STATE OF WISCONSIN

C O U R T O F A P P E A L S

DISTRICT I

Case No. 2014AP002840-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

CHRISTOPHER JOSEPH ALLEN,

Defendant-Appellant.

On Appeal from a Judgment of Conviction, and an Order Denying in Part a Postconviction Motion, Entered in Milwaukee County Circuit Court, the Honorable Jeffrey Wagner, Presiding.

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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ISSUES PRESENTED

1. In ***State v. Leitner***, 2002 WI 77, 253 Wis. 2d 449, 646 N.W.2d 341, the Wisconsin Supreme Court held that circuit courts cannot consider an "expunged record of conviction," but may consider "the facts underlying an expunged conviction" at sentencing. Did the circuit court in this case violate ***Leitner*** when it considered at sentencing that Mr. Allen was previously on probation and the conviction was expunged?

   The circuit court answered no.

2. Alternatively, was trial counsel ineffective for failing to object to the references to Mr. Allen's expunged conviction in the pre-sentence investigation and at sentencing?

   The circuit court answered no.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Publication is warranted because this case is of substantial and continuing public interest. In ***State v. Leitner***, 2002 WI 77, ¶ 39, 253 Wis. 2d 449, 646 N.W.2d 341, the Wisconsin Supreme Court explicitly held that circuit courts cannot consider an "expunged record of conviction." In this case, the circuit court violated ***Leitner*** when it considered at sentencing that Mr. Allen was previously on probation and the conviction was expunged. If the circuit court correctly interpreted ***Leitner***, a decision will provide clarity to circuit courts and defense attorneys regarding the use of expunged convictions at sentencing. While undersigned counsel

anticipates that the parties' briefs will sufficiently address the issues raised, the opportunity to present oral argument is welcomed if the court would find it helpful.

STATEMENT OF THE CASE AND FACTS

Twenty-five year old Christopher Joseph Allen's life was moving in the right direction. Charismatic, determined, and dedicated, Mr. Allen spent his time working on political campaigns, social programs, and at his full-time job as a salesperson for Sprint. (54:23; App. 123; 19:8). A frequent recipient of awards at Sprint ranging from "Top Team Member" to "Sales Excellence Award," Mr. Allen's wages plus commissions totaled $53,000. (19).

On February 3, 2013, in Milwaukee County, Mr. Allen, who describes himself as a social drinker, made a "life-changing decision." (54:26, 45; App. 126, 145). After going to a bar to celebrate a birthday and job promotions, Mr. Allen made the mistake of getting into his car with his two of his friends and co-workers—Keyon White and Aaron Calvin—and driving. (2:2-4). Mr. Allen's car, traveling at approximately 97 miles per hour, hit a tree resulting in injury to passenger Mr. White and the death of passenger Mr. Calvin. (2:2-4; 54:6; App. 106). Mr. Allen had a blood alcohol concentration of .122. (2:3).

The State filed a criminal complaint charging Mr. Allen with: (1) homicide by intoxicated use of a vehicle, contrary to Wis. Stat. § 940.09(1)(a); (2) homicide by intoxicated use of a vehicle with a prohibited alcohol concentration, contrary to Wis. Stat. § 940.09(1)(b); (3) injury by intoxicated use of a vehicle resulting in great bodily harm, contrary to Wis. Stat. § 940.25(1)(a); and (4) injury by intoxicated use of a vehicle resulting in great bodily harm

with a prohibited alcohol concentration, contrary to Wis. Stat. § 940.25(1)(b). (2:1-2). Subsequently, the State amended the complaint to include a fifth count, homicide by negligent operation of a vehicle, contrary to Wis. Stat. § 940.10(1). (6).

On June 5, 2013, Mr. Allen pled no contest to count one and count three. (55:2, 10; 17). In exchange for Mr. Allen's plea, the State agreed to globally recommend four years of initial confinement, leaving the amount of extended supervision up to the court. (55:3). Counts two and four were dismissed by operation of law. (*Id.*). Count five was dismissed and read-in. (55:3, 11).

