STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I
Case No. 2020AP000100-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JACK B. GRAMZA,

Defendant-Appellant.

On Notice of Appeal from an Order Denying Release
Entered in Milwaukee County Circuit Court,
the Honorable David Borowski Presiding

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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ISSUES PRESENTED

1. Upon an OWI offender's successful completion of the Substance Abuse Program, is sentence modification to allow early release permitted under Wis. Stat. §302.05(3)(c)2, despite the minimum confinement term contained in Wis. Stat. §346.65(2)(am)6?

The circuit court refused to modify Mr. Gramza's sentence, despite his successful completion of the Substance Abuse Program.

2. Does the circuit court's refusal to authorize release upon successful completion of the Substance Abuse Program violate double jeopardy?

The circuit court found no double jeopardy violation.

POSITION ON ORAL ARGUMENT AND PUBLICATION

The issue raised in this case is straightforward and can be addressed solely on the briefs. Publication is warranted, as this is a recurrent issue in Wisconsin circuit courts, and is of substantial and continuing public interest. Wis. Stat. §809.23(1)(a)5.

STATEMENT OF THE CASE AND FACTS

On March 27, 2019, Mr. Gramza pled guilty to operating a motor vehicle while intoxicated (OWI)-7th, pursuant to Wis. Stat. §§346.63(1) and 346.65(2)(am)6, for an offense on August 19, 2018. (2; 37:2-9). The sentencing court, the Honorable Pedro Colon, imposed the minimum three-year confinement term as required by Wis. Stat. §346.65(2)(am)6, along with three years of extended supervision. In addition, pursuant to its authority under Wis. Stat. §973.01(3g), the court granted Mr. Gramza eligibility to participate in the Substance Abuse Program, without any limitation. (24; App. 108-109; 37:29).

In a letter dated September 26, 2019, the Wisconsin Department of Corrections (DOC) notified the court, the Honorable David Borowski[1] that Mr. Gramza had completed the Substance Abuse Program (SAP), requesting its authorization of his release and conversion of the remaining confinement time to extended supervision, pursuant to Wis. Stat. §302.05(3)(c)2. (27; App. 107). The court issued an order questioning its authority to sign a release order given the minimum confinement term provided in Wis. Stat. §346.65(2)(am)6, and directing the DOC and the Milwaukee County District Attorney's office to file briefs. (29).

[1] On August 3, 2019, pursuant to First Judicial District Chief Judge Directive 19-03 regarding judicial rotation, Judge Borowski assumed the felony court calendar previously assigned to Judge Colon.

The Department of Corrections filed a brief in support of the circuit court's authority to sign an order for release (30), and the State filed a brief taking no position on whether the court should modify the sentence, but noting that sentence modification after successful completion of the SAP "appears to be non-discretionary," under Wis. Stat. §302.05(3)(c)2. (32:3). On behalf of Mr. Gramza, undersigned counsel filed a brief arguing that the statutes could be harmonized, that Wis. Stat. §302.05(3)(c)2 required the court to sign the release order and convert the remaining confinement time to extended supervision, and that failure to do so would violate double jeopardy. (31; 33).

Following a hearing, Judge Borowski issued a written order denying the DOC's request for an order modifying Mr. Gramza's sentence under Wis. Stat. §302.05(3)(c)2 to allow his early release. (38; 34; App. 101-106). The court found no double jeopardy violation and concluded its denial "is necessary to carry out the legislature's intent that the defendant serve the mandatory minimum and to protect the public from what the court believes is a very high risk for reoffending." (34:5,6; App. 105-106).

This appeal follows. (35).

RELEVANT STATUTES

Wis. Stat. §346.65: (OWI penalties):

> (2)(am) Any person violating s. 346.63(1):
>
> 6. Except as provided in par. (f), is guilty of a Class F felony if the number of convictions under ss. 940.09(1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307(1), equals 7, 8, or 9, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one. The court shall impose a bifurcated sentence under s. 973.01 and the confinement portion of the bifurcated sentence imposed on the person shall be not less than 3 years.

