STATE OF WISCONSIN

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

DISTRICT I

Case No. 2015AP000152-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DAVID AARON PIGGUE, JR.,

Defendant-Appellant.

On Appeal from a Judgment of Conviction Entered in the Milwaukee County Circuit Court, the Honorable David L. Borowski, Presiding, and an Order Denying Postconviction Relief Entered in the Milwaukee County Circuit Court, the Honorable Daniel L. Konkol, Presiding.

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

HANNAH SCHIEBER JURSS
Assistant State Public Defender
State Bar No. 1081221

Office of the State Public Defender
735 North Water Street, Suite 912
Milwaukee, WI 53202-4116
Phone: (414) 227-2201
E-mail: schieberh@opd.wi.gov

Attorney for Defendant-Appellant

TABLE OF CONTENTS

Page

ISSUE PRESENTED 1

STATEMENT ON PUBLICATION AND ORAL ARGUMENT 1

STATEMENT OF THE FACTS AND CASE 2

A. The Acquittal in the Underlying Sexual Assault Case and Subsequent Witness Intimidation Charge in this Case 2

B. Sentencing 3

C. Post-Conviction Motion and Decision 6

ARGUMENT 9

I. Mr. Piggue is Entitled to the 84 Days He Spent In Custody Awaiting Trial on the Underlying Sexual Assault Charge, For Which He was Acquitted. 9

A. General principles of law and standards of review 9

B. ***State v. Floyd*** 10

C. The rationale of ***State v. Floyd*** and remedial purpose of Wis. Stat. § 973.155 apply to the particular facts of this case. 12

CONCLUSION 15

CERTIFICATION AS TO FORM/LENGTH 16

CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12) 16

CERTIFICATION AS TO APPENDIX 17

APPENDIX 100

CASES CITED

State v Floyd,
2000 WI 14,
232 Wis. 2d 767, 606 N.W.2d 155 ..... 1, *passim*

State v. Beets,
124 Wis. 2d 372,
369 N.W.2d 382 (1985) 12

State v. Brown,
2010 WI App 43,
324 Wis. 2d 236, 781 N.W.2d 244 10

State v. Carter,
2010 WI 77,
327 Wis. 2d 1, 785 N.W.2d 516 10

State v. Johnson,
2007 WI 107,
304 Wis. 2d 318, 735 N.W.2d 505 10

State v. Straszkowski,
2008 WI 65,
310 Wis. 2d 259, 750 N.W.2d 835 14

STATUTES CITED

§ 973.155 ..... 1, 7, 9, 12

§ 973.155(1) 12

§ 973.155(1)(a) 9, 12

ISSUE PRESENTED

Mr. Piggue was tried for the sexual assault of AJ; a jury found him not guilty. About a month later, the State charged him in this case with witness intimidation. The State alleged that, while he was in jail during the sexual assault trial, he asked his girlfriend to contact AJ to dissuade her from either coming to court or from lying in court. The sexual assault allegations, and what happened at the sexual assault trial at which he was acquitted, then became a central focus of the sentencing in this case.

Under Wisconsin Statute § 973.155, and the Wisconsin Supreme Court's rationale in ***State v Floyd***, 2000 WI 14, 232 Wis. 2d 767, 606 N.W.2d 155, is Mr. Piggue entitled to sentence credit in this case for the 84 days he spent in custody for the underlying sexual assault charge that provided the basis for the witness intimidation?

The circuit court concluded that Mr. Piggue was not entitled to this sentence credit. (31;App.105-108).

STATEMENT ON PUBLICATION AND ORAL ARGUMENT

Mr. Piggue would welcome oral argument should this Court find it helpful. Publication may be warranted to address the application of Wisconsin Statute § 973.155 and ***Floyd***, 2000 WI 14, to a case where the offense for which the defendant is being sentenced is factually and legally connected to the offense for which he was acquitted, and where the allegations and circumstances of the acquittal are discussed extensively at the subsequent sentencing.

