STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT I

Case No. 2014AP001944

In re the commitment of Jon F. Winant:

STATE OF WISCONSIN,

Petitioner-Respondent,

v.

JON F. WINANT,

Respondent-Appellant.

On Appeal of the Judgment of Commitment Under Chapter 980, Honorable David A. Hansher, Presiding, and Order Denying Post-Commitment Motion, Milwaukee County Circuit Court, the Honorable Timothy Witkowiak, Presiding

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BRIEF AND APPENDIX OF RESPONDENT-APPELLANT

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ISSUE PRESENTED

I. At the Trial to Involuntarily Commit Mr. Winant Under Chapter 980, the Court Admitted Into Evidence Hearsay Statements From a Social Worker, Detailing Statements Mr. Winant Allegedly Made While on Supervision.

Was Mr. Winant Denied the Effective Assistance of Counsel Where Mr. Winant's Attorney Failed to Lodge Proper Objections to This Hearsay Evidence?

The circuit court post-commitment concluded that the evidence was admissible and denied Mr. Winant's post-commitment motion without an evidentiary hearing.

POSITION ON ORAL ARGUMENT AND PUBLICATION

Mr. Winant does not request oral argument. Publication is warranted to address the limitations on the admissibility of hearsay evidence in a Chapter 980 commitment trial.

STATEMENT OF THE CASE AND FACTS

The State filed a petition to involuntarily commit Mr. Winant as a sexually violent person under Chapter 980 on February 8, 2008. (2). The commitment trial occurred over four years later, in August of 2012. (101;102). After a two-day court trial, written arguments, and further time for the circuit court to consider the evidence presented, the circuit court, the Honorable David A. Hansher presiding, issued an oral ruling in October of 2012. (104;App.102-12). The circuit court found that the State met its burden to prove beyond a reasonable doubt that Mr. Winant met the criteria for Chapter

980 involuntary commitment and entered a written order committing Mr. Winant to the control and care of the Department of Health Services. (104;54;App.101-112).

The State called three witnesses to prove its case: (1) Jennifer Sieker, a records assistant with the Wisconsin Department of Corrections, whose testimony was limited to the determination of Mr. Winant's release date from prison; (2) Rebecca Mahin, a probation and parole agent for the Wisconsin Department of Corrections (hereinafter "DOC"), through whom the State admitted a number of records, many over defense objection; and (3) Dr. Christopher Tyre, who testified about his diagnosis of Mr. Winant and his opinion that Mr. Winant did meet the criteria for commitment. (101;102).

Dr. Tyre testified that he diagnosed Mr. Winant with Paraphilia Not Otherwise Specified and Personality Disorder Not Otherwise Specified with Antisocial Features. (101:175). Dr. Tyre testified that while Mr. Winant's age—62 years old—attenuated his risk level somewhat, it did not "drop him below the level of likely." (101:199-200). Dr. Tyre also testified that though Mr. Winant completed sex offender treatment programs in the past, he did not believe this resulted in any "significant reduction in risk." (101:203-205).

Dr. Tyre testified that Mr. Winant was convicted in 1992 of child enticement. (101:108). He testified that Mr. Winant received an eight year prison sentence on one count, and a stayed sentence in lieu of twenty years of probation on another. (101:110). He further testified that he was aware that Mr. Winant's supervision was revoked in 1999 for having contact with a fourteen-year old girl. (101:111). He explained he was aware that "eventually [Mr. Winant] admitted that he was grooming her" to engage in the same kind of behavior he had with other underage females in the past. (101:112).

Mr. Winant called two witnesses: Dr. Craig Rypma and Dr. Richard Elwood, both of whom testified that in their

respective opinions, Mr. Winant did not meet the criteria for commitment. Dr. Rypma testified that Mr. Winant does not have a paraphilia. (102:29). He explained that Paraphilia Not Otherwise Specified is "not a diagnosis." (102:30). Rather, that "it is a category in the DSM that is there for the purpose of identifying individuals with very rare paraphilias." (102:30). In his opinion, attraction to post-pubescent adolescent females, while "against the law," is "not unusual." (102:20,31-32).

