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CLERK OF WISCONSIN
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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

Appeal No. 2023AP000369 – CR

ZACKERY J. OLSON,

Defendant-Appellant.

An Appeal From a Sentence Imposed by the Honorable Jennifer Dorow, Circuit
Court Judge, Branch 2, Waukesha County

BRIEF OF PLAINTIFF-RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii-iii
STATEMENT OF THE ISSUES.....	1
POSITION ON ORAL ARGUMENT AND PUBLICATION	2
STATEMENT AND FACTS OF THE CASE	3-8
ARGUMENT	9-13
I. Judge Dorow properly exercised her discretion by imposing consecutive prison sentences, and did not improperly rely on facts related to pending criminal matters or penalize Olson for maintaining his innocence.	
a. Relevant Law.....	9
b. Applying Relevant Law to Olson’s Case	11
CONCLUSION	14
CERTIFICATION OF BRIEF AND APPENDIX.....	15

TABLE OF AUTHORITIES

Wisconsin Statutes

Wisconsin Statutes Section 813.125(4) & (7)	3
Wisconsin Statutes Section 939.62(1)(a) & (1)(b).....	3
Wisconsin Statutes Section 946.49(1)(b)	3
Wisconsin Statutes Section 972.14(2).....	11
Wisconsin Statutes Section 973.017(2).....	10

Wisconsin Cases

<i>Elias v. State</i> , 93 Wis. 2d 278, 286 N.W.2d 559 (1980)	10, 12
<i>Harris v. State</i> , 75 Wis. 2d 513, 250 N.W.2d 7 (1977).....	10
<i>Ocanas v. State</i> , 70 Wis. 2d 179, 233 N.W.2d 457 (1975)	9
<i>Scales v. State</i> , 64 Wis. 2d 485, 219 N.W.2d 286 (1974)	11
<i>State v. Borrell</i> , 167 Wis. 2d 749, 482 N.W.2d 883 (1992).....	9
<i>State v. Cooper</i> , 117 Wis. 2d 30, 344 N.W.2d 194 (Ct. App. 1983).....	9, 12
<i>State v. Cummings</i> , 2014 WI 88, 357 Wis. 2d 1, 850 N.W.2d 915.....	10
<i>State v. Echols</i> , 175 Wis. 2d 653, 499 N.W.2d 631	9
<i>State v. Gallion</i> , 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197.....	9, 10
<i>State v. Giebel</i> , 198 Wis. 2d 207, 541 N.W.2d 815 (Ct. App. 1995).....	9
<i>State v. Grady</i> , 2007 WI 81, 302 Wis. 2d 80, 734 N.W.2d 364.....	10
<i>State v. Harris</i> , 119 Wis. 2d 612, 350 N.W.2d 883 (1984).....	9
<i>State v. McQuay</i> , 154 Wis. 2d 116, 452 N.W.2d 377 (1990)	10, 12
<i>State v. Von Loh</i> , 157 Wis. 2d 91, 458 N.W.2d 556 (Ct. App. 1990).....	10, 12

<i>State v. Wagner</i> , 191 Wis. 2d 322, 528 N.W.2d 85 (Ct. App. 1995).....	9
<i>Williams v. State</i> , 79 Wis. 2d 235, 255 N.W.2d 504.....	11, 12

STATEMENT OF THE ISSUES

Did the trial court erroneously sentence Olson to prison by considering improper information as it related to a pending criminal matter and penalizing Olson for maintaining his innocence?

The trial court answered no.

POSITION ON ORAL ARGUMENT AND PUBLICATION

The Plaintiff-Respondent request neither oral argument or publication. The briefs in this matter can fully present and meet the issues on appeal and fully develop the theories and legal authorities on the issues. Publication is unnecessary as the issues presented relate solely to the application of existing law to the facts of the record.

