate components of a criminal case disposition." *Amato*, 126 Wis. 2d at 216. In practice, costs are imposed at the sentencing proceeding regardless of whether the defendant is placed on probation or sentenced to prison, and, in fact, payment of costs is frequently listed as a condition of probation. Further, just as was done in this case, unpaid court costs are routinely reduced to judgment at sentencing after

revocation hearings. (146:34). The requirement that costs be imposed at sentencing means that they be imposed at the original sentencing proceeding, not at a sentencing after revocation hearing that may or may not occur in the future.

Even if this court were to find that the sentencing and sentencing after revocation hearings are the same for purposes of the imposition of costs under § 973.06(1), however, the order in this case must still be vacated. The court of appeals' decision disregards long-standing precedent by incorrectly stating that the facts of this case are "materially distinguishable." *Geiger*, No. 2022AP1270-CR, ¶¶14-20 (App. 8-11). It glosses over the fact that the extradition costs imposed in this case were imposed in an independent order entered months after the sentence after revocation was imposed – something the court of appeals has previously held to be improper.

In *Perry*, the court of appeals held that "payment of costs not imposed at sentencing cannot be ordered at a later time." *Perry*, 215 Wis. 2d at 700. After losing at trial, Perry was sentenced to twenty years of imprisonment and ordered to pay statutory court costs. *Id.* at 703. A "judgment of conviction containing those terms was entered" five days after the sentencing hearing. *Id.*

During the sentencing hearing, the circuit court had also ordered payment of restitution upon the state's submission of a proposed restitution order

unless objected to by Perry. *Id.* The state later filed its proposed order, which included extradition costs, and Perry objected; consequently, a restitution hearing was held. *Id.* Prior to hearing evidence on the restitution matter, the circuit court ordered “as part of the judgment of conviction that Mr. Perry pay costs of extradition.” *Id.* at 704. An amended order for restitution, directing payment of restitution as well as extradition costs, was then entered. *Id.*

The court of appeals struck down the order imposing extradition costs, finding that the circuit court “lacked authority to impose these additional costs after Perry had been sentenced.” *Id.* at 712. In doing so, it expressly rejected the state’s argument that the hearing was simply a continuation of the sentencing hearing, finding that the record proved otherwise:

Perry was sentenced to prison and ordered to pay \$300 in court costs on June 14, 1996, and a judgment of conviction containing those terms was entered on June 19, 1996. During the June 14<sup>th</sup> hearing, the court granted the State’s request for restitution but left amount open, instead ordering the State to submit a proposed restitution order within forty-five days. The court indicated that it would enter the order for the amount requested unless Perry objected. There is no indication in the record of the sentencing hearing that Perry’s sentencing was continued for any purpose. Had the State not filed a proposed restitution order, or had Perry not objected to it, no further court proceedings would have ensued.

*Id.*

In affirming the circuit court's order in this case, the court of appeals failed to acknowledge that the procedural history of this case is identical to that in *Perry*. It's assertion that the court's order was allowed as a continuation of the sentencing hearing, therefore, fails.<sup>3</sup> Just as in *Perry*, there is nothing in the record to support a finding that the sentencing after revocation hearing in this case was continued.

As was done in *Perry*, the circuit court pronounced sentence at Mr. Geiger's sentencing after revocation hearing and a judgment of conviction containing that sentence was entered about a week later. (106). Further, just as the state brought up restitution in *Perry*, the prosecutor raised the issue of extradition costs at the sentencing after revocation hearing in this case. In neither case did the circuit court make a final decision on the issue; rather, resolution required further action by the state. Had the state not filed its motion for extradition costs in this case, no additional proceedings would have been held. Moreover, the circuit court here acknowledged that the subsequent hearings in this case were held to determine the state's motion for extradition costs, and "not for the purpose of a continued sentencing hearing." (143:2; 144:2; 145:2; 147:2-3). *Perry*,

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<sup>3</sup> The facts of this case are also comparable to those in *State v. Grant*, 168 Wis. 2d 682, 484 N.W.2d 370 (Ct. App. 1992). Just as in that case, the circuit court here entered the order for extradition costs "on a post-sentence motion by the prosecutor," and it "was entered separate from the sentence." *See Grant*, 168 Wis. 2d 682, 683.



215 Wis. 2d at 712. There is simply no support for the court of appeals' finding that the sentencing after revocation hearing in this case had been continued.

As “the payment of costs not imposed at sentencing cannot be ordered at a later time,” the circuit court’s separate order requiring Mr. Geiger to pay \$3,264.40 for extradition costs incurred after his conviction is contrary to statute. *See Perry*, 215 Wis. 2d at 700. The circuit court lacked authority to enter an independent order, long after both the sentencing and sentencing after revocation hearings, requiring Mr. Geiger to pay those fees. Consequently, the order must be vacated.

## CONCLUSION

Mr. Geiger respectfully requests that this court grant review, reverse the circuit court's order requiring the payment of extradition costs, and remand the case with directions that the judgment of conviction be amended to remove that requirement.

Dated this 8<sup>th</sup> day of August, 2023.

Respectfully submitted,

*Electronically signed by*

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### **CERTIFICATION AS TO FORM/LENGTH**

I hereby certify that this brief conforms to the rules contained in S. 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is 3,324 words.

### **CERTIFICATION AS TO APPENDIX**

I hereby certify that filed with this brief is an appendix that complies with s. 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23(3)(a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rules or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review or an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 8<sup>th</sup> day of August, 2023.

Signed:

*Electronically signed by*

*Kathilynne A. Grotelueschen*

**KATHILYNNE A. GROTELUESCHEN**

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