STATE OF WISCONSIN

IN SUPREME COURT

Appeal No. 2023AP1371-CR

STATE OF WISCONSIN,

Plaintiff-Appellant,

v.

ANGELA R. JOSKI,

Defendant-Respondent-Petitioner.

PETITION FOR REVIEW

ANGELA R. JOSKI,
Defendant-Respondent-Petitioner

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ISSUE PRESENTED FOR REVIEW

Are statutory early-release mechanisms, including sentence adjustment under WIS. STAT. § 973.195 and the earned release program under WIS. STAT. § 302.05, available to individuals sentenced to a mandatory minimum term of initial confinement under WIS. STAT. § 346.65(2)(am)6?

The circuit court answered yes and granted the sentence adjustment petition.

The court of appeals answered no, because it determined that it was required to do so under its own erroneous precedent: *State v. Gramza*,[1] a 2020 court of appeals opinion that only this Court can overrule. It explained: "Because we are bound to follow *Gramza*, and are thus not free to follow an interpretation of WIS. STAT. § 346.65(2)(am)6. that we believe to be more correct, we conclude the circuit court erred in granting Joski's petition for sentence adjustment, and we reverse."[2]

CRITERIA THAT SUPPORT REVIEW

Angela Joski and the Court of Appeals seek this Court's guidance in interpreting several statutes to determine whether the law allows her to obtain early release from her mandatory minimum sentence through a petition for sentence adjustment under § 973.195.

Judge Gundrum, writing for a unanimous panel in an opinion recommended for publication, suggested that the law would appear to allow for sentence adjustment despite the mandatory minimum sentence, but nevertheless held the opposite because it was required by binding precedent that only this Court can undo: *State v. Gramza*.[3] *Gramza* held that an inmate who successfully completed substance abuse programming under § 302.05 (also known as the earned release program or ERP, because

[1] *State v. Gramza*, 2020 WI App 81, 395 Wis. 2d 215, 952 N.W.2d 836.
[2] *State v. Joski*, 2025 WL 3022487, ¶ 17 (Wis. Ct. App. Oct. 29, 2025).
[3] *Gramza*, 395 Wis. 2d 215.

the statute provides for the remaining initial confinement time to be converted to extended supervision upon completion of the program, allowing for the inmate's release from prison), nevertheless was required to serve his full sentence of confinement because it was the mandatory minimum term under § 346.65(2)(am)6.[4] As Judge Gundrum explained, *Gramza*'s interpretation of § 346.65(2)(am)6. was flawed, but binding. Section 346.65(2)(am)6. requires courts to *impose* a bifurcated sentence with at least three years' initial confinement, but *Gramza* went a step further and interpreted the statute to require those sentenced under § 346.65(2)(am)6. to *serve* at least three years in initial confinement, thereby barring application of § 302.05(3)(c)2.'s clear directive to modify the inmate's bifurcated sentence to allow for release from prison within 30 days following successful completion of the substance abuse program.[5] "Because we are bound to follow *Gramza*, and are thus not free to follow an interpretation of WIS. STAT. § 346.65(2)(am)6. that we believe to be more correct, we conclude the circuit court erred in granting Joski's petition for sentence adjustment, and we reverse."[6] To bluntly paraphrase Judge Gundrum: *Gramza* got the law wrong and we need this Court to fix it. That should be reason enough to grant review.[7]

But there's more. Resolution of the novel question presented by this case will affect the thousands of individuals currently confined in Wisconsin prisons due to an OWI conviction with a mandatory minimum sentence; the agency that is tasked with confining them; and the communities to which these individuals will eventually be released—with or without programming designed to reduce recidivism. In May 2020, the Department of Corrections announced: "The percentage of persons in our care with an OWI offense increased substantially from 3.2% in 2000 to 8.6% in 2019, with

[4] *Id.* at 227-29.
[5] *See Joski*, 2025 WL 3022487, ¶¶ 7–11.
[6] *Id.* ¶ 17.
[7] *See* WIS. STAT. § 809.62(1r)(c)3. & (e).