STATEMENT AND FACTS OF THE CASE

Zackery Olson was charged in Waukesha County Case 2021CM1454 with two counts of Violation of Injunction – Harassment as a Repeater, contrary to Wisconsin Statutes Sections 813.125(4) & (7) and 939.62(1)(a), from incidents on December 24, 2020, and December 29, 2020, involving Victims A and B. (R. 2, Criminal Complaint; R.41, Amended Criminal Complaint.) A jury trial was held on September 13, 2022, and Olson was convicted of both counts of violation of injunction. (R.91, Trial Transcript 9/13/2022, p. 229.) Olson had also been charged in Waukesha County Case 2021CF1360 for Felony Bail Jumping as a Repeater, contrary to Wis. Stat. §§ 946.49(1)(b) and 939.62(1)(b), and Violation of Injunction – Harassment as a Repeater, contrary to Wis. Stat. §§ 813.125(4) & (7) and 939.62(1)(a), which also involved Victim A, but he was ultimately found not guilty of those charges at trial. (*Id.* at 228-229.)

At trial, Victim A testified about how she was granted an injunction against Olson on May 8, 2018, for four years, and Olson was ordered to not contact Victim A. (*Id.* at 93-97.) Victim A explained that she and her sister, Victim B, had gone to high school with Olson, and Victim A and Olson graduated in 2006 together. (*Id.* at 92.) Victim A testified that she received a text message from an unknown number, which she believed to be Olson, on December 29, 2020, and the text message implied that Victim A and Victim B were cowards, were driving past Olson’s house, and some language saying “piss off.” (*Id.* at 100-101.) Victim A explained that she did not give permission for Olson to contact her, and she felt harassed or intimidated. (*Id.* at 102-103.)

Victim B, who is Victim A’s sister, testified that she was granted an injunction against Olson on December 3, 2015, for ten years, and Olson was ordered to not have contact with her. (*Id.* at 113-116.) Victim B explained that she was acquaintances with Olson in high school and they lived near each other. (*Id.* at 112.) Victim B stated that neither she nor Victim A ever dated Olson. (*Id.*) Victim B then explained December 24, 2020, she was at Victim A’s house when she received a text message from an unknown number, that she believed came from Olson, saying “Only good little bunnies get their stocking stuffed for Christmas,” with a white rabbit emoji. (*Id.* at 118-120.) Victim B also testified that it was the same phone number that had texted Victim A. (*Id.* at 120.) Victim B also testified that on December 31, 2020, she received an additional text message from a different unknown number, which was also believed to be Olson, saying

“something along the lines of I told your friends to piss off.” (*Id.* at 130-131.) Victim B never gave permission for Olson to contact her, and she did feel harassed or intimidated. (*Id.* at 133.)

Deputy Adrian with the Waukesha County Sheriff’s Department testified that he took the reports from Victim A and Victim B, and then made contact with Olson at his residence on December 30, 2020. (*Id.* at 142-145.) Prior to Deputy Adrian explaining to Olson why he was there or mentioning Victim A’s and Victim B’s names, Olson stated that he had been dealing with Victim A and Victim B “for years” and “was sick of it.” (*Id.* 145.) Deputy Adrian was then made aware that the next day, December 31, 2020, is when Victim B received the additional text message from an unknown number saying “I politely told your friends to piss off.” (*Id.* at 146.) Deputy Adrian learned that the numbers from the text messages linked back to a company identified as “Ad Hoc Inc.” (*Id.* at 148.) That company has a smartphone app called “Burner,” which is a way to disguise your actual phone number when texting or calling someone. (*Id.* at 148-149.)

Retired Detective Shari Janke with the Waukesha County Sheriff’s Department testified that she was able to determine that the unknown phone numbers sending the messages to Victim A and Victim B were linked to Olson. (*Id.* at 157-172.) Deputy Klemmer with the Fond du Lac County Sheriff’s Office testified that he also assisted in investigation of Victim B’s case, and spoke with Olson over the phone on February 21, 2021. (*Id.* at 175-76.) Deputy Klemmer testified the number that he used to communicate with Olson was the same number that Detective Janke linked to Olson. (*Id.*)

Olson was ultimately convicted of both counts of violation of injunction—harassment as it related to Waukesha County Case 2021CM1454, and judgements of conviction were entered on the verdicts. (*Id.* at 229-230.) At sentencing, on November 9, 2022, the Court also found that the State provided sufficient evidence through a certified judgment of conviction from Waukesha County Case 2017CM1820 showing three prior misdemeanor convictions for violation of harassment restraining order, which would make Olson a repeater. (R.92, Sentencing Transcript 11/9/2022, pp. 11-12; R.65, Certified JOC from Waukesha Case 17CM1820.)