The court ordered a pre-sentence investigation (PSI) without a recommendation.[1] (55:12). When discussing Mr. Allen's prior criminal record, the PSI indicated that Mr. Allen had a municipal citation ticket, which had been paid,[2] and a 7-year-old conviction for a substantial battery in Milwaukee County Case No. 05-CF-2672 that had been expunged. (19:5-6, 11; App. 156-158). Regarding the expunged conviction, the PSI stated:

> According to the CIB/FBI Criminal Background report, Mr. Allen was arrested for Substantial Battery on 5/11/05. Mr. Allen acknowledges that this incident involved a fight with another boy at high school and he was charged because the other boy lost a tooth in the fight and his mother pursued the case. On 10/07/05, he

[1] In a merit appeal, the defendant's attorney does not need to ask any court's permission to reference a PSI in an appellate brief. ***State v. Buchanan***, 2013 WI 31, ¶ 19, 346 Wis. 2d 735, 828 N.W.2d 847.

[2] The PSI notes that the municipal citation was for "resisting and obstructing." (19:6; App. 157). At sentencing, the State and trial counsel indicated that the "traffic ticket" was for speeding. (54:8, 27; App. 108, 127).

> was given a withheld sentence with conditions that if he pay restitution in the amount of $1139.00, complete anger management classes and successfully completes 9 months of probation, the case shall be expunged. WICS database reveals that the offender successfully completed his term of probation on 07/07/06. This case was officially expunged under SS973.015 on 4/11/11.

(19:5-6, 11; App. 156-158).

On July 25, 2013, a sentencing hearing was held. (54; App. 101-155). Trial counsel, Bridget Boyle, and Mr. Allen both stated that there were no additions or corrections to the PSI. (54:2; App. 102). Trial counsel indicated that she had picked up the PSI the day before and Mr. Allen had come in and reviewed it in its entirety. (*Id.*).

Pursuant to the plea agreement, the State recommended four years of initial confinement with the amount of supervision left to the court. (54:2-3; App. 102-103). During its sentencing comments, the State informed the court in pertinent part that "Mr. Allen has a substantial battery which was expunged, the State will grant that, back in '05." (54:8; App. 108). Aaron Calvin's sister and mother spoke. (54:10-18; App. 110-118). Kenyon White also spoke. (54:18-20; App. 118-120).

The defense requested that the court sentence Mr. Allen to two years of initial confinement. (54:33; App. 133). Trial counsel did not address or utilize the fact that Mr. Allen's substantial battery conviction was expunged in her argument.

Mr. Allen spoke and expressed his remorse for Mr. White and Mr. Calvin's family. (54:33-45; App. 133-145). Reverend Willie F. Dockery, Jr., spoke on Mr. Allen's behalf and asked for leniency in sentencing. (54:21-22; App. 121-

122). Additionally, Muhid Dyer, who works for the "I Will Not Die Young Campaign," and had known Mr. Allen for 15 years, stated that Mr. Allen was not a threat to the community and would be better served participating in community service and paying restitution. (54:23-25; App. 123-125).

In its sentencing remarks, the court, the Honorable Jeffrey Wagner, stated that it was looking at "any record of any undesirable behavior" and explicitly discussed Mr. Allen's expunged conviction. The court's comments were as follows:

> THE COURT: The court looks at any record of – any record of any undesirable behavior – behavior problems or any history of other contacts….
>
> THE COURT: Now, I know that you've had something expunged, a traffic ticket. Individuals, everybody gets – no – I wouldn't say everybody, but a lot of people get traffic tickets. I know that.
>
> I don't give that a lot of serious consideration just so you know, but what I do give serious consideration for is that you – you were on supervision before, right, and that was expunged.
>
> MR. ALLEN: Yes.
>
> THE COURT: And you had every opportunity to go through that – that period of supervision with the understanding that – you know, you've got to comply with certain things, certainly the rules of law making sure that you don't do bad things because you can be punished for them if you do.
>
> Having gone through that you would think that that would be a learning experience for yourself like I never want to be back in the criminal justice system.

> I don't know anything about – quite frankly, about the case except that for what it says in the presentence investigation report, but the message is – is that I should this with me [sic], it was expunged which is a good thing because I do that myself when the appropriate case comes to the Court, expunged so that wouldn't be wrapped around somebody's neck for the rest of their lives, especially a felony conviction, but you had an opportunity to learn something from that.
>
> That's what the Court's concerned about. I don't know what was going through your mind going 97 miles an hour on a city street….

