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**SUPREME COURT**

STATE OF WISCONSIN  
IN SUPREME COURT

Case No. 2020AP000564-CR

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STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

W.A.H.,

Defendant-Appellant-Petitioner.

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NO-MERIT PETITION FOR REVIEW

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The defendant-appellant-petitioner W.A.H., by his attorney, Assistant State Public Defender Jefren E. Olsen, petitions this court pursuant to Wis. Stat. §§ (Rules) 809.32(4) and 809.62 to review the decision and order of the Court of Appeals, District IV, dated June 10, 2021. (App. 3-7).

### **STATEMENT OF THE CASE AND FACTS**

For almost three decades W.A.H. led a successful, productive life in Rock County. He was the first in his family to graduate from college. (136:3). He provided for his family, as he was continuously and gainfully employed after he graduated. (126:45; 136:28-29; 196:95-97). He served for 24 years in the Army National Guard—service that included a tour of duty in Iraq, during which he saw combat and engaged in undercover operations and the search for weapons of mass destruction, among other activities, and which led to him helping two Iraqis he met there when they immigrated to the U.S. (126:50; 136:3-4; 30-31, 35-38; 144; 147:4, 6-7, 16). During those years of service, he received numerous awards and citations. (136:38). He volunteered time and donated money to a variety of civic, school, political, and social organizations. (147:2, 10-11, 15; 196:93, 94-95, 97). In addition to his full-time professional employment, he owned rental property, ran and worked at antique shows, sold corn seed, and worked a small farm where he grew hay. (136:3, 22, 23, 25, 29; 147:5, 10-11; 196:92-93).

W.A.H.'s first marriage, to K.H., lasted from 1993 to 2005. (126:32; 136:26). K.H. brought a daughter, A.F., to the marriage, and W.A.H. and K.H. had three children together. (126:32-33, 34-37; 136:27). After his divorce from K.H., W.A.H. remarried in 2009. (136:26). He and his second wife, D.H., had a daughter in 2012. (126:37; 136:26). D.H.'s daughter from her first marriage, M.L.M., also lived with them. (126:37; 136:26).

W.A.H.'s otherwise successful and productive life came to an end in February 2017, when he was arrested after M.L.M., then aged 17, alleged he had sexual contact and intercourse with her. (1). The state soon filed a criminal complaint charging W.A.H. with four counts of incest with a stepchild in violation of Wis. Stat. § 948.06(1m). (8:1-2). The four charges corresponded to specific dates on which M.L.M. alleged W.A.H. had sexual contact or sexual intercourse with her. (8:1-3). The state later filed an amended complaint that added one count of possession of child pornography in violation of Wis. Stat. § 948.12 based on a photograph of M.L.M. found on W.A.H.'s telephone. (14:4).

After various pretrial hearings on issues not relevant to this appeal, the case was set to be tried to a jury. (192). The day after the jury was selected, however, W.A.H. entered a plea of no contest to one of the counts of incest and the three remaining incest counts were dismissed and read in. (193:2-3). The count charging possession of child pornography in this case was dismissed outright with prejudice, as was

another charge of the same offense in a second case (Case No. 17-CF-836). (193:2, 19-20). A misdemeanor charge of violating a restraining order (Case No. 17-CM-835) was also dismissed and read in. (193:2).<sup>1</sup>

After W.A.H.'s plea the Department of Corrections prepared and filed a presentence investigation (PSI). (126). W.A.H.'s attorney arranged for and filed both a defense presentence and a psychosexual risk assessment. (133; 136; 140).

W.A.H. admitted during the presentence investigation and evaluation process that he engaged in sexual activity with M.L.M., saying he had lost sight of his role when he was trying to help and support her to successfully finish high school and get to college, and that he failed by allowing the activity to occur. (126:5-14; 136:2-3, 9-18). That it was not easy for him to admit his conduct is clear in part from the lengthy, detail-oriented interrogation about the sexual activity that the PSI writer undertook to obtain W.A.H.'s

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<sup>1</sup> W.A.H. was initially represented by counsel, but by the time of jury selection and the plea hearing he was representing himself. (192:2; 193:2). The events leading to his self-representation are set out in full in W.A.H.'s motion for postconviction relief because the motion raised a claim that W.A.H. was denied the right to the counsel of his choosing. (157:2-8, 9-21). W.A.H. withdrew that claim during postconviction proceedings (165; 174; 197:3; App. 27), so the events leading to his self-representation are not relevant to the issue on appeal and will not be detailed here. After his plea, W.A.H. requested counsel and the State Public Defender's Office appointed an attorney who represented him at sentencing. (123; 124; 125).

descriptions of the offenses. (126:5-14). Further, as the psychosexual risk assessment prepared by the defense noted, W.A.H. “holds some very distorted views of sexual responsibility and underage consent” and, while he has stated he accepts responsibility for his conduct, “he does not yet understand the reasons that his behaviors were so wrong, and why his victim’s participation was in fact not her responsibility at all.” (140:7). But it is also not surprising that someone who views himself as a provider and a patriot and a good, productive citizen—as W.A.H. does (196:92-99)—must overcome considerable psychological resistance to admit the acts he engaged in, let alone to accept and own up to—and articulate in a credible way—how wrong his acts were. (157:28-29).