STATEMENT OF THE FACTS AND CASE

A. The Acquittal in the Underlying Sexual Assault Case and Subsequent Witness Intimidation Charge in this Case

Mr. Piggue pled guilty to one count of Felony Intimidation of a Witness. (41). As set forth in the criminal complaint, Mr. Piggue was previously charged in Milwaukee County Case Number 12-CF-6044 with the First-Degree Sexual Assault of AJ. (2).[1] AJ's testimony at the trial in that case began on March 4, 2013. (2). On March 5, 2013, AJ informed the district attorney's office that she received a phone call from a woman who said she was Mr. Piggue's girlfriend. (2). This woman asked AJ "is this really that serious" and said "you shouldn't do this." (2). Police obtained recorded jail calls in which Mr. Piggue made comments to his girlfriend that "she got up on the stand and lied" and asking that she see if AJ would change her story. (2). Police also obtained letters from Mr. Piggue's girlfriend's home, in which Mr. Piggue asked his girlfriend to call AJ and ask her "how much money she wants 4 this shit to go away." (2).

As also set forth in the complaint, Mr. Piggue acknowledged writing the letters, providing his girlfriend with AJ's phone number, and telling his girlfriend to tell AJ to not come to court and to offer her money to not come to court. (2).

The sexual assault trial proceeded to a verdict; on March 7, 2013, the jury found Mr. Piggue not guilty of sexually assaulting AJ. (42:7;App.140;*see also* 31:2;App.106, noting the date of acquittal). The State issued a complaint charging Mr. Piggue with intimidation of a witness on April 5, 2013. (2).

[1] The parties agreed to the facts in the criminal complaint as the factual basis for the plea. (41:9).

B. Sentencing

The sexual assault allegations for which the jury acquitted Mr. Piggue became a central focus of the sentencing for the witness intimidation charge. The State explained to the court that, given that sentencing courts are supposed to have "full knowledge of the character and behavior pattern of the defendant before imposing sentence," it wished for AJ "to discuss the first degree sexual assault." (42:7;App.140). It "also provided to the court the records from the Sexual Assault Treatment Center and the DNA report filed by Ron Witucki that outlined the DNA evidence that the state had in the first degree sexual assault." (42:7;App.140).[2]

AJ then gave the sentencing court a detailed verbal account of her allegations against Mr. Piggue: that Mr. Piggue approached her at a bus stop and asked what her name was and whether she was single; that they got on the same bus, and he asked her if she wanted to give him her number and that she said no; that they got off at the same bus stop; that he had a gun and told her to come to him or he would shoot her; that he told her to lay down on her stomach and take of her pants, and that he had "intercourse" with her while she asked him to stop; that he then walked away and she ran away. (42:8-12;App.141-145).

The State explained that Mr. Piggue's sperm was found on her "labia swabs, her lower buttocks swabs, her vaginal swabs, the gauze pad, and her pants." (42:16;App.149). The State further stated that AJ was "shown a photo array, and she thought it was the defendant but was not 100 percent sure which just goes to show that she had no idea who the defendant was when he approached her that

[2] The sexual assault treatment and DNA records the State discussed at sentencing do not appear to have been filed in the record in this case.

day." (42:16-17;App.149-150). The State explained that Mr. Piggue told police "20 times that it was not him on the bus," and that he "doesn't have sex in the alley," and continued to deny it even when shown still photos from the bus video. (42:16-17;App.149-50).

The State also asserted that Mr. Piggue's "attitude towards women and his manipulation of [his girlfriend] and his attempted manipulation or successful manipulation of the situation in his first degree sexual assault is despicable." (42:22;App.155). The State argued that it was "just because she [AJ] has to ride the bus" that she "had a chance encounter with the defendant who took her behind an apartment building and forced his penis in her vagina. She didn't do anything else other than ride the bus." (42:22-23;App.155-156).

