STATE OF WISCONSIN

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

DISTRICT I

Case No. 2016AP1416-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

LARRY DAVIS,

Defendant-Appellant.

On Appeal From the Judgment of Conviction and an Order Denying Postconviction Relief Entered in the Circuit Court for Milwaukee County, the Honorable Janet C. Protasiewicz, Presiding.

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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ISSUES PRESENTED

1. Is Mr. Davis entitled to sentence credit from the date of his arrest in this case until the date he arrived at prison to begin serving a revocation sentence?

   The circuit court answered no. In a written decision and order denying sentence credit, the circuit court determined that "what makes the most sense and what is most consistent with established precedent in ***Beets*** and ***Presley***, [supra] is that the Divisions' reconfinement determination is the equivalent to the act of sentencing under Presley that severs the connection between old and new charges." (24:4; App.109).

2. Is the absolute sobriety condition of supervision reasonably related to Mr. Davis' rehabilitation and the interests of the community?

   The postconviction court determined that the condition that Mr. Davis maintain absolute sobriety was appropriate because of the history of violence, and that alcohol may impair judgment and can be linked to violence. (21:4; App. 104).

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Publication of this case is warranted as the issue presented in section I is likely to recur and a published decision from this court will resolve the issue of sentence credit. Oral argument is not necessary as the briefs can adequately address the issues presented.

STATEMENT OF THE CASE AND FACTS

The state charged Mr. Davis with the following: (1) intentionally contacting a victim, witness or co-actor after court order for a felony conviction, contrary to Wis. Stat. § 941.39(1); (2) misdemeanor battery, contrary to Wis. Stat. § 940.19(1); (3) criminal trespass to dwelling, contrary to Wis. Stat. § 943.14; and (4) disorderly conduct, contrary to Wis. Stat § 947.01(1). All four counts charged Mr. Davis with the domestic abuse assessment, pursuant to Wis. Stat. § 973.055(1); as a repeater, pursuant to Wis. Stat. § 939.62(1)(a); and as a domestic abuse repeater, pursuant to Wis. Stat. § 939.62(1)(b) and (2). (1:1-3).

The complaint alleged that on April 21, 2015, Mr. Davis went to the home of the victim, with whom he was ordered to have no contact. (1:4). According to the complaint, Mr. Davis forced his way into the victim's home and punched her. (1:4). The complaint further indicated that Mr. Davis was convicted of a felony in 2011 for battery to an injunction petitioner and was ordered at that time to have no contact with the victim. (1:4). The complaint also alleged that in 2008 Mr. Davis was convicted of disorderly conduct, as an act of domestic abuse. (1:4).

Mr. Davis, pursuant to a plea negotiation, pled guilty to counts (1) and (2). (30:2-3; 4:2). In exchange for his plea, the state dismissed the penalty enhancers and dismissed and read- in the remaining counts. (30:2-3; 4:2).

Mr. Davis was sentenced on August 26, 2015 by the Honorable Dennis Flynn[1]. At the sentencing hearing, the court was informed that Mr. Davis was revoked from extended supervision in large part due to this case. (31:10). Counsel informed the court that Mr. Davis had remained in

custody from his arrest on April 21, 2015 through the date of sentencing, and that he was returned to the institution on his revoked case on July 31, 2015. (31:13).

During its argument, the state informed the court that the police investigating this case identified that there was a history of violence, and identified "risk factors" including that the victim had called the police in the past and that the "suspect abuses alcohol and/or drugs." (31:7).

Defense counsel informed the court that there were three allegations made by the Department of Corrections in its renovation summary: (1) that Mr. Davis had contact with the victim, (2) the incident leading to new charges, and (3) missing a scheduled appointment. (31:9). After being released from custody following revocation of probation (in Milwaukee County Case No. 11CF1196) until being revoked from extended supervision in that same case, Mr. Davis had clean drug screens and there was no indication of substance abuse. (31:12).

