STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT IV

Case No. 2016AP0584-CR

IN RE THE FINDING OF CONTEMPT IN
STATE V. CLE A. GRAY, JR.:

CLE A. GRAY, JR.,

Appellant,

v.

ROBERT HUMPHREYS,
WARDEN, THOMPSON
CORRECTIONAL CENTER,

Respondent.

APPEAL FROM AN ORDER OF THE DANE COUNTY CIRCUIT COURT DENYING A POST-CONVICTION MOTION FOR CONTEMPT, THE HONORABLE STEPHEN E. EHLKE, PRESIDING

BRIEF OF RESPONDENT ROBERT HUMPHREYS

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STATEMENT OF THE ISSUES

Generally, only a party to an action who has received an order directing him to take action, and intentionally refuses to take that action, can be found in contempt of court. And only a "defendant aggrieved" by a finding of contempt of court, after being prosecuted by the state at trial, has a right of appeal pursuant to Wis. Stat. § 785.01(3). On appeal, this Court will affirm a denial of a motion for contempt if the circuit court properly exercised its discretion when it examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.

Here, after the State of Wisconsin prosecuted Cle A. Gray, Jr. for a felony, the circuit court issued an amended judgment of conviction and an order for restitution that in combination did not cap any future deduction in Gray's prison funds at 25%. Robert Humphreys, a warden in a Department of Corrections (DOC) institution where Gray was incarcerated at the time he filed his motion for contempt, was not a party to Gray's criminal action, nor was he named in either document. In his motion, Gray alleged that Humphreys was deducting more than 25% of his prison funds. Gray lost his motion. The circuit court suggested that Gray exhaust his administrative remedies and file a certiorari action to properly raise the issue of funds deduction before the courts.

1. Did Gray properly raise his prison funds deduction issue as a contempt motion premised on his amended judgment of conviction and order for restitution issued in his criminal case?

   The circuit court suggested that Gray should proceed through prison administrative channels, and then

through a writ of certiorari to the courts, but did not address this issue directly.
This Court should answer: No.

2. Did the circuit court properly exercise its discretion in denying Gray's motion for contempt against Humphreys in the court of his criminal conviction?

   The circuit court did not address this issue.
   This Court should answer: Yes.

3. Does this Court have jurisdiction over Gray's appeal pursuant to Wis. Stat. § 785.01(3)?

   The circuit court did not address this issue.
   This Court should answer: No.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument is unnecessary because all arguments and relevant law are set out in the parties' briefs.

Publication is not permitted because this case is a one-judge appeal involving contempt of court under ch. 785. *See* Wis. Stat. § 809.23(1)(b)4.

STATEMENT OF THE CASE

Appellant Gray is a prisoner in the DOC prison system. All facts are taken from his criminal prosecution record and his post-judgment motion for contempt.

On April 17, 2014, at the conclusion of Gray's trial in *State v. Gray*, No. 13-CF-2324 (Wis. Cir. Ct. Dane Cty.), a jury convicted him of domestic abuse, a Class I felony.

(R. 20–24; 52–53.) The circuit court sentenced him to 18 months in prison with two years extended supervision. (R. 26–27; 54.) A judgment of conviction was filed on June 27, 2014 (R. 30, App. 401), and an order for restitution, requiring Gray to pay his victim's medical bills ($2757.68), was issued on November 21, 2014 (R. 32, App. 501). The order for restitution states: "[DOC] shall collect restitution from up to 25% of prison funds if defendant is incarcerated." (R. 32, App. 501.)

On January 29, 2015, Gray, with assistance of counsel, moved for postconviction relief. (R. 33.) On March 2, 2015, at a sentence modification hearing before the circuit court, the State and Gray reached an agreement. (R. 35; 55.) Gray's prison sentence was reduced by six months. (R. 36.) Clay had become dissatisfied, however, with the amount DOC was taking out of his prison funds. When Gray raised the issue of deduction of funds at his sentence modification hearing before the circuit court, the judge acknowledged that he did not know how DOC calculates such things, and there was nothing that could be done at the time. Gray's attorney even acknowledged that Gray would have to contact DOC to work out any problems with the deductions. (R. 55:5–6, App. 701–02.) The next day an amended judgment of conviction was issued; it read, in pertinent part: "$268.00 to be collected by [DOC]. Court financial obligations shall be paid at the rate of 25% of the prison wages and work release funds. Restitution shall be paid pursuant to a separate court order [*i.e.*, the order for restitution]." (R. 37, App. 601.)