(54:47-49; App. 147-149).

The court exceeded the State's recommendation of four years of initial confinement and sentenced Mr. Allen to a total prison sentence of nine years (five years of initial confinement and four years of extended supervision). (54:52-53; App. 152-153). In addition, the court ordered Mr. Allen to pay the stipulated amount of restitution, $16,320.08, and the $250 DNA surcharge. (54:52; App. 152).

Mr. Allen filed a postconviction motion. The postconviction motion asserted that he was entitled to a new sentencing hearing on the grounds that: (1) the circuit court erred when it considered his expunged conviction at sentencing; and (2) trial counsel was ineffective for failing to object to the references to the expunged conviction in the PSI and at sentencing. (36:1). In addition, Mr. Allen moved the court for an order vacating the $250 DNA surcharge imposed. (*Id.*).

Briefing was ordered. (37). The State argued that the court did not consider the expunged offense as a "conviction," but "simply considered the fact that the

defendant did not learn from his prior supervision that he should not commit further crimes." (38:3).

After the completion of briefing, the circuit court issued a decision and order granting Mr. Allen's request to vacate the DNA surcharge, but denying the request for a new sentencing hearing. (42:2; App. 160). Regarding Mr. Allen's request for a new sentencing hearing, the circuit court stated that it did not consider Mr. Allen's expunged "prior conviction," but considered his "prior supervision and his opportunity to learn from that experience." (42:1; App. 159). The circuit court stated:

> The court does not read ***Leitner*** to preclude a court from considering the *fact* of an offender's prior supervision and failure to learn from that experience as part of its duty at sentencing to acquire full knowledge of the character and behavior of the defendant. *See* ***State v. Hubert***, 181 Wis. 2d 333 (Ct. App. 1993).[3] In fact, that is the *only* fact the court assigned any significant weight to regarding the defendant's prior expunged conviction, and therefore, the court perceives no violation under ***Leitner***, and consequently no ineffective assistance on the part of trial counsel for failing to raise an objection.

(42:2; App. 160). Mr. Allen appealed. (44).

[3] In ***State v. Hubert***, 181 Wis. 2d 333, 345-46, 510 N.W.2d 799 (Ct. App. 1993), the Court of Appeals examined whether a circuit court erroneously its discretion in considering 11 uncharged offenses, not a conviction that was expunged after the successful completion of probation.

ARGUMENT

I. The Circuit Court Improperly Considered Mr. Allen's Expunged Conviction and He Is Entitled to a New Sentencing Hearing.

A. Standard of review.

A circuit court's sentencing decision is reviewed for an erroneous exercise of discretion. ***State v. Gallion***, 2004 WI 42, ¶ 18, 270 Wis. 2d 535, 678 N.W.2d 197. An error of law is automatically an erroneous exercise of discretion. ***State v. Harris***, 119 Wis. 2d 612, 625, 350 N.W.2d 633 (1984). Whether the circuit court made an error of law is reviewed *de novo*. *See generally*, ***Ambrose v. Continental Ins. Co.***, 208 Wis. 2d 346, 356, 560 N.W.2d 309.

B. Legal principles.

Wisconsin statute 973.015 (2005-2006)[4] authorizes the expunction of the record of a misdemeanor conviction if a person is under the age of twenty-one at the time of the commission of the offense and if the circuit court determines that the person will benefit and society will be not be harmed.

Expunction "provides a means by which trial courts may, in appropriate cases, shield youthful offenders from some of the harsh consequences of criminal convictions." ***State v. Anderson***, 160 Wis. 2d 435, 440, 466 N.W.2d 681 (Ct. App. 1991); *see also* ***State v. Leitner***, 2002 WI 77, ¶ 38, 253 Wis. 2d 449, 646 N.W.2d 341 (2002). This allows an offender an opportunity to have a "fresh start without the burden of a criminal record and a second chance at becoming a law-abiding and productive member of the community."

[4] The underlying offense for Mr. Allen's expunged conviction occurred in May 2005. (19:6; App. 156).

State v. Hemp, 2014 WI 129, ¶¶ 18-20, 359 Wis. 2d 320, 856 N.W.2d 811.