Defense counsel stated that it knew that the court could "take into consideration uncharged offenses and acquitted conduct;" however, he believed that the State had "unfairly injected the first case into the second case in an effort" "to in effect retry this case." (42: 24,26;App.157,159). Defense counsel noted that though that trial had been held before a different judge, the prosecutor was the same in both cases. (42:26;App.159).

Defense counsel also explained that weeks before the sexual assault trial began, Mr. Piggue sent a letter to the court handling the trial explaining that he was innocent and why he was innocent. (42:26;App.159). He further noted that when the State became aware of the call that had been made to AJ, "there was no request made of the court to end the trial," "no indication made to the court that the witness didn't want to testify, that the witness somehow was fearful about testifying." (42:27-28;App.160-161). Instead, "[t]he trial continued," and Mr. Piggue provided testimony consistent with the letter he previously sent to the court. (42:28;App.161).

At this point in the sentencing, the circuit court asked, "[w]hat was his defense, counsel?" (42:29;App.162). The State answered: "She's a whore. That's the defense. She's a prostitute." (42:29;App.162). The circuit court asked if that was indeed the defense, and noted that "both sides are retrying this now." (42:29;App.162). Defense counsel explained that he did not wish to retry it, but noted that whenever someone is convicted he is "told the jury has spoken," but that whenever "someone is found not guilty whatever the jury said falls on deaf ears." (42:29;App.162). "I don't want to try this again, but I think it's important that I present a perspective of this case other than retrying so that the court can take into consideration how much weight it should be given which is what the state is asking this Court to do today." (42:30;App.163).

Instead, defense counsel stated that he wished to focus on Mr. Piggue's acceptance of responsibility in this case: "And that acceptance of responsibility is a realization that when there was an accusation of an assault, a false accusation, Mr. Piggue was concerned that he was going to be separated from his only child." (42:30-31;App.163-164).

The State recommended nine years initial confinement followed by five years extended supervision—the maximum length of sentence with a habitual offender penalty enhancer. (42:24;App.157). Defense counsel asked for a sentence of three years initial confinement followed by three years of extended supervision. (42:34;App.167). Defense counsel also explained that Mr. Piggue spent "203 days now in custody" but also spent "80 days in custody for the sexual assault offense where a jury determined that he was not guilty." (42:33;App.166).

The circuit court discussed the sexual assault trial when imposing its sentence. (42:37-60;App.170-193). It noted that the DNA evidence proved that "sexual contact or sexual intercourse" occurred and discussed how "sperm fractions" were "found on the victim's lower buttocks, her

labia, her vaginal area, her pants." (42:41;App.174). Though the court acknowledged that "did not preside over the trial," it found Mr. Piggue's defense "basically impossible to believe." (42:42;App.175). "Not to say that there's someone who may engage in allegedly prostitution looks a certain way, but I do not believe for one minute that Miss J[] is or was a prostitute." (42:43;App.176). The court stated that the "victim in this case is obviously extremely traumatized by the totality of these circumstances, the underlying sexual assault case, the verdict in that case, and the prosecution in this matter, including the phone call from this defendant's girlfriend or significant other." (42:43;App.176).

The court later again reiterated that it wholly rejected the idea that AJ could have been working as a prostitute:

> And even if I believed, which I do not that she was a prostitute, again, that is preposterous, I could maybe be convinced that somehow, maybe—again, I wasn't at the trial. I didn't hear the testimony. I could maybe be convinced that this was consensual, but there is no way on God's earth that Miss J[] is a prostitute.

(42:49;App.182).

The circuit court imposed a sentence of six years initial confinement followed by five years extended supervision, and ordered 203 days sentence credit. (42:37-60;App.170-193). It also ordered Mr. Piggue to pay the $250 DNA surcharge. (42:59;App.192).

