STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT 2
Appeal No. 2018AP2274

DEMONTA ANTONIO HALL,

Petitioner-Respondent,

v.

WISCONSIN DEPARTMENT OF JUSTICE,

Defendant-Appellant.

ON APPEAL FROM A FINAL ORDER OF THE CIRCUIT COURT FOR MILWAUKEE COUNTY, THE HONORABLE WILLIAM POCAN, PRESIDING

Petitioner-Respondent's Response Brief

LEGAL ACTION OF WISCONSIN, INC.

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Table of Contents

Table of Authorities

Introduction

This case presents a question of first impression: under what circumstances must the Department of Justice ("DOJ") expunge arrest information from a Crime Information Bureau criminal history report ("CIB")?[1] The statute governing this question, Wis. Stat. § 165.84(1), requires DOJ to return "any fingerprint record taken in connection therewith" an arrest when a person has been "subsequently released without charge." Removal of a "fingerprint record taken in connection" with an arrest from the state-administered criminal history archive has the practical result of removing or expunging the arrest information from the CIB report sold to the public.[2]

The plaintiff in this case, Demonta Hall, sought help from Legal Action of Wisconsin to correct, clarify, and if possible mitigate his criminal record to improve his employment opportunities. In pursuit of that end, Mr. Hall sought to remove from his CIB report information about two arrest incidents which the district attorney's office decided not to prosecute. At the time of both those arrests, the police

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[1] In *Teague v. Schimel*, the Wisconsin Supreme Court recognized for the first time the right of citizens to obtain judicial review of the accuracy of the criminal history reports the DOJ sells to the public. 2017 WI 56, ¶ 68, 375 Wis. 2d 458, 503, 896 N.W. 2d, 286, 308. DOJ does not contest that its decisions about fingerprint removal requests are also final agency decisions subject to review under Wis. Stat. § 227.

[2] The police or law enforcement entity that originally arrested the individual retains information about that arrest and that information can be obtained by an open records request to the agency records custodian. Wisconsin Statute § 165.84 only affects the report created by DOJ in response to a non-law enforcement request for a criminal history report or a background check. The format and most of the content of these reports reflects not state statute or regulation, but unwritten DOJ policies and practices.

discovered that Mr. Hall had municipal warrants, associated with previous municipal charges. In both cases, Mr. Hall's municipal charges preceded the date of his criminal arrests and did not involve the same alleged activity or the same time frame. In other words, the sole connection between the municipal warrants and the criminal arrests was that the warrants were in existence when Mr. Hall became a suspect in the two criminal incidents in question in this case. DOJ denied Mr. Hall's removal requests, despite the fact that Mr. Hall was not convicted after his arrest on either of the criminal charges for which he was arrested, asserting that the statute did not allow removal under the circumstances.

Statement of the Issue

Does Wis. Stat § 165.84(1) require return of a fingerprint record when the facts which formed the basis of the arrest result in neither a charge nor a conviction?

The circuit court answered yes, reasoning that a municipal conviction involving a charge arising months or years before an arrest on a wholly unrelated criminal matter does not prevent the return of the fingerprint record of that criminal arrest so long as that individual is not convicted of the criminal offense in question.

Statement on Oral Argument and Publication

Oral argument is not necessary. This case does not involve any extraordinarily complex issues of fact, and the briefs adequately addresses the legal questions.

The decision should be published. The accuracy of CIB records is of substantial and continuing interest to Wisconsin citizens. Wis. Stat. § 809.23(1)(a)5. DOJ maintains criminal records of approximately 1.5 million people[3] in its CIB database. Employers, landlords, and other users rely on these records in important decisions, such as whether to hire people or provide them housing

Publication will clarify the statute, providing guidance to DOJ on which arrest information should be removed from its database in response to the requests of the record subject. Wis. Stat. § 809.23(1)(a)1. This guidance is particularly important because there are no published cases addressing DOJ's responsibility for correcting arrest record information. There are also no administrative agency decisions interpreting the statute—because until last year DOJ had created no mechanism for contesting its decisions.

