STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT II

Case No. 2014AP1876-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ERIC L. NIGL,

Defendant-Appellant.

ON APPEAL FROM THE JUDGMENT OF CONVICTION ENTERED IN WINNEBAGO COUNTY CIRCUIT COURT, THE HONORABLE BARBARA H. KEY PRESIDING, AND THE ORDER DENYING POSTCONVICTION RELIEF ENTERED IN WINNEBAGO COUNTY CIRCUIT COURT, THE HONORABLE SCOTT C. WOLDT PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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STATEMENT OF ISSUE

Under nonretroactivity doctrine, a case announcing a new rule generally cannot be applied retroactively to closed cases. Here, Eric L. Nigl had to register as a sex offender after his adjudication for sexual assault in 1999. But Nigl argues that he should not have to register based upon a rule announced subsequently in *In the Interest of Cesar G.*, 2004 WI 61, ¶ 40, 272 Wis. 2d 22, 682 N.W.2d 1. Should this Court retroactively apply *Cesar G.* to Nigl's adjudication after he failed to comply with registration in 2012?

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument is unnecessary because the briefs should fully present and meet the issue on appeal. *See* Wis. Stat. § 809.22(2)(b).

The State agrees with Nigl on publication. A published decision would clarify an existing rule of substantial and

continuing public interest. *See* Wis. Stat. § 809.23(1)(a)1. and 5.[1]

ARGUMENT

I. This Court reviews the legal question on appeal de novo, while accepting the circuit court's findings of fact as true unless clearly erroneous.

This Court reviews whether *Cesar G.* may be applied retroactively to Nigl's sex offender registration requirement as a question of law. *See State v. Howard*, 211 Wis. 2d 269, 276-77, 564 N.W.2d 753 (1997), *rev'd on other grounds*, *State v. Gordon*, 2003 WI 69, ¶ 5, 262 Wis. 2d 380, 663 N.W.2d 765. But the circuit court's "[f]indings of fact shall not be set aside unless clearly erroneous." *State v. Carter*, 2010 WI 77, ¶ 20, 327 Wis. 2d 1, 785 N.W.2d 516 (citing Wis. Stat. § 805.17(2)). So this Court generally accepts the lower court's findings of fact applying the legal principles de novo to those facts. *See State v. Sobczak*, 2013 WI 52, ¶ 9, 347 Wis. 2d 724, 833 N.W.2d 59.

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[1]The State cautions, however, that the record only contains four pages from Nigl's underlying juvenile case (R. 11:1-4). The State defers to this Court's discretion on the impact this limited record may have on the publication decision. *See* Wis. Stat. § 809.23(1).

This Court is not bound to the grounds set forth by the circuit court if it decides the decision was correct but disagrees with the basis for that decision. "An appellate court is concerned with whether the decision . . . is correct, not whether it or the circuit court's reasoning is." *Liberty Trucking Co. v. Dep't of Indus., Labor & Human Relations*, 57 Wis. 2d 331, 342, 204 N.W.2d 457 (1973). So "[i]f the holding is correct, it should be sustained and this court may do so on a theory or on reasoning not presented to the lower court." *Id.*; *see also State ex rel. Harris v. Milwaukee City Fire & Police Comm'n*, 2012 WI App 23, ¶ 9, 339 Wis. 2d 434, 810 N.W.2d 488.

II. The circuit court properly convicted Nigl after finding beyond a reasonable doubt that he knowingly failed to comply with a sex offender registration requirement.

The circuit court found that Nigl knowingly failed to comply with a sex offender registration requirement. Nigl was required to register as a sex offender after his juvenile adjudication in 1999 for first degree sexual assault of a child (R. 1:2, 11:1-2 (citing Wis. Stat. § 948.02(1) (1997-98))). In 2012, Nigl failed to comply with the requirement to keep

his address current with the Wisconsin Department of Corrections ("DOC") (R. 1). Nigl's noncompliance violated his sex offender registration obligation. *See* Wis. Stat. § 301.45 (2011-12)[2]. At trial, the court found that the State met its burden of proof that Nigl failed to comply with his registration requirement (R. 40:12).[3]

The crime required the State to prove beyond a reasonable doubt that Nigl knowingly failed to comply with a requirement to provide the DOC with an updated address within 10 days after a change occurred. Wis. Stat. § 301.45(2)(a)5., (4)(a), and (6)(a)1. So the State had to prove three elements: (1) Nigl was a person required to provide information under the sex offender registration statute; (2) Nigl failed to provide an updated address as required; and (3) Nigl knowingly failed to provide the required updated address. *See* Wis. J.I.-Criminal 2198 (2013).

