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110 EAST MAIN STREET, SUITE 215  
P.O. BOX 1688  
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
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**DISTRICT IV**

February 2, 2018

To:

Hon. Charles A. Pollex  
Circuit Court Judge  
Adams County Courthouse  
402 Main St., P. O. Box 200  
Friendship, WI 53934

Kathleen R. Dye  
Clerk of Circuit Court  
402 Main Street  
P. O. Box 220  
Friendship, WI 53934

Tania M. Bonnett  
District Attorney  
P.O. Box 258  
Friendship, WI 53934-0258

Gregory M. Weber  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

Joey J. Hicks 176682  
Columbia Corr. Inst.  
P.O. Box 900  
Portage, WI 53901-0900

You are hereby notified that the Court has entered the following opinion and order:

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2016AP1556

State of Wisconsin v. Joey J. Hicks (L.C. # 2005CF78)

Before Lundsten, P.J., Sherman and Kloppenburg, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Joey Hicks, pro se, appeals the circuit court's entry of three civil money judgments arising out of unpaid restitution and court costs from his 2005 conviction. Hicks argues that the circuit court lacked authority to convert these unpaid amounts into civil judgments. He further argues that the original restitution order was unlawfully imposed. Based upon our review of the

briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).<sup>1</sup> We reject Hicks' arguments and affirm.

In 2005, Hicks was charged with theft of movable property, between \$5,000 and \$10,000, after he was caught stealing rails from Union Pacific Railroad and selling them to Lawent Iron and Metal. Hicks pleaded guilty and was sentenced to three years' initial confinement and three years' extended supervision. He was also ordered to pay restitution totaling \$3735.15, court costs of \$20, a mandatory victim/witness surcharge of \$85, and a miscellaneous charge of \$8. The restitution amounts included \$1062.10 payable to Union Pacific and \$2673.05 payable to Lawent Iron and Metal.

Hicks completed his sentence in 2013, without having fully paid his restitution and court ordered financial obligations. In 2016, the Department of Corrections (the department) filed a petition to convert the unpaid amounts to civil judgments. Without awaiting a response from Hicks, the circuit court directed the clerk to enter three civil judgments against Hicks: \$1049.18 in favor of Lawent Iron and Metal; \$28 in favor of the Clerk of Circuit Court in Friendship, Wisconsin; and \$416.99 in favor of Union Pacific. Hicks filed this appeal.

Hicks raises numerous challenges to the underlying conviction and restitution order in an attempt to argue that restitution was unlawfully imposed in the first instance. The State contends that WIS. STAT. § 974.06 is Hicks' sole vehicle for collaterally challenging his conviction and sentence, including the restitution order, and further contends that most if not all of Hicks' challenges were waived by his guilty plea. Hicks responds that we may consider issues that were

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

overlooked during his direct appeal, relying on *State v. Fortier*, 2006 WI App 11, 289 Wis. 2d 179, 709 N.W.2d 893. This argument misses the mark: our decision in *Fortier* addressed whether the circuit court should have considered certain arguments raised for the first time in the defendant's postconviction motion for sentence modification. *Id.*, ¶1. Here, Hicks is not appealing the denial of a postconviction motion in which he attempted to make his arguments to the circuit court. Instead, Hicks is appealing the entry of civil judgments, to which he made no objection in circuit court. Our general rule is that we will not address issues that were not first raised in the circuit court. See *Wirth v. Ehly*, 93 Wis. 2d 433, 443-44, 287 N.W.2d 140 (1980). We see no reason to deviate from this rule in this instance.

The sole issue on appeal properly before us is whether the circuit court properly converted the unpaid restitution and court ordered financial obligations into civil judgments. Hicks contends that the department was required to file its petition at least 90 days before the end of his sentence. See WIS. STAT. § 973.09(3)(b), (3)(bg), and 3(bm). He contends that the department's failure to pursue these judgments before the end of his sentence means that they have been discharged. However, the State points out that the cited statutory provisions all relate expressly to the payment of restitution as a condition of probation, and Hicks was not on probation. Instead, the State argues that the circuit court's entry of civil judgments was a straightforward clerical matter under WIS. STAT. § 973.20(1r),<sup>2</sup> which allows restitution to be

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<sup>2</sup> WIS. STAT. § 973.20(1r) provides that, "After the termination of ... extended supervision, ... restitution ordered under this section is enforceable in the same manner as a judgment in a civil action by the victim named in the order."

enforced as a civil judgment, and WIS. STAT. § 973.05(4)(a),<sup>3</sup> which allows a court to issue a judgment for unpaid costs and fees.

Hicks' reply brief focuses on his challenges to his conviction and the resulting restitution order. As explained above, such challenges to the original restitution order are beyond the scope of this appeal. We see no response to the State's argument regarding the statutory basis for the entry of the three civil judgments. Accordingly, we deem Hicks to have conceded the State's arguments. See *Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (unrefuted arguments deemed conceded).

Upon the foregoing reasons,

IT IS ORDERED that the judgments are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Diane M. Fremgen*  
*Acting Clerk of Court of Appeals*

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<sup>3</sup> WISCONSIN STAT. § 973.05(4)(a) provides that “[i]f a defendant fails to pay a fine, surcharge, costs, or fees ... the court may ... [i]ssue a judgment for the unpaid amount and direct the clerk to file and docket a transcript of the judgment, without fee.” WIS. STAT. § 973.05(4)(a).