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STATE OF WISCONSIN

IN SUPREME COURT

Case No. 2013AP1345-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ANDREW M. OBRIECHT,

Defendant-Appellant-Petitioner.

On Review of a Decision of the Court of Appeals, District IV, Affirming an Order of the Dane County Circuit Court, the Honorable William E. Hanrahan Presiding.

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT-PETITIONER

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CASES CITED

CONSTITUTIONAL PROVISIONS AND STATUTES CITED

OTHER AUTHORITIES CITED

ISSUE PRESENTED

1. Mr. Obriecht served 107 days in custody before his probation was revoked. When he was sentenced to prison after revocation, the court did not apply the credit. Mr. Obriecht served part of his sentence and was later paroled. Now that his parole has been revoked, is he entitled to have the 107 days credited toward his term of reincarceration? Or may the court withhold the credit and instead use it to shorten the time Mr. Obriecht has left to serve on parole?

   The circuit court granted the credit, but applied it to Mr. Obriecht's remaining time on parole.

   The court of appeals affirmed.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Based on the Court's decision to grant review, oral argument and publication are presumed.

RELEVANT STATUTES

973.155 Sentence Credit (1)

(a) A convicted offender shall be given credit toward the service of his or her sentence for all days spent in custody in connection with the course of conduct for which sentence was imposed. As used in this subsection, "actual days spent in custody" includes, without limitation by enumeration, confinement related to an offense for which the offender is ultimately sentenced, or

for any other sentence arising out of the same course of conduct, which occurs:

1. While the offender is awaiting trial;

2. While the offender is being tried; and

3. While the offender is awaiting imposition of sentence after trial.

(b) The categories in par. (a) and sub. (1m) include custody of the convicted offender which is in whole or in part the result of a probation, extended supervision or parole hold under s. 302.113 (8m), 302.114 (8m), 304.06 (3), or 973.10 (2) placed upon the person for the same course of conduct as that resulting in the new conviction.

….

(2) After the imposition of sentence, the court shall make and enter a specific finding of the number of days for which sentence credit is to be granted, which finding shall be included in the judgment of conviction. In the case of revocation of probation, extended supervision or parole, the department, if the hearing is waived, or the division of hearings and appeals in the department of administration, in the case of a hearing, shall make such a finding, which shall be included in the revocation order.

(3) The credit provided in sub. (1) or (1m) shall be computed as if the convicted offender had served such time in the institution to which he or she has been sentenced

….

(5) If this section has not been applied at sentencing to any person who is in custody or to any person who is on probation, extended supervision or parole, the person may petition the department to be given credit under this

section. Upon proper verification of the facts alleged in the petition, this section shall be applied retroactively to the person…This subsection applies to any person, regardless of the date he or she was sentenced.

302.11 Mandatory Release

(1) The warden or superintendent shall keep a record of the conduct of each inmate, specifying each infraction of the rules. Except as provided in subs. (1g), (1m), (1q), (1z), and (7), each inmate is entitled to mandatory release on parole by the department. The mandatory release date is established at two-thirds of the sentence.…

(7) (ag) In this subsection "reviewing authority" means the division of hearings and appeals in the department of administration, upon proper notice and hearing, or the department of corrections, if the parolee waives a hearing.

(am) The reviewing authority may return a parolee released under sub. (1) or (1g) (b) or s. 304.02 or 304.06 (1) to prison for a period up to the remainder of the sentence for a violation of the conditions of parole. The remainder of the sentence is the entire sentence, less time served in custody prior to parole. The revocation order shall provide the parolee with credit in accordance with ss. 304.072 and 973.155.

(b) A parolee returned to prison for violation of the conditions of parole shall be incarcerated for the entire period of time determined by the reviewing authority unless paroled earlier under par. (c). The parolee is not subject to mandatory release under sub. (1) or presumptive mandatory release under sub. (1g). The period of time determined under par. (am) may be extended in accordance with subs. (1q) and (2).

