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CLERK OF WISCONSIN
SUPREME COURT

STATE OF WISCONSIN

IN SUPREME COURT

No. 2022AP1390-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

MATTHEW CURTIS SILLS,

Defendant-Appellant-Petitioner.

RESPONSE OPPOSING PETITION FOR REVIEW

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The State of Wisconsin has received Defendant-Appellant-Petitioner Matthew Curtis Sills's petition for review from the court of appeals' unpublished decision upholding Sills's first-degree sexual assault of a child conviction and order denying postconviction relief. The State opposes the petition because it does not meet the criteria for review. *See* Wis. Stat. § (Rule) 809.62(1r).

In 2016, Sills was charged with first-degree sexual assault of a child under the age of 13 for sexually assaulting his daughter when she was seven. (Pet-App. 2–3.) The following year, Sills was convicted upon a guilty plea on the reduced charge of second-degree sexual assault of a child under the age of 16 and was sentenced to 9 years of initial confinement and 6 years of extended supervision. (Pet-App. 3.) Sills moved for plea withdrawal on the ground the plea-taking court, the Honorable Jeffrey A. Wagner, failed to advise him of the maximum fine associated with the offense. (Pet-App. 3 & nn.3, 4.) The circuit court denied the motion. (Pet-App. 3.) In 2020, the court of appeals reversed, and Sills withdrew his guilty plea on remand. (Pet-App. 3.)

Sills elected to go to trial on the reinstated charge of first-degree sexual assault of a child. (Pet-App. 3–4.) At the February 2021 trial, Sills's daughter, now 12, testified in detail about Sills repeatedly sexually assaulting her as a young child. (Pet-App. 3, 5.) The jury found Sills guilty, and the circuit court, the Honorable David J. Borowski, sentenced Sills to 20 years of initial confinement and 10 years of extended supervision. (Pet-App. 6, 8.)

Sills's first claim on appeal and only claim in his petition is that he was denied his right to a fair trial because Judge Borowski was objectively biased against him. (Pet. 6–11.) Sills bases his claim on multiple comments Judge Borowski made criticizing the court of appeals' 2020 decision reversing Sills's original conviction. (Pet. 6–8; Pet-App. 4, 7.) He argues that these comments, which were made at trial but

out of the jury's presence and at sentencing, show that the judge was "unable to separate his frustration with the appellate court's decision from his duty to permit Sills to exercise his constitutional right to a trial." (Pet. 7.)

As the court of appeals correctly noted, negative remarks like those Judge Borowski made about the court of appeals' decision "do not automatically equal bias," and "expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women . . . sometimes display" do not prove bias or partiality. *State v. Pirtle*, 2011 WI App 89, ¶ 34, 334 Wis. 2d 211, 799 N.W.2d 492 (quoting *Liteky v. United States*, 510 U.S. 540, 555–56 (1994)). (Pet-App. 11.) The court of appeals properly concluded that Judge Borowski's remarks about the court of appeals' decision did not demonstrate objective bias toward Sills for exercising his rights to appeal and to have a trial. (Pet-App. 11–13.) These remarks about the court of appeals' decision were inadequate to overcome the presumption that Judge Borowski "acted fairly, impartially, and without prejudice" at Sills's trial and sentencing. *State v. Herrmann*, 2015 WI 84, ¶ 3, 364 Wis. 2d 336, 867 N.W.2d 772.

Judicial bias was not the reason Sills's 2021 sentence was significantly longer than his 2017 sentence. As the court of appeals discussed, Judge Borowski applied the appropriate sentencing factors and imposed a lengthy sentence because: (1) the judge learned about the gravity and repeated nature of Sills's assaults from the victim at Sills's trial; and (2) Sills's testimony at trial was "unbelievable" and "aggravated the circumstances" of his case, demonstrating Sills's refusal to take responsibility for his conduct this time. (Pet-App. 13.)

The court of appeals reached the correct result. Even if Sills could show otherwise, his argument for this Court taking discretionary review to address the judicial bias issue is weak. He all but concedes that he merely seeks error correction. He does not show that this case presents an opportunity for law

development or clarification. Rather, he asserts that review “will give the Court an opportunity to give real meaning to the doctrine of objective judicial bias and,” more ambitiously, “help restore confidence in Wisconsin courts.” (Pet. 5, 11.) He does not show that review is warranted.

The petition should be denied.

Dated this 11th day of April 2024.

Respectfully submitted,

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Electronically signed by:

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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 719 words.

Dated this 11th day of April 2024.

Electronically signed by:

Jacob J. Wittwer
JACOB J. WITTWER
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 Appellate Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 11th day of April 2024.

Electronically signed by:

Jacob J. Wittwer
JACOB J. WITTWER
Assistant Attorney General