STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT IV

Case No. 2017AP000741

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STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JAVIEN CAJUJUAN PEGEESE,

Defendant-Appellant.

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On Appeal from a Judgment of Conviction and Written Order Denying the Postconviction Motion Entered in the Rock County Circuit Court, the Honorable John M. Wood, Presiding

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# BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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## TABLE OF CONTENTS



## CASES CITED

## STATUTES CITED

<u>Wisconsin Statutes</u>

## OTHER AUTHORITIES CITED

## ISSUE PRESENTED

Did the circuit court err in denying Mr. Pegeese's postconviction ***Bangert***[1] motion for plea withdrawal without an evidentiary hearing?

## STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Mr. Pegeese anticipates that the issues will be fully presented in the briefs, but would welcome oral argument if the court would find it helpful in resolving the case. Publication may be warranted pursuant to Wis. Stat. § 809.23(1)(a)1 or 2.

## STATEMENT OF THE CASE AND FACTS

The state charged Mr. Pegeese with armed robbery, as party to a crime, in violation of Wis. Stats. §§ 943.32(2) and 939.05. (1). The complaint alleged that on April 24, 2015, someone called in a delivery pizza order and when the pizza delivery person arrived, he was approached by three individuals, struck with a gun in the side of the head, and robbed. (1:1).

### *Plea Colloquy*

On August 13, 2015, Mr. Pegeese pled guilty to robbery with threat of force, as party to a crime, in violation of Wis. Stats. §§ 943.32(1)(b) and 939.05. (45). A signed plea

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[1] ***State v. Bangert***, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986).

questionnaire/waiver of rights form was filed that same day. (12; App. 102-03).

The circuit court, the Honorable Richard T. Werner presiding, conducted a plea colloquy with Mr. Pegeese and accepted his guilty plea. (45:3-9).

In its colloquy, the court did not specifically advise Mr. Pegeese of any of his constitutional rights. Instead, the court asked Mr. Pegeese if he understood the constitutional rights he was giving up by entering his plea, without enumerating any of them. Mr. Pegeese answered, "Yes, sir." The Court then asked if Mr. Pegeese had any questions about those rights, to which Mr. Pegeese answered, "No, sir." (45:4; App. 106).

Although earlier in the hearing the court confirmed that Mr. Pegeese had read the plea questionnaire and understood it, it did not reference the plea questionnaire in asking Mr. Pegeese about his constitutional rights. (45:4; App. 106). Mr. Pegeese's trial attorney also stated he went through the plea questionnaire form with Mr. Pegeese. (45:4; App.106).

On the same day it accepted Mr. Pegeese's plea, the court withheld sentence and imposed 3 years of probation. (14; 45:11; App. 101).

*Postconviction Litigation*

Mr. Pegeese filed a postconviction motion requesting plea withdrawal on the grounds that the circuit court failed to explain, and he did not understand, his constitutional rights to:

(1) Remain silent or testify,

(2) Use subpoenas to require witnesses to testify,

(3) Have a jury trial where all 12 jurors have to agree on guilt,

(4) Confront and cross-examine people who testify against him, and

(5) Make the state prove him guilty beyond a reasonable doubt.

(31:2).

Regarding his lack of understanding, Mr. Pegeese stated in the motion that at a hearing he would testify he did not understand the above constitutional rights when he entered his plea. (31:6). He further stated that he was sixteen when he entered his plea, does not have a high school diploma, GED or HSED, and has only completed the 10th grade. (31:6). He further stated, he had never entered a plea in adult court before he entered this plea. (31:6). He requested an evidentiary hearing on the motion. (31:7).

The court scheduled a hearing on the motion for February 10, 2017. Mr. Pegeese's trial attorney, Jack Hoag, was in attendance at the hearing to testify. At the hearing, the court expressed some confusion about burden shifting under ***Bangert*** and whether the hearing should begin with Mr. Pegeese's testimony. (46:3-4).