C. Post-Conviction Motion and Decision

Mr. Piggue filed a post-conviction motion. (30;App.109-133). He asked the circuit court to (1) remove the habitual offender repeater enhancer and commute his sentence to five years initial confinement followed by five years extended supervision (the maximum length of sentence absent the enhancer), on grounds that the State failed to meet its burden to prove the repeater enhancer; (2) award him 84

days additional sentence credit for the time he spent awaiting trial on the underlying sexual assault charge; (3) award him one additional day of sentence credit for the time he spent in custody on this case; and (4) vacate the DNA surcharge. (30;App.109-133).

As grounds for his claim that the court should award him 84 days credit for the time he spent in custody on the underlying sexual assault charge, for which he was acquitted, Mr. Piggue presented two arguments. (30:11-14;App.119-122). First, he argued that he was entitled to this credit under Wisconsin Statute § 973.155 and the rationale underlying the Wisconsin Supreme Court's decision in ***State v. Floyd***, 2010 WI 14, 232 Wis. 2d 767, 606 N.W.2d 155. (30:11-14;App.119-122). Second, he alternatively argued that the court should modify his sentence to 84 fewer days of initial confinement on grounds that he is equitably entitled to the credit, in light of the extensive discussion of and reliance at his sentencing on the facts of the sexual assault on which Mr. Piggue was acquitted. (30:14;App.122).

He presented as exhibits to his post-conviction motion records reflecting that he was arrested for the alleged sexual assault on December 14, 2012 and remained in custody until the jury found him not guilty on March 7, 2013—a total of 84 days. (30:7-8,19-25;App.115-116,127-133).

The circuit court granted the relief requested, except for his request for the 84 days sentence credit for the time he spent in custody on the underlying sexual assault charge. (31;32;App.103-108).

With regard to the claim for 84 days sentence credit for the time spent in custody on the underlying sexual assault, the circuit court first concluded that Mr. Piggue was not entitled to it under Wisconsin Statute § 973.155. (31:2-3;App.106-107). The court explained that "[a]lthough the intimidation charge in this case emanates from the defendant's conduct while he was in custody for the sexual

assault charge, he was not charged with intimidation until the complaint was filed on April 5, 2013, *nearly a month after he was acquitted by a jury of the sexual assault charge*." (31:2;App.106). The court determined that the 84 days credit was not "in connection with the specific act" alleged in this case. (31:2;App.106). The court further noted: "Even assuming for the sake of argument that the defendant's custody for the sexual assault charge 'fundamentally relates to the offense for which he was sentenced here,' the court fails to perceive why the defendant would be entitled to credit from December 14, 2012, when the offense in 13CF001642 was not committed until March 4, 2013, three days before he was acquitted of the sexual assault." (31:3;App.107). The court also rejected Mr. Piggue's citation to ***Floyd***, noting that "***Floyd*** held that a defendant is entitled to credit for time spent in custody for charges that are dismissed and read-in at sentencing. That is not what happened here." (31:3;App.107).

The circuit court further denied Mr. Piggue's alternative, equitable claim for sentence modification to account for the 84 days. (31:3;App.107). The court noted that "[n]o Wisconsin court has recognized equitable relief of this nature." (31:3;App.107). The court continued on to explain that Mr. Piggue had already received a "benefit" by being acquitted of the sexual assault charge

> While the defendant may believe that he has accrued some unrealized benefit in the form of 84 days of custodial time for the sexual assault charge, he overlooks the fact that he was acquitted of the sexual assault charge—a crime for which he was facing **60 years** imprisonment. An acquittal is no small matter. Constitutional double jeopardy protections prohibit the State from a second prosecution of this charge—a significant benefit of the acquittal. The defendant is not entitled to the additional benefit of a sentence reduction of his intimidation sentence.

(31:3;App.107).

Mr. Piggue filed a notice of appeal. (33). He now appeals the circuit court's decision denying his motion for 84 days sentence credit for the time he spent in custody on the underlying sexual assault charge.[3]

ARGUMENT

I. Mr. Piggue is Entitled to the 84 Days He Spent In Custody Awaiting Trial on the Underlying Sexual Assault Charge, For Which He was Acquitted.