About three months after his sentencing modification hearing, and without the assistance of counsel, Gray returned to the circuit court of his conviction and filed a motion for contempt of court pursuant to Wis. Stat. § 785.03. (R. 38.) He asked for remedial sanctions against Humphreys, the warden of Kettle Moraine Correctional Institution (KMCI), the DOC

institution where he was then incarcerated. Gray argued that his funds were being deducted at a rate over 25%, which he claimed was contrary to the amended judgment of conviction and order for restitution. (R. 38.) On February 17, 2016, after months of correspondence between Gray and a Dane County Circuit Court Prisoner Litigation Staff Attorney and the chief judge, in which it was suggested that Gray file a certiorari action (R. 39–45), the circuit court denied Gray's motion. The court wrote:

> The Amended Judgment of Conviction ordered court financial obligations paid at 25% of your prison wages and work release funds. Separate from the judgment of conviction, your restitution order commanded the DOC to collect restitution at 25% of prison funds. Neither document ordered the DOC to cap deduction at 25%. DOC DAI Policy #309.45.02 explains that deductions are taken on a declining balance. That is why the DOC has been taking in excess of 25% of your wages or receipts. Based on my review of DOC's action in your case I believe the DOC is acting within its rights.

(R. 46, App. 201.) Then the court again suggested that Gray needed to proceed through the prison administrative process to remedy any issue he had with deductions. (R. 46.)

Gray filed a notice of appeal under his criminal case number. (R. 47.) This Court docketed the appeal as a three-judge appeal, the normal practice for an appeal in a felony case under Wis. Stat. § 752.31(1). Soon thereafter, this Court, pursuant to a motion by the State, changed the appeal to a one-judge contempt matter under Wis. Stat. § 752.31(2)(h). The order also amended the caption to reflect

Gray as the appellant and Humphreys as the respondent.[1] The order further directed the State (*i.e.*, the district attorney) to find appropriate counsel and file a response brief. (Order, Jan. 4, 2017.) The undersigned attorneys from the Department of Justice now submit this response brief on behalf of Humphreys.

STANDARDS OF REVIEW

This Court reviews the trial court's use of its contempt power for an erroneous exercise of discretion. *State ex rel. N.A. v. G.S.*, 156 Wis. 2d 338, 341, 456 N.W.2d 867 (Ct. App. 1990).

Also, the interpretation and application of a statute is a question of law this Court reviews de novo. *See Frisch v. Henrichs*, 2007 WI 102, ¶ 29, 304 Wis. 2d 1, 736 N.W.2d 85 (citing *Evans v. Luebke*, 2003 WI App 207, ¶ 16, 267 Wis. 2d 596, 671 N.W.2d 304).

ARGUMENT

I. Gray fails to show that he properly could raise his prison funds deduction issue as a contempt motion premised on his criminal conviction.

Although not directly addressed by the circuit court, Humphreys, a warden, could not be found in contempt by the circuit court of a prisoner's (*i.e.*, Gray's) conviction based on

[1] Humphreys was the warden at KMCI at the time Gray filed his motion for contempt. He is not, as the caption reads, the warden at Thompson Correctional Institution, where Gray is currently incarcerated. At the time Gray filed his appellate brief he was at Oakhill Correctional Institution. (Appellant's Brief (cover page).)

the Amended Judgment of Conviction and Order for Restitution.[2]

A. Contempt against Humphreys in the present context is unworkable under established contempt law.

No order or judgment at issue adjudicated Humphreys' rights nor directed Humphreys to do anything. He cannot be found in contempt.