Dr. Rympa further explained that research indicates that by "about the age of 60, recidivism is approaching zero." (102:39). He noted that Mr. Winant completed sex offender treatment while in prison. (102:22). He diagnosed Mr. Winant with bipolar disorder, adult anti-social behavior, panic disorder with agoraphobia and polysubstance abuse, but concluded that none of these diagnoses predisposed him to commit crimes of sexual violence. (102:40).

Dr. Elwood, an evaluator at Sand Ridge Secure Treatment Facility, testified that though he concluded in 2009 that Mr. Winant did meet the criteria for commitment, he could no longer reach that conclusion. (102:61-63). Dr. Elwood testified that he, like Dr. Tyre, diagnosed Mr. Winant with "paraphilia NOS," specifically with hebephilic (meaning "sexual attraction toward young adolescents") and exhibitionist features. (102:63-64).

Dr. Elwood explained that his opinion changed based on a better understanding through new data about the effect of both age and completion of sex offender treatment on recidivism risk. (102:62-68). Dr. Elwood explained that recent research showed about a "25 percent reduction in reoffense rates" for even "anti-social men" who had completed sex offender treatment. (102:62-68). Additionally, new data showed a "strong general tendency for age to reduce risk." (102:67). These two factors, Dr. Elwood explain, led him to change his opinion and hold that he could not conclude

that Mr. Winant met the criteria for Chapter 980 commitment. (102:68).

One of the central arguments the State made was that, despite Mr. Winant's age and success in completing sex offender treatment, he was still more likely than not to re-offend due to the fact that he continued to solicit prostitutes and have unsupervised contact with underage teenage girls while on supervision. (*See, e.g.,* 53). The State argued that Mr. Winant had a pattern of re-offending after being released from custody. (53:14).

The State, through DOC Agent Mahin, moved into evidence a note made by a social worker, Raymond Konz, who did not testify at the trial. (101:67-68;112:Tr.Exh.26; App.129-30). This note detailed statements Mr. Winant allegedly made to the social worker while on supervision in 1999. (101:67-68;112:Tr.Exh.26; App.129-30). Mr. Winant's attorney objected on grounds of lack of foundation and that this information was privileged (101:68-69;App.130-31). The State argued that the statement was admissible as "treatment records," and the circuit court admitted it into evidence. (101:68-69;App.130-31).

The social worker's note indicated that Mr. Winant reported "feelings of shame and guilt" for placing his hand on his daughter's fourteen-year-old half-sister's leg while she was in his car and offering her money. (112:Tr.Exh.26). The social worker's note also indicated that Mr. Winant knew this was a violation of his probation but stated that "so is using prostitutes," and further that he did not want to report this as he knew he would return to jail. (112:Tr.Exh.26).

The State further moved into evidence, with no objection from Mr. Winant's attorney, violation reports and a revocation summary from the revocation of supervision which followed Mr. Winant's disclosures to the social worker. (112:Tr.Exh.27 at 1, Tr.Exh.28 at 1, Tr.Exh.29 at 3).

Mr. Winant's attorney objected to the admission of a number of other pieces of evidence on hearsay grounds. At one point, the State attempted to admit, through Department of Corrections (hereinafter "DOC") Agent Mahin, FBI, Virginia, New York, and Wisconsin criminal record checks on grounds that these were business records kept in the Wisconsin Department of Corrections' file. (101:17-28). Defense counsel objected, noting that while an expert could rely on those documents to reach a conclusion, that in turn did not mean that the documents themselves were admissible absent another hearsay exception. (101:17-28). The circuit court agreed with the defense and sustained these objections. (101:17-28). The circuit court, however, overruled trial counsel's hearsay objections to a number of other pieces of evidence. (*See, e.g.,* 101:82,84-85,89-90,114,122,124-26).

When issuing its oral ruling, the circuit court noted that it found Dr. Tyre's testimony to be "more credible than Dr. Rympa's." (104:5;App.106). The court explained that Dr. Tyre's testimony was consistent with Dr. Elwood's, with the exception of the weight Dr. Elwood gave to the recent studies concerning the relationship between age, completed sex offender treatment, and recidivism risk. (104:5-8;App.106-09). The circuit court held that such information was "not convincing" in this case, and further noted that it was "not bound by one of the expert's opinions" or by actuarial tables. (104:6-7;App.107-08).

