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**STATE OF WISCONSIN**  
**IN SUPREME COURT**

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**Case No. 2019AP000567-W**

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STATE OF WISCONSIN, ex rel.  
MILTON EUGENE WARREN,

Plaintiff-Petitioner-Petitioner,

**Lower Case No. 14-CF-2123**

v.

MICHAEL MEISNER,

Defendant-Respondent.

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**REPLY BRIEF TO THE SUPREME COURT**

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**APPEALS FROM THE DECISION OF THE  
WISCONSIN COURT OF APPEALS DATED  
APRIL 8, 2019 AND FROM THE DECISION OF THE  
WISCONSIN COURT OF APPEALS ON THE MOTION  
FOR RECONSIDERATION DATED MAY 10, 2019**

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## ARGUMENT

**I. THIS COURT SHOULD REAFFIRM THE  
KNIGHT/ROTHERING FRAMEWORK. THIS  
COURT SHOULD WITHDRAW ANY LANGUAGE  
FROM STARKS SUGGESTING OTHERWISE.  
FINALLY, THIS COURT SHOULD RETURN  
WARREN'S § 974.06 MOTION TO THE  
CIRCUIT COURT OF ROCK COUNTY FOR  
A DECISION ON THE MERITS**

The defendant-respondent in his responsive brief has laid out a compelling case as to why the *Knight/Rothering*<sup>1</sup> framework should be reaffirmed. The explanation is that *Knight* said the Court of Appeals should handle errors of appellate counsel because the appeal had taken place and errors concerning the appeal would be within the expertise of the Court of Appeals.

The defendant-respondent further explained that the *Rothering* opinion states that where postconviction counsel failed to bring a motion in the circuit court to withdraw a plea because of ineffective trial counsel, the deficient conduct is in what did not occur in the trial court. Therefore, the remedy as to the effectiveness of both postconviction counsel and trial counsel should be in the circuit court.

The defendant-respondent then goes on to argue that any language in the

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<sup>1</sup>*State v. Knight*, 168 Wis.2d 509, 484 N.W.2d 540 (1992); *State ex re. Rothering v. McCaughtry*, 205 Wis.2d 675, 556 N.W.2d 136 (Ct. App. 1996)

*Starks*<sup>2</sup> decision contrary to the *Knight/Rothering* format be withdrawn. All of the above positions and arguments of the defendant-respondent are agreed with by Warren. However, the defendant-respondent then goes on to argue that the decision of the Court of Appeals dismissing Warren's *Knight* petition be affirmed and that Warren, if he chooses, can attempt to seek permission from the Court of Appeals to retroactively extend his deadline to appeal the decision of the circuit court of Rock County denying his § 974.06.

What the defendant-respondent suggests is that Warren be placed in a position where he must ask for an extension on his right to appeal the circuit court ruling to the Court of Appeals. Then, if that request is granted, Warren would appeal the decision of the circuit court to the Court of Appeals. If this Supreme Court then reaffirms the *Knight/Rothering* approach, the Court of Appeals, on appeal, would then send the Warren case back to the circuit court to litigate the issues of ineffectiveness of postconviction counsel and trial counsel. Inasmuch as what Warren has already had to go through as far as time and expense in this matter, wouldn't it be more logical and efficient for this court to issue an opinion reaffirming the *Knight/Rothering* framework, withdrawing any language from *Starks* suggesting otherwise and then send this matter back to the Rock County Circuit Court for a

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<sup>2</sup>*State v. Starks*, 2013 WI 69, 349 Wis.2d 274

decision on the merits of the § 974.06 motion.

**CONCLUSION**

The *Knight/Rothering* framework should be reaffirmed, any language from *Starks* suggesting otherwise should be withdrawn, and this matter should be sent back to the circuit court of Rock County for a decision on the merits of the § 974.06 motion.

Respectfully submitted this 3<sup>rd</sup> day of February, 2020.

**ROBERT N. MEYEROFF S.C.**

By: s/Robert N. Meyeroff  
ROBERT N. MEYEROFF

**CERTIFICATION 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 as of this date.

A copy of this certification has been served with the paper copies of this brief filed with the court and served upon all opposing parties.

Dated: February 3, 2020

*s/Robert N. Meyeroff*

ROBERT N. MEYEROFF

**CERTIFICATION**

I hereby certify that this brief conforms to the rules contained in s. 829.62(4), Wis. Stats., for a brief produced with a proportional serif font. The length of this brief is 507 words.

Dated: February 3, 2020

*s/Robert N. Meyeroff*

ROBERT N. MEYEROFF