> (c) The parole commission may subsequently parole, under s. 304.06 (1), and the department may subsequently parole, under s. 304.02, a parolee who is returned to prison for violation of a condition of parole.…

STANDARD OF REVIEW

The issue in this case is whether the lower courts properly applied Wis. Stat. §§ 973.155 and 302.11(7). Statutory interpretation presents a question of law that this Court reviews de novo. ***State v. Johnson***, 2009 WI 57, ¶63, 318 Wis. 2d 21, 767 N.W.2d 207. To the extent that statutory interpretation raises a constitutional issue, this issue is also reviewed de novo. ***Id.***

STATEMENT OF THE CASE AND FACTS

In 1999, Mr. Obriecht was placed on a 12-year term of probation.[1] In 2001, his probation was revoked, and he was sentenced to seven years in prison. (270; App. 112). In 1998, 1999, and 2001, Mr. Obriecht spent 107 days in custody on this case; however, this credit was overlooked when the sentence-after-revocation was imposed. (App. 102).

In 2011, Mr. Obriecht was released on parole. Thereafter, he violated parole and the Division of Hearings and Appeals ordered reincarceration time. Subsequently, Mr. Obriecht moved the circuit court for the 107 days that should have been applied at sentencing after revocation. The state did not object, and the circuit court granted the requested credit. (269, 270). After receiving the amended judgment of

[1] In the same case, jail sentences were imposed on several misdemeanor counts. Those counts are not relevant to this appeal.

conviction, the records supervisor at Kettle Morraine Correctional Institution filed a letter with the circuit court asking for "clarification" on the order. (271). The letter explained the Department of Corrections (DOC) policy of applying belatedly-granted sentence credit to remaining parole time instead of reincarceration time based on its reading of the "mandatory release" statute, Wis. Stat. § 302.11(7):

> [S]ection 302.11(7)(am), WI Stats., states that when a person's parole has been revoked, the reviewing authority may return the person to prison for a period of time that does not exceed the time remaining on the sentence. It further indicates the time remaining on the sentences is the entire sentence, less time served in custody before release. Therefore, we interpret that presentence credit granted while an offender is serving reincarceration does not reduce the reincarceration term, but rather reduces the parole time remaining on the sentence until its maximum discharge date. For that reason we have applied the additional 107 days of credit to the overall sentence length in calculating Mr. Obriecht's sentence expiration date…

(App. 111).

The circuit court approved the DOC's decision to apply the credit to the remaining parole time. In a series of letters, Mr. Obriecht objected and moved for reconsideration. (272-276).

The court denied reconsideration, stating that DOC "correctly calculated the maximum discharge date…based on preincarceration credit earned by [Obriecht] in accordance with 302.11(7)(am)." (277; App. 110). Mr. Obriecht filed a pro se notice of appeal. (278). The court of appeals affirmed

the circuit court's order and held that the result was mandated by Wis. Stat. § 302.11(7), "mandatory release":

> Under WIS. STAT. § 302.11(7)(b), Obriecht "shall be incarcerated for the entire period of time determined by" DHA. In this case, if the sentence credit were applied to the term of reincarceration ordered by DHA, instead of to the remaining period of parole, Obriecht would not be "incarcerated for the entire period of time determined by" DHA. Such an application of the sentence credit would violate § 302.11(7)(b). We therefore conclude that DOC's application of Obriecht's sentence credit to the period of parole, rather than to the term of reincarceration ordered by DHA, is consistent with the plain language of § 302.11(7)(am) and (b).

(App. 105).

Mr. Obriecht, then represented by counsel, filed a motion for reconsideration. The court of appeals denied reconsideration. This Court granted review, the undersigned was appointed as successor counsel, and this appeal follows.

ARGUMENT

I. Mr. Obriecht is Entitled to 107 Days of Sentence Credit Toward his Term of Reincarceration.

A. Reincarceration is a continuance of an original sentence and Wis. Stat. § 973.155 expressly applies.

1. Sentence credit under § 973.155

In Wisconsin, sentence credit is governed by Wis. Stat. § 973.155. This statute is designed to "prevent a defendant from serving more time than his sentence or his sentences call for." ***State v. Beets***, 124 Wis. 2d 372, 379, 369 N.W.2d 382

(1985). The underlying purpose of the sentence credit statute is to afford fairness...'" ***State v. Johnson***, 2007 WI 107, ¶70, 304 Wis. 2d 318, 735 N.W.2d 505.