In rejecting Dr. Elwood's conclusions, the circuit court placed great weight on the evidence presented concerning Mr. Winant's history and performance while on supervision. (104:3-8;App.104-09). This Court noted that the "value" of the studies Dr. Elwood relied on was "very limited in this case, specifically for respondents whose treatment in the past has not changed." (104:7;App.108). The court looked at Mr. Winant's "propensity to reoffend despite treatment." (104:7;App.108). The circuit court explained:

> The record again is clear that he has failed to respond to treatment in the past and has shown by his reoffending the first time he was released from prison and by—and reoffended involved [sic] a sexual act. He was put back in prison. He was treated, released and sexually offended again. He was revoked a third time and that was based on his own report.

(104:5;App.106).

Following the entry of the commitment order, Mr. Winant filed a notice of intent to pursue post-commitment relief. (54;55;App.101). Mr. Winant, by undersigned counsel, then filed a post-commitment motion. (105;App.115-28). Mr. Winant argued that he was denied his right to the effective assistance of counsel, as trial counsel had failed to properly object to pieces of hearsay evidence improperly admitted at trial. (105;App.115-28). Following court-ordered briefing, (71;73;105;111;App.115-128), the circuit court denied Mr. Winant's motion without a ***Machner***[1] hearing. (78;App.113-114).

Mr. Winant now appeals.

ARGUMENT

I. Mr. Winant Was Denied the Effective Assistance of Counsel When Counsel Failed to Lodge Proper Objections to the Admission of Prejudicial, Inadmissible Hearsay Evidence.

In this close case, the question came down to whether new studies demonstrating a strong correlation between age, completion of sex offender treatment, and recidivism risk applied to Mr. Winant, who was then 62 years old and had completed sex offender treatment. In rejecting the conclusions of two doctors who testified that these studies

[1] ***State v. Machner***, 92 Wis.2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979).

would apply to Mr. Winant, the circuit court emphasized Mr. Winant's past failures on supervision. The circuit court specifically noted Mr. Winant's third revocation following his "own report."

Defense counsel failed to lodge proper objections to the admission of documents discussing statements of a social worker concerning supervision violations Mr. Winant allegedly discussed with him—Mr. Winant's "own report." Given the weight the court placed on Mr. Winant's failures on supervision and the State's high burden, there is a reasonable likelihood that the outcome of Mr. Winant's case would have been different had defense counsel lodged proper objections to this hearsay evidence.

A. General principles of law and standards of review

Persons facing involuntary commitment under Chapter 980 have the right to counsel and the effective assistance of counsel. Wis. Stat. § 980.03(2)(a); *see, e.g.,* ***State v. Taylor***, 2004 WI 81, 272 Wis. 2d 642, 679 N.W.2d 893 (analyzing an ineffective assistance of counsel claim in a Chapter 980 commitment trial).

To prevail on an ineffective assistance of counsel claim, Mr. Winant must show (1) that counsel performed deficiently; and (2) that the deficient performance prejudiced his case. ***State v. Artic***, 2010 WI 83, ¶ 24, 327 Wis. 2d 392, 768 N.W.2d 430. To prove deficient performance, he must "identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." ***Strickland v. Washington***, 466 U.S. 668, 690 (1984). To establish prejudice, he must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." ***State v. Smith***, 207 Wis. 2d 258,

276, 558 N.W. 2d 379 (1997) (citing ***Strickland***, 466 U.S. at 694).

A circuit court must hold a ***Machner*** hearing if the party alleges facts which, if true, would entitle the party to relief. *See* ***State v. Bentley***, 201 Wis. 2d 303, 309, 548 N.W.2d 50, 53 (1996) (emphasis added)(quoting ***Nelson v. State***, 54 Wis. 2d 489, 497-98, 195 N.W.2d 629 (1972).

In reviewing a claim of ineffective assistance of counsel, appellate courts "grant deference only to the circuit court's findings of historical fact." ***State v. Roberson***, 2006 WI 80, ¶ 24, 292 Wis.2d 280, 717 N.W.2d 111 (quoting ***State v. Thiel***, 2003 WI 111, ¶ 24, 265 Wis. 2d 571, 665 N.W.2d 305). Nevertheless, whether a motion alleges facts which, if true, would entitle a party to relief is a question of law which this Court reviews de novo. ***Bentley***, 201 Wis. 2d at 310. Appellate courts also review de novo "the legal questions of whether deficient performance has been established and whether it led to prejudice rising to a level undermining the reliability of the proceeding." ***Id.***

In a bench trial, the law presumes that the court disregards matters not relevant to the issue. *See* ***Block v. State***, 41 Wis. 2d 205, 212, 163 N.W.2d (1968).

