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STATE OF WISCONSIN  
C O U R T O F A P P E A L S  
DISTRICT II

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Case No. 2023AP970-CR

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STATE OF WISCONSIN,  
  
Plaintiff-Appellant,  
  
v.  
  
SCOTT R. DACHELET,  
  
Defendant-Respondent.

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APPEAL FROM AN AMENDED JUDGMENT OF  
CONVICTION GRANTING SENTENCE CREDIT  
ENTERED IN CALUMET COUNTY CIRCUIT COURT,  
THE HONORABLE JEFFREY S. FROEHLICH,  
PRESIDING

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**BRIEF AND APPENDIX OF PLAINTIFF-APPELLANT**

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## TABLE OF CONTENTS

ISSUE PRESENTED.....	5
STATEMENT ON ORAL ARGUMENT AND PUBLICATION .....	6
STATEMENT OF THE CASE .....	6
STANDARD OF REVIEW.....	9
ARGUMENT .....	9
Dachelet is not entitled to sentence credit for 25 days in custody leading up to his sentencing after revocation because he was serving another sentence at the time. ....	9
A.    Wisconsin Stat. § 973.155 and the “in connection with” requirement.....	9
B.    Custody spent serving a sentence cannot also be in connection with a pending case. ....	10
C.    If a defendant’s probation is revoked, and he has already been sentenced to <i>prison</i> , the defendant’s sentence does not begin by statute until he enters the prison.....	11
D.    Under the only reasonable view of when Dachelet’s jail sentence began, Dachelet was serving a jail sentence November 4–29, 2022, and he is therefore not entitled to credit for this time.....	13
1.    When, as here, a defendant’s probation is revoked, and he has already been sentenced to <i>jail</i> , his sentence begins upon entering the jail.....	13

2.	Credit is not available for Dachelet's November 4–29, 2022 custody because the connection between custody and the present case was severed on November 4 when he was revoked and started serving his jail sentence that day. ....	15
CONCLUSION.....		18

## TABLE OF AUTHORITIES

### Cases

<i>State v. Aderemi</i> , 2023 WI App 8, 406 Wis. 2d 132, 986 N.W.2d 306.....	9
<i>State v. Beets</i> , 124 Wis. 2d 372, 369 N.W.2d 382 (1985) ....	5, 10, 11, 13, 16
<i>State v. Beiersdorf</i> , 208 Wis. 2d 492, 561 N.W.2d 749 (Ct. App. 1997).....	9
<i>State v. Carter</i> , 2010 WI 77, 327 Wis. 2d 1, 785 N.W.2d 516.....	10
<i>State v. Davis</i> , 2017 WI App 55, 377 Wis. 2d 678, 901 N.W.2d 488 .....	14
<i>State v. Presley</i> , 2006 WI App 82, 292 Wis. 2d 734, 715 N.W.2d 713 .....	15
<i>State v. Slater</i> , 2021 WI App 88, 400 Wis. 2d 93, 968 N.W.2d 740 .....	11, 12, 13
<i>State ex rel. Kalal v. Cir. Ct. for Dane Cnty.</i> , 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110.....	14

**Statutes**

Wis. Stat. § 304.072(4).....	14
Wis. Stat. § 973.03(2).....	8, 14, 16
Wis. Stat. § 973.10(2)(b) .....	8, 11, 12, 13, 14
Wis. Stat. § 973.155 .....	9
Wis. Stat. § 973.155(1).....	9
Wis. Stat. § 973.155(1)(a) .....	9

## ISSUE PRESENTED

At Defendant-Respondent Scott R. Dachelet's April 2022 sentencing, the circuit court placed Dachelet on probation, withholding sentence in the present case and issuing an imposed and stayed sentence to jail in a separate case. Dachelet was arrested and held in jail on probation violations, and his probation was revoked on November 4, 2022. He was referred to the circuit court for sentencing in the present case, and the circuit court imposed a sentence after revocation on November 29, 2022. The parties litigated the issue of sentence credit, and the court granted Dachelet credit for his post-revocation jail custody from November 4 to 29, 2022.<sup>1</sup>

Under *Beets*,<sup>2</sup> a defendant is not entitled to sentence credit on a pending case for time spent serving another sentence; service of a sentence "severs" the connection between custody and a pending case. No statute or case addresses when an imposed and stayed sentence to jail begins following revocation of probation. But if Dachelet's jail sentence to jail in the other case began on the day of his revocation, November 4, 2022, the connection between Dachelet's jail custody and the present case then pending in the circuit court would have been severed on that date for purposes of sentence credit.