The court found that the State proved the first element—Nigl was a person required to provide information

[2]All citations to Wis. Stat. § 301.45 are to this edition.

[3]Nigl had a court trial after waiving his right to jury (R. 40:4-5).

under the sex offender registration statute (R. 40:12). During the trial, the court received into evidence as an exhibit the 1999 dispositional order from Nigl's juvenile adjudication (R. 11:1-4, 40:10-11). Nigl argued that the dispositional order "does not say anything about registry" (R. 40:11). But the court was not persuaded by his argument (R. 40:11-12). The court found that "[t]here wasn't any stay in [e]ffect and just because it's not on the order doesn't mean that he still isn't subject to the requirements of 301.45" (R. 40:11). The court found beyond a reasonable doubt Nigl was required to register under the statute (R. 40:11-12).

The court found the State proved the second element—Nigl failed to provide DOC with an updated address within 10 days after a change occurred (R. 40:12). At trial, DOC Registration Specialist Nichole Hall stated that she supervised Nigl (R. 40:6). Hall testified that, in January 2012, she spoke with Nigl at his registered residence in the City of Appleton (R. 40:8). In August 2012, DOC mailed Nigl his annual registration letter, which the post office returned because he no longer was at his

registered residence (R. 40:8). Hall testified that she undertook a significant investigation to locate Nigl (R. 40:8). Nigl's whereabouts remained unknown until his arrest on unrelated warrants in November 2012 (R. 40:9). After Nigl's arrest, DOC learned that he had moved to a residence in the City of Kaukauna (R. 40:9). Hall testified that Nigl failed to provide DOC with his updated address from at least August to November 2012 (R. 40:10). From Hall's testimony, the court found beyond a reasonable doubt that Nigl failed to provide DOC with his updated address within 10 days (R. 40:12).

The court found the State proved the third element—Nigl knowingly failed to provide the required updated address (R. 40:12). Hall testified that Nigl received numerous notices about his obligation to register over the course of several years (R. 40:7). She explained that, in January 2012, she had a meeting where she again reviewed Nigl's reporting obligations with him (R. 40:7). From Hall's testimony, the court found beyond a reasonable doubt that Nigl knowingly

failed to comply with his registration requirements (R. 40:12).

This Court should defer to the circuit court's findings of fact. *See* Wis. Stat. § 805.17(2). Nigl does not allege the court's factual findings were clearly erroneous. He confirms that "[t]here is no dispute that the State proved at trial that during the time periods alleged, Nigl had not provided the information required . . . ." (Def.-Appellant Br. 5). So this Court's review begins with great deference to the factual determinations made by the circuit court as the trier of fact. *State v. Rowan*, 2012 WI 60, ¶ 5, 341 Wis. 2d 281, 814 N.W.2d 854.

III. Nigl forfeited his statutory right for an exemption to sex offender registration when he failed to move for such an exemption at the time of his juvenile disposition in 1999.

A defendant or juvenile forfeits a right when he or she fails to make a timely assertion of the right. *State v. Ndina*, 2009 WI 21, ¶ 29, 315 Wis. 2d 653, 761 N.W.2d 612. Here, Nigl concedes that he "never took any action to ask for the registration requirement to be stayed" at the time of his adjudication in 1999 (Def.-Appellant Br. 5). So he forfeited

his statutory right for an exemption to sex offender registration. *See Ndina*, 315 Wis. 2d 653, ¶ 29.

A. Nigl forfeited his statutory right for a waiver of sex offender registration because he failed to move for waiver under Wis. Stat. § 938.34(15m).

At the time of Nigl's adjudication in 1999, the Juvenile Justice Code allowed a juvenile to file a motion exempting him or her from sex offender registration:

> If the juvenile is adjudicated delinquent on the basis of a violation, or the solicitation, conspiracy or attempt to commit a violation, of s. 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055, 948.06, 948.07, 948.08, 948.11 or 948.30, or of s. 940.30 or 940.31 if the victim was a minor and the juvenile was not the victim's parent, the court shall require the juvenile to comply with the reporting requirements under s. 301.45 *unless the court determines, after a hearing on a motion made by the juvenile, that the juvenile is not required to comply under s. 301.45 (1m).*

Wis. Stat. § 938.34(15m)(bm) (1997-98)[4]; *see In the Interest of Hezzie R.*, 219 Wis. 2d 848, 880 n.10, 580 N.W.2d 660 (1998), *as amended on denial of reconsideration*, 220 Wis. 2d 360, 580 N.W.2d 660 (1998).