The state did not object to stipulating that the burden had shifted to the state but argued the first thing that needed to happen was for Mr. Pegeese to waive his attorney client privilege with his trial attorney so the state could discuss with that attorney what the two had discussed regarding constitutional rights and the plea questionnaire. (46:4-5). Mr. Pegeese took the stand and waived his privilege for this

purpose. (46:7-9). The state then asked for an adjournment to discuss the case with Mr. Pegeese's trial attorney. (46:10-11). In requesting the privilege waiver and asking for an adjournment to talk to the trial attorney, the state again implicitly conceded that Mr. Pegeese had made his prima facie showing under ***Bangert*** and the burden had shifted to the state to prove that Mr. Pegeese understood his constitutional rights despite the deficient colloquy. This is true because there would be no point in obtaining the waiver and talking to the trial attorney if the burden had not shifted and there would be no evidentiary hearing.

A second hearing took place on March 31, 2017. (47). Mr. Pegeese's trial attorney, Jack Hoag, was again in attendance. However, instead of calling Attorney Hoag to testify, the state changed its position from the February 10, 2017, hearing, and argued that Mr. Pegeese had actually not met his prima facie burden and therefore the burden had not shifted to the state. (47:3). Specifically, the state said there was no deficiency in the plea colloquy because the court went over the other matters it was required to cover with the defendant and because at the beginning of the plea hearing the court asked Mr. Pegeese if he signed and understood the plea questionnaire. (47:3-7). The state also argued Mr. Pegeese did not adequately allege that he did not understand his constitutional rights because he did not attach an affidavit to that effect to his motion. (47:3). Mr. Pegeese disagreed arguing the burden had shifted due to a deficiency in the colloquy because the court did not go through the constitutional rights with Mr. Pegeese or refer him to the plea questionnaire. Further, he sufficiently alleged he did not otherwise understand his constitutional rights in his motion and was not required to submit an affidavit. (47:11-16, 20-22).

The circuit court agreed with the state concluding that the colloquy was sufficient and that the case "is almost identical" to ***Moederndorfer***.[2] (47:23; App. 108). The court reasoned there was no need for the court to enumerate the constitutional rights because the defendant and trial attorney stated at the plea hearing they went through the plea questionnaire form and Mr. Pegeese said he did not need more time to talk to his attorney. (47:25-26; App. 110-11). The court also found Mr. Pegeese's assertion that he did not understand his constitutional rights when he entered his plea insufficient because he did not attach an affidavit alleging the same. (47:23; App. 108).

Mr. Pegeese now appeals the circuit court's order denying his postconviction motion for plea withdrawal without an evidentiary hearing.

## ARGUMENT

I. The Circuit Court Erred in Denying Mr. Pegeese's Postconviction Motion Without an Evidentiary Hearing.

Mr. Pegeese met his prima facie burden under ***Bangert***, 131 Wis. 2d 246, and was entitled to an evidentiary hearing on his postconviction motion. At his plea hearing, the court failed to establish that Mr. Pegeese understood his constitutional rights to: (1) remain silent or testify, (2) use subpoenas to require witnesses to testify, (3) have a jury trial where all 12 jurors have to agree on guilt, (4) confront and cross-examine people who testify against him, and (5) make

[2] ***State v. Moederndorfer***, 141 Wis. 2d 823, 416 N.W.2d 627 (Ct. App. 1987).

the state prove him guilty beyond a reasonable doubt, and that he was giving them up by entering his plea.

In his motion, Mr. Pegeese presented the deficiencies in the colloquy and asserted that at a hearing he would testify that he did not understand his constitutional rights listed above at the time he entered his pleas.

The circuit court erred in finding there was no deficiency and Mr. Pegeese failed to meet his prima facie burden. Specifically, the circuit court erred in finding that Mr. Pegeese's statement that he understood the plea questionnaire, which was made at the beginning of the hearing apart from the discussion of constitutional rights, was an appropriate substitute for the court going through the constitutional rights. The Wisconsin Supreme Court has held that a plea questionnaire can be used as a tool during a plea colloquy but cannot take the place of an in-court colloquy. ***State v. Hoppe***, 2009 WI 41, ¶ 42, 317 Wis. 2d 161, 765 N.W.2d 794. Here, the court did not even refer to the plea questionnaire in discussing the constitutional rights making the colloquy defective.

As discussed below, the circuit court also erred in finding that Mr. Pegeese's assertion that he did not understand his constitutional rights was deficient because it was not supported by an affidavit. This Court should therefore reverse and remand this case for an evidentiary hearing on Mr. Pegeese's motion for plea withdrawal.