For a party to be punishable by contempt resulting from a circuit court's order or judgment, it must be a specific directive. *Carney v. CNH Health & Welfare Plan*, 2007 WI App 205, ¶ 17, 305 Wis. 2d 443, 740 N.W.2d 625. Only an "order or judgment which requires specific conduct (either to do, or to refrain from, specific actions) can be enforced by contempt." *Id.* "Injunctions, of course, must be specific as to the prohibited acts and conduct in order for the person being enjoined to know what conduct must be avoided." *Welytok v. Ziolkowski*, 2008 WI App 67, ¶ 24, 312 Wis. 2d 435, 752 N.W.2d 359. "Injunctions operate in personam and will not issue against one who is beyond the court's jurisdiction." *Dalton v. Meister*, 84 Wis. 2d 303, 311, 267 N.W.2d 326 (1978) (citing *Gruhl Realty Co. v. Groth*, 193 Wis. 108, 213 N.W. 657 (1927) and *Zenith Corp. v. Hazeltine*, 395 U.S. 100, 110 (1969)).

First, Humphreys cannot be found in contempt by the circuit court of Gray's criminal case because he was not a

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[2] "Regardless of the extent of the trial court's reasoning, [a reviewing court] will uphold a discretionary decision if there are facts in the record which would support the trial court's decision had it fully exercised its discretion." *State v. Hurley*, 2015 WI 35, ¶ 29, 361 Wis. 2d 529, 861 N.W.2d 174 (quoting *State v. Hunt*, 2003 WI 81, ¶ 52, 263 Wis. 2d 1, 666 N.W.2d 771).

party to that action. The only named parties were Gray, as the criminal defendant, and the State of Wisconsin, as the prosecuting plaintiff. (R. 1.) Humphreys took absolutely no part in prosecuting Gray for his crime. Indeed, Gray was not yet a prisoner at the institution over which Humphreys was warden. Humphreys is beyond that circuit court's jurisdiction to be subject to a finding of contempt of court. *Dalton*, 84 Wis. 2d at 311. As a result, he cannot be found in contempt of court in a criminal case.

While there are some circumstances under which a nonparty who has actual notice of an injunctive order may be held in contempt, "a court may not punish by contempt persons who violate an injunction by independent conduct and whose rights have not been adjudicated." *Id.* at 312. Here, assuming for the moment that the Amended Judgment of Conviction and Order for Restitution combine to constitute a clear injunction and that Humphreys actually received them, because the case to which Gray brought his contempt motion was his criminal case, Humphreys' rights were not adjudicated. The circuit court of Gray's conviction did nothing to determine Humphreys' rights and obligations regarding the deduction of Gray's prison funds. Thus, Humphreys cannot be subject to contempt of court by the court of Gray's criminal conviction.

A second reason Humphreys cannot be found in contempt is that neither the Order for Restitution nor Amended Judgment of Conviction is an unequivocal injunctive order directing *Humphreys* to take action.

To be punishable by contempt, a court's order must be directive and unequivocal. *See State v. Dickson*, 53 Wis. 2d 532, 541, 193 N.W.2d 17 (1972). The Order for Restitution states that Gray is required to pay his victim's medical bills totaling $2,757.68. In cases in which the offender is

subsequently incarcerated by DOC, the "[f]ailure to pay restitution may result in revocation or extension of supervision, or entry of Civil Judgment." In non-DOC cases, the failure to pay restitution "may result in contempt of court, entry of Civil Judgment, and/or a warrant for your arrest." And the failure to pay restitution gives the victim a cause of action against Gray.[3] This illustrates that the order for restitution is directed at the convicted person, here, Gray. It is not directed at Humphreys. Indeed, his name is not even mentioned. So while this Order for Restitution may be an "order of a court" as referenced in Wis. Stat. § 785.01(1)(b), and it may be directive in nature, because it is not directed at Humphreys, it cannot serve as a basis for contempt of court against him.

The Amended Judgment of Conviction is not an order directed at Humphreys, either. The Legislature requires that a "judgment of conviction shall set forth the plea, the verdict or finding, the adjudication and sentence, and a finding as to the specific number of days for which sentence credit is to be granted under s. 973.155." Wis. Stat. § 972.13(3). It is mostly an adjudication document. *See* Wis. Stat. § 972.13(6). The supreme court has held that a declaratory judgment, as opposed to an injunction, cannot be enforced by contempt proceedings. *Madison Teachers, Inc. v. Walker*, 2013 WI 91, ¶ 21, 351 Wis. 2d 237, 245, 839 N.W.2d 388 (per curium) (vacating a contempt finding based on a declaratory judgment); *see also Badger Catholic, Inc. v. Walsh*, 620 F.3d 775, 782 (7th Cir. 2010) ("A declaratory judgment cannot be enforced by contempt proceedings."). The judgment of conviction form, at most, orders only *the defendant* to take