In July 1998, the Wisconsin Supreme Court recognized that "the reporting requirements for sex offender

[4]All citations to Wis. Stat. § 938.34 are to this edition.

registration . . . may be waived" under Wis. Stat. § 938.34(15m)(bm). *Hezzie R.*, 219 Wis. 2d at 880. The Court explained that "a juvenile need not comply with the reporting requirements of § 301.45 if 'the court determines, after a hearing on a motion made by the juvenile, that the juvenile is not required to comply under s. 301.45(1m).'" *Id.* (quoting Wis. Stat. § 938.34(15m)(bm)).

A juvenile must file a motion seeking waiver before the court considers an exemption to sex offender registration. Wis. Stat. § 938.34(15m)(bm). Upon filing a motion, the juvenile court may excuse registration when the juvenile meets the following four requirements:

> (1) the offender is younger than nineteen; (2) the offender was convicted of first-degree sexual assault of a child, second-degree sexual assault of a child or repeated acts of sexual assault of the same child; (3) there is no more than a four-year age difference between the child and the offender; and (4) protection of the public does not require registration of the offender.

In re Joseph E.G., 2001 WI App 29, ¶ 10, 240 Wis. 2d 481, 623 N.W.2d 137 (citing Wis. Stat. § 301.45(1m)). The court does not consider this exemption when the juvenile fails to make a motion. Wis. Stat. § 938.34(15m).

Prior to Nigl's disposition in April 1999, he could have moved for waiver of sex offender registration under Wis. Stat. § 938.34(15m). The statutory section was enacted a year earlier. *Hezzie R.*, 219 Wis. 2d at 880 n.10. And prior to Nigl's disposition the Court confirmed that the section permitted waiver of sex offender registration to eligible juveniles. *Id.* at 880. So the registration requirements "are only imposed on a juvenile who is adjudicated delinquent where the particular facts of the case and concerns for public safety dictate it." *Id.* at 881.

Nigl failed to move for waiver under Wis. Stat. § 938.34(15m) at the time of his adjudication in 1999. *See State v. Holmgren*, 229 Wis. 2d 358, 363 n.2, 599 N.W.2d 876 (Ct. App. 1999).[5] So he forfeited this

[5]Nigl fails to provide this Court with sufficient records from his underlying juvenile adjudication. As the appellant, Nigl has the burden "to ensure that the record is sufficient to address issues raised on appeal." *State v. Sahs*, 2013 WI 51, ¶ 50, 347 Wis. 2d 641, 832 N.W.2d 80. He only provides this Court with four pages of the record from his underlying juvenile case (R. 11:1-4). When the appellant provides this Court with an incomplete record, the Court must assume that the missing material supports the circuit court's ruling. *Holmgren*, 229 Wis. 2d at 363 n.2. So this Court may assume that Nigl was an eligible juvenile who did not file a waiver motion. *Id.*

statutory right exempting him from sex offender registration. *See Ndina*, 315 Wis. 2d 653, ¶ 29.

B. Nigl forfeited his statutory right for a stay of sex offender registration because he failed to move for a stay under Wis. Stat. § 938.34(16).

At the time of Nigl's adjudication in 1999, the Juvenile Justice Code allowed a circuit court to enter an order staying one or more dispositions. Wis. Stat. § 938.34(16). After adjudication, the juvenile court must enter an order imposing one or more of the dispositions under Wis. Stat. § 938.34. The court then may "enter an additional order staying the execution of the dispositional order contingent on the juvenile's satisfactory compliance with any conditions that are specified in the dispositional order and explained to the juvenile by the court." Wis. Stat. § 938.34(16).

In 1995, the sex offender reporting requirement was included as a disposition under Wis. Stat. § 938.34. 1995 Wisconsin Act 77, sec. 629 (creating Wis. Stat. § 938.34); *see* 1995 Wisconsin Act 440, secs. 79-81 (amending Wis. Stat. § 938.34(15) and creating Wis. Stat. § 938.34(15m)). The Wisconsin Supreme Court later

confirmed that "the sex offender registration requirement established in Wis. Stat. § 938.34(15m) is a disposition." *Cesar G.*, 272 Wis. 2d 22, ¶ 40.

