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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**

May 21, 2020

To:

Hon. Ellen K. Berz  
Circuit Court Judge  
Dane County Courthouse, Br. 11  
215 S. Hamilton St., Rm. 5103  
Madison, WI 53703

Carlo Esqueda  
Clerk of Circuit Court  
Dane County Courthouse  
215 S. Hamilton St., Rm. 1000  
Madison, WI 53703

Timothy J. Helmberger  
Assistant District Attorney  
215 S. Hamilton St., Ste. 3000  
Madison, WI 53703-3211

Andrew Hinkel  
Assistant State Public Defender  
P.O. Box 7862  
Madison, WI 53707-7862

Michael C. Sanders  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

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

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2019AP901-CR                      State of Wisconsin v. Ronald J. Back (L.C. # 2018CF113)

Before Fitzpatrick, P.J., Kloppenburg and Nashold, 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).**

Ronald Back appeals a judgment of conviction and an order denying his motion for postconviction relief. The single issue Back raises on appeal is whether the circuit court erroneously exercised its sentencing discretion by employing a “preconceived policy of sentencing,” contrary to *State v. Ogden*, 199 Wis. 2d 566, 571, 544 N.W.2d 574 (1996). 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. We reverse and remand for resentencing.

Back pled guilty to operating while intoxicated (OWI) as an eighth offense. As a result of his arrest in this case, his extended supervision was revoked in two prior OWI cases, his sixth and seventh. Pursuant to the plea agreement, the State agreed to make a sentencing recommendation that would result in a total confinement time, including the revocation sentences, of no fewer than five years and no more than two years beyond the reconfinement sentences.

At the reconfinement hearing on his sixth and seventh OWI cases, Back received combined sentences totaling four years of reconfinement time. At sentencing in this case, the State recommended a nine-year sentence, consisting of six years of initial confinement and three years of extended supervision, to run concurrent to Back's reconfinement sentences. Back's defense counsel asked the circuit court to impose a concurrent sentence. Defense counsel also told the court that Back would not be entitled to sentence credit if the court imposed consecutive sentences because the credit would all be applied to his revocation sentence. The court then stated, "You don't need to speak any further because this Court will not be ordering a concurrent sentence." After argument by the parties, the court further stated that it does not "give concurrent sentences on different cases when there's a revocation." The court went on to discuss the standard sentencing factors, and imposed a sentence on Back's eighth OWI consisting of four years of initial confinement and five years of extended supervision, consecutive to the revocation sentences imposed in his sixth and seventh OWI cases. Back filed a postconviction motion challenging his sentence on the basis that the court employed a preconceived policy of sentencing, contrary to *Ogden*, 199 Wis. 2d at 571. The court denied the postconviction motion after a hearing, and this appeal follows.

On appeal, Back argues that the circuit court's statements at the sentencing hearing that it does not impose concurrent sentences when there is a revocation involved demonstrate that the court employed a preconceived policy of sentencing. Back asserts that the court employed the type of "mechanistic sentencing" prohibited by *Ogden*, without regard to individual mitigating factors. See *Ogden*, 199 Wis. 2d at 571-72. The State responds that, while the circuit court's remarks suggest that the court had a general predisposition against concurrent sentences, the whole of the sentencing transcript shows that the court considered the particular circumstances of Back's case when imposing sentence and, thus, did not employ a preconceived policy.

We are not persuaded by the State's arguments. First, we note that the circuit court announced its policy against concurrent sentences at multiple points during the sentencing hearing. In addition, the court stated its policy before hearing any argument by defense counsel regarding the sentencing factors, and before the court considered those factors on the record. Finally, the transcript of the postconviction motion hearing demonstrates that the court had a "default" policy against imposing concurrent sentences, "absent there being some reason behind a recommendation for concurrent." In short, the record reflects that the court employed the type of preconceived sentencing policy prohibited under *Ogden*, in which our supreme court held that "a judge's predispositions must never be so specific or rigid so as to ignore the particular circumstances of the individual offender upon whom he or she is passing judgment." *Id.* at 573.

IT IS ORDERED that the judgment and order are summarily reversed under WIS. STAT. RULE 809.21(1), and the cause is remanded for resentencing only.

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*