Prior to sentencing, the State submitted Victim Impact Statements from Victim A and Victim B. (R.18, Victim A's Statement; and R.19, Victim B's Statement.) Victim A explained the harassment and fear that she and her sister, Victim B, had been suffering for many years because of Olson. (R.18, Victim A's Statement.) Victim A stated that he initially started harassing Victim B, and that when Olson could not get through to Victim B, he would try to get to Victim B through Victim A. (*Id.*) Victim A stated that the only time her and her family have ever felt safe from Olson is when he was in jail for nine months for prior convictions related to violating the injunction for Victim B in Waukesha County Case 2017CM1820. (*Id.*) Victim A also explained in her statement the numerous voicemails that Victim B received in 2021 from Olson in which he spoke about watching Victim A's home, and how terrifying this was for her. (*Id.*) Victim A concluded her statement by saying:

I am scared for the safety of myself, my husband, and my two young daughters. He is getting more experienced in trying to outsmart the law. Please do not let him get away with this anymore. I ask that Zackery be shown no leniency in his sentencing and that he be forced to get psychological treatment.

(*Id.*) Victim A also made a short oral statement at sentencing explaining how she wanted to protect her sister, Victim B, from Olson, and how she wanted the Court to make sure that nothing happened to her sister. (R.92, Sentencing Hearing Transcript, pp. 8-9.)

In Victim B's Victim Impact Statement, she described at length Olson's continued pattern of harassing conduct with her that started back in 2015. (R.19, Victim B's Statement.) Since 2015, Victim B described numerous incidents involving Olson, including sexually explicit voicemails and text messages she had received from Olson, and even quoted some of the messages that she had received. (*Id.*) Victim B also described how she was "paralyzed with fear after hearing his voice." (*Id.*) Victim B discussed the text messages that Olson sent to her in this case, and also explained that starting in December of 2020, Olson had contacted her 749 times within a two week period. (*Id.*) There were 681 text messages and 33 voicemails that Olson sent to Victim B's phone, but she did not receive them as she blocked his number. (*Id.*) Victim B explained that nothing has stopped Olson from contacting and harassing her. (*Id.*) She concluded her written statement by saying:

This has been allowed to escalate for far too long and I don't want to become another statistic. There is nothing more terrifying to me as a woman than knowing someone with no respect for the law is out there holding onto a 16 year sexually charged obsession with you. I am so afraid all of the time. It's not good for my health and it's especially not good for my pregnancy. My children need a mother to love and nurture them and more importantly be alive to be there for them. However, with this sexually deranged man free, I truly fear for my life and the life of my unborn baby everyday because of [Olson]. I live my life never knowing when and where he might show up. I ask the court to please impose the longest stay in jail as possible for a second offender and a man as unpredictable as [Olson].

(Id.)

Victim B also gave a verbal statement at sentencing re-emphasizing many of the points made in her victim impact statement. (R.92, Sentencing Hearing Transcript, pp. 4-9.) In addition, Victim B described how Olson had contacted her by email as recently as October 29, 2022, in violation of bail conditions and the injunction. (*Id.* at 6.) Victim B did briefly describe that Olson was also charged in Fond du Lac County with additional charges including stalking, bail jumping, and violation of an injunction. (*Id.* at 7.) Victim B again asked the Court to impose “the longest stay in jail as possible.” (*Id.* at 8.)