In *Cesar G.*, the Court confirmed that the statutes permitted a juvenile to move for a stay of the sex offender registration disposition. *Id.* ¶¶ 51-52. The Court placed the burden on the juvenile moving for a stay "to prove by clear and convincing evidence that, based on these factors, a stay should be granted in his or her case." *Id.* ¶ 51. The burden "attaches when a juvenile files a motion requesting a stay of the sex offender registration requirement." *Id.*

At Nigl's juvenile disposition, he could have moved for a stay under Wis. Stat. § 938.34(16). The statutory section was enacted years before his disposition. *See* 1995 Wisconsin Act 77, sec. 629; 1995 Wisconsin Act 440, secs. 79-81. Nothing prevented Nigl from moving for a stay through reliance upon the plain language of Wis. Stat. § 938.34. In *Cesar G.*, the juvenile made such a motion in the circuit court prior to appellate review. 272 Wis. 2d 22, ¶ 9. Nigl

concedes that he could have sought such a stay in 1999 (Def.-Appellant Br. 9-10).

Nigl failed to move for a stay under Wis. Stat. § 938.34(16) at the time of his adjudication in 1999. "There is no dispute that Nigl never took any action to ask for the registration requirement to be stayed" (*Id.* at 5). Having never moved for a stay, Nigl cannot now criticize the juvenile court for not issuing a stay sua sponte in 1999. *See Cesar G.*, 272 Wis. 2d 22, ¶ 51 (sua sponte stay). Nigl forfeited the statutory right exempting him from sex offender registration. *See Ndina*, 315 Wis. 2d 653, ¶ 29.

IV. The circuit court properly denied Nigl's motions because he cannot retroactively apply *Cesar G.* to his sex offender registration requirement.

A. Nigl cannot retroactively apply *Cesar G.* to his juvenile adjudication from 1999.

Under nonretroactivity doctrine, "a new rule of criminal procedure generally cannot be applied retroactively to cases that were final before the rule's issuance." *State v. Lagundoye*, 2004 WI 4, ¶ 13, 268 Wis. 2d 77, 674 N.W.2d 526. A court employs a three-part test to determine whether the doctrine applies: (1) Whether the

rule was new; (2) Whether it was a rule of criminal procedure; and (3) Whether a case was final. *State ex rel. Krieger v. Borgen*, 2004 WI App 163, ¶ 8, 276 Wis. 2d 96, 687 N.W.2d 79.

Under the doctrine, *Cesar G.* was a new rule. "A rule is new if the result was not dictated by precedent existing at the time the defendant's conviction became final." *Krieger*, 276 Wis. 2d 96, ¶ 9. Here, *Cesar G.* announced that the sex offender registration requirement is a disposition the juvenile court may stay under Wis. Stat. § 938.34(16). 272 Wis. 2d 22, ¶ 40. Nigl acknowledges that "[t]he availability to a juvenile of the right to move for a stay of sex offender registration was first clearly identified" in *Cesar G.* (Def.-Appellant Br. 7-8). So there is no dispute that *Cesar G.* announced a new rule within the meaning of the doctrine because it was the first case clearly identifying a juvenile court's authority to stay the disposition of sex offender registration. *See Krieger*, 276 Wis. 2d 96, ¶ 9.

Cesar G. addressed a rule of criminal procedure. Sex offender registration is not a punishment. *Hezzie R.*, 219 Wis. 2d at 881; *In re Jeremy P.*, 2005 WI App 13, ¶ 14, 278 Wis. 2d 366, 692 N.W.2d 311. Registration is a collateral consequence. *State v. Bollig*, 2000 WI 6, ¶ 27, 232 Wis. 2d 561, 605 N.W.2d 199. So the requirement is not a substantive law because it neither declares what acts are crimes, nor prescribes the punishment therefore. *See Lagundoye*, 268 Wis. 2d 77, ¶ 21. The relevant substantive law in Nigl's juvenile case was his underlying offense of first degree sexual assault of a child. *See id.* But the procedure by which he may stay the dispositional collateral consequence of sex offender registration is procedural. *See id.* ¶ 22. Nigl acknowledges that the *Cesar G.* addressed a new "procedure" (Def.-Appellant Br. 9). So there is no dispute that *Cesar G.* involved a rule of criminal procedure.

