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DISTRICT IV

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CASE NO. 2018AP000799-CR

CURCUIT COURT CASE NO. 207-CF0001506

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STATE OF WISCONSIN,  
    plaintiff-respondent

VS.

JAMES A CULVER  
    defendant-appellant

---

ON APPEAL FROM AN ORDER DENYING POSTCONVICTION RELIEF  
ENTERED IN DANE COUNTY CIRCUIT COURT, THE HONORABLE  
TIMOTHY C. SAMUELSON, PRESIDING.

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REPLY BRIEF OF DEFENDANT-APPELLANT

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JAMES A CULVER

FILED PRO-SE

JAMES A CULVER 291061  
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## ISSUES PRESENTED

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In 2008 the Honorable Circuit Court as i believe misused there authorities to move a 6th OWI class H felony to an unclassified felony. To go abouve and beyound the legilature in making laws, and state stats. as this case should fall under 973.01 EXCESSIVE ERRORS CURED and sentence for the defendant-appellant should be (REVERSED & AMENDED).

Due to the postconviction was an unlawful sentence.

## INTRODUCTION

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The state argues that the defendant-appellant has waited over 10 years to view this mistake at hand. I only became aware of this mistake in December, 2016 by an attorney doing an extent look at this case at hand.

If the defendant-appellant new this was an issue in 2008 the defendant Mr. Culver would of never agreed to the plea agreement, and would of raised this issue in 2008. This is why defendants hire attorneys because we trust they know the (LAW) and have our best intrest in all matters.

I also agree with the state if we can not conclude this matter (the out come should be returned for new sentencing to correct this matter at hand).

## ARGUEMENT

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1. According, the state moved to amend the information to reflect that Mr. Culvers offense should of been charged as an unclassified felony rather than a class H felony (R.21.1-22.1.)

See State v. Gallion, 2004 WI 42, 270 wis. 2d 535, 678 N.W. 2d 197. (OVERVIEW) on further review wis. stats. 973.017 (10m) (2001-02) required that the sentencing court set forth the exercise of sentencing direction on the record, including a statement of reason.

The state also admits that the record does not show or indicate why it was amended to unclassified felony. The sentencing transcripts (WENT OFF RECORD DURING THIS DISCUSSION), and when back on record did not clarify the reason to amend this case at hand.

Also see wis.stats. 967.055 (2) dismissing or amending charges if the prosecutor seeks to dismiss or amend a charge under wis. stats. 346.63 (1) where the offense involved a (VEHICLE) the prosecutor shall apply to the court the application shall state the reason for the proposed (AMENDMENT OR DISMISSAL).

Sentencing transcripts clearly state no one knows why this action took place as it does not state or give reason on the record

(NOTE) page 3 paragraph 3 states brief the plea hearing transcript is not extant to amended charges also see (R36.1) plea hearing transcripts.

2. State argues that the defendant-appellant does not argue that the Dane County Circuit Court the honorable judge Samuelson solely based its decision on unpublished cases such as State v. Smith-IWER no. 2013AP1426-CR and also State v. Robinson no. 2012AP2498-CR. The honorable court did not offer any other case to justify its decision in this matter.

For the honorable court to use (per-curiam) 809.23(3)(b) cases as listed above State v. Smith-IWER (unpublished), State v.

Robinson also (unpublished). Even the state agrees with this finding because this is an unpublished opinion is not authored it may not be cited (EVEN FOR PERSUASIVE VALUE), stated on pg. 14, in number 6 of states brief.

Refer to motion hearing on April 2, 2018 with Honorable Timmothy C. Samuelson presiding in transcripts on pg. 8 (22-23) Honorable Judge states (BUT I FIND BOTH ARE PERSUASIVE ESPECIALLY SMITH-IWER).

So i conclude the Circuit Court made a decision solely based on, (UNPUBLISHED OPINIONS (per-curiam 809(3)(b) CASES)).

3. The state argues that the defendant-appellant does not explain what case controls this appeal it has been pointed out (STATE V. VOLK, 2002 WI App 274, 258 Wis. 2d 584, 654 N.W. 2d 24). See defendant-appellant first brief pages 3,4,5. Also see motion hearing transcripts as Honorable Judge Samuelson states on page 8, 14, thought ( STATE V. VOLK WAS RIGHT ON POINT).