[3] The document reads: "Pursuant to Wis. Stat. § 973.20(1r), restitution is enforceable in the same manner as a judgment in a civil action by the victim(s) named in the Order for Restitution." (R. 32, App. 501.)

action: "pay a fine." Here, in the "Comments" section of Gray's Amended Judgment of Conviction under "Costs," it reads: "$268.00 to be collected by the Dept of Corrections. Court financial obligations shall be paid at the rate of 25% of the prison wages and work release funds." (R. 37, App. 601.) Like the Order for Restitution, Humphreys' name is nowhere to be found on the document; it is not directed at him in any way. And to the extent it reveals a role for DOC for the collection of money, that is not the equivalent of an *order* against DOC; in any event, the circuit court concluded DOC was collecting Gray's money properly.

The circuit court's denial of Gray's motion for contempt against Humphreys can be affirmed because Humphreys' rights were not adjudicated in Gray's criminal action, and neither the Amended Judgment of Conviction nor the Order for Restitution is directed Humphreys to take specific action.

B. The circuit court properly recognized that whether Gray's prison funds are being properly deducted is an issue better addressed through the DOC Inmate Complaint Review System (ICRS) and certiorari review.

Supporting the notion that contempt is the wrong path here, in the circuit court's order denying Gray's motion for contempt, it informed Gray that if he disagreed with the denial of his motion for contempt, a remedy "would be to file an appeal within the prison administrative review procedures." (R. 46, App. 201.) Previously, the court had sent Gray a checklist of the items required to file a writ of certiorari and some of the necessary forms. (R. 39.) That other administrative path makes much more sense than contempt, and is another reason the circuit court properly denied Gray's motion.

The advantages of Gray proceeding through administrative channels to resolve his prison funds deduction issue are numerous. Placing the issue before DOC officials—with his own, current evidence—would "allow the administrative agency to perform the functions the legislature has delegated to it and to employ its special expertise and fact-finding facility." *Metz v. Veterinary Examining Bd.*, 2007 WI App 220, ¶ 13, 305 Wis. 2d 788, 741 N.W.2d 244. "Preventing premature judicial intervention also allows the agency to correct its own error, thus promoting judicial efficiency; and, in the event judicial review is necessary, the complete administrative process may provide a greater clarification of the issues." *Id.* Here, Gray's motion for contempt alleges that he did file complaints within the administrative ICRS and that Humphreys denied some of them. (R. 38:2–3 ¶¶ 7, 9–10.) If Gray had exhausted the ICRS without positive result, he could have attempted to secure judicial review through commencement of a certiorari proceeding in circuit court. Wis. Stat. § 801.02(7)(b).[4] Instead, he attempted to seek judicial review through a contempt motion. That was a mistake. Gray could have placed before the courts an administrative record revealing his trip through the ICRS and the DOC's reasons for making the deductions as it did. But because he didn't, the only certified record before the courts is Gray's criminal conviction record. The circuit

[4] "No prisoner may commence a civil action or special proceeding, including a petition for a common law writ of certiorari, with respect to the prison or jail conditions in the facility in which he or she is or has been incarcerated . . . until the person has exhausted all available administrative remedies that the department of corrections has promulgated by rule." Wis. Stat. § 801.02(7)(b). "'Prison or jail conditions' means any matter related to the conditions of confinement or to the effects of actions by government officers, employees or agents on the lives of prisoners." Wis. Stat. § 801.02(7)(a)3.

court lacked a certified agency record about the deductions to Gray's prison funds and correctly declined to create one through a post-judgment evidentiary contempt hearing.

The circuit court properly reasoned that the better avenue for Gray to get his prison funds deduction issue before the courts was to first exhaust his administrative remedies through the ICRS and then file a certiorari action. Its decision should be affirmed.

II. Assuming this contempt proceeding was procedurally proper, the circuit court properly exercised its discretion in denying Gray's motion for contempt of court against Humphreys.