a peak of 9.3% in 2015."[8] Those figures are from a time period in which inmates sentenced to OWI mandatory minimums were still eligible for early release through ERP and sentence adjustment. The numbers have presumably increased since *Gramza* was decided in November 2020, forcing the DOC to keep inmates otherwise eligible for early release imprisoned for the full mandatory minimum period of confinement. As of December 2024, the DOC's correctional facilities were operating at 130.8 percent of their capacity.[9] The DOC has explained that one of its priorities "is to reduce Wisconsin's prison population in a safe manner maintaining public safety" and that "ERP is one of the very few mechanisms" available to the DOC to accomplish this goal.[10] The DOC's desire to enroll all eligible inmates in ERP is seen in *Gramza* itself, in which the DOC argued in favor of allowed those convicted of seventh-offense OWIs to participate in ERP and, upon successful completion, obtain immediate release.[11] But now, thanks to the Court of Appeals' opinion in *Gramza*, any inmate with a mandatory-minimum sentence cannot enroll in ERP until the mandatory minimum has been served.[12] And without this Court's review, sentence adjustment will be off-limits for these inmates, too. *Gramza*'s erroneous interpretation of § 346.65(2)(am)6 is not only keeping inmates in prison longer but disincentivizing, if not outright blocking, their participation in programs designed to decrease their chances of returning to prison.[13] All this at a time

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[8] DEP'T OF CORRS. *Prison Point-in-Time Populations: 2000-2019*, https://doc.wi.gov/DataResearch/InteractiveDashboards/DAIPointInTime2000to2019.pdf, at 10 (May 2020).

[9] Wisconsin Legislative Fiscal Bureau, *Adult Corrections Program, Informational Paper 60*, https://docs.legis.wisconsin.gov/misc/lfb/informational_papers/january_2025/0060_adult_corrections_program_informational_paper_60.pdf, at 4 (Jan. 2025).

[10] DEP'T OF CORRS. *Earned Release Program FAQs*, https://doc.wi.gov/Documents/TownHalls/FAQs/Earned%20Release%20Program%20FAQs%20-%20November%202023.pdf, at 2 (Nov. 2023).

[11] *See Gramza*, 395 Wis. 2d 215, ¶ 10.

[12] *Earned Release Program FAQ's, supra* note 10, at 4 (Nov. 2023).

[13] *See* DEPT' OF CORRS. OFFICE OF PROG. SERVS. RSCH. & POL'Y UNIT, PRIMARY PROGRAMS REPORT, https://doc.wi.gov/DataResearch/RecidivismReincarceration/Primary%20Program%20Report_2022_FINAL.pdf, at 9 (2022) ("Persons in our care who completed ERP had lower rearrest, reconviction, and reincarceration rates after one, two, and three years compared

where the cost—monetary and human—of overcrowded DOC facilities is weighing more and more heavily on us all.[14] So review is warranted because resolution of this novel question will have statewide impact.[15]

And to top it off, the question of statutory interpretation presented by this appeal will allow this Court to consider *how* to interpret statutes—whether through step-by-step application of *Kalal*'s well-known framework or a more holistic approach.[16]

For all these reasons, review is justified.

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to their peers who met the ERP eligibility criteria, but who did not receive programming.").

[14] *See Adult Corrections Program, Informational Paper 60*, *supra* note 9, at 3 ("In 2023-24, the average daily per capita cost for all adult correctional facilities was $144.88 ($52,881 annually)."); *see also, e.g.*, Andrew Kennard, *Lawsuit Filed Over Eighth Reported Death at Waupun Prison Since 2023*, WISCONSIN EXAMINER (June 2, 2025, 5:20 am), https://wisconsinexaminer.com/2025/06/02/lawsuit-filed-over-eighth-reported-death-at-waupun-prison-since-2023/.

[15] *See* WIS. STAT. § 809.62(1r)(c)2.