State v. Jackson 2004 WI 29, 270 Wis. 2d 113, 676 N.W. 872. Is being cited to show (third and fourth) OWI are the last unclassified felonys.

(note) Under Tis-II only a few unclassified felonys remain these include operating a automobile while intoxicated with a minor passenger (third or fourth offense). Wis. Stats. 346.65 (2) (f) and the felony enhancement of committing domestic abuse during the 72 hour period following a domestic abuse incident. (see)

State v. Jackson 2004 Wi. 29, 270 Wis. 2d 113, 676 N.W. 872

Foremost this should of been Mr. Culvers 6th OWI see page 2 last parsgraph ( at plea sentencing the parties and the court

agreed that infact this would be Mr. Culvers sixth DWI offense. Stated in states red brief. If the Legislature intended for the 5th of 6th DWI to be unclassified they would be listed under unclassified felonys there are not. (instead they are class H felonys). The court was outside ther juisdiction to make that change to unclassifie.

(note) The legislature has since reclassified an DUI 5th or 6th offense to a class G felony (if it were ment to be unclassified it would be now it would not moved to a class G.

4. The use of imprisonment and extended supervision to mean the same word. state v. Cole 2003 wi 59, 262 wis.2d 167, 663 N.W. 2d 700. The court also examined several factors that supported that conclusion, including that the word imprisonment, imprisioned used once in wis. stats. 961.41(1)(cm)(3). Should not be const-rued to have two meanings.

This applies to penalty at hand imprisonment and extended supervision two differnt meanins. In support state ex-rel Kalal v. cir. ct. for dane county 2004 wi 58, 271 wis 2d 633, 681 N.W. 2d 110. (AMBIGUITY) keep focus on the statutory langage.

(note) Unpublished, per-ceriam decision 809.23(3)(b) state v. Gray, 2013 wisc. app. lexis 103 refer to (p.3-p.4) Mr. Gray received 3 years imprisonment and 5 years extended supervision, (an 8 year sentence) based on wis. stats. 346.65 (2)(f) enhancer. (max sentence exposure was 12 years). on postconviction motion, Circuit Court changed out time to 3 years extended supervision, the max extended supervision allowed on a class H felony.

5. For the state to cite state v. hardick, 114 wis 2d 54, 422, N.W. 2d 922 (ct. app 1988) and state v. Johnson, 2001 wi app 105



(9), 244 wis 2d 164, 628 N.W. 2d 431. and state v. Petty 201 wis. 2d 337, 347, 548 N.W. 2d 817 (1996). and state v. Gove, 148 wis 2d 936, 944, 437 N.W. 2d 218 (1989).

As expressed before all issues at hand would of been addressed a long time ago, but as we trust our attorneys to know best. This issue was not seen until December 2016 by attorney David R Karpe (madison attorney).

As resault when noticed there could be an issue here the defendant-appellant Mr. Culver started to pursue this matter at hand. Is this a leagle sentence?

This was filed as a writ of ceriurari December 23, 2016 and was responded with a brief from the state assistant attorney general Rebecca A Paulson state bar 1079833 (stated in brief while it is not clear in the record, to why court amended the judgment of conviction in 2009). In any event the sentence if Mr. Culver wants needs to be challenged and petition the sentencing court see state v. Harbor 2011 wi 28 35 n.8, 333 wis 2d 53, 72, 797 N.W. 2d 828. Its not an appropriate argument to make base on issues and record before this certiorari court.

(note) The defendant-appellant is not an attorney at law and is filing pro-se to the best of his ability to understand the law 6. States argues State v. Petti, 171 Wis. 2d 627, 492, N.W. 2d 633 (ct. App. 1992). We may decline to review issues inadequately briefed. The defendant-appellant is filing Pro-Se, and would hope that the Honorable Court will see through any small mistakes made

For the state to cite State v. Steinhardt, 2007 Wi. 62, 375 Wis. 2d 212, 896 N.W. 2d 700, and also State v. Hardwick, 144 Wis 2d 54, 422, N.W. 2d 922 (ct. App. 1988). To use the word

(ESTOPPEL) by referring to the defendant Mr. Culver agreeing to a plea agreement, and now looking for a new outcome in this matter.

The defendant-appellant only seeks the truth and Justice in this case, (TO STATE LAWS). Again all of this became aware to the defendant-appellant Mr. Culver, in December 2016. that there may be , or is a sentencing error to be corrected here.