A. General principles of law and standards of review

Wisconsin Statute § 973.155 governs when a person is entitled to sentence credit. The statute provides, in relevant part:

> (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.

Wis. Stat. § 973.155(1)(a). This statute requires two determinations: (1) whether the defendant was in custody; and (2) whether the custody was "in connection with" the

[3] Mr. Piggue does not renew his alternative argument for sentence modification to account for the 84 days spent in custody.

"course of conduct for which the sentence was imposed." ***State v. Johnson***, 2007 WI 107, ¶ 31, 304 Wis. 2d 318, 735 N.W.2d 505. The defendant has the burden to prove both of these criteria. ***State v. Carter***, 2010 WI 77, ¶ 11, 327 Wis. 2d 1, 785 N.W.2d 516.

The jail records attached to Mr. Piggue's post-conviction motion established that he was in the custody of the Milwaukee County Jail from December 14, 2012 to March 7, 2013, a total of 84 days. (30:7-8,19-25;App.115-116,127-133). Thus, the central question in this case is whether those 84 days are "in connection with" the "course of conduct for which the sentence was imposed."

Statutory interpretation, including whether a defendant is entitled to sentence credit is a question of law this Court reviews de novo. ***State v. Brown***, 2010 WI App 43, ¶ 4, 324 Wis. 2d 236, 781 N.W.2d 244; *see also* ***State v. Floyd***, 2000 WI 14, ¶ 11, 232 Wis. 2d 767, 606 N.W.2d 155. "The goal of statutory interpretation is to discern the intent of the legislature in enacting the statutory provision." ***Floyd***, 2000 WI 14, ¶ 11. The first step is to look at the plain language of the statute; if the plain language proves ambiguous, courts look "beyond the language to examine the scope, history, context, and purpose of the statute." ***Id.*** (internal citations omitted). "A statute is ambiguous if reasonable, well-informed persons may differ as to its meaning." ***Id.***

B. ***State v. Floyd***

In ***Floyd***, 2000 WI 14, the Wisconsin Supreme Court held that a defendant is entitled to sentence credit for time spent in custody for a charge that is dismissed but read-in at sentencing.

In ***Floyd***, the defendant entered a plea to charges of reckless endangerment and felony bail jumping; pursuant to the plea agreement, all other charges, including an armed robbery charge, were ordered to be dismissed but read-in at

sentencing. ***Id.***, ¶ 4. Importantly, in discussing the facts of the case, the Wisconsin Supreme Court noted that the armed robbery was discussed extensively in the pre-sentence investigation report:

> The description of the armed robbery charge contained in the report was both lengthy and detailed. An equal amount of discussion was devoted to the read-in armed robbery charge as to the reckless endangerment charge. The victim impact statement in the report also related the serious consequences of Floyd's armed robbery charge, describing the victim's various psychological and financial problems.

Id., ¶ 5.

The defendant made two arguments as to why he was entitled to sentence credit for time spent in custody for the read-in offense: first, that the time was "in connection" with the conduct for which he was sentenced because it was dismissed and read-in in exchange for a plea to the offense for which he was sentenced; second, that the time was "related to an offense for which he was ultimately sentenced" "because the trial court took the read-in armed robbery charge into account when sentencing him for reckless endangerment." ***Id.***, ¶¶ 14, 18.

The Wisconsin Supreme Court rejected the first argument, explaining that while a "factual connection fulfills the statutory requirement for sentence credit," "a procedural or other tangential connection will not suffice." ¶ 17.

The Court, however, unanimously agreed with Floyd's second argument. ***Id.*** ¶¶ 18-32. The Court concluded that the meaning of "confinement related to an offense for which the offender is ultimately sentenced" is ambiguous, and thus looked beyond the language to the statute's history and purpose. ***Id.***, ¶¶ 18-20.