After hearing arguments of counsel, the court sentenced Mr. Davis to 3 years of initial confinement and 3 years of extended supervision in count one, and 9 months of jail in count two. (31:19-20). Both counts were ordered to run concurrent to one another, and concurrent to any other sentence being served. (31:19-20). The court granted 101 days of sentence credit. (31:19-20). As a condition of supervision, the court ordered that the matter be referred back to the office of child support for establishment of a support order. (31:20). It also ordered that Mr. Davis maintain absolute sobriety. (31: 25). The sentencing court, however, did not order any Alcohol or other Drug Abuse (AODA) assessment or treatment unless the agent determined it was necessary. (31:25).

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[1] The Hon. Dennis Flynn was substitute judge for the Hon. Rebecca Dallet.

The court wanted to make sure it did things with respect to other orders and conditions consistent with how Judge Dallet normally did things. (31:24). With respect to eligibility for the Challenge Incarceration program, the sentencing court asked the clerk what Judge Dallet's normal practice was. (31:24). The clerk told the court that Judge Dallet usually does not make people eligible due to the nature of the crimes. (31:24.). The sentencing court then stated that Mr. Davis would "not be eligible for those two programs, consistent with the standard approach taken by Judge Dallet." (31:24).

Defense counsel asked the court for a moment to check whether the conviction in count 1 made Mr. Davis statutorily ineligible, noting that while the Substance Abuse Program would not be appropriate given the lack of AODA needs, Challenge Incarceration would be appropriate. (31:25). Counsel requested that if Mr. Davis is statutorily eligible, that the court make allow him to participate in the program. (31:26).

In response to counsel's request, the sentencing court asked the clerk whether Judge Dallet normally denies the program because of ineligibility or because of domestic violence matters. (31:26). The clerk again stated that she thought people were usually denied because of the nature of the crime and that Judge Dallet "rarely, rarely says they're eligible." (Id. 27). The court determined that it would "stick with the ruling not to be eligible for that challenge incarceration program. I think it would not be appropriate and it's also consistent with what Judge Dallet does." (31:27).

Finally, the court ordered 101 days of sentence credit in count (1) and zero days of credit in count (2). (10:3; 11:2).

On December 10, 2015, the Department of Corrections wrote to the court asking it to clarify the sentence credit in count 2. (15). It noted that the court ordered 101 days of credit in count 1 and that the counts ran concurrent to one another, but that no credit had been given on count number 2. (15). On December 16, 2015, the circuit court entered an order amending the judgment of conviction to reflect 78 days of credit on both counts instead of 101 days as originally ordered. (16; App. 110). The court reasoned that reconfinement in case number 11-CF-1196 occurred on the day that Mr. Davis' supervision was revoked (July 8, 2015), and therefore, he was only entitled to credit from the date of arrest until that date. (16; App. 110).

Mr. Davis filed a postconviction motion raising several issues.[2] (20). In a written decision and order dated May 4, 2016 the postconviction court granted relief on two issues, denied two of the claims raised, and held the issue of sentence credit in abeyance pending a decision from this Court in ***State v. Cotton*** 2015AP1625.[3] (21:1-5; App. 101-105).

The postconviction court denied Mr. Davis's claim that the condition of supervision requiring him to maintain absolute sobriety was not reasonably related to his rehabilitation or to the protection of the community. (21:3-4; App. 103-104). According to the postconviction court, defense counsel's comments that Mr. Davis had been testing negative for the use of alcohol and drugs from the time he had been released onto supervision and being confined in this case "conflicts with the record in 11-CF-1196." (21:4; App. 104). The postconviction court determined that because alcohol can

[2] Mr. Davis was granted relief in two of the issues raised in his motion and therefore those issues will not be addressed in this appeal. The postconviction court denied Mr. Davis eligibility for the Challenge Incarceration Program. That decision is not subject of this appeal.

[3] As a summary disposition order, it may not be cited in any court of this state as precedent or authority, Wis. Stat. § 809.23(3).

impair judgment and incite violence, it was in the best interest of Mr. Davis and the community for him to maintain absolute sobriety. (21:4; App. 104).

On June 23, 2016 the postconviction court issued a written decision and order denying Mr. Davis the additional 23 days of sentence credit he claimed. (24:4; 109). The postconviction court raised "several concerns" with this Court's reasoning in ***Cotton***. (24:2; App. 107). The postconviction court noted that the only procedural difference post-***Presley*** is that reconfinement determinations are done administratively by the Division of Hearings and Appeals rather than the circuit court, and that this should not change the timing of when the connection between the old and new charges. (24:2; App. 107).