The State recommended a sentence of 12 months jail on each count consecutive to each other, and emphasized the pattern of harassing behavior for years by Olson against Victim A and Victim B. (*Id.* at 12-23.) The State emphasized Olson’s prior record, which included the three prior convictions for violation of a harassment restraining order from 2018, where three counts of bail jumping and an additional count of violation of injunction were dismissed and read-in. (*Id.* at 13.) The sentence on those three convictions included a nine month jail sentence on one, and nine months jail consecutive to each other but stayed for two years probation on the remaining two counts. (*Id.* at 13-14.) He did complete his two years probation in February 2020. (*Id.* at 14.) In addition, Olson was also convicted of possession of narcotic drugs in 2010, in which he was placed on probation and completed it. (*Id.*)

The State then went to explain the facts and circumstances surrounding the three prior convictions in 2018 for violation of injunction that also involved Olson contacting Victim B in violation of the 10-year injunction. (*Id.* at 16-17.) When Olson was in custody for the nine month jail sentence, he then started contacting Victim A. (*Id.* at 17.) This then led to Victim A also getting an injunction against Olson to protect herself. (*Id.* at 17-18.) While Olson was on probation for two

years, he did not contact Victim A or Victim B. (*Id.* at 18.) Olson then started contacting Victim A and Victim B again after getting off probation, and escalated his behavior by concealing his phone number and leaving deranged sexually explicit messages for Victim B. (*Id.* at 18.) The State mentioned that he was charged with various offenses in Fond du Lac County and described the facts surrounding that case, but also acknowledged that he was not convicted of those offenses yet. (*Id.* at 20.) The State then explained how it was important to understand those offenses because it gives context to the victims' immense fear of Olson. (*Id.* at 20-21.)

The State explained that such a significant sentence was important as Olson had been told numerous times by various courts since 2015 that he needed to stop contacting Victim A and Victim B, but continued to ignore all court orders and the victims' wishes. (*Id.* at 22.) The nine month jail sentence and two years probation was not enough for him to get the message. (*Id.*) There needed to be relief for the victims so they could feel safe, and there needed to be a lengthy sentence to impress upon Olson to stop his behavior. (*Id.* at 23.)

The defense emphasized that there should be little weight given to the Fond du Lac County cases as he had not been convicted of any of those offenses. (*Id.* at 25.) The defense recommended a probation sentence as Olson had probationary needs that could be addressed through things like counseling. (*Id.*)

Olson then exercised his right to allocation and gave his own statement. (*Id.* at 27-31.) Olson accused Victim A and Victim B of not being truthful, and there was more to the situation. (*Id.* at 28.) Olson then stated that he and Victim B had been having an affair and were trying to keep it from Victim B's husband. (*Id.* at 29.) Olson then asked the Court to withhold any sentencing decision until after the Fond du Lac County cases were done. (*Id.* at 30.)

The Court proceeded to sentencing and first noted that the jury found Victim A and Victim B credible, and how his plea was "merely a desperate attempt by [Olson] to deflect the turn away from [his] behavior in this case." (*Id.* at 31-32.) The Court then focused on and recited the history that dated back to 2015 starting with a 10-year injunction. (*Id.* at 32.) Olson had been told by court commissioners, judges, probation agents, prosecutors, and the victims for seven years to not

contact Victim A or Victim B, and yet continued to do so, thus implying his view that the rules don't matter to him. (*Id.* at 32-33, 36.)

While the Court acknowledged that she is only sentencing Olson on the charges before her, she also provided specific case law, including *State v. Von Loh*, 157 Wis. 2d 91 (1990), *State v. Frey*, 2012 WI 99, and *State v. Leitner*, 2002 WI 77, that allowed her to consider “history of undesirable behavioral patterns, including dismissed, uncharged, or unproven offenses or facts underlying even expunged offenses, and including conduct for which the defendant was acquitted, if relevant.” (*Id.* at 33.) Therefore, the conduct that related to contact with Victims A and B was relevant as it showed a pattern of obsession, specifically with Victim B, and a pattern of disregarding court orders. (*Id.* at 33-34.) The Court did not spend any time discussing or emphasizing the specific charges in Fond du Lac County. (*Id.* at 33-34.)

The Court emphasized the significant impact that the crimes and Olson's behavior has had on Victims A and B. (*Id.* at 34-35.) The Court also explained how this case was more aggravated as Olson had already been convicted of the same behavior in 2018, and yet that sentence did not send a clear enough message to Olson to stop his behavior. (*Id.* at 35.) The Court briefly mentioned when discussing Olson's character his lack of remorse and not taking responsibility, but did so in the context of how he then used his opportunity for allocation to blame the victims for the situation instead of using appropriate and legal ways to solve the problem if he did feel wronged by Victims A and B. (*Id.* at 36.)