The presentence investigation and evaluation process also produced a broader, harsher portrait of W.A.H. as abusive, controlling, and manipulative. First and foremost, M.L.M. described W.A.H.’s multiple acts of grooming behavior and then sexual abuse of her as well as what she said was his manipulative, controlling, and privacy-invading behavior. She also described the effects of his conduct on her and her mother, D.H. (126:14-17; 196:42-63).

In addition, A.F., W.A.H.’s stepdaughter from his marriage to K.H., also told the PSI writer and the court during sentencing that W.A.H. sexually assaulted her multiple times in the 1990s and was emotionally, psychologically, and physically abusive to her, to her mother, K.H., and to her three step-siblings who were born during the marriage of K.H. and

W.A.H. (126:38-41; 196:28-33). In their statements to the PSI writer, K.H. and her three children with W.A.H. made similar allegations of physical abuse and manipulative and controlling behavior. (126:32-37).

Finally, D.H., W.A.H.'s second wife and the mother of M.L.M., also told the PSI writer and the sentencing court that W.A.H. was deceitful and manipulative and was a monster for engaging in sexual activity with M.L.M. (126:17-20; 196:33-42).

While W.A.H. admitted engaging in the sexual activity with M.L.M. for which he had been charged, he denied many of the other specific allegations she made about his conduct as well as the broader array of allegations made by M.L.M., D.H., A.F., and his children that he is abusive, manipulative, and deceitful. (126:22-26, 34, 35; 136:26-27; 140:3, 5-6). He did, however, acknowledge that his long service in the military made him too stern and discipline-minded, which was detrimental to his relationships with his children. (126:39; 136:27, 38).<sup>2</sup>

The PSI and the defense presentence included statements from W.A.H.'s parents and brothers and some of his closest friends, and the defense also

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<sup>2</sup> W.A.H. filed a motion asking for a hearing to dispute the accuracy of information in the PSI. (134). The court denied the motion and said he could submit written comments before sentencing or comment on the information and call witnesses at the sentencing hearing itself. (137). W.A.H.'s attorney made comments and corrections at the start of the sentencing hearing. (196:2-16).

submitted letters to the court. They all praised W.A.H.'s hard work and support of his family, his generosity and helpfulness to them and others, and his military service. (126:31, 42; 136:19-26; 147). A few of them spoke at sentencing, as did W.A.H. himself. (196:64-72, 92-99).

After the presentations by the parties at the sentencing hearing the court addressed the primary sentencing factors and, based on the information presented and for the reasons the court articulated, the court imposed a 14-year bifurcated sentence consisting of ten years of initial confinement followed by four years of extended supervision. (196:101-13; App. 8-24).

W.A.H. filed a motion for postconviction relief, which raised three claims: (1) that he was denied his right to retain of counsel of choice; (2) that the circuit court erred by relying on unproven conduct in imposing sentence; and (3) that the circuit court erroneously exercised its discretion at sentencing by giving too little weight to sentencing factors in W.A.H.'s favor. (157). W.A.H. subsequently withdrew the first two claims in the motion. (165; 174). The parties then submitted further written argument on the remaining claim. (166; 167). After considering those arguments, the circuit court denied the motion for sentence modification, finding the sentencing court did not erroneously exercise its discretion in how it weighed the relevant sentencing factors. (174; 197:5-16; App. 29-40).

W.A.H. appealed. (175). The court of appeals summarily affirmed. (App. 3-7). The court applied this court's leading case on the review of a sentencing court's exercise of discretion. *State v. Gallion*, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197. The court of appeals held that the sentencing judge gave sufficient weight to sentencing factors favorable to W.A.H. and therefore the record did not show a basis to conclude the circuit court erroneously exercised its discretion in fashioning the prison sentence it imposed.

W.A.H. subsequently requested that undersigned counsel file this petition for review under Wis. Stat. § 809.32(4).

## CONCLUSION

This petition is filed pursuant to Rule 809.32(4). W.A.H. has been advised of his responsibility to prepare and file a supplemental petition that includes the other portions of the petition for review required under Rule 809.62.

Dated and filed this 9<sup>th</sup> day of July, 2021.

Respectfully submitted,

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## **CERTIFICATION AS TO FORM/LENGTH**

I certify that this petition meets the form and length requirements of Rules 809.19(8)(b) and 809.62(4) in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line of body text. The length of the petition is 1,592 words.

## **CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)**

I hereby certify that:

I have submitted an electronic copy of this petition, excluding the appendix, if any, which complies with the requirements of § 809.19(12). I further certify that:

This electronic petition is identical in content and format to the printed form of the petition filed on or after this date.

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

Dated this 9<sup>th</sup> day of July, 2021.

Signed:

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JEFREN E. OLSEN  
Assistant State Public Defender