A. Legal principles and standard of review.

In order to withdraw a plea after sentencing, a defendant must prove by clear and convincing evidence that withdrawal is necessary to correct a "manifest injustice." ***State v. Brown***, 2006 WI 100, ¶ 18, 293 Wis. 2d 594,

716 N.W.2d 906. A defendant meets this showing if his plea was not constitutionally valid. A defendant establishes that his plea was not constitutionally valid by showing that it was not knowingly, voluntarily, and intelligently entered. ***Bangert***, 131 Wis. 2d at 257.

To show that a plea was not knowingly, voluntarily, and intelligently entered as required under ***Bangert***, the defendant must make a prima facie showing that (1) a deficiency in the plea colloquy exists and (2) the defendant did not "know or understand the information that should have been provided at the plea hearing." ***Hoppe***, 317 Wis. 2d 161, ¶ 4, n.5 (discussing the requirements of ***Bangert***).

If a defendant's post-conviction motion "establishes a prima facie violation of Wis. Stat. § 971.08 or other court-mandated duties and makes the requisite allegations, the court *must* hold a postconviction evidentiary hearing." ***Brown***, 293 Wis. 2d 594, ¶ 40 (emphasis added).

At the evidentiary hearing, the burden shifts to the State to prove "by clear and convincing evidence that the defendant's plea was knowing, intelligent, and voluntary despite the identified inadequacy of the plea colloquy." ***Id***.

This Court reviews independently whether Mr. Pegeese's postconviction motion met his prima facie burden thereby shifting the burden and entitling him to an evidentiary hearing. ***Id.*** at ¶ 21.

B. The circuit court's plea colloquy was deficient because the circuit court failed to explain or ensure Mr. Pegeese understood his constitutional rights.

During a plea colloquy, a court must "[i]nform the defendant of the constitutional rights he waives by entering a plea and verify that the defendant understands that he is giving up these rights." ***Id.*** at ¶ 35.

The relevant constitutional rights are enumerated in the standard plea questionnaire form and can be found in the Wisconsin Criminal Jury Instructions – Special Materials 32. They include:

1. The right to a trial

2. The right to remain silent or testify and present evidence

3. The right to use subpoenas to require witnesses to come to testify

4. The right to a jury trial where all 12 jurors agree on guilty or innocence

5. The right to confront people who testify against the defendant and cross-examine them

6. The right to make the state prove the defendant guilty beyond a reasonable doubt.

In ***State v. Hoppe***, the Wisconsin Supreme Court explained that while a plea questionnaire form lessens "the extent and degree of the colloquy otherwise required between the trial court and the defendant," it is not intended to

eliminate the need for the circuit court to make a record demonstrating the defendant's understanding of the specific information contained in the form. 317 Wis. 2d 161, ¶ 42.

The Supreme Court explained that a circuit court may use the plea questionnaire form as part of the colloquy. ***Id.***, ¶ 30. The Court explained that one way for a court to satisfy its responsibilities is to:

> specifically refer to some portion of the record or communication between defense counsel and [the] defendant which affirmatively exhibits [the] defendant's knowledge of the constitutional rights he will be waiving and then to ascertain whether the defendant understands he will be waiving certain constitutional rights by virtue of his guilty or no contest plea.

***Id.***, ¶ 30 (internal quotations omitted).

The defendant in ***Hoppe*** argued that the circuit court's plea colloquy was deficient for multiple reasons, including the court's failure to explain and ensure that he understood the constitutional rights he waived by entering his plea. ***Id.***, ¶¶ 20-24.

At the plea hearing in that case, the circuit court accepted a plea questionnaire/waiver of rights form which, the Wisconsin Supreme Court noted, "indisputably states that the defendant understands the mandatory information to which the defendant's motion is addressed." ***Id.***, ¶ 24. The circuit court asked the defendant whether he had reviewed the plea questionnaire form and whether he was satisfied that he understood everything in the form. ***Id.***, ¶ 25. The court did not specifically explain the constitutional rights to the defendant, nor did it ask the defendant whether he understood the constitutional rights listed in the plea questionnaire form. *See* ***Id.***, ¶ 25.