Section 973.155 reads, in relevant part, as follows:

> (1)(a) A convicted offender shall be given credit toward the service of his or her sentence for all days spent in custody in connection with the course of conduct for which sentence was imposed. As used in this subsection, "actual days spent in custody" includes, without limitation by enumeration, confinement related to an offense for which the offender is ultimately sentenced, or for any other sentence arising out of the same course of conduct, which occurs:
>
> 1. While the offender is awaiting trial;
>
> 2. While the offender is being tried; and
>
> 3. While the offender is awaiting imposition of sentence after trial.
>
> (b) The categories in par. (a) and sub. (1m) include custody of the convicted offender which is in whole or in part the result of a probation, extended supervision or parole hold under s. 302.113(8m), 302.114(8m), 304.06(3), or 973.10(2) placed upon the person for the same course of conduct as that resulting in the new conviction.

In deciding whether an offender is entitled to sentence credit under the statute, a court must make two determinations: (1) whether the offender was "in custody" within the meaning of Wis. Stat. § 973.155(1)(a); and (2) whether all or part of the "custody" for which sentence credit is sought was "in connection with the course of conduct for which sentence was imposed." ***State v. Johnson***, 2009 WI 57, ¶27, 318 Wis. 2d 21, 767 N.W.2d 207. "Custody" means any

status for which an offender is subject to an escape charge for leaving. ***State v. Magnuson***, 2000 WI 19, ¶12, 233 Wis. 2d 40, 606 N.W.2d 536.

After making these determinations, "the court shall make and enter a specific finding of the number of days for which sentence credit is to be granted." § 973.155(2). "[T]he credit provided in sub. (1)…shall be computed as if the convicted offender had served such time in the institution to which he or she has been sentenced." § 973.155(3). Sentence credit is to be granted on a "day for day basis." ***State v. Boettcher***, 144 Wis. 2d 86, 87, 423 N.W.2d 553.

2. Application to reincarceration time

Reincarceration time is considered an extension of the original sentence. Wisconsin Stat. § 304.072, which deals with the tolling of periods of probation, extended supervision or parole, explains that "[t]he sentence of a revoked parolee or person on extended supervision *resumes running* on the day he or she is received at a correctional institution subject to sentence credit…." § 304.072(4) (emphasis added).

In addition, the mandatory release statute incorporates § 973.155 into revocation proceedings. "The reviewing authority may return a parolee released under sub. (1) or (1g) (b) or s. 304.02 or 304.06 (1) to prison for a period up to the remainder of the sentence for a violation of the conditions of parole. *The remainder of the sentence is the entire sentence, less time served in custody prior to parole. The revocation order shall provide the parolee with credit in accordance with ss. 304.072 and 973.155*." § 302.11(7)(am) (emphasis added).

Everyone in this case agrees that Mr. Obriecht is entitled to the retroactive application of 107 days of sentence

credit because those days were "time served in custody prior to parole." § 302.11(7)(am). (App.105). And § 973.155(5) explicitly provides for retroactive application of sentence credit. ("If this section has not been applied at sentencing… this section shall be applied retroactively to the person.").

However, the parties disagree about which component—confinement or supervision—of Mr. Obriecht's remaining sentence should be reduced. The court of appeals held that custody credit must be applied to shorten remaining parole time instead of reincarceration custody. This holding ignores ***State ex rel. Ludke v. Dep't of Corr***., 215 Wis. 2d 1, 572 N.W.2d 864 (Ct. App. 1997), which rejected the idea that confinement custody and supervision are interchangeable. In ***Ludke***, the defendant argued that time he had successfully served on parole prior to his revocation was custody for purposes of sentence credit. The court of appeals roundly denied his claim, holding that "§302.11(7)(a), by its own terms, distinguishes between 'custody' and time served on parole." ***Id.*** at 6.

The correct result follows from the basic sentence credit rules set forth in § 973.155. Sentence credit only applies to confinement custody. ***Magnuson***, 233 Wis. 2d 40 at ¶ 12. Moreover, custody credit is to be granted on a "day-for-day" basis. ***Boettcher***, 144 Wis. 2d. at 87. Mr. Obriecht spent 107 days in *confinement* in connection with this case. These 107 days must be credited toward his re-*confinement*, not supervision.