The postconviction court also concluded that Wis. Stat. § 304.072(4) is "nothing more than a direction to the Department of Corrections to resume running an offender's sentence . . . ." (24:3; App. 108). Accordingly, it reasoned, the statute should not be construed to require credit to be given up until the date the person is received at the institution. (24:3; App. 103). The postconviction court determined that while the "***Cotton*** court may have agreed with the parties that 'persuasive authority and relevant statutory language' supported [the] claim for additional credit," it was not so persuaded. (24:4; App. 109).

This appeal follows.

ARGUMENT

I. Mr. Davis is Entitled to Sentence Credit for the Period of Time Between Revocation of His Extended Supervision and Returning to the Institution.

Mr. Davis seeks an order awarding 23 additional days of sentence credit, so that the judgment reflects 101 days credit. The sentence imposed in this case (3 confinement and 3 years extended supervision), was ordered concurrent to any other sentence. (31:19-20). While this case was pending, Mr. Davis' extended supervision in case no. 11CF1196 was revoked and he returned to prison.

Because his sentence in this case was ordered to run concurrent to any other sentence, he is entitled to credit up until the date he began serving his revocation sentence. ***State v. Beets***, 124 Wis.2d 372, 369 N.W.2d 382 (1985). The issue, then, is to determine what date he began serving his revocation sentence. The answer, for the reasons argued below, is July 31, 2016, which was the date he entered the prison system.

A. Standard of review and principles of law

Pursuant to Wis. Stat. § 973.155 there are two requirements for sentence credit: 1) that a defendant be "in custody" and 2) that the custody be "in connection with the court of conduct for which the sentence was imposed." Wis. Stat. § 973.155(1). At its core, Wis. Stat. § 973.155 is "designed to afford fairness" and to ensure "that a person did not serve more than he is sentenced." ***State v. Floyd***, 2000 WI 14 ¶ 23, 232 Wis. 2d 767, 606 N.W.2d 155 (citing ***Beets***, 124 Wis. 2d at 379).

The application of Wis. Stat. 973.155 to undisputed facts is a question of law that this Court review de novo. ***State***

v. Presley, 2006 WI App 82 ¶ 4, 292 Wis. 2d 743, 606 N.W.2d 713.

B. Mr. Davis began serving the sentence for his revoked case when he was received at the institution and is therefore entitled to credit for all days in custody until that date.

Both Wisconsin statutes and case law demonstrate that the connection between a revoked case and a new case is severed when the defendant arrives at the institution, not on the date that revocation occurs. Wisconsin Statute § 304.072(4) states:

> The sentence of a revoked parolee or person on extended supervision resumes running on the day he or she is received at a correctional institution subject to sentence credit for the period of custody in a jail, correctional institution or any other detention facility pending revocation according to the terms of s. 973.155.

In ***Presley***, the court of appeals addressed concurrent sentence credit under a previous statutory scheme in which the circuit court conducted reconfinement hearings.[4] There, Mr. Presley's extended supervision was revoked and the circuit court held a reconfinement hearing on the same date that it imposed the sentence on the new charge. ***Presley***, 292. Wis. 2d 734, ¶ 2. He then sought credit on the concurrent sentence the court imposed for the period of time between the date of his arrest and the reconfinement hearing.[5] ***Id***. 292. Wis. 2d 734, ¶ 3.

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[4] 2009 Wisconsin Act 28 eliminated reconfinement hearings.

[5] Mr. Presley was sentenced on the new case on the same date as the reconfinement hearing. ***Presley***, 292 Wis. 2d 734, ¶ 2. Therefore the period of time between the reconfinement/sentencing hearing and his receipt at the institution was not at issue for sentence credit purposes.

This Court rejected the State's argument that the date of revocation serves as the start of the revocation case's sentence for purposes of credit. ***Presley,*** 292, Wis. 2d 734, ¶10. It reasoned that according the court in ***Beets***, "the lynchpin to the uncoupling of the connection between the new and old charges was the act of sentencing, *not the revocation determination*." ***Presley***, 292 Wis. 2d 734, ¶ 9 (emphasis added, citing 124 Wis. 2d at 379).

