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STATE OF WISCONSIN
COURT OF APPEALS

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OF WISCONSIN**

DISTRICT I

Appeal Case No. 2017AP000633-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

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 PLAINTIFF-RESPONDENT

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TABLE OF CONTENTS

	Page
ARGUMENT	1
CONCLUSION	3
CERTIFICATION.....	3
CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)	4

TABLE OF AUTHORITIES

CASES CITED

	Page
<i>State v. Arberry</i> 2018 WI 7, 329 Wis. 2d 254, 905 N.W. 2d 832	1, 2
<i>State v. Matasek</i> 2014 WI 27, 353 Wis. 2d 601, 846 N.W.2d 811	1, 2
<i>State v. Hemp</i> 2014 WI 29, 359 Wis. 2d 320, 856 N.W.2d 320	1

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I

Appeal Case No. 2017AP0006343-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

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

BRIEF OF PLAINTIFF-RESPONDENT

ARGUMENT

This Court should uphold the circuit court's decision and deny Mr. Edwards Appeal. The Wisconsin Supreme Court has decided, repeatedly, that a circuit court judge must determine whether a person is eligible for expungement at the time of the sentencing hearing. *See generally State v. Arberry*, 2018 WI 7, 379 Wis. 2d 254, 905 N.W.2d 832; *State v. Matasek*, 2014 WI 27, 353 Wis. 2d 601, 846 N.W.2d 811; *State v. Hemp*, 2014 WI 29, 359 Wis. 2d 320, 856 N.W.2d 320.

Based on the recent *Arberry* decision, that applies even in cases where the issue of expungement is not addressed at the time of sentencing. *Arberry*, 379 Wis. 2d 254, ¶ 9.

In *Arberry*, the defendant did not request expungement, and it was not considered by the court at the time of sentencing. *Id.* ¶¶ 9, 11. The defendant requested expungement for the first time during post-conviction proceedings, and the circuit court determined it was barred from determining expungement at that time. *Id.* ¶¶ 10, 11. The Wisconsin Supreme Court ultimately determined that the defendant was procedurally barred from requesting expungement at that time because, “if a circuit court is going to exercise its discretion to expunge a record, the discretion must be exercised at the hearing where sentence is imposed.” *Id.* ¶¶ 15, 21.

The rule controls this case as well. In Mr. Edwards’ case, expungement was requested by defense counsel, considered by the court, and the court declined to make him eligible. (R45:12-13, 16-18, 20-21). There is no legal reason to allow a court to revisit its expungement decision under these circumstances considering that the circuit court could not revisit its decision if Mr. Edwards had not requested expungement at the time of sentencing. Given that eligibility for expungement *must be* determined at the time of sentencing, whether expungement was 1) considered and denied, or 2) not considered at all, is a distinction without a difference. *Arberry*, 379 Wis. 2d, ¶ 21; *Matasek*, 353 Wis. 2d ¶¶ 6, 45.

Mr. Edwards is essentially seeking sentence modification via expungement based on a new factor, which is barred. (App. Supp. Br. at 2); *see generally Matasek*, 353 Wis. 2d. 601. Mr. Edwards seeks to have the circuit court revisit its decision given his performance on probation. (App. Supp. Br. at 2). By definition, that is a factor that cannot be known at the time of sentencing, so it cannot be considered now.

Lastly, circuit courts do not have inherent authority to expunge criminal records, and the circuit court appropriately exercised its discretion when it declined to make Mr. Edwards eligible for expungement. (*See State’s Initial Br.* at 5 – 10).

CONCLUSION

For the reasons stated above and in the initial briefs, this Court should deny Mr. Edwards appeal and enter an order affirming the circuit court's decision.

Dated this _____ day of March, 2018.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19 (8) (b) and (c) for a brief produced with a proportional serif font. The word count of this brief is 468.

Date

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**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 s. 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.

Date

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