II. The Court of Appeals' Reliance on Wis. Stat. § 302.11(7)(b) is Misplaced.

A. Section 302.11(7)(b) is a restriction on mandatory release; it has nothing to do with sentence credit.

The court of appeals held that the mandatory release statute does not allow previously-overlooked sentence credit to be applied to a term of reincarceration. The court of appeals' decision hinged on a misinterpretation of a single sentence in § 302.11(7)(b) taken out of context—"a parolee returned to prison for violation of the conditions of parole shall be incarcerated for the entire period of time determined by the reviewing authority unless paroled earlier under par. (c)."

1. Rules of statutory interpretation

"Statutory interpretation begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry." ***State ex rel. Kalal v. Circuit Court for Dane County***, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. "Context is important to meaning. So, too, is the structure of the statute in which the operative language appears. Therefore, statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably to avoid absurd or unreasonable results." ***Id.***, ¶46.

"If this process of analysis yields a plain, clear statutory meaning, then there is no ambiguity, and the statute is applied according to this ascertainment of its meaning." ***Id.*** Legislative history does not need to be consulted, "although

legislative history is sometimes consulted to confirm or verify a plain-meaning interpretation." ***Id.***, ¶51.

Courts may defer to an agency's interpretation of a statute; however, a court does not defer to an interpretation that "directly contravenes the words of the statute, is clearly contrary to legislative intent, or is otherwise unreasonable or without rational basis." ***State ex rel. Parker v. Sullivan***, 184 Wis. 2d 668, 700, 517 N.W.2d 449 (1994).

2. Interpretation of Wis. Stat. § 302.11(7)

Wisconsin Stat. § 302.11 is titled "mandatory release." Under this section, an inmate serving a pre-December 31, 1999 sentence is entitled to release on parole at two-thirds of the sentence "except as provided in subs. (1g), (1m), (1q), (1z), and (7)." § 302.11(1)(a).

The exception to mandatory release that is at issue in this case is set forth in sub. (7). It involves the reincarceration of a revoked parolee. Subsection (7)(am) provides that "the reviewing authority may return a parolee… to prison for a period up to the remainder of the sentence for a violation of the conditions of parole." Subsection (7)(b) provides that, "a parolee returned to prison for violation of the conditions of parole shall be incarcerated for the entire period of time determined by the reviewing authority unless paroled earlier under par. (c). The parolee is not subject to mandatory release under sub. (1) or presumptive mandatory release under sub. (1g)."

The court of appeals interpreted sub. (7)(b) to mean that belatedly-granted sentence credit cannot be applied to reincarceration time because to do so would mean that the parolee would not be incarcerated for "the entire period of time determined by the reviewing authority." (App. 106).

This conclusion was reached by ignoring context. *See* ***Kalal***, 271 Wis. 2d 633 at ¶46. The statement "entire period of time" may seem expansive. However, it is given particular meaning by the sentence that immediately follows—"[t]he parolee is not subject to mandatory release...or presumptive mandatory release." In context, the phrase means that a revoked parolee will not gain automatic early release from reincarceration. The only way a revoked parolee can be released early is through a discretionary act of the parole commission. § 302.11(7)(c).

Moreover, the statute explicitly provides for the application of sentence credit. "The reviewing authority may return a parolee…to prison for a period up to the remainder of the sentence for a violation of the conditions of parole. *The remainder of the sentence is the entire sentence, less time served in custody prior to parole. The revocation order shall provide the parolee with credit in accordance with ss. 304.072 and 973.155*." § 302.11(7)(am) (emphasis added).

Given that § 302.11(7)(am) explicitly addresses sentence credit, it is unreasonable to read into the term "entire period of time" a veiled reference to sentence credit. "[G]enerally where a specific statutory provision leads in one direction and a general statutory provision in another, the specific statutory provision controls." ***Marder v. Bd. of Regents of Univ. of Wis.***, 2005 WI 159, ¶ 23, 286 Wis. 2d 252, 706 N.W.2d 110.

Section § 302.11(7)(b) merely clarifies that revoked parolees are not entitled to "good time" or mandatory release. It is important to recognize that applying sentence credit does not result in early release. It simply re-calculates a sentence based on time already served. As such, applying sentence

credit does not interfere with the Division of Hearings and Appeals' reincarceration order.