Statement of the Case

DOJ's statement of the case is not inaccurate, but it hides the forest among some irrelevant trees. The statute at the heart of this case, Wis. Stat. § 165.84(1), is about fingerprint cards. But the "forest" is the series of unwritten policies and practices that permit large amounts of misleading

[3] *Teague v. Schimel*, 2017 WI 56, ¶ 3, 375 Wis. 2d 458, 463, 896 N.W.2d 286, 288.

information to be placed into the criminal history reports the DOJ sells to the public. The following statement of the case notes some of the practical effects omitted from or obscured within DOJ's Statement of Case.

A. The CIB Database is governed by Wis. Stat. §165.83 and used by both law enforcement and the general public to determine an individual's criminal history.

DOJ collects fingerprints, photographs, and other identifying data on persons who have been arrested or taken into custody. Wis. Stat. §165.83(2). Each record is connected to an individual's fingerprint. *Teague v. Schimel*, 2017 WI 56, ¶ 3, 375 Wis. 2d 458, 463, 896 N.W.2d 286, 288. Fingerprint records generally[4] originate from an arrest and are organized by cycles on CIB reports.

CIB report subjects have a right to challenge the accuracy of information in a CIB report using their name and birthdate. Wis. Stat. § 19.70(1); *see also Teague v. Schimel, 2017 WI 56, ¶¶ 13-14, 375 Wis. 2d 458, 468–69, 896 N.W.2d 286, 291.* Wisconsin Statute § 165.84(1) also gives record subjects the right to expunge information about arrests under certain circumstances: "[a]ny person arrested or taken into custody and subsequently released without charge, or cleared of the offense through court proceedings, shall have any fingerprint record taken in connection therewith returned

[4] DOJ also creates cycles for other reasons, including for admission into the state prison system after intake through Dodge Correctional Institution, for discharge from prison, and for the issuance of "failure to appear" warrants, despite the fact that not all of these events involve the submission of a new fingerprint to the archive or any new charge or arrest.

upon request." Wis. Stat. § 165.84(1). Because the "cycles" on a CIB report are linked to a specific event, and because each arrest event is linked to the fingerprint record taken at the time of the arrest, if the fingerprint record "taken in connection" with the arrest is returned to the arrestee under Wis. Stat. § 165.84(1), the "cycle" is removed from the CIB report.

B. Factual Background: the CIB cycles and fingerprint cards at issue in this case.

The two cycles at issue in this case illustrate DOJ's practice of conflating past charges, based on one set of allegedly unlawful behavior, with new arrests tied to an entirely different set of allegedly unlawful behaviors because police entities, at their discretion, associate these events on a fingerprint card. (R: 9:7-14).

Mr. Hall's first request to DOJ was for removal of Cycle 6 on his CIB. That cycle is initiated by his arrest on September 21, 2015, on the potential charge of Possession of Electronic Weapon. (R: 9:37). The fingerprint card also refers to the municipal charge of Operating after Suspension. (R: 9:37). The underlying conduct in the municipal charge for Operating after Suspension has no relationship to the arrest for Possession of Electronic Weapon. (R: 9:48). Mr. Hall was charged with Operating after Suspension in municipal court a year earlier on October 13, 2014. (R: 9:48).

Although the police arrested Mr. Hall for Possession of Electronic Weapon, he was never charged with or convicted of that crime. (R: 9:40). Mr. Hall was convicted of an outstanding Operating after Suspension ticket in municipal

court, unrelated to the Possession of an Electronic Weapon arrest, after the district attorney declined to prosecute the latter allegation. (R: 9:40, 48). The only reason that police included the Operating after Suspension ticket on the September 2015 fingerprint card is because a warrant search revealed that a warrant had been issued in that case.

Similarly, Mr. Hall requested that DOJ remove Cycle 7 from his CIB record report, which provides information about an arrest event dated January 11, 2017. The original fingerprint record card lists a potential felony charge of 2nd Degree Sexual Assault (R: 9:19). The Milwaukee County District Attorney's Office reviewed the case and declined to issue charges. (R: 9:23). The fingerprint record also referred to a ticket for Disorderly Conduct, for which Mr. Hall was charged in municipal court in 2015. (R: 9:19). Mr. Hall was convicted of that Disorderly Conduct ticket on February 22, 2017; however, the conduct underlying the potential sexual assault charges was unrelated to the municipal Disorderly Conduct ticket, issued years earlier.