Is Dachelet entitled to credit for his November 4–29, 2022 jail custody?

The circuit court answered yes, granting 25 days of credit for this period.

This Court should answer no.

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<sup>1</sup> The court granted credit for other periods of custody as well. The State challenges the order for credit as to this period only.

<sup>2</sup> *State v. Beets*, 124 Wis. 2d 372, 379, 369 N.W.2d 382 (1985).

## STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Publication is requested. No case or statute addresses when an imposed and stayed sentence to *jail* begins if probation is revoked. Resolution of this issue should be dispositive of the sentence credit question presented in this case. Oral argument is not requested.

## STATEMENT OF THE CASE

Dachelet was convicted upon a jury trial of possession of methamphetamine and felony bail jumping in case number 2020CF33 (“the present case” or “this case”). (R. 174:1, A-App. 12.) He was also convicted upon a guilty plea of felony bail jumping in case number 2022CF44 (“the 2022 case” or “the other case”). (R. 149:12.)

At a sentencing hearing on both convictions in April 2022, the circuit court placed Dachelet on probation for 30 months. (R. 149:21–22.) The court withheld sentence in the present case, and it imposed and stayed a nine-month jail sentence in the 2022 case. (R. 149:21–22.)

Dachelet was arrested in October 2022 and held in jail on multiple probation violations. (R. 120:4, A-App. 17.) He remained in custody when, on November 4, 2022, the Department of Corrections (DOC) issued an order revoking his probation. (R. 120:6, A-App. 19; 156:4, A-App. 70.) DOC referred Dachelet to the circuit court for sentencing in the present case. (R. 120:1, A-App. 14.)

The circuit court held a sentencing hearing on November 29, 2022. (R. 153:1, A-App. 32.) The parties appeared to acknowledge that, as a result of his revocation, Dachelet had already begun serving his previously stayed jail sentence in the 2022 case. (R. 153:4, 8–9, A-App. 35, 39–40.) In the present case, the circuit court imposed sentences of 20 months of initial confinement and 24 months of extended

supervision on the possession of methamphetamine and bail jumping counts, to be served concurrently with each other and with the sentence in the other case. (R. 153:28–30, A-App. 59–61.) The court ordered 83 days of sentence credit. (R. 153:32, A-App. 63.)

By a March 2023 letter, DOC advised the circuit court that the 20-month term of confinement on the possession of methamphetamine count exceeded the statutory maximum; the offense is a Class I felony with maximum confinement time of one year and six months. (R. 156:1, A-App. 67.) DOC also indicated that it believed Dachelet was entitled to additional sentence credit—141 days, not 83 days—based on its credit calculation in the Revocation Order and Warrant. (R. 120:6, A-App. 19; 156:1, 4, A-App. 67, 70.) The revocation order indicated that Dachelet was entitled to credit for his periods of jail custody up through the revocation sentencing hearing. (R. 120:6, A-App. 19; 156:4, A-App. 70.)

The State, by District Attorney Nathan Haberman, submitted a letter in response to DOC's letter. (R. 167:1–2.) The State argued that Dachelet was not entitled to the 58 days of additional credit recommended by DOC. (R. 167:1–2.) The State's argument focused primarily on Dachelet's November 4–29, 2022 custody, a period for which Dachelet later received 25 days of credit. (R. 167:1–2.) But the State also objected to credit for the remainder of the additional 58 days: 33 days of previously unawarded pre-November 4, 2022 custody. (R. 167:1–2.) On appeal, the State no longer disputes that Dachelet is entitled to credit for the 33-day period.

