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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

Case No. 2023AP1371-CR

STATE OF WISCONSIN,
Plaintiff-Appellant,

v.

ANGELA R. JOSKI,
Defendant-Respondent.

ON APPEAL FROM AN ORDER GRANTING SENTENCE
ADJUSTMENT ENTERED IN THE CIRCUIT COURT
FOR WALWORTH COUNTY, THE HONORABLE
DANIEL STEVEN JOHNSON PRESIDING

REPLY BRIEF OF PLAINTIFF-APPELLANT

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TABLE OF CONTENTS

ARGUMENT	3
This Court’s interpretation of the mandatory minimum sentence statute requires that Joski serve her three-year term of initial confinement in full.....	3
A. Joski has conceded the State’s arguments by failing to contest them.....	3
B. <i>Gramza</i> forecloses Joski’s arguments.	4
CONCLUSION.....	5

TABLE OF AUTHORITIES

Cases

<i>Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.</i> , 90 Wis. 2d 97, 279 N.W.2d 493 (Ct. App. 1979).....	3
<i>State v. Gramza</i> , 2020 WI App 81, 395 Wis. 2d 215, 952 N.W.2d 836.....	3, 5
<i>State v. Shaffer</i> , 96 Wis. 2d 531, 292 N.W.2d 370 (Ct. App. 1980).....	3

Statutes

Wis. Stat. § 302.05	3
Wis. Stat. § 346.65(2)(am)6.	4
Wis. Stat. § 973.195	4

ARGUMENT

This Court’s interpretation of the mandatory minimum sentence statute requires that Joski serve her three-year term of initial confinement in full.

A. Joski has conceded the State’s arguments by failing to contest them.

On appeal, Joski makes no attempt to respond to the State’s brief-in-chief argument that “under *Gramza*, Joski must fully serve the required term of initial confinement prescribed by section 346.65 ‘regardless of’ the early release option under the sentence adjustment statute.” (State’s Brief 10.) In *Gramza*, this Court concluded that “granting . . . early release to extended supervision” under Wis. Stat. § 302.05 would conflict with “the OWI-7th statute’s requirement of serving the full three year term of initial confinement.” *State v. Gramza*, 2020 WI App 81, ¶ 24, 395 Wis. 2d 215, 952 N.W.2d 836.

By failing to contest the State’s argument, Joski concedes it. See *Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (holding that unrefuted arguments are deemed admitted). Furthermore, besides referencing the sentence adjustment statute, Joski develops no legal argument in support of the circuit court’s order but in conclusory fashion states that “[t]his Court should uphold [it].” (Joski’s Br. 5.) This Court does not ordinarily consider arguments unsupported by references to legal authority. See *State v. Shaffer*, 96 Wis. 2d 531, 545–46, 292 N.W.2d 370 (Ct. App. 1980).

B. *Gramza* forecloses Joski’s arguments.

In its brief-in-chief, the State relied on the statute creating a mandatory minimum prison sentence for persons convicted of OWI as a seventh offense, as Joski was, and this Court’s interpretation of it. The State argued that *Gramza*’s reasoning showed that “some defendants— those who receive sentences that don’t exceed the statutory minimum prison term for their offense—don’t have the kind of sentence that can be adjusted under another statute.” (State’s Br. 11.)

Joski does not respond to these arguments and references neither the mandatory minimum statute nor *Gramza*.

Joski argues that the circuit court’s order was consistent with the sentence adjustment statute, Wis. Stat. § 973.195. (Joski’s Br. 4.) The State does not dispute that this would end the analysis if Joski were not sentenced to a bifurcated sentence with “a confinement portion” that must be “not less than 3 years.” See Wis. Stat. § 346.65(2)(am)6.

For the same reason, it is not an answer to argue that “the overall length of [her] bifurcated sentence has not changed.” (Joski’s Br. 4.) The total length is not the question; the statute prescribes a minimum “confinement portion.” See Wis. Stat. § 346.65(2)(am)6.

Joski also argues that “[i]gnoring” the positive incentives the hope of early release provides is counterproductive. (Joski’s Br. 4.) The problem is that granting the sentence adjustment in this case ignores the legislature’s requirement that Joski serve a “confinement portion” of her sentence that is “not less than 3 years.” See Wis. Stat. § 346.65(2)(am)6. In *Gramza*, this Court held that “the most reasonable interpretation” of the mandatory minimum statute in circumstances such as this is one that requires an inmate to serve “in full” the required confinement

portion, “regardless of” any eligibility for release under any other statute. *Gramza*, 395 Wis. 2d 215, ¶ 26.

CONCLUSION

This Court should reverse the circuit court’s order granting Joski early release until she has fully served the mandatory minimum confinement portion of three years set by statute for her OWI—7th offense conviction.

Dated this 21st day of February 2024.

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 568 words.

Dated this 21st day of February 2024.

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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.

I further certify that a copy of the above document was mailed on February 21, 2024, to:

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Dated this 21st day of February 2024.

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