Based on the history with the victims, Olson's prior record, and the seven years that court officials have repeatedly told Olson to stop contacting Victim A and Victim B, the Court sentenced Olson to 12 months of initial confinement and 3 months of extended supervision on each count consecutive to each other. (*Id.* at 36-37.) The Court then specifically stated that the sentence was imposed “because to do anything other than that would be to send a very wrong message to Mr. Olson that his behavior is tolerated.” (*Id.* at 38.)

The defense now argues the Court erroneously sentenced Olson to prison instead of probation by improperly relying on facts related to the unresolved Fond du Lac County cases, and punishing Olson for exercising his right to trial and maintaining his innocence.

ARGUMENT

I. Judge Dorow properly exercised her discretion by imposing consecutive prison sentences, and did not improperly rely on facts related to pending criminal matters or penalize Olson for maintaining his innocence.

a. Relevant Law

“Sentencing is a discretionary judicial act and appellate review is limited to determining whether there was an abuse of discretion.” *State v. Borrell*, 167 Wis. 2d 749, 781, 482 N.W.2d 883 (1992) (citing *State v. Harris*, 119 Wis. 2d 612, 622, 350 N.W.2d 633 (1984)). Therefore, Wisconsin appellate courts enforce “a strong public policy against interference with the sentencing discretion of the trial court.” *State v. Echols*, 175 Wis. 2d 653, 681, 499 N.W.2d 631, *cert. denied*, 510 U.S. 889 (1993) (quoting *Harris*, 119 Wis. 2d at 622). This deference stems from the trial court’s inherent advantage in considering the relevant sentencing factors and the demeanor of the defendant in each particular case. *See Echols*, 175 Wis. 2d at 682. Therefore, on appeal, a trial court’s conclusion that a sentence was not unduly harsh is reviewed for an erroneous exercise of discretion. *See State v. Giebel*, 198 Wis. 2d 207, 220, 541 N.W.2d 815 (Ct. App. 1995).

Implicit in Olson’s argument that he should have been sentenced to probation instead of prison is that the trial court’s sentence was unduly harsh. A sentence is deemed to be unduly harsh or unconscionable if it is “so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.” *State v. Wagner*, 191 Wis. 2d 322, 333, 528 N.W.2d 85 (Ct. App. 1995) (quoting *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975)). Furthermore, when a defendant claims that his sentence was unduly harsh, it is the defendant’s burden to “show some unreasonable or unjustifiable basis for the sentence in the record.” *State v. Cooper*, 117 Wis. 2d 30, 40, 344 N.W.2d 194 (Ct. App. 1983). If the record contains evidence that the trial court properly exercised its discretion, the appellate court must affirm. *Id.* at 40.

Circuit courts retain considerable discretion at sentencing. *State v. Gallion*, 2004 WI 42, ¶ 17, 270 Wis. 2d 535, 678 N.W.2d 197. If the circuit court demonstrated a process of reasoning and came to a reasonable conclusion based on legally relevant facts and factors, this Court will not interfere with the sentencing decision. *State v. Cummings*, 2014 WI 88, ¶ 75, 357 Wis. 2d 1, 850 N.W.2d 915 (citation omitted).

When fashioning a sentence, a sentencing court must consider the gravity of the offense, the need to protect the public, the defendant's rehabilitative needs, and any applicable aggravating or mitigating factors. Wis. Stat. § 973.017(2). The sentence should reflect the minimum amount of confinement necessary that is consistent with these factors. *Gallion*, 270 Wis. 2d 535, ¶ 44. The court may also consider the following: (1) the defendant's criminal history; (2) any history of undesirable behavior patterns; (3) the defendant's personality and character; (4) the presentence investigation results; (5) the vicious or aggravated nature of the crime; (6) the defendant's degree of culpability; (7) the defendant's demeanor at trial; (8) the defendant's age, education and employment history; (9) the defendant's remorse, repentance and cooperativeness; (10) the need for rehabilitative control; (11) the rights of the public; and (12) the length of pretrial detention. *Harris v. State*, 75 Wis. 2d 513, 519–20, 250 N.W.2d 7 (1977). The circuit court retains considerable discretion in determining which factors are relevant and most important to its sentencing decision. *Gallion*, 270 Wis. 2d 535, ¶ 68; *State v. Grady*, 2007 WI 81, ¶ 31, 302 Wis. 2d 80, 734 N.W.2d 364.

