

Claude's analysis:

No.

The dispositive problem is that this petition attacks a ruling the court of appeals didn't make. Nush's entire argument is that § 973.20(3) requires bodily injury and that § 973.20(4m) lists specific offenses that don't include § 948.11(2)(am). Both propositions are correct. But the circuit court and the court of appeals both upheld the therapy award under § 973.20(5)(a) — special damages substantiated by the record and recoverable in a civil action for conduct in the commission of a crime considered at sentencing. The petition never mentions subsection (5)(a). Not once. It quotes (3) and (4m) at length and stops. A petition that doesn't engage the actual basis of the decision below cannot show error, let alone the "special and important reasons" required by § 809.62(1r).

That's a shame, because there *is* a real question buried here. If (3)(a) authorizes psychological-care costs only where the crime caused bodily injury, and (4m) authorizes them for an enumerated list of sexual offenses subject to a \$10,000 cap, then reading the general special-damages provision in (5)(a) to cover therapy costs for any crime, uncapped, arguably renders both of those provisions surplusage. Why would the legislature have needed (4m) at all if (5)(a) already reached counseling expenses without limit? That's a legitimate specific-governs-general and anti-surplusage argument, and it's a question of statutory interpretation likely to recur — genuine law-development territory. There's a second question lurking too: the award includes therapy for the victim's *mother*, and (5)(a) is keyed to what "could be recovered in a civil action," which for a parent's emotional-distress-derived expenses is not obvious under Wisconsin tort law.

But neither argument is in this petition. The court would have to construct both from scratch, with no adversarial briefing from either side, on an ineffective-assistance record where it would also have to work through Strickland deficiency and prejudice. That is a bad vehicle for a question worth answering well.

The rest of the petition compounds it. The Criteria for Review section is four sentences long and concludes that the case "may be worthy of review by this court" — the State is right that this is barely a statement of criteria at all, and the "may be" is close to a concession. Two of the twelve substantive pages are boilerplate Strickland and Nelson/Bentley standard-of-review recitation. The Fermanich cite doesn't do the work asked of it; the point that a court can consider conduct at sentencing without sentencing for it says nothing about whether *restitution* may rest on conduct underlying a dismissed charge, which is precisely the contested question. The statement of facts even misidentifies the original charge — child enticement is § 948.07, not § 948.02.

The State's response is competent and gets to the right result, though it's thinner than it needed to be. Its lead argument — that the unpublished summary disposition has no precedential value — is close to a non-sequitur; this court takes review of unpublished decisions routinely, and non-precedential status is a reason the error is contained, not a reason the question is unimportant. The stronger ground, which the response reaches only glancingly, is that counsel cannot be deficient for failing to raise a losing objection, so the merits and the IAC claim collapse into each other and the record disposes of both. The response also never defends the (5)(a) holding

substantively, which would have been the surest way to show there was nothing for counsel to object to.

Deny. The underlying interpretive question about the interaction of (3), (4m), and (5)(a) deserves the court's attention someday, in a case where a petitioner actually raises it.

Gemini's analysis:

No, the Wisconsin Supreme Court should not accept this case for review.

Failure to Meet Review Criteria

The most glaring issue with this petition is its failure to articulate any "special and important reasons" for discretionary review under Wis. Stat. § 809.62(1r).

- The petition does not present a novel question of constitutional law, highlight a conflict in precedent, or demonstrate a need to clarify statewide policy.
- Instead, Nush's counsel offers a remarkably weak justification for review, stating only that the issue "may be worthy of review" given "the nature of the rights involved".
- As the State's response rightfully highlights, this is a textbook request for error correction regarding a circuit court's discretionary decision, which falls outside the typical purview of the state's highest court.

The Flawed Underlying Claim

Substantively, the petition attacks a straw man regarding the restitution statute.

- Nush argues that his trial counsel was ineffective for not objecting to therapy restitution, claiming his convictions did not involve "bodily injury" under Wis. Stat. § 973.20(3) or the specific crimes enumerated in § 973.20(4m).
- However, the State points out that the circuit court properly authorized the therapy costs as "special damages" under a completely different subsection, Wis. Stat. § 973.20(5)(a).
- Because the therapy expenses were readily ascertainable and recoverable in a civil action, the record conclusively demonstrated that trial counsel was not deficient, fully justifying the circuit court's denial of the postconviction motion without a *Nelson/Bentley* evidentiary hearing.

Appellate Strategy and Disposition

When evaluating which postconviction appeals warrant Supreme Court intervention, the focus is naturally drawn to cases that genuinely shift statewide jurisprudence.

- The Court of Appeals disposed of this matter via an unpublished summary affirmance, meaning the decision carries no precedential weight.

- Expending top-tier judicial resources on a fact-bound, summarily affirmed ineffective assistance of counsel claim that lacks any broader doctrinal dispute makes little sense from an appellate management perspective.