The Court explained that the sentence credit statute "has its roots in the constitutional principle of equal protection," with a "broad statutory base" "which exceeded the restricted scope of the common law." ***Id.***, ¶¶ 21-23. This Court recognized that the sentence credit statute is "designed to afford fairness" and ensure "that a person not serve more time than he is sentenced"; designed to serve a "remedial purpose underlying the conscious effort to provide sentence credit in a wide range of situations." ***Id.***, ¶ 23, quoting ***State v. Beets***, 124 Wis. 2d 372, 379, 369 N.W.2d 382 (1985).

The Court then considered the nature of read-in offenses. ***Id.***, ¶¶ 25-32. The Court noted that "[r]ead-ins constitutes an admission by the defendant to those charges." ***Id.***, ¶ 25. The Court explained that while a defendant does not run the risk of consecutive or concurrent sentences based on read-in charges, "there is exposure to the risk of a lengthier sentence as a result of consideration by the court of read-in charges." ***Id.***, ¶ 26. The Court also distinguished read-in charges from unproven or acquitted offenses, explaining that the "implication is that more weight is placed on the admitted charges." ***Id.***, ¶ 27.

The Court rejected the State's concerns that its decision would "release the floodgates," and limited "the reach of Wis. Stat. § 973.155(1) to charges that are dismissed and read in at sentencing." ***Id.***, ¶¶ 30-31. "Applying the rule of lenity" to the ambiguity of the statute, the Court concluded that a dismissed but read-in charge relates to an offense for which the offender is ultimately sentenced. ***Id.***, ¶ 31.

C. The rationale of ***State v. Floyd*** and remedial purpose of Wis. Stat. § 973.155 apply to the particular facts of this case.

Mr. Piggue is entitled to credit in this case for the 84 days he spent in custody on the underlying sexual assault acquittal. Just as with the read-in offense in ***Floyd***, here the confinement Mr. Piggue served in the underlying sexual

assault case was "related to an offense for which the offender [was] ultimately sentenced." Wis. Stat. § 973.155(1)(a).

First, the underlying sexual assault offense was related to his witness intimidation offense because Mr. Piggue was in the custody of the jail awaiting trial for the sexual assault offense when he committed the witness intimidation, and it was the woman accusing him of sexual assault whom he tried to deter from coming to court or from lying.

But even more importantly, the underlying sexual assault offense was related because it became a central—arguably the primary—focus at the sentencing for witness intimidation. The State started the sentencing by making clear its intention to detail the sexual assault allegations, and then proceeded to present and discuss sexual assault treatment records and DNA analysis records. (42:7,16;App.140,149). AJ, the woman who accused Mr. Piggue of sexual assault, gave a detailed account of the sexual assault that she alleged had occurred. (42:8-12;App.141-145). Despite defense counsel's assertion that the State had "unfairly injected the first case into the second case in an effort" "to in effect retry this case," (42:24,26;App.157,159), the circuit court continued to then ask what Mr. Piggue's defense was in the sexual assault case. (42:29;App.162). The court reflected that "both sides are retrying this now." (42:29;App.162).

The circuit court then repeatedly discussed the sexual assault acquittal when imposing a sentence of six years initial confinement followed by five years of extended supervision for witness intimidation. (42:37-60;App.170-193). These repeated comments included the circuit court wholly rejecting Mr. Piggue's defense from the sexual assault trial—finding it "basically impossible to believe" and concluding that it was "preposterous"—even though the judge in this case did not preside over that trial. (42:42-43,49;App.175-176,182). The record thus reflects that the sentencing essentially devolved into a sentencing-within-a-sentencing for both witness intimidation and sexual assault. As such, the underlying

sexual assault allegation and trial, and the time he spent in custody awaiting the sexual assault, were "related to" the offense of witness intimidation for which he was being sentenced here.

