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STATE OF WISCONSIN
C O U R T O F A P P E A L S
D I S T R I C T I
Case No. 2017AP0633-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

CHENEYE LESHIA EDWARDS,

Defendant-Appellant.

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

SUPPLEMENTAL BRIEF OF
DEFENDANT-APPELLANT

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Mr. Edwards files this Supplemental Brief solely to address the recent Wisconsin Supreme Court decision in *State v. Arberry*, 2018 WI 7, 379 Wis. 2d 254, 905 N.W.2d 832. Mr. Edwards does not intend that this brief substitute or replace the previously filed Initial Brief or Reply Brief.

ARGUMENT

- I. *Arberry* does not bar Mr. Edwards from seeking expunction on appeal.

In *Arberry*, the Wisconsin Supreme Court considered whether a defendant could raise a request for expunction for the first time in a postconviction motion to modify sentence. When the defendant in *Arberry* was sentenced, no mention was made of her eligibility for expunction. *Id.* ¶¶ 3, 9. Subsequently, the defendant filed a postconviction motion seeking a finding that she was eligible for expunction. *Id.* ¶¶ 3, 10. She argued that the circuit court has power to modify a sentence if there is a “new factor” and that “*Matasek’s* ‘clarification of when the court must exercise its discretion to determine eligibility for [expunction] constitutes a ‘new factor . . .’” *Id.* ¶ 10.

The Wisconsin Supreme Court denied relief, concluding that the defendant was procedurally barred from seeking expunction because the expunction determination must be made at the sentencing hearing. *Id.* ¶¶ 16, 23. In a footnote, the Wisconsin Supreme Court further indicated that it does not make sense to characterize “eligibility for expunction” as a “new factor” because it is not “relevant to the imposition of sentence” and “eligibility for expunction . . . will always be known at the time of sentencing.” *Id.* ¶ 16 n.8.

Arberry's holding is limited and does not bar Mr. Edwards from seeking expunction in this case.

First, in *Arberry*, the defendant did *not* request expunction at the time of sentencing. The defendant requested expunction for the first time postconviction. *Id.* ¶¶ 3, 10. Here, in contrast, Mr. Edwards properly requested expunction at the time of sentencing and the circuit court made a decision on the request. (R.45:12-13, 16-18, 20-21; Def. Initial Br. App. 115-16, 119-21, 123-24). Thus, this Court should find that Mr. Edwards is not procedurally barred from seeking expunction on appeal. As set forth in Mr. Edward's Reply Brief (at 2), holding that a circuit court cannot revisit or reexamine a denial of a request for expunction made at the time of sentencing whatsoever would effectively deprive a defendant of the constitutional right to an appeal.

Second, unlike in *Arberry*, Mr. Edwards is not alleging that his "eligibility for expunction" is a new factor. *Id.* ¶ 16 n.8. Rather, he seeks to modify the circuit court's decision on expunction in light of his performance on probation, which was unknown at the time of sentencing.¹ (*See* Def. Initial Br. at 9-13). At the time of sentencing in this case, the circuit court expressed concern about granting expunction without knowing whether Mr. Edwards had completed counseling or paid fines and court costs. (R.45:16-18; Def. Initial Br. App. 119-21). Subsequently, Mr. Edwards successfully completed probation, including paying off court costs and extended supervision fees. (R.28:15-17). Additionally, while on probation, Mr. Edwards did not commit any violations and complied with all conditions, including completing AODA and anger management programming. (R.28:7-8; 31:3).

¹ *See generally, State v. Allen*, 2017 WI 7, 373 Wis. 2d 98, 890 N.W.2d 245 (stating that "a defendant's behavior on supervision is relevant to his overall character").

Third, *Arberry* did not address whether circuit courts have inherent authority to expunge court records. (*See* Def. Initial Br. at 13-14).

Lastly, assuming for the sake of argument, but not conceding, that *Arberry* prevents Mr. Edwards from seeking to modify the expunction decision, Mr. Edwards can still challenge the circuit court's denial of his request for expunction as an erroneous exercise of discretion. (*See* Def. Initial Br. at 14-18). *Arberry* did not overrule *State v. Helmbrecht*, 2017 WI App 5, 373 Wis. 2d 203, 891 N.W.2d 412, which requires that a circuit court put forth in the record the facts and rationale underlying a decision to grant or deny expunction.

CONCLUSION

For the reasons stated above, and in Mr. Edwards's previous briefs, this Court should enter an order reversing the circuit court's denial of the postconviction motion, remanding this matter, and ordering the circuit court to consider whether Mr. Edwards's performance on probation entitles him to expunction, or alternatively, to properly exercise its discretion on the question of expunction eligibility.

Dated this 1st day of March, 2018.

Respectfully submitted,

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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 725 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 March, 2018.

Signed:

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