C. Procedural History

On October 16, 2017, Mr. Hall used DOJ form DJ-LE-250B to request removal of his September 21, 2015, (Cycle 6) and January 11, 2017, (Cycle 7) fingerprint records, pursuant to Wis. Stat. § 165.84(1). (R: 3:1-5). DOJ's response, dated October 30, 2017, denied both requests with the form language: "the final disposition did not result in being released without charge or cleared of the offense through court proceedings." (R: 9:26, 43). Mr. Hall timely filed a

Petition for Review of Agency Decision on November 29, 2018. The circuit court agreed with Mr. Hall that DOJ incorrectly interpreted Wis. Stat. § 165.84, remanding the matter to DOJ for removal of the information Mr. Hall had requested.

The circuit court concluded[5] that the phrase "subsequently released without charge" meant subsequently released without a new charge or at the least a charge associated with the current arrest. (R: 23:9). In so doing, the circuit court rejected DOJ's assertion that the controlling factor in determining whether to grant or deny a fingerprint removal request is whether certain information appears on the same fingerprint card. "There must be some nexus that links the arrest and charge beyond writing a numerical sequence on a card." (R: 23:9). The court reasoned that "several years as well as interceding warrants" had "attenuated" any nexus between the municipal charges and the arrests to such an extent that Mr. Hall was subsequently released without charge in both criminal cases. (R: 23:9).

On October 10, 2018, the court entered an order reversing DOJ's decision and remanding the matter back with instructions to remove Cycles 6 and 7 from Mr. Hall's CIB report. DOJ filed a timely notice of appeal of that decision on November 20, 2018.

[5] The circuit court also concluded that Mr. Hall has an interest in removing the possession of electronic weapon and sexual assault offenses from his CIB report because he was never charged with either offense and thus has an interest in DOJ publishing a correct CIB report. (R: 23:6).

D. Standard of Review

No deference is owed to DOJ. The question on appeal is the interpretation of a statute. This presents a question of law which the Court reviews *de novo*. *See, e.g., State v. Williams,* 198 Wis.2d 516, 525, 544 N.W.2d 406 (1996); *see also Tetra Tech EC, Inc. v. Wisconsin Dep't of Revenue*, 2018 WI 75, ¶ 108, 382 Wis. 2d 496, 582, 914 N.W.2d 21, 63 (ending the practice of deferring to administrative agencies' conclusions of law). Under *Tetra Tech,* reviewing courts apply the same standard to an administrative agency's conclusions of law as they have always done to the circuit courts' conclusions of law. 2018 WI 75, ¶ 84.

While DOJ acknowledges its conclusions of law are entitled to no deference, it goes on to ask the Court of Appeals to give "due-weight 'respect' to its views of the law." (DOJ/Appellant Brief at 7). While the *Tetra Tech* Court did allow for due weight "in its statutory form" to remain intact, the legislature subsequently amended the statute. *Tetra Tech*, 2018 WI 75, ¶ 75; *see also* Wis. Act 369 § 80. Wisconsin Statute § 227.57(10)-(11) now clearly rejects judicial deference to administrative agency conclusions of law.

If anything remains of the previous standard, it is the recognition that a reviewing court may find an agency's conclusion of law persuasive if it reflects long experience, technical competence, and specialized knowledge particularly with respect to areas in which the agency has

broad discretion. *Tetra Tech*, 2018 WI 75, ¶ 78. DOJ failed to establish any of the factors necessary to give its interpretation additional persuasive value. Like the Tax Appeals Commission in *Tetra Tech*, DOJ relies on the rules of statutory interpretation and a dictionary definition to support its position—not its specialized expertise. *Tetra Tech*, 2018 WI 75, ¶ 106. The *Tetra Tech* Court found that "the 'due weight' calculus did not increase the persuasiveness of the [Tax Appeals] Commission's conclusion of law." 2018 WI 75, ¶ 106. Additionally, the statute at issue in this case gives DOJ no discretion in its application. Thus, DOJ's interpretation is entitled to no additional persuasive value.