But as to the 25-day period of November 4–29, the State appeared to argue that credit was not available because, when Dachelet's probation was revoked on November 4, the stay was lifted on the jail sentence, and so Dachelet was serving that sentence at the time. (R. 167:1–2.)

The State further argued that this Court's recent decision in *Slater* was distinguishable. (R. 167:1–2.) There, as the State explained, Slater was revoked, which removed the stay on a previously imposed prison sentence. (R. 167:1–2.) But he was held in the county jail following his revocation and was never transported to the prison. Because Slater was never entered in prison, his prison sentence hadn't started under Wis. Stat. § 973.10(2)(b) (a stayed and imposed prison sentence begins “on the date the [revoked] probationer enters the prison”). (R. 167:1–2.) So, Slater's extended jail custody remained in connection with the pending case, and credit was available for this time. (R. 167:1–2.) But here, the State explained, the sentence after revocation was to *jail*, and Dachelet, who was in county custody when he was revoked, began serving the jail sentence on the day of revocation, November 4. (R. 167:1–2.)

Dachelet, by Assistant State Public Defender Jeremy Newman, submitted his own response to DOC's and the State's letters. (R. 168:1–2.) As to his November 4–29, 2022 custody, Dachelet argued that he was entitled to credit under *Slater* “because the 9-month jail sentence imposed in [the 2022 case] will . . . be served in prison,” citing Wis. Stat. § 973.03(2). (R. 168:1.) Dachelet appeared to argue that the jail sentence should be treated as beginning when he is in prison: “[A]s of November 29, 2022, . . . the jail sentence imposed in [the 2022 case] must be treated as a prison sentence and it does not ‘begin’ until Mr. Dachelet arrived in prison.” (R. 168:2.)

At a decision hearing held April 21, 2023, the circuit court ordered the judgment of conviction amended to grant 141 days of credit. (R. 178:8, A-App. 10.) In brief remarks, the court stated that it “does give some weight to the DOC recommendation here.” (R. 178:8, A-App. 10.) “[T]hese are sentences to be served like a prison sentence, and given the



revocation date and sentencing date, the [c]ourt is going to order the 141 days of credit.” (R. 178:8, A-App. 10.)

The State appeals.

### STANDARD OF REVIEW

This case involves the application of undisputed facts to the sentence credit statute, Wis. Stat. § 973.155. Whether on undisputed facts a defendant is entitled to sentence credit under section 973.155 is a question of law this Court decides independently. *State v. Beiersdorf*, 208 Wis. 2d 492, 496, 561 N.W.2d 749 (Ct. App. 1997).

The matter of when an imposed and stayed sentence to jail begins if probation is revoked is also a question of law that is determined *de novo*. *State v. Aderemi*, 2023 WI App 8, ¶ 15, 406 Wis. 2d 132, 986 N.W.2d 306 (an appellate court reviews questions of law independently).

### ARGUMENT

**Dachelet is not entitled to sentence credit for 25 days in custody leading up to his sentencing after revocation because he was serving another sentence at the time.**

**A. Wisconsin Stat. § 973.155 and the “in connection with” requirement**

Under Wis. Stat. § 973.155(1)(a), a convicted offender is entitled to sentence credit for all days spent in custody “in connection with the course of conduct for which sentence was imposed.”<sup>3</sup> “[C]redit is to be given on the eventual sentence for

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<sup>3</sup> Wisconsin Stat. § 973.155(1) provides as follows:

(1)(a) A convicted offender shall be given credit toward the service of his or her sentence for all days spent in custody in connection with the course of conduct for which sentence was

all periods of custody: From arrest to trial, the trial itself, and from the date of conviction to sentence.” *State v. Beets*, 124 Wis. 2d 372, 377, 369 N.W.2d 382 (1985). To be entitled to credit, the offender bears the “burden of demonstrating both ‘custody’ and its connection with the course of conduct for which the Wisconsin sentence was imposed.” *State v. Carter*, 2010 WI 77, ¶ 11, 327 Wis. 2d 1, 785 N.W.2d 516.