The Supreme Court in ***Hoppe*** held the plea colloquy was deficient and in so doing distinguished the case from ***Moederndorfer***, 141 Wis. 2d 823. ***Hoppe***, 317 Wis. 2d 161, ¶¶ 28-42.

In ***Moederndorfer***, the defendant moved for plea withdrawal on the grounds that the circuit court failed to ensure that he understood the constitutional rights he waived by entering his plea. 141 Wis. 2d 823. The plea questionnaire form used by the circuit court in ***Moederndorfer*** detailed each constitutional right and directed the defendant to "individually initial each paragraph explaining the particular constitutional right being waived if the paragraph is understood." ***Id.*** at 827. As part of the colloquy on constitutional rights, the court specifically referred to the plea questionnaire and asked: "By entering that plea of guilty, Mr. Moederndorfer, you give up rights, and these rights have been detailed in this three-page waiver of rights form." ***Id.*** at 828-829, n.1. The form had the defendant's initials next to the constitutional rights. ***Id.*** at 828, n.1. The circuit court asked the defendant whether his initials signified that he "read each of the paragraphs" and understood them before initialing them, and the defendant answered: "Yes, Your Honor, on each and every one." ***Id.*** at 828, n.1. This Court found the court's colloquy to be sufficient. ***Id.*** at 828-829.

The Supreme Court in ***Hoppe*** explained why the colloquy in ***Moederndorfer*** was sufficient but the one in ***Hoppe*** was not. It explained the "circuit court in ***Moederndorfer*** used substantive colloquy during the plea hearing to establish Moedendorfer's understanding of the information." ***Hoppe***, 317 Wis. 2d 161, ¶ 42. Therefore:

> the ***Moederndorfer*** decision is properly interpreted to mean that although the use of a Plea Questionnaire/ Waiver of Rights Form lessens the extent and degree of

> the colloquy otherwise required between the trial court and the defendant, the Form is not intended to eliminate the need for the court to make a record demonstrating the defendant's understanding of the particular information contained therein.

***Id.*** (Internal quotations omitted).

In Mr. Pegeese's case, the circuit court failed at the plea hearing to ensure that Mr. Pegeese understood his constitutional rights and that he was giving them up by entering his plea.

The court did not enumerate any of the constitutional rights during the colloquy. Further, although the court asked Mr. Pegeese if he signed and understood the plea questionnaire earlier in the hearing, it failed to refer to the plea questionnaire form in asking about the constitutional rights like the court in ***Moederndorfer*** did. The only questions the court asked about the constitutional rights were: (1) "Do you understand the Constitutional Rights you give up when you enter a plea today? and (2) Any questions about those rights?" But these questions without any reference to the plea questionnaire or explanation of the rights, did not establish that Mr. Pegeese knew or understood what the rights he was giving up *actually were*. (45:4; App. 106). After all, people do not know what they do not know. Further, young and less-educated defendants, like Mr. Pegeese, often have language deficits which make it difficult to understand sophisticated legal concepts like what a defendant's constitutional rights are and that they are waived by entering a plea. *See* Michele LaVigne & Gregory Van Rybroek, *Breakdown in the Language Zone: The Prevalence of Language Impairments Among Juvenile and Adult Offenders and Why it Matters*, 15 U.C. Davis Journal of Juvenile Law & Policy 37, 70-74 (2011) (App. 153-57).

Additionally, in ***Moederndorfer***, the court and the defendant discussed the fact that Moederndorfer had read and initialed each constitutional right on the form and Moederndorfer indicated his initials signified his understanding of each constitutional right. 141 Wis. 2d at 828, n.1. In contrast, Mr. Pegeese did not initial the rights on the form and was never asked about or referred to the constitutional rights section of the form at all.

For the reasons stated above, the circuit court erred in holding this case is "almost identical to ***Moederndorfer***." In reality, the case is similar to ***Hoppe*** where the colloquy was found deficient. In ***Hoppe***, the court asked the defendant if he understood the plea questionnaire and he said he did. 317 Wis. 2d 161, ¶ 25. The same is true in this case. The Supreme Court held in ***Hoppe***, however, that just signing and understanding the form is not enough – a plea questionnaire form cannot be a substitute for a substantive in-court colloquy. ***Id.*** at ¶ 42.