Argument

DOJ's argues, throughout these proceedings, that in order to qualify for removal pursuant to Wis. Stat. §165.84(1), all references on a given fingerprint card, regardless of the charge date of the listed offenses or of the total separation of the charges with respect to the alleged activity, must be released or cleared. (R: 8:2, 9:26, 40).

DOJ's interpretation suffers from two fundamental defects: it ignores the intent of the legislature and renders the word "subsequently" in the phrase "subsequently released without charge" meaningless. Finally, DOJ misinterprets the intent behind the "fugitive from justice" statutory provision. Based on these flawed interpretations, this Court should affirm the circuit court's decision.

A. DOJ's interpretation of Wis. Stat. § 165.84 is contrary to the plain language of the statute.

Statutory construction begins with an examination of the language because Wisconsin courts presume that the legislature's intent is expressed in the statutory language. *State ex rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 663, 681 N.W.2d 110, 124. Statutes must be interpreted within the context, not in isolation, to the language of the related statutes. 2004 WI ¶ 46. Furthermore, statutory language is interpreted reasonably to avoid absurd or unreasonable results. 2004 WI ¶ 46.

Wisconsin Statute §165.84(1) provides in relevant part that "...[a]ny person arrested or taken into custody and subsequently released without charge, or cleared of the offense through court proceedings, shall have any fingerprint record taken in connection therewith returned up on request."

The statute thus distinguishes between people who are arrested and fingerprinted as part of that arrest and then "subsequently" convicted for the conduct for which they were arrested and people who are arrested and who are "subsequently" not charged or cleared through court proceedings. That distinction reflects the presumption of innocence that attaches to one group when a charge has been dismissed or there has been a court finding of not guilty. This reading of the statute is consistent with the most fundamental principles of criminal justice. It also avoids the interpretive sin of writing words out of the statute. *Kalal,* 271 Wis.2d 633, ¶ 46, 681 N.W.2d 110; *see also United States v. Jicarilla Apache Nation,* 564, U.S. 162, 185, 131 S. Ct. 2313.180 L.Ed. 2d 187 (2011).

DOJ's interpretation, by contrast, rendered the word "subsequently" superfluous by arguing that it modifies only the word "released." (DOJ/Appellant Brief at 11-12). In that reading, "subsequently" or "subsequent" becomes surplusage because *all* releases after arrest are subsequent to the arrest. Mr. Hall's interpretation gives effect to every word in the statute: if the new arrest does not result in new charges, or if the new charges are "cleared" through the newly instituted court proceedings, the arrestee preserves the presumption of innocence and is entitled to return of the fingerprint card.

DOJ's interpretation also runs afoul of the principle that statutory interpretation should not lead to absurd results. The absurd result here is that under DOJ's interpretation, "subsequently" modifies only "released," and not the post-arrest new charges. By conflating a current arrest, based on recent activity, with some antecedent arrest, based on an entirely different set of activities, DOJ's interpretation could prevent vast numbers of people previously charged of an offense from ever taking advantage of Wis. Stat. §165.84(1).

Under DOJ's interpretation, for example, a person charged and for whom a warrant was issued in 1970 could not obtain return of a fingerprint card from a 2017 arrest for a separate, unrelated offense, in which that warrant was discovered, even if the 2017 arrest yields no new charges. That reading is, of course, absurd. The circuit court, by contrast, examined the context of the statutory language to arrive at a reasonable and workable interpretation which requires that there be a "nexus" connecting arrest events in

order to reconcile their linkage within a CIB arrest cycle. (R:23: 9).

On the facts, there is no dispute that the September 2015 and January 2017 arrests did not result in a conviction for his conduct in September 2015 or January 2017. The two antecedent municipal court proceedings are as disconnected from the September 2015 and January 2017 conduct as the hypothetical 1970 charge in the preceding paragraph. If law enforcement authorities had charged a new crime, committed in September 2015, such as flight to avoid prosecution or disorderly conduct for his conduct in January 2017, then Wis. Stat. § 165.84(1) would look to those charges (subsequent to the new arrest) to determine if the "released without charge or cleared" language applies.

B. Mr. Hall's interpretation of Wis. Stat. §165.84(1) is consistent with the legislature's intent to track an individual's criminal history event from beginning to end.