**B. Custody spent serving a sentence cannot also be in connection with a pending case.**

When a defendant is serving a sentence and another case is pending, the defendant is not entitled to credit for this time on the pending case. *Beets*, 124 Wis. 2d at 379. Service of the sentence “severs” the connection between custody and the pending case. *Id.*

Robert Darnell Beets was on probation with an imposed and stayed sentence for delivery of a controlled substance when he was arrested for committing a burglary. *Beets*, 124 Wis. 2d at 374–75. DOC revoked Beets’s probation, and he began serving his controlled substance sentence. *Id.*

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imposed. As used in this subsection, “actual days spent in custody” includes, without limitation by enumeration, confinement related to an offense for which the offender is ultimately sentenced, or for any other sentence arising out of the same course of conduct, which occurs:

1. While the offender is awaiting trial;
2. While the offender is being tried; and
3. While the offender is awaiting imposition of sentence after trial.

(b) The categories in par. (a) and sub. (1m) include custody of the convicted offender which is in whole or in part the result of a probation, extended supervision or parole hold under s. 302.113(8m), 302.114(8m), 304.06(3), or 973.10(2) placed upon the person for the same course of conduct as that resulting in the new conviction.

Eventually, Beets was convicted and sentenced on the burglary offense. *Id.* Beets sought credit against his burglary sentence for his custody when serving the controlled substance sentence and awaiting disposition of the burglary charge. *Id.*

The Wisconsin Supreme Court concluded that Beets was not entitled to sentence credit against his new burglary offense for the time he spent in custody after revocation of his probation for the controlled substance offense. *Beets*, 124 Wis. 2d at 379. “[A]ny connection which might have existed between custody for the drug offenses and the burglary was severed when the custody resulting from the probation hold was converted into a revocation and sentence.” *Id.* “From that time on,” the court continued, Beets was serving a sentence, “and whether he was also awaiting trial on the burglary charge was irrelevant, because his freedom from confinement . . . was not in any way related to the viability of the burglary charge.” *Id.*

**C. If a defendant’s probation is revoked, and he has already been sentenced to *prison*, the defendant’s sentence does not begin by statute until he enters the prison.**

If a defendant on probation has already been sentenced to prison, and his or her probation is later revoked, DOC must “order the probationer to prison, and the term of the sentence shall begin on the date the probationer enters the prison.” Wis. Stat. § 973.10(2)(b).

In *Slater*, this Court addressed whether a defendant on probation who had already been sentenced to prison and was later revoked was entitled to credit on a pending case for custody following his revocation. *State v. Slater*, 2021 WI App 88, ¶¶ 13–14, 400 Wis. 2d 93, 968 N.W.2d 740. This Court concluded that he was under the unique circumstances of the case. *Id.*

Joseph L. Slater was on probation with an imposed and stayed sentence of 3 years of initial confinement and 10 years of extended supervision on a drug conviction (possession with intent to distribute cocaine and possession of THC). *Slater*, 400 Wis. 2d 93, ¶ 5. Slater was taken into custody on a new charge of armed robbery, and his probation in the drug case was eventually revoked. *Id.* ¶ 6. For reasons unknown, Slater was never transferred to prison to serve his sentence, and he remained in the county jail awaiting trial in the armed robbery case for the next three years. *Id.* ¶¶ 7–8.

At sentencing in the armed robbery case, the parties and circuit court treated Slater’s three years of jail custody following his revocation as service of the initial confinement portion of his sentence in the drug case. *Slater*, 400 Wis. 2d 93, ¶ 8. Accordingly, the parties agreed, and the court concluded, that Slater was not entitled to credit for this time toward his armed robbery sentence under *Beets*. *See id.* Postconviction, Slater changed his position and requested credit for the three years of jail custody. *Id.* ¶ 9. The court denied the request. *Id.*

This Court reversed, concluding that Slater’s jail custody remained in connection with his pending case under *Beets* because his prison sentence never started. *Slater*, 400 Wis. 2d 93, ¶¶ 13–14. The court noted that under Wis. Stat. § 973.10(2)(b), when a defendant’s probation is revoked, and he or she was already sentenced to prison, the sentence “begin[s] on the date the probationer enters the prison.” Because Slater never entered the prison system, his sentence never began, and thus the connection between his custody and the pending case was not “severed.” *See id.* Slater was thus entitled to credit for the three years of jail custody against his armed robbery sentence, *id.*—and, presumably, against his drug sentence, too, “dual credit” that would not have been available if Slater’s custody had been transferred to prison to serve the drug sentence.