B. Relevant law concerning the admission of hearsay in Chapter 980 trials

At an initial commitment trial, the State has the burden to prove beyond a reasonable doubt that the person subject to the Chapter 980 petition is a sexually violent person. Wis. Stat. § 980.05(3)(a).[2] As relevant here, a sexually violent person is someone who has been convicted of a sexually violent offense and who is dangerous because he or she suffers from a mental disorder that makes it more likely than

[2] All references to the Wisconsin Statutes are to the 2011-2012 statutes unless otherwise noted.

not that the person will engage acts of sexual violence. Wis. Stat. § 980.01(7)(1m).

This Court addressed the admissibility of hearsay evidence in a Chapter 980 trial in ***State v. Keith***, 216 Wis. 2d 61, 573 N.W.2d 888 (1997). In that case, the respondent objected on hearsay grounds to the admission of (1) a police report concerning prior allegations against him, and (2) testimony from a former DOC employee derived from her review of his DOC files. ***Id.*** at 74-78.

A detective who testified at Mr. Keith's trial used the police report to refresh his recollection a prior investigation. ***Id.*** at 74. Though the report did refresh his recollection, the State nevertheless still moved the report itself into evidence. ***Id.*** This Court concluded that was error, explaining that a document reviewed by a witness may be admissible as a past recollection only if the document failed to refresh the witnesses' recollection. ***Id.*** at 75. Nevertheless, this Court found the error harmless because "the report was not referred to again and was not sent to the jury." ***Id.*** at 74.

Additionally, in ***Keith***, the State asked a former DOC employee who had been Mr. Keith's parole agent whether his probation files reflected prior contacts with juveniles. ***Id.*** at 76. Mr. Keith's attorney objected on grounds of lack of personal knowledge; the State argued that these were records kept in the ordinary course of business. ***Id.*** Importantly, the "files themselves were not offered as evidence." ***Id.***

This Court concluded that "[p]robation and parole files compiled by the DOC fall within the definition of public records, an exception to hearsay under § 908.03(8)." ***Id.*** at 77. Additionally, the Court held that "since ch. 980 is a civil proceeding, the records may be used to establish factual findings made during investigations, as well as activities or observations made by DOC personnel." ***Id.*** The Court explained that the "only foundation required to introduce DOC records is that they be identified by a competent

witness." ***Id.*** As the testifying witness was a "former DOC employee who had used Keith's probation and parole files during the course of her employment," this Court concluded that the circuit court did not err in overruling the hearsay objection. ***Id.***

Wisconsin Statute § 908.03(8) provides an exception to the hearsay rule for public records. The statute provides that the "following are not excluded by the hearsay rule, even though the declarant is available as a witness:" "Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (a) the activities of the office or agency, or (b) matters observed pursuant to duty imposed by law, or (c) in civil cases and against the state in criminal cases, factual findings resulting from an investigation made pursuant to an authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness." Wis. Stat. § 908.03(8).

This hearsay exception, however, does not in turn mean that (1) documents *not* prepared by DOC but placed in a DOC file or (2) hearsay within admissible DOC records are admissible. "The record must be that of a public office or agency." Daniel D. Blinka, Wisconsin Practice Series, Wisconsin Evidence § 803.8, at 781 (3d ed.2008). Furthermore, Wisconsin Statute § 908.05 provides that "[h]earsay included within hearsay is not excluded under the hearsay rule *if each part of the combined statements conforms with an exception to the hearsay rule* provided in this chapter." Wis. Stat. § 908.05 (emphasis added).

The public records exception rests on the public policy assumption that "public officials and employees carefully and diligently perform their duties and honestly record their activities as required by law." Blinka, Wisconsin Practice Series, Wisconsin Evidence § 803.8, at 781. Multiple levels of hearsay are acceptable "provided that *all declarants are members of the agency charged* with the record's preparation and all are under a lawful duty to report the matter" with

"personal knowledge of the matters observed." ***Id.*** at 782 (emphasis added).