7. See State v. Kleven, 280 Wis. 2d 468 (page 30-31). (REMANDING FOR RE-SENTENCING). The defendant-appellant believes this would correct the problem, and a way to resolve this case. Also the State agrees if this case is seen to have errors. (note) Also the RULE OF LENITY must apply in this situation for re-sentencing.

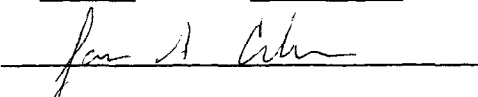
#### CONCLUSION

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For these reasons, the defendant-appellant request that this Honorable Court REVERSE & AMEND the Circuit Court Order Denying Mr. Culvers postconviction motion for relief, and send this back to the Circuit Court for Re-Sentencing to correct this ERROR at hand. The defendant-appellant prays for relief in this matter.

RESPECTFULLY SUBMITTED THIS 20<sup>th</sup> DAY OF October, 2018.

SIGNATURE

  
James A Culver 291061  
Winnebago Correctional Center  
Post Office Box 219  
Winnebago Wi. 54985-219

CC. five copies to Wisconsin Court Of Appeals  
one copy to Assistant Attorney General (Courtney K. Lanz)  
one copy file James A. Culver appellant

FORM AND LENGTH CERTIFICATION

---

I hereby certify that this re-ply brief conforms to the rules contained in state stats. 809.19(8)(b) and (c) for a brief produced with a X monospaced or \_\_\_ proportional serif font.

The length of this brief is 6 pages (if a monospaced font is used) or 1510 words (if a proportional serif font is used).

DATE. October 26, 2018

Signature. \_\_\_\_\_

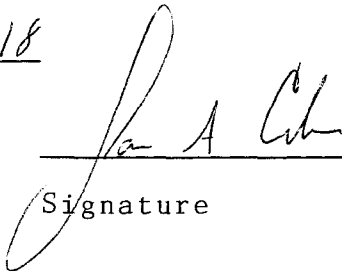
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CERTIFICATION OF MAILING

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I certify that this re-ply brief or appendix was deposited in the United States Mail for delivery to the clerk of Court of Appeals by first-class mail, or other class of mail that is at least as expeditious, on this day 26<sup>th</sup> October 2018. I further certify that the re-ply brief or appendix was correctly addressed and postage was pre-paid.

DATE. 26<sup>th</sup> October 2018

  
\_\_\_\_\_  
Signature

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APPELLANTS BRIEF APPENDIX CERTIFICATION

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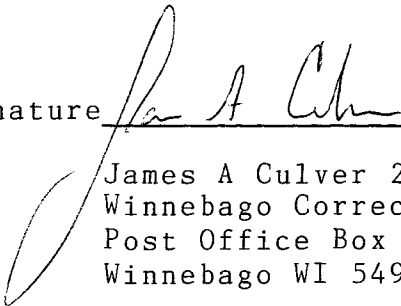
I hereby certify that filed with this re-ply brief, either as a separate document or as a part of this brief, is an appendix that complies with s. 809.19(2)(a) and that contains, at a minimum, (1) a table of contents, (2) the findings or opinion of the circuit court, and (3) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit courts reasoning regarding those issues.

I further certify that if this appeal is taken from the circuit court order judgment entered in a judicial review of an administrative decision, the appendix contains the finding 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 first names and last initials instead of full names or 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.

DATE 26<sup>th</sup> October, 2018

Signature

  
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DATE 10-26-2018

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RE. State Of Wisconsin VS. James A Culver  
Case NO. 2018AP000799-CR  
District IV

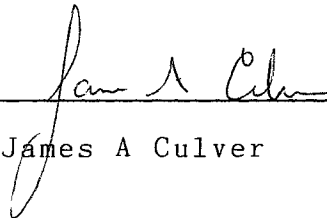
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Dear Ms. Reiff

Enclosed for filing in the matter above are the five original copies for filing of reply brief to Assistant Attorney General Courtney k. Lanz.

A copy of this reply brief has been served by mail on the plaintiff-respondent Assistant Attorney General COURTNEY K. LANZ.

Signature

  
James A Culver

CC. State Assistant Attorney General (Ms. LANZ)  
James A Culver