On the merits, Gray argues that Humphreys can be found in contempt in the court of his conviction because he was deducting more than 25% of his prison funds, which he claims runs contrary to the Amended Judgment of Conviction (R. 37, App. 601) and Order for Restitution (R. 32, 501). (R. 38, App. 301.) Gray is incorrect and the circuit court properly denied Gray's motion on this basis.

Chapter 785 governs contempt in Wisconsin. Under Wis. Stat. § 785.01(1)(b), "contempt of court" means "intentional . . . [d]isobedience, resistance, or obstruction of the authority, process or order of a court." "The underlying purpose of contempt is to uphold the authority and dignity of the court." *Carney*, 305 Wis. 2d 443, ¶ 20. A court may hold a person in contempt "if he or she has the ability, but refuses, to comply with a circuit court order." *Benn v. Benn*, 230 Wis. 2d 301, 309, 602 N.W.2d 65 (Ct. App. 1999). The mere failure to comply with a court order is an insufficient basis for a contempt finding. *Id.*

There are two types of procedures for finding a person in contempt of court: nonsummary and summary. Wis. Stat. § 785.03(1)–(2). Within the nonsummary procedure are two types of sanctions: remedial and punitive. Wis. Stat. § 785.03(1)(a)–(b). A remedial sanction addresses a "continuing contempt of court." Wis. Stat. § 785.01(3). Wisconsin Stat. § 785.03(1)(a) allows a "person aggrieved by a contempt of court" to seek imposition of a remedial sanction "by filing a motion for that purpose in the proceeding to which the contempt is related." A court may, but is not required to, impose a sanction, and only after notice and hearing. Wis. Stat. § 785.03(1)(a).

A decision denying a motion for contempt, like any discretionary decision by the trial court, will be upheld if the trial court examined "the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach." *Loy v. Bunderson,* 107 Wis. 2d 400, 414–15, 320 N.W.2d 175 (1982).

Here, the relevant facts were found in the Amended Judgment of Conviction and Order for Restitution, since these were the "orders" that Gray alleged Humphreys was intentionally violating. The circuit court explained that there was no conflict between the two documents and the allegations that Humphreys was deducting more than 25% of Gray's funds:

> The Amended Judgment of Conviction ordered court financial obligations paid at 25% of your prison wages and work release funds. Separate from the judgment of conviction, your restitution order commanded the DOC to collect restitution at 25% of prison funds. Neither document ordered the DOC to cap deduction at 25%.

(R. 46, App. 201.) Thus, the circuit court decided that even if Gray's allegations were true—that Humphreys was deducting more than 25% of Gray's prison funds—such action did not run contrary to the Amended Judgment of Conviction and Order for Restitution because those documents, even if they capped certain types of individual deductions at 25%, did not cap aggregate deductions at any particular amount. Far from intentionally refusing to comply with the judgment and order, Humphreys was complying with them. These documents permitted what he was doing. Consequently, there was no need for the circuit court to hold an evidentiary hearing to determine whether Humphreys was in contempt.[5] As a matter of law he could not be.

The court also gave another reason, based on DOC policy, that Gray does not meaningfully address on appeal. The court concluded:

> DOC DAI Policy #309.45.02 explains that deductions are taken on a declining balance. That is why the DOC has been taking in excess of 25% of your wages or receipts. Based on my review of DOC's action in your case I believe the DOC is acting within its rights.

(R. 46, App. 201.) On appeal, Gray does not fully develop an argument that this conclusion was incorrect, meaning it is

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[5] Gray incorrectly believes that a motion for contempt is a motion for "postconviction relief" under Wis. Stat. §§ 809.30(1) and 974.02, requiring an evidentiary hearing pursuant to *State v. Bentley*, 201 Wis. 2d 303, 548 N.W.2d 50 (1996). (Appellant's Br. 7.) But contempt proceedings "are neither civil actions nor criminal prosecutions." *See McGee v. Racine Cty Circuit Court*, 150 Wis. 2d 178, 184, 441 N.W.2d 308 (Ct. App. 1989). Therefore, his citation to *Bentley* (concerning a defendant's postconviction motion to withdraw a guilty plea) is inapplicable and his argument erroneous.

conceded.[6] *See State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

Based on Gray's allegations, the two post-judgment documents, and the law of contempt, the circuit court issued a reasonable decision that Humphreys could not be found in contempt of court. If it were to reach the merits, this Court should affirm the decision and dismiss Gray's appeal.