Wisconsin Statute §165.83(2)(f) requires DOJ to collect information about the legal action "taken in connection with offenses committed …from the inception of the complaint to the final discharge of the defendant." That phrase illustrates the legislative intent that DOJ create a narrative history that begins with an arrest or a charge[6], includes information about the various stages of the criminal justice process, and ends with the final disposition of the case.

[6] Some narratives begin with a charge and not an arrest. For example, a person may be cited for an ordinance violation and never be arrested. In another instance, a person may be charged with a crime in absentia and an arrest warrant may be issued.

The interceding events that occur from the beginning to end of a case are like chapters in a book. If a court issues a warrant for an individual before a case goes to trial or after a case is resolved, that warrant is another chapter in the book that began with an arrest or a charge.

Contrary to DOJ's position, a person is not newly charged just because law enforcement discovers upon their arrest that a warrant has been previously issued. That warrant is not the beginning of a new narrative of events; rather, it is related to an event that exists prior to and separate from the arresting offense.

The plain language of the statute mandates that any person arrested and fingerprinted shall, after a period of time in which charges may be amended, dismissed, or prosecuted and guilt or innocence has been determined, have any fingerprint taken in connection "therewith" returned. The phrase "in connection therewith" plainly modifies the initial arrest that initiated the sequence of events, which means that this statute, like Wis. Stat. §165.83(2)(f), reflects the legislature's intent to treat an event that begins with an arrest as a single event with multiple stages or chapters.

C. DOJ's supposedly "absurd" hypothetical result does not occur under a common sense reading of Wis. Stat. § 165.84(1).

DOJ argued both to the circuit court and in its opening appellate brief that implementing a policy that would comport with the plain language of the statute is "unworkable." In support of its position, it presented a flawed hypothetical to the Court, stating that… a person who is (1) arrested; (2) then

charged or cited; (3) then found guilty would not be entitled to remove his corresponding fingerprint arrest card from the database. However, if (1) and (2) were reversed, that person would be eligible for removal." (DOJ/Appellant Brief at 13). While it is truly absurd that the legislature would authorize removal of a fingerprint of a person arrested and convicted of a new crime, neither the context nor the language requires that result. DOJ's analysis is simply wrong. In either variation of its hypothetical, a person who is convicted on the new charges (regardless of whether "charged" before arrest or after arrest) never survives the "cleared through court proceedings" prong and is thus the cycle is not eligible for removal pursuant to Wis. Stat. § 165.84(1).

Nor does the statutory language create an odd result for the innocent arrestee based on the timing of the "arrest" and the "charge." If a prosecutor files a criminal complaint and then a defendant is arrested, the defendant remains "charged" subsequent to the most recent arrest. The fact that that particular innocent defendant could not be "subsequently released without charge" (the charge having been already made), does not prevent the innocent defendant from obtaining the relief of Wis. Stat. § 165.84(1) when the defendant is "cleared" through the criminal proceedings. The fingerprint card is returned. Conversely, if the defendant is not cleared, the fingerprint card remains on file because Wis. Stat. § 165.84(1) has not been satisfied.

Because DOJ's hypothetical leads to absurd results, the most logical meaning of the statute is that any person arrested and then later released without charge, or cleared by

the court of the offense they are arrested for, "shall have any fingerprint record taken in connection" with that arrest returned. Wis. Stat. § 165.84(1). The presumption of innocence is vindicated as to the new accusations. Antecedent charges are simply irrelevant because the temporal nexus in Wis. Stat. § 165.84 links new accusations of criminal conduct to the resolution of those new accusations.

Thus, the circuit court correctly applied the plain language of the statute when it reasoned that there must be a temporal and sequential "nexus" linking an arrest to a charge and that nexus is not satisfied simply because the law enforcement agency grouped events relating to multiple, distinct arrest events on a single fingerprint card. Ignoring both time and a connection between the arrest and charge undoubtedly would mean, as the circuit court aptly points out, that a person who has a minor conviction may never have a fingerprint record removed from the database. (R:23: 9).

D. DOJ's "fugitive from justice" argument fails because it ignores the distinction between Wis. Stat. § 165.83(2) and 165.84(1), and it disregards the legislative intent behind Wis. Stat. § 165.83(2)(j).