Nigl's juvenile case from 1999 was final when the Court issued its *Cesar G.* opinion in 2004. Nigl concedes that his juvenile case was final: "When this was decided, Nigl was

already almost 19 years old and out of the jurisdiction of the juvenile court, and the Dispositional Order had already been expired for four years" (*Id.* at 5). His juvenile case clearly was final under nonretroactivity doctrine. *See Lagundoye*, 268 Wis. 2d 77, ¶ 20; *Krieger*, 276 Wis. 2d 96, ¶ 10.

As a new rule of criminal procedure occurring after Nigl's underlying juvenile adjudication was final, the *Cesar G.* rule generally cannot be applied retroactively to his case. *See Lagundoye*, 268 Wis. 2d 77, ¶ 31. Nigl may only avail himself to the *Cesar G.* rule under two narrow exceptions to the nonretroactivity doctrine. But neither exception applies.

The "first exception applies to conduct that 'is classically substantive.'" *Id.* ¶ 32 (citation omitted). The procedure by which a juvenile court may stay the dispositional collateral consequence of sex offender registration is a rule of criminal procedure—not substantive law. *See Lagundoye*, 268 Wis. 2d 77, ¶¶ 21-22. *Cesar G.* did not decriminalize any conduct. *See id.* ¶ 32. *Cesar G.* also did not place any conduct beyond the power of the Legislature—it simply interpreted

the legislative intent of a statute. *See id*. So *Cesar G*. does not fall within the first exception.

"[T]he second exception is limited to 'those new procedures without which the likelihood of an accurate conviction is seriously diminished.'" *Id*. ¶ 34 (quoting *Teague v. Lane*, 489 U.S. 288, 311 (1989)). It is "'reserved for watershed rules of criminal procedure.'" *Id*. ¶ 33 (quoting *Teague*, 489 U.S. at 311). The stay of sex offender registration is not the sort of watershed rule required for ordered liberty. *See id.* ¶¶ 33-37. The stay is a legislative creation that has no impact on the accuracy of the underlying adjudication. *See id*. So *Cesar G*. does not fall within the second exception.

The rule decided in *Cesar G*. cannot be applied retroactively to Nigl's juvenile adjudication. *See id*. ¶ 44. The *Cesar G*. rule does not fit within either of the two exceptions. So Nigl's case is governed by the law as it existed when his adjudication became final in 1999. *See id*. ¶ 43. Nigl cannot avail himself to the *Cesar G*. rule.

Nigl fails to consider the doctrine when he asks this Court to retroactively apply *Cesar G.* to his juvenile disposition. Nigl characterizes this Court's review as whether the court properly exercised discretion (Def.-Appellant Br. 6-7). But he avoids any discussion of nonretroactivity doctrine. And Nigl fails to understand that this Court's review is not a question of discretion by a lower court—it is a question whether *Cesar G.* may be retroactively applied to his registration requirement that resulted from a disposition in 1999.

Nigl's reliance on *Jeremy P.* does not support his argument. He repeatedly cites to this case (Def.-Appellant Br. 8, 12 (citing *Jeremy P.*, 275 Wis. 2d 366)). But *Jeremy P.* involved a juvenile case commenced in 2002 with a direct appeal in 2004. 275 Wis. 2d 366, ¶ 2. The direct appeal in *Jeremy P.* was not exhausted when the Court issued its *Cesar G.* opinion. So *Jeremy P.*'s case was not final under nonretroactivity doctrine. *Lagundoye*, 268 Wis. 2d 77, ¶ 20. As a result, the juvenile in *Jeremy P.* could avail himself to *Cesar G.* while Nigl cannot. *See generally id.*

Nigl errs by failing to understand that nonretroactivity doctrine applies with equal force in this case to direct and collateral challenges. *See id.* ¶ 2. The doctrine applies broadly because it furthers the policy objective of finality in convictions and adjudications. *Id.* ¶ 30. Nigl attempts to distinguish his challenge from a collateral attack (Def.-Appellant Br. 11). But he cannot avoid the doctrine simply by calling his challenge by another name.