In 2002, the Wisconsin Supreme Court examined the extent to which an expunged conviction could be considered at a subsequent sentencing hearing. ***Leitner***, 253 Wis. 2d 449 at ¶ 39. In ***Leitner***, the defendant entered a no contest plea to one count of reckless driving causing great bodily harm. ***Id.,*** ¶ 4. The circuit court ordered a PSI. ***Id.,*** ¶ 6. The PSI indicated that the defendant was previously convicted of a misdemeanor hit and run and operating a motor vehicle while intoxicated causing injury, both of which related to an incident that had occurred on October 28, 1997. ***Id.*** The PSI did not mention that the records of the 1997 convictions had been expunged. ***Id.***

During sentencing, the State agreed that it was inappropriate to refer to the defendant's 1997 convictions because the court records had been expunged. ***Id.,*** ¶ 7. The State went on, however, to recount the facts underlying the expunged records of the defendant's 1997 convictions by relying on information in the police reports and the district attorney's case files. ***Id.*** Defense counsel objected to the circuit court's consideration of the expunged records of the convictions, but did not object to the State's recitation of the underlying facts. ***Id.,*** ¶ 8. Defense counsel utilized the underlying facts of the 1997 convictions to emphasize the minor nature of the injury involved in the prior incident. ***Id.*** In its sentencing remarks, the circuit court did not consider the 1997 convictions, but considered the "facts underlying" the 1997 convictions. ***Id.,*** ¶ 9. The circuit court stated:

> You say you have no problem with alcohol and yet this is the second incident that you have been involved in that has resulted in your being charged with an alcohol

> related offense, although it was not charged in this particular case, but certainly alcohol was involved.

Id.

On appeal, the Wisconsin Supreme Court held that a circuit court cannot consider "an expunged record of conviction," but may consider "the facts underlying an expunged conviction." ***Id.,*** ¶¶ 39, 44, 48. The Court further stated that in ***Leitner***, the facts underlying the record were significant because "the facts of his prior behavior elucidate his character, including the escalating harms caused by his interrelated intoxication and hit and run accidents." ***Id.,*** ¶ 44.

In this case, as discussed below, the circuit court improperly considered Mr. Allen's expunged conviction and he is entitled to a new sentencing hearing.

C. The circuit court improperly considered Mr. Allen's expunged conviction at sentencing and he is entitled to a new sentencing hearing.

In this case, at sentencing, the circuit court improperly considered Mr. Allen's expunged conviction. The circuit court stated in pertinent part:

> THE COURT: The court looks at any record of – any record of any undesirable behavior – behavior problems or any history of other contacts….
>
> THE COURT: Now, I know that you've had something expunged, a traffic ticket. Individuals, everybody gets – no – I wouldn't say everybody, but a lot of people get traffic tickets. I know that.
>
> I don't give that a lot of serious consideration just so you know, but what I do give serious consideration for is that

> you – you were on supervision before, right, and that was expunged.
>
> MR. ALLEN: Yes.
>
> THE COURT: And you had every opportunity to go through that – that period of supervision with the understanding that – you know, you've got to comply with certain things, certainly the rules of law making sure that you don't do bad things because you can be punished for them if you do.
>
> Having gone through that you would think that that would be a learning experience for yourself like I never want to be back in the criminal justice system.
>
> I don't know anything about – quite frankly, about the case except that for what it says in the presentence investigation report, but the message is – is that I should this with me [sic], it was expunged which is a good thing because I do that myself when the appropriate case comes to the Court, expunged so that wouldn't be wrapped around somebody's neck for the rest of their lives, especially a felony conviction, but you had an opportunity to learn something from that.
>
> That's what the Court's concerned about. I don't know what was going through your mind going 97 miles an hour on a city street….

(54:47-49; App. 147-149).

Unlike in ***Leitner***, here, the circuit court was *not* taking into consideration "the underlying facts" of the battery conviction. The circuit court did not discuss or utilize the information that approximately seven years ago, when Mr. Allen was in high school, he got in a fight with another boy. (*See* 19:5-6; App. 156-157). Rather, the circuit court specifically considered that Mr. Allen had a previous criminal

conviction and it had been expunged. Significantly, the circuit court stated that "I know that you've had something expunged," and "I give serious consideration … that you – you were on supervision before, right, and that was expunged." (54:47-48; App. 147-148).