"Where multiple levels of hearsay are involved, each layer must be qualified under some exception to the hearsay rule if relied upon for the truth of the matter asserted. Wisconsin Statute Section 908.03(8) embraces only statements made by public agents or employees in the compilation of the report. Statements made by citizens to public officers or employees (e.g., 911 calls) must qualify under some other exception to the hearsay rule." ***Id.*** at 784.

C. Exhibits to which counsel failed to lodge Proper objections

1. Exhibit 26: A Note From Social Worker Raymond Konz Entered Through DOC Agent Mahin

The State, through DOC agent Rebecca Mahin, entered into evidence Exhibit 26, a note from social worker Raymond Konz from July of 1999. (101:67-68;112:Tr.Exh.26;App.129-30). The note states that during a session Mr. Winant reported feeling shame for having his daughter's 14-year old half-sister in his car, putting his hand on her leg, and offering her money:

> During session pt reported that he has feelings of shame and guilt specifically to recent event where he had engaged in old behavior this last weekend. He had his daughter's 14 year old half-sister in his car, with his hand on her leg, offering her money. When asked what her reply was and what occurred he stated that she said nothing and "just left the car." He also stated that he called her the next day to ask her if she was mad with him.

(112:Tr.Exh.26). It further states, in relevant part:

> When I questioned if, just being with a minor wasn't a violation of his probation, he stated that it was but so is

> using prostitutes. I encouraged him to discuss with his probation officer and sexual offender's therapist and he stated that he did talk to supportive friends.
>
> I stated that he needed to report this but he stated that he would go back to jail; furthermore, he stated that he needed to be able to discuss this in therapy without fear of disclosure.

(112:Tr.Exh.26). Mr. Winant's attorney objected to this exhibit on grounds of lack of foundation and that it was privileged. (101:68-69;App.130-31). The State argued that the foundation had been laid that Mr. Winant was there for sex offender treatment in the community, and further that "[t]hese are treatment records." (101:68-69;App.130-31).

Counsel should have objected to these records on grounds that the social worker's statements were inadmissible under the hearsay exception providing for statements made for the purpose of treatment or medical diagnosis. In ***State v. Huntington***, the Wisconsin Supreme Court held that the hearsay exception for statements made for the purpose of treatment or diagnosis does *not* extend to statements made to social workers:

> We decline, however, to apply the hearsay exception for statements made for medical diagnosis or treatment, Wis. Stat. § 908.03(4), to statements made to counselors or social workers. Such an expansive application of the doctrine would strain the traditional grounds for the exception. Receipt of proper medical diagnosis and treatment requires doctors to obtain basic information about a patient implicating that diagnosis and treatment. The doctor is focused on diagnosis and treatment of the individual, not on the process of providing larger social remedies aimed at detecting abuse, identifying and punishing abusers, and preventing further mistreatment, which involves skills and social intervention lying beyond the expertise of doctors.

216 Wis. 2d 671, 695, 575 N.W.2d 268 (1998)(internal quotations omitted). And beyond that, even if this note were

contained within Mr. Winant's DOC file, it would not be admissible under the public records exception to the hearsay rule because it was not a report prepared by DOC. *See* Wis. Stat. § 908.03(8). Thus, this entire exhibit should have been excluded from evidence.

2. Exhibits 27-29: Hearsay Statements Within Revocation Paperwork

Counsel further should have objected to the hearsay statements contained within Exhibits 27-29 (Notice of Violation and Receipt, Violation Investigation Report, and Revocation Summary). (112:Tr.Exhs.27-29). Defense counsel made no objection the admission of these exhibits. (101:70-79;App.132-141). While these documents were prepared by DOC and thus would overcome the first hearsay hurdle under the public records exception, hearsay statements made within these documents—specifically, the references to the fact that on July 1, 1999, Mr. Winant's agent received a call from social worker Konz and discussion of what Mr. Konz told the agent—were inadmissible hearsay within hearsay. (112:Tr.Exh.27 at 1, Tr.Exh.28 at 1, Tr.Exh.29 at 3).[3]

