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CLERK OF WISCONSIN
SUPREME COURT

STATE OF WISCONSIN

IN SUPREME COURT

No. 2023AP1371-CR

STATE OF WISCONSIN,

Plaintiff-Appellant,

v.

ANGELA R. JOSKI,

Defendant-Respondent-Petitioner.

RESPONSE TO PETITION FOR REVIEW

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CRITERIA FOR REVIEW

Review is not warranted. The court of appeals correctly applied the law and reached the right result. It correctly reversed the circuit court's discretionary grant of early release under the sentence adjustment statute, concluding that the law requires Angela R. Joski to serve the statutorily mandated three-year confinement sentence for her operating a motor vehicle while intoxicated as a seventh offense (OWI-7th) conviction. The published decision on which the court of appeals relied also reached the correct conclusion: that Jack Gramza, an OWI-7th defendant who completed substance abuse programming (SAP) and sought early release after serving six months of a three-year confinement sentence, was required to serve the statutorily mandated three-year confinement sentence.¹ Joski argues that *Gramza* was wrongly decided (Pet. 7), but beyond that, she satisfies none of the subsections of Wis. Stat. § (Rule) 809.62(1r), "Criteria for granting review."

- The petition satisfies neither sub. (1r)(c)3. nor sub. (1r)(e).

It is true that the court of appeals stated in its published decision that the panel was "bound to follow *Gramza*" despite the fact that it "question[ed] the correctness of [its] interpretation."² It offered "a different interpretation," consisting of three sentences addressing the sentencing statute and three addressing the sentence adjustment

¹ *State v. Gramza*, 2020 WI App 81, ¶¶ 2–3, 395 Wis. 2d 215, 952 N.W.2d 836. It elected not to certify the question to this Court under Wis. Stat. § (Rule) 809.61, a procedure by which the court has traditionally sought this Court's guidance.

² *State v. Joski*, No. 2023AP1371-CR, 2025 WL 3022487, ¶¶ 13, 17 (Wis. Ct. App. Oct. 29, 2025). (Pet-App. 10, 12.)

statute.³ Its disagreement with *Gramza* was essentially that the legislature intended the mandatory minimum statute only to require that a sentencing court “impose” a three-year confinement sentence, and not to require that a defendant actually serve it. But it is not true, as Joski asserts, that the court’s commentary about *Gramza* “should be reason enough to grant review” under two of the statutory criteria. (Pet. 7.)

In connection with this assertion, Joski references by footnote two subsections from 809.62(1r); she neither quotes nor applies them. (Pet. 7.)

First, sub. (1r)(c)3., that “[a] decision by the supreme court will help develop, clarify or harmonize the law, and . . . [t]he question presented is not factual in nature but rather is a question of law of the type that is likely to recur unless resolved by the supreme court.” Of course any case involving the interpretation of statutes presents a question of law. But it does not satisfy sub. (1r)(c)3. because the question presented is answered in binding authority and thus is settled and won’t recur. Asserting that the binding authority is wrongly decided does not satisfy this criteria.

Second, Wis. Stat. § (Rule) 809.62(1r)(e), that “[t]he court of appeals’ decision is in accord with opinions of the supreme court or the court of appeals but due to the passage of time or changing circumstances, such opinions are ripe for reexamination.” Again, satisfying this requires more than an assertion that a case was wrongly decided. *Gramza* is a five-year-old case. This Court ordered a response and denied review in *Gramza*.⁴ Joski has not shown that “the passage of

³ *Joski*, 2025 WL 3022487, ¶¶ 14, 15. (Pet-App. 10–11.)

⁴ *State v. Gramza*, 2022 WI 86, 988 N.W.2d 284 (2021) (*denying review*).

time or changing circumstances” necessitate reexamining the decision.

Furthermore, Joski’s view that *Gramza* “got the law wrong” (Pet. 7) does not engage in a serious way with the facts on the ground in that case, the public safety consequences of requiring circuit courts to grant early release of OWI 7th, 8th and 9th offenders in similar cases, or the precedent from this Court that provided a legal and logical basis for the court of appeals’ decision in that case.

Gramza—who, as the circuit court pointed out, had received mandatory programming for his first, second, third, fourth, fifth and sixth OWIs—had nevertheless committed a seventh offense; he had then served just six months of a confinement sentence when the Department of Corrections sent a letter notifying the court to release him within 30 days, pursuant to the substance abuse program statute. The record in *Gramza* reflected the circuit court’s experience with and knowledge of the grave risks repeat OWI offenders pose to the public.