Nigl attempts to use his 2012 criminal case as an end run around his requirement to register that followed from his 1999 juvenile adjudication. He attempts to convert the criminal case into an appeal of his juvenile case when he asks this Court to review the actions of the juvenile court (Def.-Appellant Br. 7-13). But Nigl is foreclosed from such a review by nonretroactivity doctrine. And a party cannot do an end run to accomplish indirectly what cannot be done by direct means. *See State v. Deilke*, 2004 WI 104, ¶ 23, 274 Wis. 2d 595, 682 N.W.2d 945 (prohibiting end runs around plea agreements).

B. Nigl cannot ignore with impunity his sex offender registration requirements.

The circuit court properly denied Nigl's repeated motions to dismiss his criminal charge. The court recognized that Nigl cannot ignore with impunity his registration requirement.

Nigl repeatedly moved to dismiss the criminal charge in the circuit court. He first filed a motion to dismiss the criminal complaint before the trial (R. 9). In the initial motion, Nigl alleged that the juvenile dispositional order from 1999 failed to include the registration requirement (R. 9:1). After conviction, Nigl filed a notice and motion on postconviction relief (R. 14, 16, 18). He asked the circuit court to reconsider his original motion to dismiss (R. 18:1). Nigl alleged that his "rights were violated because he was unable to effectively ask for a stay of the registration requirement as a juvenile, [so] he should not be subject to the registration requirement now as an adult" (R. 18:3).

The circuit court denied Nigl's motions (R. 29, 39:6). The court made a finding of fact that the juvenile court in 1999 did not stay sex offender registration (R. 39:5-6). The court

explained that, "if anything, there may have been an oversight on the Dispositional Order itself but that doesn't negate the fact that there is the requirement here unless there's a specific finding that he should not have—or did not have to register as a sex offender" (R. 39:6). The juvenile court made no such findings so the circuit court denied Nigl's original motion (R. 39:6). And denied Nigl's postconviction motion (R. 29).

Nigl does not argue that the circuit court's findings of fact were clearly erroneous (Def.-Appellant Br. 13-16). To the contrary, Nigl acknowledges that the juvenile court never stayed his requirement to register as a sex offender (*Id*. at 5, 13). He accepts this fact, but still argues that "he should have no requirement to register" (*Id*. at 16).

Nigl errs by failing to understand the limited role the circuit court had in reviewing the sex offender registration requirement that followed from his juvenile adjudication. Nigl assumes that the circuit court must exercise its discretion into the actions of the juvenile court (*Id*. at 13-16).

But that is not the role of the circuit court confronted with a charge for failure to register as a sex offender.

The criminal charge in Nigl's case is analogous to a charge of bail jumping. A bail jumping case focuses on the allegation that a person violated a condition of his or her bond—it is not the forum to litigate the validity of the underlying criminal charge that imposed the bond. *State ex rel. Jacobus v. State*, 208 Wis. 2d 39, 53-54, 559 N.W.2d 900 (1997). Here, the focus is whether Nigl was a person required to provide information under the sex offender registration statute. *See* Wis. J.I.-Criminal 2198. The court found that Nigl had to register (R. 39:5-6). Based upon that finding of fact, the court properly denied Nigl's motions.

Nigl asks this Court to reach an absurd result that he may ignore with impunity his sex offender registration requirements. Such a result is absurd because *Cesar G.* placed the burden on a juvenile moving for a stay "to prove by clear and convincing evidence that, based on these factors, a stay should be granted in his or her

case." 272 Wis. 2d 22, ¶ 51. Nigl advocates for a windfall relieving him of this burden. Nigl asks this Court to allow him—and presumably all juveniles adjudicated prior to *Cesar G.*—to ignore previously required registration requirements.

* * * * *

This Court should affirm the circuit court's judgment of conviction and order denying Nigl's postconviction motion. The circuit court properly convicted Nigl after finding beyond a reasonable doubt that he knowingly failed to comply with a sex offender registration requirement. Nigl forfeited his statutory right for an exemption to sex offender registration when he failed to move for such an exemption at the time of his juvenile disposition in 1999. The circuit court properly denied Nigl's motions because he cannot retroactively apply *Cesar G.* to his registration requirement.

CONCLUSION

This Court should affirm the judgment and order of the circuit court.

Dated this ____ day of January, 2015.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 4,350 words.

Dated this _____ day of January, 2015.

_____
WINN S. COLLINS
Assistant Attorney General

CERTIFICATE OF COMPLIANCE
WITH WIS. STAT. § (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 Wis. Stat. § (Rule) 809.19(12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of 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 _____ day of January, 2015.

_____
WINN S. COLLINS
Assistant Attorney General