When the plain language of a statute is clear, there is no need to refer to legislative history. However, legislative history may be helpful to confirm and verify the plain-meaning interpretation. ***Kalal***, 271 Wis. 2d 633, ¶54. A court may infer intent by analyzing the changes the legislature has made over time. *See*, *e.g.*, ***In re Commitment of Byers***, 2003 WI 86, ¶¶22-27, 263 Wis. 2d 113, 665 N.W.2d 729.

Section 302.11 was previously numbered § 53.11. Subsection (7) was adopted in 1951. When sub. (7)(b) was first created, it *did* provide for early release from reincarceration through application of statutory and industrial good time credits.[2] The 1951 version of § 53.11(7)(b) reads:

> (b) Any person on parole under this section may be returned to prison as provided in section 57.06(3) or 57.07(2) to serve the remainder of his sentence. *He may earn good time on the balance of such sentence while so in prison*, subject to forfeiture thereof for misconduct as herein provided. He may again be released on parole thereafter under either this section or section 57.06 or 57.07, whichever is applicable. The remainder of his sentence shall be deemed to be the amount by which his original sentence was reduced by good time.

(emphasis added).

[2] Under the 1951 version of Wis. Stat. § 53.11(1), "statutory" good time was applied as follows: "First year, one month; second year, 2 months; third year, 3 months; fourth year 4 months; fifth year, 5 months; every year thereafter, 6 months." Inmates could also earn "industrial good time," "a diminution of time at the rate of one day for each six days" for "diligence" in work or study. § 53.12(1) (1951).

In 1983 Wisconsin Act 528 §6, the legislature amended § 53.11 to replace "good time" with "mandatory release." At the same time, § 53.11(7)(b) was amended to preclude mandatory parole for revoked parolees.

> (b) *A parolee returned to prison for violation of the conditions of parole shall be incarcerated for the entire period of time determined by the department under par. (a), unless paroled earlier under par. (c). The parolee is not subject to mandatory release* under sub. (1). The period of time determined under par. (a) may be extended in accordance with sub.(2).

1983 Act 528, § 6 (emphasis added).[3]

Comparing the 1951 and 1984 versions confirms the plain-meaning interpretation of the statute. The phrase "entire period of time determined by the department" pertains to early release. It has nothing to do with sentence credit.

The Legislative Reference Bureau's (LRB) Analysis of the assembly bill that was enacted as 1983 Act 528 also supports the plain-meaning interpretation. Under the subsection "Revoked Parolees," the analysis states in part: "Any parolee returned to prison for violation of conditions of parole is returned for a period up to the remainder of the sentence, as determined by the department. This person is not subject to release under the old mandatory parole date (this is a change from present law) and must serve the period

[3] The differences between the 1984 version of § 53.11(7) and the 2014 version of § 302.11(7) include: (1) "the department" was changed to "reviewing authority" and (2) when "presumptive mandatory release" was created, it was also excluded (for certain serious felonies mandatory release upon service of two-thirds of the sentence was presumptive but could be denied by the Parole Commission. *See* Wis. Stat. § 302.11(1g) (2001-2002)).

specified by the department, unless granted discretionary parole by the department at an earlier date." 1983 Assembly Bill 2011 (parentheses in original).

In statutory and historical context, the phrase, "entire period of time" pertains to mandatory early release, not to sentence credit. And applying credit that was rightfully earned but previously overlooked, does not result in early release. It simply results in a recalculation of the reincarceration time based on time already served.

Nothing in Wis. Stat. § 302.11(7) prohibits the correction of a sentence via application of rightfully deserved, but previously overlooked, sentence credit.

B. If the court of appeals interpretation of Wis. Stat. § 302.11(7)(b) was correct, the statute would violate equal protection.

The legislature is presumed to have drafted a law in a constitutional manner. ***State v. Cole***, 2003 WI 112, ¶11, 264 Wis. 2d 520, 665 N.W.2d 328. However, the court of appeals holding, if affirmed, violates equal protection as guaranteed under the Fourteenth Amendment to the United States Constitution and the Wisconsin Constitution (which have been interpreted as substantial equivalents). ***State ex rel. Cresci v. Schmidt***, 62 Wis. 2d 400, 414, 215 N.W.2d 361(1974).

