

STATE OF WISCONSIN
IN SUPREME COURT

FILED

MAY 11 2022

**CLERK OF SUPREME COURT
OF WISCONSIN**

No. 2021AP1949-CR

STATE OF WISCONSIN,
Plaintiff-Respondent,

v.

MICHAEL J. LEIGHTON,
Defendant-Appellant-Petitioner.

RESPONSE TO PETITION FOR REVIEW

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CRITERIA FOR REVIEW

The issue Petitioner presents does not satisfy the criteria for review—and he makes no attempt to show that it does.

“Supreme court review is a matter of judicial discretion, not of right, and will be granted only when special and important reasons are presented.”¹ Petitioner references none of the statutory criteria for granting review in Wis. Stat. § (Rule) 809.62(1r). Nevertheless, he asks this Court to grant review and reverse a discretionary decision of the circuit court because it “did not reason through the factors in a reasonable way.” (Pet. 3.) He asks for error correction in a case where there was no error, and he ignores the appellate standard of review for circuit courts’ discretionary rulings.

The court of appeals concluded that because the circuit court “considered the pertinent facts, applied the correct law, and reached a reasonable determination, it did not erroneously exercise its discretion.” (Pet-App. 101.) It noted that “the standard of appellate review requires this court to affirm.” (Pet-App. 105.) The court of appeals reviewed the circuit court’s decision, which was made after a hearing on Leighton’s motion. (Pet-App. 104.) The circuit court applied the factors from *State v. Davis*,² weighing the delay’s adverse impact on Leighton against the victim’s constitutional right to restitution. (Pet-App 103.)

Leighton does not dispute that the circuit court applied the correct law. (Pet. 5–9.) He argues that the relevant legal factors should have been weighed differently and the decision made in his favor, rather than in the favor of the victim to whom restitution was owed. (Pet. 9–10.) This is merely an

¹ Wis. Stat. § (Rule) 809.62(1r).

² *State v. Davis*, 2001 WI 136, 248 Wis. 2d 986, 637 N.W.2d 62.

argument that the circuit court *could* have reached a different result, and it is not sufficient grounds for reversing a discretionary decision. He complains that the court of appeals “ignored a large portion of arguments made by the defense” (Pet. 10), but the court of appeals was correctly focused on the applicable standard of review for discretionary decisions.

The State also notes that Leighton’s petition includes the statement that the delay in the case “diminishe[d] his ability to receive concurrent time” (Pet. 8), but before the petition was filed, Leighton did, in fact, receive a sentence of 60 days in jail, concurrent to his prison sentence, as the State pointed out in its brief to the Court of Appeals.³

This Court should deny Leighton’s petition for review of the decision that affirmed the circuit court’s exercise of discretion. The case is routine, unpublished, and correctly decided.

³ Wisconsin Circuit Court Access, *State of Wisconsin v. Michael J. Leighton*, Kenosha County Case Number, 2021CM177 (sentencing hearing on June 1, 2021).

Dated this 11th day of May 2022.

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 454 words.

Dated this 11th day of May 2022.



SONYA K. BICE
Assistant Attorney General

**CERTIFICATE OF COMPLIANCE WITH
WIS. STAT. §§ (RULES) 809.19(12) and 809.62(4)(b)
(2019-20)**

I hereby certify that:

I have submitted an electronic copy of this response, excluding the appendix, if any, which complies with the requirements of Wis. Stat. §§ (Rules) 809.19(12) and 809.62(4)(b) (2019-20).

I further certify that:

This electronic response is identical in content and format to the printed form of the response filed as of this date.

A copy of this certificate has been served with the paper copies of this response filed with the court and served on all opposing parties.

Dated this 11th day of May 2022.



SONYA K. BICE
Assistant Attorney General