DOJ argues that the circuit court's interpretation of the removal statute, Wis. Stat. § 165.84(1), is incompatible with the "fugitive from justice" clause[7] of Wis. Stat. § 164.83(2)(a), which governs the categories of information DOJ collects in its CIB database. (DOJ/Appellant Brief at 13). This argument should be rejected for two reasons: (1)

[7] Wis. Stat. § 164.83(2)(a)4.

DOJ's argument that the statutes are incompatible relies on a fundamental misunderstanding of the distinction between the statutes; and (2) DOJ ignores the intent of the "fugitive from justice" provision of the statute.

Both Wis. Stat. § 165.83(2) (the collection of information statute) and Wis. Stat. § 165.84(1) (the return of fingerprint cards statute) are compatible and can be applied consistently. Wisconsin Statute § 165.83(2) lists the information DOJ is to collect in the first instance; while, § 165.84(1) addresses when DOJ shall remove fingerprint information previously collected. DOJ conflates the purposes of these statutes when it argues that its requirement to file fingerprints of a "fugitive from justice" countermands its requirement to remove those fingerprints from its database when the elements of the removal statute are met. (DOJ/Appellant Brief at 14). As long as a person remains a suspected "fugitive from justice," DOJ keeps the record and makes it available to law enforcement. However, as soon as one determines that the suspect is no longer a "fugitive from justice" because either they have been arrested **or** there is no new criminal charge related to being a "fugitive from justice" for which they have been convicted, then § 165.84(1) directs the fingerprint card be removed. One can be falsely accused of being a "fugitive from justice" just as one can be falsely accused of a crime.

The structure of the statutes bears this argument out. Wisconsin Statute § 165.83(2)(a) provides five categories[8] of

[8] Wisconsin Statute § 165.83(2)(a) requires DOJ "to obtain and file fingerprints…on persons who have been arrested or taken into custody in

persons, who have been arrested or taken into custody, from whom DOJ must obtain and file fingerprints. "Fugitive[s] from justice" comprise only one of those five categories. Nowhere does the statute state that a "fugitive from justice" should be treated differently than persons whose fingerprints DOJ has obtained and filed because they were arrested for an offense. Had the legislature intended for a "fugitive from justice" to be treated differently by DOJ than other persons who have been arrested, it would have provided a special rule for this category in the statute. It did not. The "fugitive from justice" provision should be interpreted consistently with the other categories within this section—simply as one type person whose fingerprints DOJ is charged with obtaining and filing. *See Perra v. Menomonee Mut. Ins. Co.*, 2000 WI App 215, ¶ 9, 239 Wis. 2d 26, 31, 619 N.W.2d 123, 126 ("Statutes and rules that assist in implementing a chapter's goals and policies should be read *in pari materia*.").

It is a separate question entirely when those fingerprints must be removed from DOJ's criminal history database. Wisconsin Statute § 165.84(1) requires DOJ to return "any fingerprint record taken in connection therewith" an arrest when an individual has been "subsequently released without charge." No language in the statute suggests that a "fugitive from justice" whose arrest does not result in a subsequent charge does not have the same recourse as a

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this state: (1) For an offense which is a felony…(2) For an offense which is a misdemeanor…or which is a violation of an ordinance…(3) For an offense charged or alleged as disorderly conduct… (4) As a *fugitive from justice*. (5) For any other offense designated by the attorney general." (emphasis added)

person who was arrested for an offense that does not result in a charge. The circuit court reasoned, "an individual is not 'charged' upon release simply because a charge exists in the ether." (R:23: 9). Here, Mr. Hall may have been charged with municipal ordinance violations prior to his arrest for criminal cases, but those charges occurred prior—not subsequent—to his arrest. Therefore—even if he had been a "fugitive from justice"—Mr. Hall met all elements of the removal statute.

DOJ disregards the analysis central to this case when it states that "[i]t cannot be that the statute requires the reporting of a fugitive's arrest and then *automatically* allows it to be removed." (DOJ/Appellant Brief at 14) (emphasis added). The argument is a red herring because the statute does not "automatically" allow it to be removed. A fugitive's fingerprint card would be returned if the fugitive was not charged with a crime or if charged is cleared of that charge by a court.