**D. Under the only reasonable view of when Dachelet's jail sentence began, Dachelet was serving a jail sentence November 4–29, 2022, and he is therefore not entitled to credit for this time.**

The circuit court erred in ordering credit in the present case for Dachelet's November 4–29, 2022 custody because, at the time, he was serving a jail sentence. *See Beets*, 124 Wis. 2d at 379.

Neither the statutes nor case law directly addresses when an imposed and stayed *jail* sentence begins if a defendant's probation is revoked. But the only reasonable view is that the jail sentence begins once the defendant first enters the jail following revocation. Here, Dachelet resumed his jail custody on the date of his revocation, November 4, so his jail sentence began on that day. Because Dachelet was serving his sentence in the 2022 case November 4–29, 2022, he is not entitled to the 25 days of credit ordered for this time.

**1. When, as here, a defendant's probation is revoked, and he has already been sentenced to *jail*, his sentence begins upon entering the jail.**

The Legislature has addressed when an imposed and stayed sentence to prison begins if the defendant's probation is revoked: "on the date the probationer enters the prison." Wis. Stat. § 973.10(2)(b); *Slater*, 400 Wis. 2d 93, ¶ 14. It has not addressed when an imposed and stayed *jail* sentence begins following revocation of probation, and no citable Wisconsin case appears to have done so. Wisconsin Stat. § 973.10(2)(b) and *Slater* do not squarely answer this question; an already imposed *jail* sentence does not begin when the defendant enters "the prison," unless the defendant also has an imposed and stayed *prison* sentence that takes effect at the same time as the jail sentence. *See* Wis. Stat.

§ 973.10(2)(b); Wis. Stat. § 973.03(2) (a defendant sentenced to prison must serve any jail sentences in prison).

Of course, Dachelet's and every other imposed and stayed sentence to jail following revocation of probation has a start date. Absent any statute or case law directly on point, the only reasonable view is that, if a defendant's probation is revoked, the defendant's previously imposed and stayed sentence to jail begins once he enters the jail. If a defendant is in jail and remains in custody through the day on which probation is revoked, the sentence to jail begins on the date of revocation.

This is not a usual statutory interpretation case, if one at all, because there is no statute squarely addressing the issue in this case. But statutes establishing when other sentences begin following revocation provides guidance. *See State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, ¶ 46, 271 Wis. 2d 633, 681 N.W.2d 110 (recognizing language of surrounding or closely-related statutes as a source of meaning).

While not directly controlling for the reasons discussed above, Wis. Stat. § 973.10(2)(b), as well as Wis. Stat. § 304.072(4), support the view that, following revocation of probation, an already imposed jail sentence starts when the defendant enters the jail. These statutes provide that a sentence following revocation of probation, parole, or supervision begins or resumes *when the defendant enters the facility to which he or she was sentenced*. If a defendant's probation is revoked, an imposed and stayed sentence to prison begins "on the date the probationer enters the prison." Section 973.10(2)(b). Likewise, section 304.072(4) provides that the prison sentence of a person revoked from parole or extended supervision "resumes running on the day he or she is received at a correctional institution." *State v. Davis*, 2017 WI App 55, ¶ 10, 377 Wis. 2d 678, 901 N.W.2d 488 (citation omitted) (discussing section 304.072(4) as to revocation of

extended supervision); *State v. Presley*, 2006 WI App 82, ¶ 14, 292 Wis. 2d 734, 715 N.W.2d 713 (same).