[16] *See* WIS. STAT. § 809.62(1r)(e); *see also, e.g.*, *Service Employees International Union Healthcare Wisconsin v. Wisconsin Employment Relations Commission*, 2025 WI 29, ¶51 & n.4 416 Wis. 2d 688, 22 N.W.3d 876 (Dallet, J., concurring).

STATEMENT OF THE CASE

Angela Joski was convicted by a jury of operating while intoxicated as a seventh offense.[17] She was sentenced to the mandatory minimum three years of initial confinement in accordance with WIS. STAT. § 346.65(2)(am)6.[18] After serving about two years and three months in confinement (and successfully participating in several treatment and rehabilitation programs during that time), she petitioned the circuit court for sentence adjustment under WIS. STAT. § 973.195.[19] The circuit court granted the petition, finding that it was in the public interest to do so.[20]

The State appealed, arguing that *Gramza* interpreted § 346.65(2)(am)6. to require an individual convicted of OWI seventh to serve the full three-year-mandatory-minimum term of confinement prior to release, and therefore Joski could not benefit from sentence adjustment, regardless of § 973.195.[21]

Judge Gundrum, writing for a unanimous panel in an opinion recommended for publication, agreed with the State—but bemoaned his inability to independently interpret the statutes.[22] "Because we are bound to follow *Gramza*, and are thus not free to follow an interpretation of WIS. STAT. § 346.65(2)(am)6. that we believe to be more correct, we conclude the circuit court erred in granting Joski's petition for sentence adjustment, and we reverse."[23]

ARGUMENT

This appeal asks whether WIS. STAT. § 973.195 allows a circuit court to adjust a sentence imposed under WIS. STAT. § 346.65(2)(am)6. It's a novel question that requires interpretation of more than one statute—but the

[17] *Joski*, 2025 WL 3022487, ¶ 2.
[18] *Id.*
[19] *Id.* ¶ 3.
[20] *Id.* ¶ 5.
[21] *Id.* ¶ 7.
[22] *Id.* ¶ 16.
[23] *Id.* ¶ 17.

opinion below did not engage in that statutory interpretation because it concluded that it was bound by *Gramza* to answer the question presented in the negative.[24]

In *Gramza*, the Court of Appeals held that "the mandatory minimum term of initial confinement of the OWI-7th statute must be served in full by Gramza, regardless of his successful completion of [ERP]."[25] It did so in spite of the mandatory language of WIS. STAT. § 302.05(3)(c)2. requiring release of an inmate who successfully completes ERP within 30 days—and in spite of the DOC's request that the court follow that mandatory language.[26]

As Judge Gundrum explained, *Gramza* got it wrong.[27] *Gramza* purported to focus its analysis on statutory language. But in reality, it focused on language found within a Legislative Reference Bureau analysis cited by *State v. Williams*,[28] in which this Court interpreted an earlier version of § 346.65(2)(am)6. to require imposition of a bifurcated sentence with at least three years of initial confinement (rather than, as the defendant argued, requiring three years' initial confinement *if* a bifurcated sentence is imposed—a very different issue than the one addressed in *Gramza*).[29] *Williams* turned to legislative history after concluding that § 346.65(2)(am)6. was ambiguous on that point and quoted an LRB analysis as stating:

> The substitute amendment requires a person who commits a seventh, eighth, or ninth OWI-related offense to *serve* a minimum period of confinement

[24] *Id.* ¶¶ 13, 16.
[25] *Gramza*, 395 Wis. 2d 215, ¶ 26 (citing *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶ 46, 271 Wis. 2d 633, 681 N.W.2d 110).
[26] *See id.* ¶¶ 10, 17.
[27] *Joski*, 2025 WL 3022487, ¶ 11 & n.4.
[28] *State v. Williams*, 2014 WI 64, 355 Wis. 2d 581, 852 N.W.2d 467.
[29] *Williams*, 355 Wis. 2d 581, ¶ 40; *see also Joski*, 2025 WL 3022487, ¶ 11 & n.4.