III. This Court does not have jurisdiction over Gray's appeal pursuant to Wis. Stat. § 785.01(3).

Notwithstanding that Gray's appeal can be dismissed on the grounds argued above, for the purpose of completeness, Humphreys will respond to Gray's contention that this Court has jurisdiction over his appeal pursuant to Wis. Stat. § 785.01(3). (Appellant's Br. 6.) Gray is mistaken. The text of this statute, and case law interpreting it, shows that only a person who has been prosecuted by the State in a special contempt proceeding may use it to appeal. Since Gray is not such a person, this Court does not have jurisdiction over his appeal pursuant to Wis. Stat. § 785.01(3).

Subsection (3) of Wis. Stat. § 785.03 expressly provides a right of appeal in a specific contempt circumstance. "A defendant aggrieved by a determination under this chapter may appeal in accordance with s. 809.30 if the proceeding was prosecuted by the state." This Court explained what this language means in *McGee*, 150 Wis. 2d 178. "[Wisconsin Stat. § 785.03(3)] is clear. It allows an appeal pursuant to sec. 809.30, Stats., if a contempt finding follows prosecution by the

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[6] Gray argues that the circuit court had a "plain duty" to enforce his rights to proper deductions. (Appellant's Br. 6.) Gray confuses a contempt motion with a mandamus action.

state. Thus, it clearly *requires that a prosecution have occurred* before sec. 809.30 can be used." *Id.* at 181 (emphasis added). The phrase "prosecuted by the state" refers to the prosecution of the alleged contemnor.[7] *Id.* at 181–84. Thus, the alleged contemnor becomes the "*defendant* aggrieved" after being prosecuted by the state for punitive sanctions and found in contempt of court at trial. Only then does the "defendant aggrieved" have a right of appeal under subsection (3). *Id.* at 181–82. Here, because he filed the motion for contempt against Humphreys, Gray was merely the alleged "person aggrieved" under subsection (1)(a). He was not the alleged contemnor; Humphreys was. And nobody in this case was the "defendant aggrieved."

Further, to the extent Gray may argue that the term "defendant" and phrase "prosecuted by the state" in subsection (3) refer to a separate criminal prosecution, like his, he also would be wrong. Again, Gray is not a "defendant" because he was not prosecuted for contempt. And the word "prosecution" does not refer to a criminal proceeding at all. It refers a prosecution of the alleged contemnor for punitive sanctions. *See, e.g.*, Wis. Stat. § 785.03(1)(b); *see also McGee*, 150 Wis. 2d at 184 ("Contempt proceedings are *sui generis* and are neither civil actions nor criminal prosecutions within the ordinary meaning of those terms.").

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[7] "Prosecuted by the state" in subsection (3) is a reference to the nonsummary procedure for punitive sanctions in subsection (1)(b) in which the "district attorney of a county, the attorney general or a special prosecutor issues a complaint against a person with a contempt of court and reciting the [punitive] sanction to be imposed." Wis. Stat. § 785.03.

Accordingly, Gray does not secure appellate jurisdiction through Wis. Stat. § 785.03(3) because he is not a "defendant aggrieved . . . in a proceeding prosecuted by the state."[8]

CONCLUSION

Respondent Humphreys asks this Court to affirm the circuit court's order denying appellant Gray's motion for contempt against him.

Dated this 20th day of February, 2017.

Respectfully submitted,

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[8] This Court's January 4, 2017, order explained that this appeal would be decided by a one-judge panel under Wis. Stat. § 752.31(2)(h), implying that Gray secured jurisdiction through Wis. Stat. § 808.04(1). The Court does not have jurisdiction through Gray's criminal conviction. (Order, Jan. 4, 2017.)

CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (c) for a brief produced with a proportional serif font. The length of this brief is 4367 words.

Dated this 20th day of February, 2017.

STEVEN C. KILPATRICK
Assistant Attorney General

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § (RULE) 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § (Rule) 809.19(12).

I further certify that:

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

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

Dated this 20th day of February, 2017.

STEVEN C. KILPATRICK
Assistant Attorney General