There does not appear to be any reasonable alternative to this view. A rule that the sentence to jail starts immediately upon revocation without requiring the defendant's entry into or presence in the jail makes little sense; the sentence cannot begin until the defendant is in custody. And any other date—The next day? Three days later?—would be arbitrary.

Further, a special rule that might apply only to a situation like Dachelet's—the defendant is revoked, and is subject to both an imposed and stayed jail sentence and a withheld sentence in another case—that pegs the start date of the jail sentence to an as-yet imposed sentence after revocation in another case would be problematic and unwarranted. Dachelet appeared to argue for such a rule in the circuit court, and the State addresses it in more detail in the next section.

**2. Credit is not available for Dachelet's November 4–29, 2022 custody because the connection between custody and the present case was severed on November 4 when he was revoked and started serving his jail sentence that day.**

Applying the foregoing legal principles to this case, Dachelet is not entitled to sentence credit against his sentence after revocation in the present case for his November 4–29, 2022 jail custody.

At the April 2022 sentencing hearing, the circuit court had imposed and stayed a nine-month jail sentence in the 2022 case and withheld sentence in the present case. DOC's November 4, 2022 revocation order removed the stay on the imposed jail sentence. It is undisputed that Dachelet was in



jail custody on November 4 (he sought credit for that day), and so his jail sentence began on that date. Because he was serving the jail sentence in the 2022 case from November 4–29, he is not entitled to credit against his sentence after revocation in the present case for this time. *See Beets*, 124 Wis. 2d at 379 (service of a sentence severs the connection between custody and a pending case). The circuit court thus erred in granting Dachelet 25 days of credit.<sup>4</sup>

In the circuit court, Dachelet argued that he was entitled to credit from his November 4 revocation to the November 29 revocation sentence because the jail sentence “will . . . be served in prison” pursuant to Wis. Stat. § 973.03(2). (R. 168:1.) While it is true that the lion’s share of the nine-month jail sentence will be served in prison, this fact does not answer the dispositive question of whether the jail sentence began when Dachelet’s probation was revoked on November 4 and he remained in jail custody on that date.

Dachelet also argued that because the jail sentence will be treated as a prison sentence under Wis. Stat. § 973.03(2) “it does not ‘begin’ until Mr. Dachelet arrived in prison.” (R. 168:2.) He thus appears to advocate for a special rule described above that would delay the start date of an already imposed sentence to jail when the defendant is also awaiting sentencing after revocation on a previously withheld sentence. Under such a rule, the jail sentence would presumably then begin at some point in the prison following the sentencing after revocation.

There are problems with a special rule such as this. First, it ties the start date of the jail sentence to an event that may never occur. It assumes that the court will impose a prison sentence after revocation in every case and not some

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<sup>4</sup> The State takes no position on whether November 4–29 is 25 days or is 26 days, inclusive. Regardless, the court erred in granting any credit for this time.



other disposition. Indeed, assuming credit for probation holds, the court could impose a sentence of time served at the sentencing after revocation. Second, there is no apparent rationale for such a rule. The present case and the 2022 case are wholly separate cases, and the sentencing court elected to impose and stay a sentence in the latter and withhold sentence in the former. Finally, having two different rules for determining the start date of an imposed and stayed jail sentence based on whether there is a *second* case awaiting sentencing after revocation would be needlessly confusing for courts, parties, and DOC.

For these reasons, the circuit court erred in granting 25 days of sentence credit for Dachelet's November 4–29, 2022 jail custody. This Court should therefore vacate that portion of the amended judgment of conviction ordering 141 days of sentence credit. It should remand with directions for the circuit court to enter an amended judgment of conviction ordering 116 days of credit.

## CONCLUSION

The portion of the judgment of conviction ordering 141 days of sentence credit should be vacated, and the matter should be remanded with directions to enter an amended judgment of conviction ordering 116 days of credit.

Dated this 22nd day of September 2023.

Respectfully submitted,

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### **FORM AND LENGTH CERTIFICATION**

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 3,520 words.

Dated this 22nd day of September 2023.

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 22nd day of September 2023.

Electronically signed by:

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