The circuit court's postconviction decision asserts that under ***Leitner***, a sentencing court is not precluded from considering "the fact of an offender's prior supervision and failure to learn from that experience..." (42:2; App. 160). However, this interpretation makes no sense and would render ***Leitner's*** holding meaningless. ***Leitner*** unequivocally states that a circuit court cannot consider "an expunged record of conviction," which "enables an offender to have a clean start so far as the prior conviction is concerned." 253 Wis. 2d 449 at ¶ 39. How can a circuit court consider that a defendant was previously on probation, but not consider, as required by ***Leitner***, the defendant's prior expunged conviction?

Considering that a defendant was previously on probation, as in this case, *is* considering that he or she has a conviction. Probation is the direct result of a criminal conviction. *See generally*, Wis. Stat. § 973.09(1)(a)(stating that if a person is convicted of a crime, other than a crime punishable by life imprisonment or prohibited for a particular offense by statute, the court may place a person on probation); Wis. Stat. § 972.13(7) (a judgment of conviction lists probation). A person would not be subject to probation if not convicted of a crime. In addition, in regards to an expunged conviction, probation and the conviction are especially intertwined. In order for a conviction to be expunged, a person must first successfully complete probation. *See* Wis. Stat. § 973.015. And, in fact, Mr. Allen did successfully complete probation in 2006. (19:6; App. 157). Thus, given the intrinsic connection between probation

and a conviction, it makes no sense under ***Leitner*** to find that the circuit court can consider that a defendant was on probation for an expunged conviction. Taking into consideration that an individual was on probation clearly takes into consideration the expunged conviction in violation of ***Leitner***. Consequently, the circuit court erred by considering that Mr. Allen was previously on probation for an expunged conviction.

Moreover, unlike in ***Leitner***, the "underlying facts" of Mr. Allen's expunged battery conviction are not "interrelated" to the offenses to which Mr. Allen pled. In ***Leitner***, the expunged 1997 convictions and the offense at issue both involved alcohol and the use of a motor vehicle. *See* ***id.,*** ¶¶ 4, 6, 9. ***Leitner*** stated that the facts underlying the expunged 1997 convictions "are significant to sentencing *this defendant* because the facts of his prior behavior elucidate his character, including the escalating harms caused by his interrelated intoxication and hit and run accidents." 253 Wis. 2d 449 at ¶ 44 (emphasis added). Here, the facts of the expunged high school battery conviction as set forth in the PSI are not "interrelated" to the offenses in this case—homicide by intoxicated use of a vehicle and injury by intoxicated use of a vehicle. There is no indication in the record that the expunged battery conviction involved alcohol or a motor vehicle. (19:6; App. 157). Nor there is any indication that anger contributed to Mr. Allen's intoxicated use of a vehicle. (2).

Therefore, in this case, the circuit court improperly took into consideration Mr. Allen's expunged conviction at sentencing, and he is entitled to a new sentencing hearing.

II Alternatively, Trial Counsel Was Ineffective for Failing to Object to the References to Mr. Allen's Expunged Conviction in the PSI and at Sentencing and Mr. Allen Is Entitled to an Evidentiary Hearing.[5]

A. Standard of review.

When a postconviction motion alleges sufficient material facts that, if true, would entitle the defendant to relief, the circuit court *must* hold an evidentiary hearing. ***State v. Bentley***, 201 Wis. 2d 303, 310, 548 N.W.2d 50; ***State v. Allen***, 2004 WI 106, ¶ 9, 274 Wis. 2d 568, 682 N.W.2d 433 (citations omitted). Whether a postconviction motion meets this standard is a question of law which this Court reviews *de novo*. ***Bentley***, 201 Wis. 2d 303 at 310.

A circuit court may, in its discretion, deny a motion without a hearing if the motion does not raise a question of fact, presents only conclusory allegations, or if a review of the record conclusively demonstrates that the defendant is not entitled to relief. ***Allen***, 274 Wis. 2d 568, ¶¶ 9, 12. This discretionary decision is subject to deferential review under the erroneous exercise of discretion standard. ***Id.***, ¶ 9. A proper exercise of discretion requires the court to examine relevant facts, apply proper legal standards and engage in rational decision process. ***Bentley***, 201 Wis. 2d 303 at 318.