> o[f] three years in prison under a bifurcated sentence . . . .[30]

Gramza relied on that the single word, "serve," to hold that an individual sentenced on an OWI seventh must *serve* the full three years of initial confinement that must be *imposed* by the sentencing court under § 346.65(2)(am)6.—even if the individual successfully completes ERP, at which point § 302.05(3)(c)2. explicitly requires their release.[31]

It's not that *Gramza* shouldn't have considered the LRB analysis, but that it should have considered *more* than just the LRB analysis. Hyper-fixation on a single word runs the risk of ignoring other available evidence of the statutory meaning—such as the following timeline.

July 2002	Truth-in-Sentencing II is implemented through the passage of 2001 Wisconsin Act 109.[32] Inclusion of the sentence adjustment program was a "critical compromise" leading to passage of Act 109, allowing all inmates to petition for early release from prison except those convicted of "the most serious classes of felonies."[33]
July 2003	2003 Wisconsin Act 33 creates the earned release program (ERP), allowing eligible inmates who successfully complete the substance abuse program to obtain release to extended supervision within 30 days.[34]

[30] *Williams*, 355 Wis. 2d 581, ¶ 40 (quoting Drafting File, 2009 WI Act 100, *Analysis by the Legislative Reference Bureau* of Substitute Amendment 1 for 2009 S.B. 66, Legislative Reference Bureau, Madison, Wis.) (emphasis added).
[31] *See Gramza*, 395 Wis. 2d 215, ¶¶ 20–22.
[32] 2001 WI Act 109.
[33] Thomas J. Hammer, *The Long and Arduous Journey to Truth-in-Sentencing in Wisconsin*, 15 FED. SENT. REP. 1, 15, 17 (Oct. 2002).
[34] 2003 WI Act 33 § 2505.

June 2005	A majority of this Court announced that circuit courts may grant sentence adjustment even when a district attorney objects to the petition.[35]
May 2009	A Legislative Fiscal Bureau report to the Joint Committee on Finance explains: "All inmates are eligible" for ERP "except inmates who are incarcerated for crimes against life and bodily security (crimes under Chapter 940 of the statutes), or for sex crimes against a child," and upon successful completion, the inmate must be "released to extended supervision within 30 days."[36]
June 2009	2009 Wisconsin Act 28 expands ERP so that more eligible inmates could participate.[37]
December 2009	2009 Wisconsin Act 100 creates the statutory language at issue in *Williams*: for seventh, eighth, and ninth offense OWIs, "the confinement portion of a bifurcated sentence imposed on the person under § 973.01 shall be not less than 3 years."[38]
August 2011	2011 Wisconsin Act 38 repeals "most of the provisions of the sentencing modification laws that were created or affected by 2009 Wisconsin Act 28," but specifically "retains and restores" the sentence adjustment program and ERP.[39]
April 2014	2013 Wisconsin Act 224 corrects the statutory language at issue in *Williams* and confirms that courts must impose a

[35] *State v. Stenklyft*, 2005 WI 71, ¶¶ 106-08, 281 Wis. 2d 484, 697 N.W.2d 769 (Abrahamson, C.J., concurring in part); *Id.* ¶ 128 (Crooks, J., concurring in part); *see also Joski*, 2025 WL 3022487, ¶ 15 (recognizing that the lead opinion in *Stenklyft* was not a majority).

[36] Legislative Fiscal Bureau, *Earned Release and Challenge Incarceration Program Expansions (Corrections – Sentence Modifications)* (May 26, 2009), https://docs.legis.wisconsin.gov/misc/lfb/budget/2009_11_biennial_budget/103_budget_papers/276_corrections_earned_release_and_challenge_incarceration_program_expansions.pdf, at 2.

[37] 2009 WI Act 28 § 2703.

[38] 2009 WI Act 100 § 43.