DOJ also ignores the purpose of the "fugitive from justice" provision in the statute for which information is collected. The DOJ database helps law enforcement officials apprehend people believed to be fugitives. Wisconsin Statute § 165.83(2)(j) clearly outlines the reason that DOJ is charged with filing the fingerprints of fugitives: DOJ shall "compare the fingerprints…that are received from law enforcement…with the fingerprints and descriptions already on file and, if the person arrested or taken into custody is a fugitive from justice or has a criminal record, immediately notify the law enforcement…agenc[y] concerned and supply

copies of the criminal record to these agencies." Wis. Stat. § 165.83(2)(j).

The legislature intended, based on the plain language of this section of the statute, for DOJ's database to be used as a tool for law enforcement to resolve legal issues surrounding "fugitive[s] from justice." The effect of this requirement is that DOJ can aid law enforcement in their investigations and assist in pushing charged cases in warrant status to resolution. The legislature just as clearly intended that individuals arrested for crimes which they are later not prosecuted for or convicted of should be able to remove information about their arrests from the public reports used by private citizens to make important decisions. These two intentions are not in conflict; rather, they reflect the legislature's recognition that the DOJ archive functions as one kind of resource for law enforcement and another kind of resource for public record check requestors.

Nothing in either of the statutes requires DOJ to retain records of all warrants that have ever been issued against a person for all time—no matter how those warrants are resolved. Yet, under DOJ's analysis, no person, no matter how wrongfully identified as a fugitive from justice, could ever request that an arrest associated with a warrant be removed from a CIB report.

This position does not reconcile with the legislative intent of Wis. Stat. § 165.84(1), through which the legislature provided persons with a remedy for correcting inaccurate or misleading information in their criminal history reports. *See Highland Manor Assocs. V. Bast*, 2003 WI 152, ¶ 9, 268

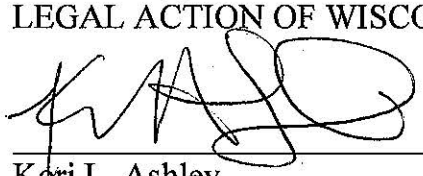
Wis.2d 1, 6, 672 N.W.2d 709, 711 ("A cardinal rule in interpreting statutes is to favor an interpretation that will fulfill the purpose of a statute over an interpretation that defeats the manifest objective of an act.").

Conclusion

This Court should affirm the circuit court, reverse DOJ's decision, and order DOJ to remove Cycles 6 and 7 from Mr. Hall's CIB report pursuant to Wis. Stat. §§ 165.84(1) and 227.57(7).

Respectfully submitted this 25th day of March, 2019.

Submitted by:
LEGAL ACTION OF WISCONSIN, INC.



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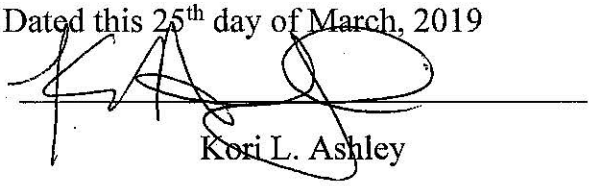
CERTIFICATION OF FORM/LENGTH

Kori L. Ashley herein certifies that the motion meets the form and length requirements of Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with proportional serif font. The length of the brief is 4,724 words.

Dated this 25th day of March, 2019



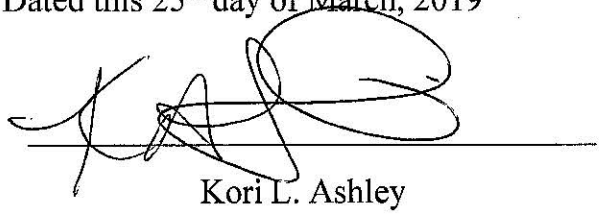
Kori L. Ashley

CERTIFICATION OF COMPLIANCE WITH WIS. STAT. § 809.19(12)

Kori L. Ashley herein certifies the following:

I have submitted an electronic copy of this brief, which complies with the requirements of § 809.19(12). I further certify that the electronic brief is identical in content and format to the printed form of the brief filed on this date. A copy of this certificate has been served along with (10) paper copies of this brief with the court and (3) paper copies to Anthony D. Russomanno.

Dated this 25th day of March, 2019



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