Furthermore, a court can consider unproven or pending charges at sentencing on a separate case as it can be used in assessing the character of the defendant, which is an essential aspect of any sentencing. *See State v. McQuay*, 154 Wis. 2d 116, 452 N.W.2d 377 (1990); *State v. Von Loh*, 157 Wis. 2d 91, 458 N.W.2d 556 (Ct. App. 1990). The Wisconsin Supreme Court stated in *McQuay*:

In determining the character of the defendant and the need for his incarceration and rehabilitation, the court must consider whether the crime is an isolated act or a pattern of conduct. Evidence of unproven offenses involving the defendant may be considered by the court for this purpose.

McQuay, 154 Wis. 2d 116 at 126. The Wisconsin Supreme Court emphasized this same principle in *Elias v. State*, 93 Wis. 2d 278, 284, 286 N.W.2d 559 (1980), when explaining why uncharged, unproven, or pending charges can be considered:

This court has stated that the trial court in imposing sentence for one crime can consider other unproven offenses, since those other offenses are evidence of a pattern of behavior which is an index of the defendant's character, a critical factor in sentencing.

Wisconsin Statutes Section 972.14(2) gives the defendant the right of allocution before being sentenced. But, even after a finding of guilt by a jury, a court cannot use a defendant's refusal to admit guilt as a factor to impose a harsher sentence. *Scales v. State*, 64 Wis. 2d 485, 495, 219 N.W.2d 286 (1974). A defendant's "post-trial confession of guilt and an expression of remorse may be considered in mitigation of a sentence." *Id.* at 496. But, if instead of admitting guilt, a defendant exercises his Fifth Amendment right against self-incrimination, a court cannot penalize him based on that fact alone. *Id.* at 496-97. The Wisconsin Supreme Court found in *Scales v. State* that "[a] trial judge may, but he need not, take into consideration such expressions as indicative of the likelihood that the rehabilitative process hoped for in the criminal law has commenced; but where [. . .] the defendant refuses to admit his guilt, that fact alone cannot be used to justify incarceration rather than probation." *Id.*

But, the Court explained in *Williams v. State*, 79 Wis. 2d 235, 239, 255 N.W.2d 504 (1977), that *Scales* does not stand for the proposition that it is "improper or an abuse of discretion to consider on sentencing a defendant's remorse, repentance and cooperativeness." In *Williams*, the Court clarified that a court cannot give "undue and [. . .] overwhelming weight to the defendant's refusal to admit guilt" to the point that the record indicates the refusal materially influenced the trial court's discretion. *Id.* at 239-40.

b. Applying Relevant Law to Olson's Case

There is a strong public policy against overturning Judge Dorow's sentencing decision, and this Court must only review the sentence to determine if she abused her discretion. In this case, Judge Dorow explained the reason for imposing the sentence she did was based on the facts and circumstances of Olson's continued harassment against Victim A and Victim B for several years. The sentence was not unduly harsh as it was reasonably related to the main sentencing goals of protection of the community, which included the victims' protection, defendant's rehabilitation, and the gravity of the offense.