In further support for this conclusion, the court noted that Wis. Stat. § 304.072(4) "unambiguously states that the sentence begins once the offender is transported and received at a correctional institution, not when the revocation occurs." ***Presley***, 292 Wis. 3d 734, ¶14.

As noted above, the postconviction court held Mr. Davis' motion for sentence credit in abeyance, pending a decision from the Court of Appeals in ***State v. Cotton***, 2015AP1625. (21:4; App. 104). A summary reversal was issued in that case on May 24, 2016[6]. On June 23, 2016, the postconviction court issued a written decision and order denying the 23 days of sentence credit. (24:4; App. 109).

The postconviction court noted "several concerns" with this Court's reasoning in ***Cotton***. (24:2; App. 107). It stated:

> The court fails to perceive a material legal distinction post-***Presley*** between a reconfinement determination made by the court and a reconfinement determination made by the Division, and ***Cotton*** does not explain why the Division's reconfinement determination carries no legal significance for purposes of determining when an offender's reconfinement term commences

(24:2-3; App. 107-108).

[6] As a summary disposition order, it may not be cited in any court of this state as precedent or authority. Wis. Stat. §809.23(3).

The postconviction court's "concern" has been addressed, and the answer made clear by this Court as this is not a new issue. Post-***Presley***, reconfinement hearings in the circuit court were eliminated. *See* 2009 Wisconsin Act 28 §2726. ***Presley*** made clear the applicability of Wis. Stat. §304.072(4), noting that "the sentence begins once the offender is transported and received at a correctional institution, not when the revocation occurs." ***Presley***, 292 Wis. 2d 734, ¶14. The Special Materials of the Wisconsin Jury Instructions also provides guidance. (Wis. JI-Criminal SM-34A). *See* ***State v. Gilbert***, 115 Wis.2d 371, 379, 340 N.W.2d 511 (1983). (SM-34A is persuasive authority for the correct interpretation of Wis. Stat. §973.155). The comments explain that after revocation of extended supervision, *the sentence resumes running when the person arrives at prison*. Wis. JI-Criminal SM-34A.

Similarly, when a probationer, with an imposed-and-stayed sentence, has his probation revoked, "the sentence commences when the offender arrives at the prison. The revocation date is irrelevant." Wis. JI-Criminal SM-34A, comment 37b. That approach is consistent with Wis. Stat. §973.10(2)(b), stating that "the term of the sentence shall begin on the date the probationer enters the prison."

This Court agrees with this consistent application of the statutes and the uniform guidance from the Jury Instruction Committee: "Williams's sentence imposed following the revocation of his extended supervision did not "resume" until he was received at a correctional institution." ***State v. Manuel R. Williams***, 2013 WI App 30 at ¶14, 346 Wis.2d 280, 827 N.W.2d 929, unpublished. (App:111-113).

The postconviction court also noted concern with this Court's focus on Wis. Stat. § 304.072(4), and the WI JI-Criminal SM34A, stating:

> Although the statute [304.072(4)] makes reference to section 973.155, Stats. the court reads section 304.072(4), Stats., as a sentence *computation* statute. The statute appears to be nothing more than a direction to the Department of Corrections to resume running an offender's sentence when he or she is received at the institution, less credit for time spent in custody pending revocation. Nothing in the language of the statute states that an offender is to be given credit towards a new sentence up to the date he or she is received at the institution, and therefore, the court is concerned that ***Cotton*** and the Wisconsin Jury Instruction Committee appear to have attached unwarranted significance to the language of section 304.072(4), Stats.

The postconviction court seems to discount the applicability of § 304.072(4) because it applies to sentence computation and not credit. However, the statute provides guidance for courts determining credit because it shows a clear legislative intent for when a sentence should commence. Just because Wis. Stat. §304.072(4) is not directed to a sentencing court or does not discuss credit directly does not make it irrelevant to the analysis.

However, this Court has already determined that Wis. Stat. 304.072(4) is relevant, citing it when determining that Mr. Williams' sentence did not resume until he arrived at Dodge Correctional. ***State v. Williams***, 2013 WI App 30 at ¶¶13-14. (App: 113). Moreover, this Court made the relevance of Wis. Stat. § 304.072(4) glaringly clear ***Presley***, noting that it "unambiguously states that the sentence begins once the offender is transported and received at a correctional institution, not when the revocation occurs." ***Presley***, 292 Wis. 2d, ¶ 14.