D. Deficient Performance

Counsel performed deficiently by failing to object to the admission of this hearsay evidence. Indeed, counsel lodged timely and proper objections to the admission of a number of other pieces of hearsay evidence. Therefore, no apparent strategic reason exists for counsel not doing the same with the hearsay evidence described above. Further, with regard to the note from the social worker (Exhibit 26), defense counsel did object to the admission of this piece of evidence; however, he did not argue that this exhibit was inadmissible under the hearsay exception for statements made

[3] In his post-commitment motion, Mr. Winant also challenged counsel's failure to object to the admission of presentence investigation reports. (105;App.115-28). He does not renew this challenge on appeal.

for purpose of treatment or diagnosis because statements to social workers did not fall under this exception. (101:68-69;App.130-31). Given that the State moved this exhibit into evidence under the hearsay exception for "treatment records," (*see* 101:68-69;App.130-31), no apparent strategic reason exists for counsel not asserting that this document would not fall under the hearsay exception for statements made for treatment or diagnosis.

E. Prejudice

There is a reasonable likelihood that counsel's failure object to this evidence affected the outcome of the case. With two experts testifying that Mr. Winant did not meet the criteria for commitment, this trial was by no means a clear-cut win for the State. As the court found Dr. Rypma to be less credible than Dr. Tyre, the court's decision in essence came down to Dr. Tyre's conclusions versus Dr. Elwood's conclusions. The circuit court acknowledged that really the only difference between their conclusions was the weight Dr. Elwood placed on the recent studies showing the relationship between age, completion of sex offender treatment, and recidivism risk. (104:5-8;App.106-09). Both Dr. Tyre and Dr. Elwood acknowledged that Mr. Winant's age's reduced his risk of recidivism; and both acknowledged that he had completed sex offender treatment. (101:199-200,203-205;102:62-68). The doctors differed, however, on whether these factors lowered Mr. Winant's risk.

In rejecting Dr. Elwood's conclusions, the circuit court emphasized Mr. Winant's poor history while on supervision. This Court specifically noted that he "was revoked a third time and that was based on his own report." (104:5;App.106). The record thus reflects that the circuit court did consider the improperly-admitted hearsay evidence.

Mr. Winant recognizes that Exhibit 30—the 1999 revocation decision which includes findings of fact—was likely admissible under the provision allowing for public

records "in civil cases" containing "factual findings resulting from an investigation made pursuant to an authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness." Wis. Stat. § 908.03(8); *see also* ***Keith***, 216 Wis. 2d at 77 (explaining that "since ch. 980 is a civil proceeding" DOC records may be "used to establish factual findings made during investigations, as well as activities or observations made by DOC personnel"). He further recognizes that these fact-findings provided that Mr. Winant admitted to his agent that he had contact with the girl and to soliciting prostitutes, and that he, through counsel, ultimately acknowledged that he needed sex offender treatment. (112:Tr.Exh.30). Additionally, Dr. Tyre testified that Mr. Winant "admitted" to grooming the girl. (101:112).

Nevertheless, the note from the social worker (Exhibit 26) went even further and presented information concerning Mr. Winant's state of mind while he was in the community on supervision: that he knew that he was struggling with his feelings, knew that he violated his probation, but actively avoided telling his agent in order to avoid jail. (*Compare* 112:Tr.Exh.30 *with* 112:Tr.Exh.26). These statements supported the circuit court's concerns that though Mr. Winant had completed treatment and knew better, he nevertheless lacked an ability to control himself.

Where the Court—in deciding that the State had met its burden beyond a reasonable doubt that Mr. Winant was more likely than not to re-offend—emphasized his failures on supervision, failures to the level where Mr. Winant himself was reporting his inability to refrain from violations, there is a reasonable likelihood that the outcome of the case was affected by the inadmissible hearsay concerning the statements Mr. Winant allegedly made to the social worker.

As his post-commitment motion set forth sufficient facts which, if true, would warrant relief, and as the circuit court denied his post-commitment motion without an

evidentiary hearing, he asks this Court to reverse the circuit court's decision and remand the matter for a ***Machner*** hearing.

CONCLUSION

For the above stated reasons, Mr. Winant respectfully requests that this Court reverse the decision of the Court of Appeals, and remand this matter for a ***Machner*** hearing.

Dated this 22nd 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 4,364 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 22nd day of December, 2014.

Signed:

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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 22nd day of December, 2014.

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A P P E N D I X

I N D E X
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