Mr. Piggue recognizes that the Wisconsin Supreme Court in ***Floyd*** limited its holding to read-in offenses and specifically distinguished read-in offenses from acquittals. But the Court did so based on the idea that a read-in offense, unlike an acquittal, constitutes an admission to the read-in offense. 2000 WI 14, ¶ 25. As such, the Court concluded that a reviewing court would likely put more weight on read-in offenses. The Supreme Court, however, has since concluded that a defendant's agreement to have a charge dismissed but read-in does *not* constitute an admission to the read-in. ***State v. Straszkowski***, 2008 WI 65, 310 Wis. 2d 259, 750 N.W.2d 835. Further, here the record reflects that the court—despite the fact that Mr. Piggue was acquitted of sexual assault—placed great weight on the underlying sexual assault when imposing sentence, much like a court relying on a read-in offense. And though a jury acquitted Mr. Piggue of the sexual assault, the circuit court here noted multiple times that it completely rejected his defense in that case. (42:42-43,49; App.175-176,182).

As the Wisconsin Supreme Court has made clear, at its core, the sentence credit statute is designed to "afford fairness" and ensure "that a person not serve more time than he is sentenced." ***Floyd***, 2000 WI 14, ¶ 23. In this unique set of circumstances—where: (1) Mr. Piggue was in custody for the sexual assault charge when he committed the intimidation offense in this case; (2) he was charged with witness intimidation against the woman who accused him of sexual assault; (3) he was acquitted of the sexual assault charge (and thus is not receiving any sentence credit toward any sentence in that case); and (4) the sexual assault charge was a central component of Mr. Piggue's sentencing in this case—the remedial purpose of the sentence credit statute and the

rationale of ***Floyd*** reflect that Mr. Piggue should indeed receive the 84 days of sentence credit in this case for the time he spent in custody on the sexual assault charge prior to the jury finding him not guilty.

CONCLUSION

For these reasons, Mr. Piggue respectfully requests that this Court enter an order reversing the circuit court's denial of his request for 84 days sentence credit and remanding this matter for the circuit court to amend the judgment to add 84 days to Mr. Piggue's sentence credit in this case.[4]

Dated this 7th day of April, 2015.

Respectfully submitted,

_____

HANNAH SCHIEBER JURSS
Assistant State Public Defender
State Bar No. 1081221

Office of the State Public Defender
735 North Water Street, Suite 912
Milwaukee, WI 53202-4116
Phone: (414) 227-2201
E-mail: schieberh@opd.wi.gov

Attorney for Defendant-Appellant

[4] Mr. Piggue currently has a total of 204 days sentence credit. (32). With the addition of 84 days, he would have a total of 288 days sentence credit.

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 4,333 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 7th day of April, 2015.

Signed:

HANNAH SCHIEBER JURSS
Assistant State Public Defender
State Bar No. 1081221

Office of State Public Defender
735 North Water Street, Suite 912
Milwaukee, WI 53202-4116
Phone: (414) 227-2201
Email: schieberh@opd.wi.gov

Attorney for Defendant-Appellant

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 7th day of April, 2015.

Signed:

HANNAH SCHIEBER JURSS
Assistant State Public Defender
State Bar No. 1081221

Office of the State Public Defender
735 North Water Street, Suite 912
Milwaukee, WI 53202-4116
Phone: (414) 227-2201
E-mail: schieberh@opd.wi.gov

Attorney for Defendant-Appellant

A P P E N D I X

I N D E X
T O
A P P E N D I X

Page

Judgment of Conviction, filed 10/28/13 (18) 101-102

Amended Judgment of Conviction,
filed 1/6/15 (32) 103-104

Decision and Order Partially Granting
Postconviction Motion and Order
Amending Judgment of Conviction (31) 105-108

Postconviction Motion, filed 12/17/14 (30) 109-133

Transcript of the Sentencing Hearing
on October 25, 2013 (42) 134-194

* The full names of AJ (the woman who accused Mr. Piggue of sexual assault and the subject of Mr. Piggue's witness intimidation conviction) and SG (Mr. Piggue's girlfriend and alleged co-actor in the witness intimidation charge) have been redacted from this Appendix.