In a recent unpublished opinion, this court again found a plea questionnaire cannot take the place of an in-court colloquy. In ***State v. Church***, No. 2015AP2513-CR, 2017 WL 950971, ¶ 12 (Wis. Ct. App. March 9, 2017) (unpublished) (App. 117), the defendant stated he went over the plea questionnaire form with his attorney and understood everything in the form. This court found the circuit court's general and brief questioning of the defendant and the trial attorney regarding the plea questionnaire was insufficient to establish the defendant understood his constitutional rights. ***Id***. at ¶ 14. (App. 117). It stated the existence of a plea questionnaire alone is not enough as "the logic of this argument would render superfluous most plea colloquy defects when a plea questionnaire is filled out and the plea hearing merely includes brief questioning about whether the

form was filled out and whether the defendant understood the contents of the form….the adoption of this reasoning would seriously undercut ***Bangert***." ***Id***. at ¶ 20. (App. 118).

***Moederndorfer***, ***Hoppe*** and ***Church*** all recognized that a plea questionnaire form is not meant to eliminate the need for the court to conduct a colloquy on the defendant's understanding of his constitutional rights. The question is not simply whether the defendant signed a plea questionnaire form; rather the question is whether the circuit court engaged in a colloquy sufficient to ensure Mr. Pegeese understood the rights listed on the form. And, as the Wisconsin Supreme Court stated in ***Hoppe***, "***Moederndorfer*** does not support the position that so long as the circuit court ascertains that the defendant generally understands the plea Questionnaire/Waiver of Rights Form, the contents of that Form may be viewed as intrinsic to the plea colloquy." 317 Wis. 2d 161, ¶ 42. The ***Hoppe*** court went on to say the plea colloquy cannot "be reduced to determining whether the defendant read and filled out the plea questionnaire and it is not enough for the court to ascertain that the defendant generally understands the guilty plea form. ***Id***. at ¶¶ 32, 38.

The reasoning of ***Hoppe*** makes sense. After all, if the plea questionnaire can take the place of an in-court colloquy why is a colloquy required at all? If the existence of the plea questionnaire alone were sufficient, a court could hold a five second plea hearing asking the defendant only "did you read and understand the plea questionnaire?" That is clearly not the state of the law. The circuit court cannot simply outsource responsibility to ensure the defendant's plea is knowingly, intelligently and voluntarily entered. The circuit court in Mr. Pegeese's case took the position that a colloquy on constitutional rights is sufficient as long as at some point during the hearing the court confirmed the defendant read and

understood the plea questionnaire but that is not the law as articulated in ***Moederndorfer*** and ***Hoppe***. The plea colloquy here was deficient like in ***Hoppe*** because the court failed to explain the constitutional rights to Mr. Pegeese and failed to explain to Mr. Pegeese that he was waiving them by entering his plea. It further failed to refer him to the plea questionnaire to ascertain whether he understood the constitutional rights he was waiving.

In ***Bangert***, the Wisconsin Supreme Court stated the method a circuit court uses to ascertain the defendant's understanding of information during a plea hearing should depend upon "the circumstances of the particular case, including the level of education of the defendant." 131 Wis. 2d at 267-68. Thus, the less education or capacity the defendant has, the more the circuit court should do to make sure the defendant understands the constitutional rights he is waiving by entering his plea. The Supreme Court in ***Brown*** also discussed the importance of evaluating the characteristics of the specific defendant, like his age and literacy, in determining what the court needs to do to ensure the defendant's understanding. 293 Wis. 2d 594, ¶¶ 9, 52, 76. The defect in the colloquy in Mr. Pegeese's case is especially significant because Mr. Pegeese was sixteen when he entered his plea and had limited education, had no high school diploma, and had never entered a plea in adult court before.

### C. The postconviction motion satisfied Mr. Pegeese's prima facie burden under ***Bangert*** and he was thus entitled to an evidentiary hearing on his motion.

In his postconviction motion, Mr. Pegeese pointed out the deficiencies in the plea colloquy explained above and explained how this case differs from ***Moederndorfer***.