[39] Wisconsin Legislative Council Act Memo for 2011 Wis. Act 38 (Aug. 2011), https://docs.legis.wisconsin.gov/2011/related/lcactmemo/act038.pdf.

	three-year mandatory minimum term of confinement for seventh, eighth, and ninth offense OWIs.[40]
July 2014	This Court announces in *Williams* that under the statutory language created by 2009 Wisconsin Act 100, courts must impose a three-year mandatory minimum term of confinement for seventh, eighth, and ninth offense OWIs.[41]

Much more can be said about this timeline and the sources cited within it, but for now, let it suffice to say that the sentence adjustment program, earned release program, and mandatory minimum prison sentences for OWIs were all created by the legislature in less than a decade, and key changes to those statutory schemes were made within just a few years of each other. If the legislature wanted to preclude inmates on OWI mandatory minimum sentences from eligibility for sentence adjustment and ERP, all it had to do was say so. It had the perfect opportunity to do so in 2011, when it reined in early release provisions less than two years after it created mandatory minimum prison sentences for seventh-offense and higher OWIs. It chose not to add any additional exceptions to eligibility for sentence adjustment or ERP. As Judge Gundrum explained, "[t]he legislature's choice to except only Class B felonies from the applicability of § 973.195 strongly indicates the legislature intended no other exceptions, such as for an OWI-seventh offense," and "nothing in § 346.65(2)(am)6. indicates the full three years of confinement must be *served* by a defendant sentenced thereunder."[42]

And when considering the purpose of ERP and sentence adjustment, it's no surprise that the legislature didn't see fit to preclude OWI offenders from participation. ERP provides treatment to inmates with substance use disorders.[43] Sentence adjustment petitions generally require proof of the inmate's post-sentencing "conduct, efforts at and progress in rehabilitation,

[40] 2013 WI Act 224 § 4.
[41] *Williams*, 355 Wis. 2d 581, ¶ 47.
[42] *Joski*, 2025 WL 3022487, ¶¶ 14–15.
[43] WIS. STAT. § 302.05(1).

or participation and progress in education, treatment, or other correctional programs."[44] The goal is to motivate offenders to complete treatment and thereby reduce recidivism—OWI offenders should be no exception; they would seem, on the whole, to be perfect candidates for such rehabilitation.

Looking at the statutory language with eyes wide open, the meaning of § 346.65(2)(am)6. is clear: WIS. STAT. § 346.65(2)(am)6. requires courts to *impose* a mandatory minimum prison sentence, but does not necessarily require defendants to *serve* that mandatory minimum, just as the DOC explained five years ago.[45] If defendants deemed eligible for ERP successfully complete substance abuse programming, and if defendants deemed ineligible manage to rehabilitate themselves through treatment, programming, and education while serving at least 75 percent of their initial term of confinement, the law allows for the remainder of their term of confinement to be converted to extended supervision, thereby allowing them to prove their rehabilitation in the community (and allowing the court to revoke supervision and return them to prison if it becomes clear that their rehabilitative efforts were unsuccessful).

CONCLUSION

For these reasons, Angela Joski asks this Court to accept review.

Dated at Madison, Wisconsin, November 25, 2025.

Respectfully submitted,

ANGELA R. JOSKI,
Defendant-Respondent-Petitioner

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[44] WIS. STAT. § 973.195(1r)(b)1.
[45] *See Gramza*, 395 Wis. 2d 215, ¶ 10.

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CERTIFICATION

I hereby certify that this petition conforms to the rules contained in § 809.19(8)(b), (bm) and § 809.62(4). The length of this petition is 2,768 words.

APPENDIX CERTIFICATION

I hereby certify that filed with this petition is an appendix that complies with § 809.62(2)(f) and that contains: (1) the decision and opinion of the court of appeals; (2) the judgments, orders, findings of fact, conclusions of law and memorandum decisions of the circuit court and administrative agencies necessary for an understanding of the petition; (3) any other portions of the record necessary for an understanding of the petition; and (4) a copy of any unpublished opinion cited under § 809.23(3)(a) or (b).

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of 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.

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