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[5] If this Court does not order a new sentencing hearing as requested in Part I, in the alternative, Mr. Allen requests an evidentiary hearing to determine whether he was deprived of effective assistance of counsel.

An ineffective assistance of counsel claim presents a mixed question of fact and law. ***State v. Thiel***, 2003 WI 111, ¶ 21, 264 Wis. 2d 571, 665 N.W.2d 305. A circuit court's findings of fact are upheld unless clearly erroneous. ***Id.*** Whether counsel was ineffective is a question of law that is reviewed *de novo*. ***Id.***

B. Legal principles.

An accused's right to effective assistance of counsel derives from the Sixth and Fourteenth Amendments to the United States Constitution, and Art. I, sec. 7 of the Wisconsin Constitution. ***State v. Smith***, 207 Wis. 2d 258, 273, 558 N.W.2d 379 (1997).

In assessing whether counsel's performance satisfied this constitutional standard, Wisconsin applies the two-part test outlined in ***Strickland v. Washington***, 466 U.S. 668 (1984). ***Smith***, 207 Wis. 2d at 273. To establish a deprivation of effective representation, a defendant must demonstrate both that: (1) counsel's performance was deficient, and (2) counsel's errors or omissions prejudiced the defendant. ***Id.***

To prove deficient performance, the defendant must establish that his or her counsel "made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." ***Id.*** (citations omitted). The prejudice prong requires a showing 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." ***Smith***, 207 Wis. 2d at 276 (citations omitted). The defendant need only demonstrate to the court that the outcome is suspect, but need not establish that the final result of the proceeding would have been different. ***Smith***, 207 Wis. 2d at 275.

In this case, as discussed below, trial counsel was ineffective for failing to object to the references to Mr. Allen's expunged conviction in the PSI and at sentencing, and Mr. Allen's postconviction motion alleged sufficient facts entitling him to an evidentiary hearing.

C. Trial counsel was ineffective for failing to object to the references to Mr. Allen's expunged conviction in the PSI and at sentencing.

In this case, as set forth in the postconviction motion, trial counsel performed deficiently by failing to object to the references to Mr. Allen's expunged conviction in the PSI and at sentencing. (36:9). Given ***Leitner's*** explicit holding that a circuit court cannot consider an expunged record of conviction, a reasonably competent attorney would have objected and sought to exclude Mr. Allen's expunged conviction from consideration at sentencing. *See* ***Strickland***, 466 U.S. at 687-88 (to establish deficient performance, the defendant must show that counsel's representation fell below the objective standard of "reasonably effective assistance"). There can no reasonable strategic reason for failing to object based on ***Leitner***. Trial counsel made no reference to and did not utilize the expunged conviction in the defense's sentencing argument. *Compare generally with* ***Leitner***, 253 Wis. 2d 449 at ¶ 8 (noting that defense counsel used the underlying facts of the expunged convictions to emphasize the minor nature of the injury involved in the prior incident).

Moreover, as set forth in the postconviction motion, trial counsel's failure to object was prejudicial. (36:9). At sentencing, the circuit court explicitly took into consideration the expunged conviction. The court stated that "I do give serious consideration for is [sic] that you – you were on supervision before, right, and that was expunged." (54:47-48;

App. 147-148). The circuit court's comments reflect that the expunged conviction was an aggravating or negative factor. The court emphasized that Mr. Allen "had an opportunity to learn something" from the expunged conviction, but now was back in the criminal justice system. (*See id.*). Thus, trial counsel's failure to object was prejudicial and undermines confidence in the outcome of the proceeding.

Therefore, Mr. Allen was deprived of effective assistance of counsel, and this Court should remand for an evidentiary hearing. Mr. Allen's postconviction motion alleged sufficient facts, which if true, entitle him to relief.

CONCLUSION

For the reasons stated, Christopher Joseph Allen respectfully requests that this Court direct the circuit court to grant a new sentencing hearing, or in the alternative, an evidentiary hearing.

Dated this 16th day of March, 2015.

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 4,376 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 16th day of March, 2015.

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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; (3) a copy of any unpublished opinion cited under § 809.23(3)(a) or (b); and (4) 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 16th day of March, 2015.

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