This Court has stated that the legislature’s current “graduated penalty structure with increasing mandatory minimums” for OWI offenses serves three purposes: “greater punishment for more serious offenses,” “treatment during confinement,” and public protection “by keeping repeat offenders confined for longer periods of time.”⁵

As the State argued in its briefing in *Gramza*, if SAP mandatory release is untethered from the mandatory minimum sentence statute, there is no longer any coherence to the “graduated penalty structure with increasing mandatory minimums” that was created by the Legislature and recognized by *Williams*. As the circuit court noted in

⁵ *State v. Williams*, 2014 WI 64, ¶ 36, 355 Wis. 2d 581, 852 N.W.2d 467.

refusing to grant early release to Gramza, construing the early release provision of the SAP statute to require release would have resulted in a confinement sentence for an OWI-7th that would be less than the average sentence for an OWI-3rd, which, the circuit court noted, is not even a felony. In *Williams*, this Court rejected the statutory interpretation advocated by the defendant in large part because his interpretation “less effectively protects the public because it *allows courts to release someone who just committed a seventh or higher OWI offense.*”⁶ The purpose of protecting the public for a longer period from a repeat drunk driver would not have been served by an interpretation of the statute that effectively nullified the graduated penalty structure adopted by the legislature.

- The petition does not satisfy sub. (1r)(c)2.

Joski argues that “resolution of this novel question will have statewide impact” because, she argues, “*Gramza’s* erroneous interpretation . . . is not only keeping inmates in prison longer but disincentivizing . . . their participation in programs designed to decrease their chances of returning to prison,” and “the cost—monetary and human—of overcrowded DOC facilities is weighing more and more heavily on us all.” (Pet. 8–9.) She footnotes to sub. (1r)(c)2.: “[a] decision by the supreme court will help develop, clarify or harmonize the law, and . . . [t]he question presented is a novel one, the resolution of which will have statewide impact.”

It is evident that a decision in any case involving an OWI penalty is going to have statewide impact. Wisconsin has a drunk driving problem, and it remains “the only state where the penalty for a first-offense OWI is a civil forfeiture.”⁷ But

⁶ *Williams*, 355 Wis. 2d 581, ¶ 38 (emphasis added).

⁷ *City of Cedarburg v. Hansen*, 2020 WI 11, ¶ 14 n.9, 390 Wis. 2d 109, 938 N.W.2d 463 (*paragraph 30 of opinion modified on reconsideration*, 2020 WI 45, 391 Wis. 2d 671, 943 N.W.2d 544).

Joski offers no explanation of what makes the question “a novel one.”

- The statutory interpretation angle doesn’t render the petition worthy of review pursuant to sub. (1r)(e).

Finally, Joski asserts that this case is a good vehicle for a re-examination of the law governing statutory interpretation itself because it requires interpreting statutes. (Pet. 9.) She footnotes to sub. (1r)(e), which states that this Court considers granting review of decisions that are “in accord with opinions of the supreme court or the court of appeals” but are “ripe for reexamination” “due to the passage of time or changing circumstances.”

First, that is a slender reed on which to rest a petition for review; there is no shortage of petitions presenting questions of statutory interpretation, any one of which offers the same opportunity. Second, Joski develops no argument that a different interpretive approach makes a difference in the outcome of the interpretation of the mandatory minimum statute and the early release statutes. And while she faults the *Gramza* court for “rel[ying] on that single word, ‘serve,’” for its holding (Pet. 12), she ignores that the *Joski* decision, in cursory analysis, also bases its analysis on a single word: “impose.”⁸ Further, it did so without examining or addressing any definition of “impose,”⁹ which connotes that whatever penalty is being pronounced is the actual penalty. A representative definition offered for “impose” is “to lay on or set as something to be borne, endured, obeyed, fulfilled, paid,

⁸ *Joski*, 2025 WL 3022487, ¶ 15. (Pet-App. 10–11.)

⁹ Courts “rely on dictionary definitions when the legislature fails to provide a definition in the statute.” *Int. of A.L.*, 2019 WI 20, ¶ 16, 385 Wis. 2d 612, 923 N.W.2d 827.

etc.”¹⁰ Consistent with the rules of statutory interpretation, the *Gramza* court properly declined to interpret the word “impose” contrary to “its common, ordinary, and accepted meaning.”¹¹

As for Wis. Stat. 346.65(2)(am)6., establishing a mandatory minimum confinement sentence for defendants convicted of OWI 7th, 8th and 9th offenses, the State agrees that “the meaning of [the statute] is clear.” (Pet. 15.) There is no reasonable interpretation of the legislative intent behind that statute that would grant release into the community to a defendant six months after his conviction on an OWI as a 7th, 8th or 9th offense. The *Gramza* decision got it right. Review is not warranted.

¹⁰ Dictionary Online,
<http://www.dictionary.com/browse/impose> (last visited
Dec. 6, 2025).

¹¹ *Int. of A.L.*, 385 Wis. 2d 612, ¶ 11 (citation omitted).

CONCLUSION

This Court should deny review.

Dated this 9th day of December 2025.

Respectfully submitted,

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FORM AND LENGTH CERTIFICATION

I hereby certify that this response conforms to the rules contained in Wis. Stat. §§ (Rules) 809.19(8)(b), (bm) and 809.62(4) for a response produced with a proportional serif font. The length of this response is 1,574 words.

Dated this 9th day of December 2025.

Electronically signed by:

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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 9th day of December 2025.

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