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**CLERK OF COURT OF APPEALS
OF WISCONSIN**

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

STATE OF WISCONSIN,
Plaintiff-Respondent,

vs. Appeal No. 2019AP000858 CR

JEFFREY T. ZIEGLER,
Defendant-Appellant.

REPLY BRIEF OF DEFENDANT-APPELLANT JEFFREY T. ZIEGLER

Appeals from judgments and an order of the circuit court for Dane
County,
the Honorable John D. Hyland, judge.



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ARGUMENT

The Facts Alleged in the Complaints Did Not Allow an Inference of Sexual Gratification, Even Looking at the Record and the Surrounding Circumstances, and Ziegler Should Be Allowed to Withdraw His Plea.

WISCONSIN STAT. § 942.08(2)(d)1 requires that the actor looks into a dwelling unit “for the purpose of sexual arousal or gratification.” There was no fact alleged in the Zeigler complaints to justify a finding of sexual gratification in this case. Furthermore, to accept a guilty plea, the circuit court must determine that the conduct to which the defendant has admitted constitutes the offense charged. *State v. Thomas*, 232 Wis. 2d 714, 727, 605 N.W.2d 836 (1999). “[I]f a circuit court fails to establish a factual basis that the defendant admits constitutes the offense pleaded to, manifest injustice has occurred,” *id.* at 727, and the circuit court should allow withdrawal of the plea, *see State v. Higgs*, 230 Wis. 2d 1, 10, 601 N.W.2d 653 (Ct. App. 1999).

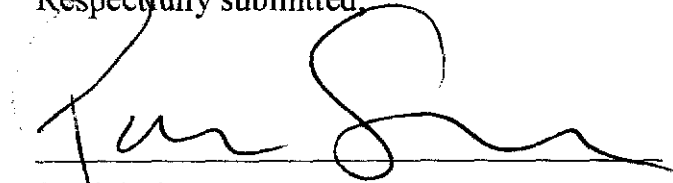
Neither complaint in this case alleged any fact showing that Ziegler’s actions were for sexual arousal or gratification. Ziegler was looking through windows. From this, the circuit court infers that Ziegler’s actions were for sexual gratification. But in the written decision denying Ziegler’s postconviction motion, the circuit court only states that “the surrounding circumstances establish the reasonableness of the inference.” Decision and Order, April 17, 2019: A28. The court does not explain what circumstances allow the inference, no doubt because there are none. This constitutes an erroneous exercise of discretion.

CONCLUSION

The circuit court's acceptance of Ziegler's guilty plea to charges that had no basis in fact was a manifest injustice, and Ziegler must be allowed to withdraw his plea.

Dated this 23rd day of December, 2019.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Patricia Sommer', written over a horizontal line.

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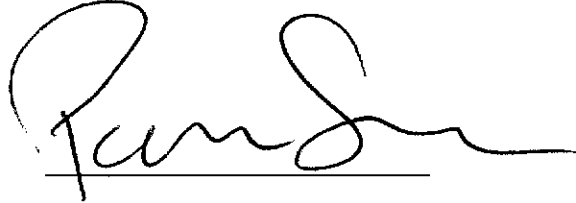
CERTIFICATION

I certify that this brief conforms to the rules contained in WIS. STAT. § 809.19(8)(b) and (c) for a brief produced using the following font:

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Dated: December 23, 2019

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


I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of WIS. STAT. § 809.19(12)(f).

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.



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