Furthermore, the explicit reference in §304.072(4) to Wis. Stat. §973.155 is important. "Statutes relating to the same subject matter are to be construed together and

harmonized." ***State v. Burkman***, 96 Wis. 2d 630, 642, 292 N.W.2d 641 (1980).

Finally, the postconviction court in this case expressed the following concern:

> But when a person is received at an institution can depend on a number of factors, and therefore, to consider when a person is received at an institution as "the lynchpin to the uncoupling of the connection between the new and old charges" can lead to inconsistent results…. For example, assume that a person has been revoked on extended supervision and a reconfinement order has been entered but the person remains in a county jail on a pending charge for one more month before he is sentenced to concurrent imprisonment. Cotton supports a finding that the person is entitled to credit for that additional month towards his concurrent prison term. But if the person were sent to prison after the reconfinement order was entered and had to be produced for sentencing a month later on the new charge, he would only be entitled to credit up to the date he was received at the prison.

(24:4; App. 109).

The variables that the court points to in its order also exist if the revocation and administrative reconfinement determination were to be the cut-off date. While revocation hearings should occur within 50 calendar days after an offender's detention, the hearing can be rescheduled or adjourned for good cause. HA 2.05(4)-(4)(b)[7] And, after a hearing, a decision should be issued within 10 days, but can be extended by 5 days. HA 2.05(7)(g) and (h). That decision can be appealed within 10 days, the other party has up to 7 days to respond, and then the administrator has up to 21 days to decide the appeal. HA 2.05(8) and (9).

[7] Wisconsin Administrative Code, Division of Hearings and Appeals

Without factoring in potential certiorari review and its 45-day deadline, the above timeline by itself provides for ample inconsistencies. One person, on the first day they are given notice of their violations, might waive their final revocation hearing. Another might contest everything and not have a final administrative reconfinement decision for several months afterwards. Scheduling of a hearing itself could create significant inconsistencies.

The same reasoning that the court of appeals applied in ***Williams*** applies in this case. The plain language of Wis. Stat. § 304.072(4) states that a revocation sentence resumes when the defendant arrives at the correctional institution to serve the sentence. *See also*, ***Presley***, 292. Wis. 2d 734, ¶14. Although Mr. Davis' supervision was revoked on July 8, 2015, he did not resume serving that sentence until he arrived at Dodge on July 31, 2015. Therefore, he was "in custody in connection" with the new crime until July 31, 2015. Accordingly, Mr. Davis is entitled to a total of 101 days of sentence credit from the date he was arrested (April 21, 2015), to the date he was received at Dodge Correctional. (July 31, 2015).

II. The Circuit Court Erroneously Exercised its Discretion When it Ordered that as a Condition of Extended Supervision Mr. Davis is Not Permitted to Consume Alcohol.

A. Standard of review and principles of law.

Under Wis. Stat. § 973.01(5), the circuit court has "broad, undefined discretion" to impose conditions of extended supervision, "so long as the conditions are reasonable and appropriate." ***State v. Galvan***, 2007 WI App 173, ¶ 8, 304 Wis. 2d 466, 736 N.W.2d 890 (*citing* ***State v. Koenig***, 2003 WI App 12, ¶ 7, 259 Wis. 2d 833, 656 N.W.2d 499.

"Whether a condition of extended supervision is reasonable and appropriate is determined by how well it serves the dual goals of supervision: rehabilitation of the defendant and the protection of a state or community interest." ***State v. Miller***, 2005 WI App 114, ¶ 11, 283 Wis. 2d 465, 701 N.W.2d 47. Conditions of supervision may impinge upon constitutional rights "as long as they are not overly broad and are reasonably related to the person's rehabilitation." ***State v. Stewart***, 2006 WI App 67, ¶ 12, 291 Wis. 2d 480, 713 N.W.2d 165.

This Court reviews the conditions of supervision imposed by the circuit court under the erroneous exercise of discretion standard to "determine their validity and reasonableness measured by how well they serve their objectives" ***State v. Nienhardt***, 196 Wis. 2d 161, 167, 537 N.W.2d 123 (Ct. App. 1995); ***Koenig***, 259 Wis. 2d ¶ 7.