The sentence for 12 months initial confinement and three years extended supervision on each count consecutive to each other was not so excessive and unusual in relation to Olson's criminal conduct that it shocks the public sentiment and violates the judgment of reasonable people. Olson needs to show this Court that there was "some unreasonable or unjustifiable basis for the sentence in the record." *Cooper*, 117 Wis. 2d at 40. Olson first claims this is the case as Judge Dorow considered other unproven facts and pending charges in Fond du Lac County as a basis for the sentence. Olson fails to support his argument with any established case law that it was improper for Judge Dorow to consider other conduct by Olson in relation to Victim A and Victim B. Based on long-established case law from *McQuay*, *Von Loh*, and *Elias*, amongst many cases, a court can consider unproven or pending charges at sentencing in order to assess the character of the defendant. It was also clear that Judge Dorow specifically acknowledged that she was only sentencing Olson for the charges before her, but could consider Olson's seven-year pattern of harassing behavior against Victim A and Victim B when assessing his character, which included facts surrounding the Fond du Lac County cases. (R.92, Sentencing Hearing Transcript, p. 33.) She did not emphasize the actual charges in Fond du Lac County, but did find the facts of those allegations to be relevant and it showed that Olson had a pattern of obsession with Victim B and complete disregard of court orders. (*Id.* at 33-34.) Consideration of the facts in this way is exactly what the case law has found to be permissible during sentencing.

Second, the defense claims that the sentence was unduly harsh because Judge Dorow used Olson's lack of remorse and lack of acceptance of responsibility for the crimes as justification for imposing the sentence. When assessing the record in this respect, this Court must look to whether there was "undue and [. . .] overwhelming weight" given to Olson's refusal to admit guilt "to the point that the record indicates the refusal materially influenced the trial court's discretion." *Williams*, 79 Wis. 2d at 239-40. This is not the case. It is important to recognize that Olson did not state in his allocution that he did not commit these violations of injunctions; Olson just tried to justify his behavior by blaming Victims A and B. (R.92, Sentencing Hearing Transcript, p. 28-31.) Judge Dorow emphasized that had Olson felt he was being wronged by Victims A and B as he alleged, he could have used proper legal means in order to protect his own rights, yet did not do so, and instead continued to violate long-established court orders. (*Id.* at 36.)

It was also clear from the rest of the record that his refusal to take responsibility was not central to the prison sentence in this case. Judge Dorow emphasized various aggravating factors that formed the basis for the sentence including: prior record consisting of similar conduct, history of continued violations of court orders, concealing his phone number when contacting Victims A and B, and the impact of Olson's behavior on Victims A and B. (*Id.* at 34-36.) Judge Dorow emphasized repeatedly the seven-year history of Olson violating court orders prohibiting him from contacting Victim A and Victim B was one of the main reasons for giving such a sentence in order to send a message to him to stop his behavior. (*Id.* at 32, 33-34, 35, 36, 37, 38.)

In addition, Judge Dorow acknowledged Olson's prior record for the same convictions with the same victim made this case aggravated. (*Id.* at 35.) The sentence given in those cases included two years probation and nine months jail, and yet that was not enough of a message to deter Olson's behavior. (*Id.*) Judge Dorow believed that prison was necessary and probation would unduly depreciate the seriousness of the offense as it would otherwise it would send the message to Olson that "continued violations off this restraining order are tolerated." (*Id.* at 36-37.)

Judge Dorow also discussed how Olson's behavior affected Victim A's and Victim B's mental health and their family, and how much fear they have of Olson by his continued and repeated behavior over the years. (*Id.* at 34.)

In sum, the record clearly demonstrates to this Court that Judge Dorow properly exercised her discretion by considering relevant factors when imposing consecutive prison sentences in this case, and thus this Court must affirm the sentence.

CONCLUSION

For all the foregoing reasons, the State respectfully requests that this Court find that Judge Dorow appropriately exercised her discretion by considering relevant factors when imposing consecutive prison sentences on each count in this case.

Dated this 16th day of January, 2024.

Respectfully,

Electronically Signed by Melissa J. Zilavy
Melissa J. Zilavy
Assistant District Attorney
Waukesha County
Attorney for Plaintiff-Respondent
State Bar No. 1097603

CERTIFICATION OF BRIEF AND APPENDIX

I hereby certify that this brief conforms to the rules contained in s. 809.19(8)(b), (bm), and (c), for a brief produced with proportional serif font. The length of this brief is 5,244 words.

I further certify that there is no appendix filed with this brief.

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 16th day of January, 2024.

Electronically Signed by Melissa J. Zilavy
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