Mr. Pegeese also explained that, at a hearing he would testify that at the time he entered his plea, he did not understand his constitutional rights to: (1) remain silent or testify, (2) use subpoenas to require witnesses to testify, (3) have a jury trial where all 12 jurors have to agree on guilt, (4) confront and cross-examine people who testify against him, and (5) make the state prove him guilty beyond a reasonable doubt. (31:6).

Mr. Pegeese further stated in his motion that, at a hearing, he would testify that he does not have a high school diploma, GED or HSED and has only completed the 10th grade. He also stated he would testify that he was sixteen years old when he entered this plea and had never entered a plea in any adult court before he entered the plea in this case. (31:6).

Mr. Pegeese's post-conviction motion therefore satisfied his prima facie burden to establish (1) a deficiency in the colloquy and (2) that, at the time he entered his plea, he did not understand his constitutional rights. *See* Postconviction Motion (31); ***Hoppe***, 317 Wis. 2d 161, ¶ 4, n.5.

At the initial postconviction motion hearing, the state acknowledged the burden had shifted by seeking a waiver of attorney/client privilege and asking for an adjournment to discuss the case with the trial attorney it would call to testify at an evidentiary hearing. (46:4-5, 10-11). However, the state later changed its position and the court found the burden had not shifted to the state.

The circuit court erred in denying the motion without an evidentiary hearing because: (1) there was in fact a defect in the colloquy, for the reasons discussed above, and (2) Mr. Pegeese sufficiently asserted that he did not

understand the constitutional rights the court failed to go over with him.

The circuit court found that Mr. Pegeese's allegation in his motion that he did not understand his constitutional rights when he entered his plea was insufficient because he attached no affidavit to that effect. (47:23; App. 108). But no affidavit is required. The law states that the burden shifts if there is a colloquy defect and the defendant sufficiently *alleges* (not proves) that he did not otherwise understand the information the court should have provided. ***Brown***, 293 Wis. 2d 594, ¶ 40. Further, a defendant seeking plea withdrawal under ***Bangert*** is "not obligated to summarize in his plea withdrawal motion the evidence he might present at the requested hearing." ***State v. Hampton***, 2002 WI App 293, ¶ 25, 259 Wis. 2d 455, 655 N.W.2d 131.

Indeed, in ***Brown***, 293 Wis. 2d 594, ¶ 62, the court held that a defendant is not required to submit a sworn affidavit stating that he did not understand certain information the court should have provided at the plea hearing. Additionally, the court in ***Hoppe***, which found the burden had shifted to the state, made no mention of an affidavit being attached or required in order for the burden to shift to the state. Further, according to Wis. Stat. § 802.05(1)-(2) (which Mr. Pegeese cited in his motion), "Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a certificate that the pleading, motion or other paper is well-grounded in fact.

It is sensible that an affidavit would not be required because the defendant does not win plea withdrawal after the burden shifts, he simply moves to the next stage where the state calls him and his trial attorney to testify to determine

what he actually understood at the time of the hearing. Thus, there will still be an opportunity for the defendant to speak to his understanding or lack thereof under oath.

Further, as a practical matter, it would be problematic, inefficient and expensive to require a signed affidavit for all plea withdrawal claims. For clients represented by the appellate division of the State Public Defender, it would mean the office's one investigator would need to travel from Madison to prisons all over the state to obtain defendant signatures not so those defendants could prevail, but just so they could raise their claims.

Instead of holding the evidentiary hearing that was required and determining whether Mr. Pegeese understood his constitutional rights despite the court's failure to explain them to him, this court erred in holding the burden had not shifted to the state. This Court should reverse the circuit court's order and remand for an evidentiary hearing on Mr. Pegeese's postconviciton ***Bangert*** motion.

## CONCLUSION

For these reasons, Mr. Pegeese respectfully requests that this Court enter an order reversing the decision of the circuit court denying Mr. Pegeese's postconviction motion for plea withdrawal without an evidentiary and remanding for an evidentiary hearing on Mr. Pegeese's motion.

Dated this 25th day of July, 2017.

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 4,375 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 25th day of July, 2017.

Signed:

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# A P P E N D I X

# I N D E X
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Page

# 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 s. 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 one or more initials or other appropriate pseudonym or designation 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 25th day of July, 2017.

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