The Equal Protection Clause is designed to assure that those who are similarly situated will be treated similarly; thus, the legislature must have reasonable and practical grounds for classifications it draws. ***State v. Padley***, 2014 WI App. 65, ¶50, 354 Wis. 2d 545, 849 N.W.2d 867. "The crucial question [in all equal protection cases] is whether there is an appropriate governmental interest suitably furthered by the

differential treatment." ***Police Department of Chicago v. Mosley***, 408 U.S. 92, 95 (1972).

The court of appeals' holding creates unreasonable distinctions between similarly situated individuals. Even worse, in cases like Mr. Obriecht's, it further penalizes a defendant who previously lost out on deserved sentence credit through no fault of his own.

Consider the following hypothetical:

> • Defendant A spends 100 days in jail before sentencing. At sentencing, the court imposes a 10-year sentence and properly acknowledges the sentence credit. Thus, the DOC back dates Defendant A's sentence start date by 100 days. After 4 years, Defendant A is released on parole. Two years later, he is revoked and sent back to prison for 2 years, leaving 2 years remaining on parole.
>
> • Defendant B also spends 100 days in jail before sentencing. At sentencing, the court imposes a 10-year sentence but overlooks the credit. Thus, Defendant B's sentence begins at the moment of sentencing. After having spent 4 years and 100 days in custody, Defendant B is released on parole. Two years later, he is revoked and sent back to prison for 2 years leaving 2 years remaining on parole.
>
> • At this point, the sentence-credit error is realized. According to the DOC interpretation, the credit must be applied to the remaining parole time.
>
> • Thus, Defendant A has served 4 years in prison and will serve 2 more years, whereas Defendant B has

> served 4 years *and 100 days* in prison and will also serve 2 more years in prison.
>
> If both defendants get out of prison and successfully complete their sentences, Defendant B will have served 100 more days in prison than Defendant A, even though the only difference between them is the sentence credit oversight.

This is an illogical and unreasonable result. *See* ***State v. Lamar***, 2011 WI 50, ¶33, 334 Wis. 2d 536, 799 N.W.2d 758 (statutes are to be construed to avoid absurd or unreasonable results).

In addition, consider if Defendant A had the financial means to post bond, and therefore had no pretrial credit. Defendant B would spend 100 more days in custody than Defendant A simply based on his indigency.

Lengthening a defendant's sentence based on indigency was the exact iniquity that the courts sought to eliminate through the application of sentence credit. The first opinion of this Court on sentence credit was ***Klimas v. State***, 75 Wis. 2d 244, 249 N.W.2d 285 (1977). In ***Klimas***, this Court held that the Fourteenth Amendment equal protection principles of the U.S. Constitution compels the award of custody credit. "The failure to credit pre-trial time or pre-sentence time in custody as the result of indigency means that persons similarly situated except for financial means are subject to different periods of confinement for the same crime. An additional period of confinement is imposed upon the poor person." ***Id.*** at 248.

The court of appeals acknowledged that its holding in this case could lead to unfair results, but quickly dismissed it as par for the course. "We acknowledge that the belated

application of sentence credit to reduce Obriecht's overall sentence may not fully cure the failure to properly apply the credit at the time of sentencing. But that problem, if it is present here, commonly occurs when a challenge to a sentence credit decision comes too late to actually affect the duration of time spend in initial incarceration." (App. 106).

The court of appeals is incorrect. Fairness is achieved by following the plain language of § 973.155 and applying the 100-days sentence credit to the term of reincarceration. Then, under the hypothetical, both Defendants A and B will have served 4 years in prison and both will serve 2 more years before being re-paroled.

Constitutional issues are avoided by applying the plain-meaning of § 973.155 to grant Mr. Obriecht day-for-day custody credit for the 107 days he already spent in custody on this case.

CONCLUSION

For the reasons above, Mr. Obriecht respectfully asks this court to reverse the court of appeals and remand the case for further proceedings.

Dated this 15th day of December, 2014.

Respectfully submitted,

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CERTIFICATION AS TO FORM/LENGTH

I certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c) 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 brief is 4,415 words.

CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that:

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

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

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

Dated this 15th day of December, 2014.

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CERTIFICATION AS TO APPENDIX

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with § 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 court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings 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 of 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.

Dated this 15th day of December, 2014.

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