B. Prohibiting Mr. Davis from consuming alcohol as a condition of his supervision is not reasonably related to a demonstrated rehabilitative need or community interest.

The sentencing court erroneously exercised its discretion when it ordered that Mr. Davis maintain absolute sobriety while on extended supervision.[8] The sentencing court had no indication that Mr. Davis abuses alcohol, or that alcohol was related to the offense in this case. During its argument, the state commented that a police report from the incident indicated that Mr. Davis abuses alcohol and/or drugs. (31:07). However, such information can hardly be characterized as informative or specific. There is no information where the investigating officer got this information, or whether that information is new, old or merely suspected.

Trial counsel advised the sentencing court that there were no issues related to AODA. (31:12, 25). For instance, defense counsel indicated that from the time Mr. Davis was released onto extended supervision, until the time he had been arrested in this case, his drug and alcohol screens were negative. (31:12). When addressing the issue of programming with the court, trial counsel indicated that the Substance Abuse Program would be inappropriate for Mr. Davis due to his lack of treatment needs. (31:25). Based on the information presented at sentencing, the court declined to order an AODA assessment or treatment. (31:25; 18:3; 23:3).

Despite the aforementioned information available to the court, and its own action in relation to ordering an evaluation and treatment as a condition of supervision, it ordered Mr. Davis to maintain absolute sobriety, which would therefore include the consumption of alcohol.

The postconviction court addressed this issue, and determined that absolute sobriety was an appropriate condition of supervision because "it is in the best interest of the defendant and the community that he maintain absolute sobriety during the period of supervision." (21:4; App. 104). The postconviction court reasoned that while there "may be no direct link between alcohol use and his crimes in this case," the information regarding the police report is "supported by the record in case [no.] 11CF001196."

The postconviction court seems to suggest that there alcohol *is* in fact somehow related to this offense, at least indirectly. To support this conclusion the postconviction court relies on the vague report, as well as information in the record for the older case, which is not a part of the record in this case. However, there is nothing in this record suggesting that

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[8] The postconviction court vacated the sentencing court's condition that Mr. Davis file a formal child support action. (21:4; App. 104).

alcohol, or any other drug for that matter, was involved in any way in the incident in this case, or any of the previous cases.

"A condition reasonably relates to the goal of rehabilitation when it assists the offender in conforming his or her behavior to the law." ***State v. Oakley***, 2001 WI 103, ¶21, 245 Wis. 2d 447, 629 N.W.2d 200. Here, there is no indication of how requiring Mr. Davis to refrain from consuming alcohol will assist him in "conforming his behavior to the law." ***Id***. The postconviction court's determination that it is "in his best interest" is overly broad.

Likewise, the postconviction court failed to adequately tie the condition to the safety of the community. Its rationalization that alcohol can lead to impaired judgment and violence may generally be true, but the requirement is that the condition not be overly broad and that it reasonably relate to the dual goals of rehabilitation and a community interest. ***Stewart***, 291 Wis. 2d 480, ¶ 12. Other than the general rationalizations from the postconviction court, there is nothing in this record to show that the condition is reasonably related. Instead, it seems to be more of a blanket-rule that is in no way individualized to the facts of this case.

Because there is no connection between any alcohol use and his crimes, requiring Mr. Davis to maintain absolute sobriety during his period of supervision does not advance his rehabilitative needs. Likewise, there is no evidence that prohibiting Mr. Davis, who is over the age of 21, from drinking alcohol will serve the community's interest. Therefore, the condition of absolute sobriety should be vacated as an erroneous exercise of discretion.

CONCLUSION

For all of the reasons set forth above, Mr. Davis respectfully requests that this Court enter an order reversing the circuit court's decision denying him an additional 23 days of sentence credit, as well as the order denying him relief from the condition of supervision requiring him to maintain absolute sobriety. He respectfully requests that this Court then remand the matter to the circuit court and order that the judgment of conviction be amended to reflect 101 days of sentence credit and that the condition of supervision be vacated.

Dated this 1st day of December, 2016.

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 4,563 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 1st day of December, 2016.

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 1st day of December, 2016.

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