Wis. Stat. §973.01(3g)(Earned release program eligibility):

> When imposing a bifurcated sentence under this section on a person convicted of a crime other than a crime specified in ch. 940 or s. 948.02, 948.025, 948.03, 948.05,948.051, 948.055, 948.06, 948.07, 948.075, 948.08, 948.085,
> or 948.095, the court shall, as part of the exercise of its sentencing discretion, decide whether the person being sentenced is eligible or ineligible to participate in the earned release program under s.302.05(3) during the term of confinement in prison portion of the bifurcated sentence.

Wis. Stat. §302.05(3)(Substance abuse program):

> (c)1. Except as provided in par. (d), if the department determines that an eligible inmate serving the term of confinement in prison portion of a bifurcated sentence imposed under s.973.01 has successfully completed a treatment program described in sub. (1), the department shall inform the court that sentenced the inmate.
>
> 2. Upon being informed by the department under subd. 1. that an inmate whom the court sentenced under s. 973.01 has successfully completed a treatment program described in sub. (1), the court shall modify the inmate's bifurcated sentence as follows:
>
> a. The court shall reduce the term of confinement in prison portion of the inmate's bifurcated sentence in a manner that provides for the release of the inmate to extended supervision within 30 days of the date on which the court receives the information from the department under subd. 1.
>
> b. The court shall lengthen the term of extended supervision imposed so that the total length of the bifurcated sentence originally imposed does not change.

ARGUMENT

I. Where a sentencing court has granted eligibility for a repeat OWI offender's participation in the Substance Abuse Program, modification of the sentence as provided by Wis. Stat. §302.05(3)(c)2 is permitted upon successful completion of the program, notwithstanding the minimum confinement provision of Wis. Stat. §346.65(2)(am)6.

This case involves the interplay of three statutory provisions and their effect on OWI sentences. Upon conviction of a 7th, 8th, or 9th offense OWI, Wis. Stat. §346.65(2)(am)6 requires a sentencing court to impose a bifurcated sentence that includes a minimum three-year term of confinement. A sentencing court is also required, as part of its sentencing discretion under Wis. Stat. §973.01(3g), to determine whether an offender is eligible to participate in the prison-based Substance Abuse Program (SAP) during the confinement portion of a bifurcated sentence. Finally, Wis. Stat. §302.05(3)(c)2 mandates that, where the Department of Corrections notifies a circuit court that an inmate has successfully completed the SAP, the court is required to modify the sentence to reduce the initial confinement term such that the inmate is released to extended supervision within 30 days.

Mr. Gramza's position - not disputed by the State or the Department of Corrections below - is

that, consistent with statutory interpretation principles, these statutes can be plainly read and harmonized, such that the court can discharge its duty to impose the minimum confinement term required by Wis. Stat. §346.65(2)(am)6, and, where it has exercised its discretion under Wis. Stat. § 973.01(3g) to authorize an offender's eligibility for participation in the SAP, it can also comply with the provision of Wis. Stat. §302.05(3)(c)2 requiring it to modify the sentence upon successful completion of the program. Further, Mr. Gramza asserts that because the clear language of Wis. Stat. §302.05(3)(c)2 mandates a circuit court's authorization of release upon notification of successful completion of SAP, the circuit court's order denying his release must be reversed.

A. Principles of statutory interpretation.

Statutory interpretation and the application of a statute to a given set of facts are questions of law that appellate courts review *de novo*. *State v. Wiskerchen,* 2019 WI 1, ¶16, 358 Wis. 2d 120, 921 N.W.2d 730.

The analytical framework for statutory interpretation is well-established, and requires an appellate court to first look to the statute's language, which is assumed to express the legislative intent. If the meaning of the statutory language is plain, the inquiry typically ends there. *State ex rel. Kalal v. Circuit Court of Dane Cnty.*, 2004 WI 58, ¶¶44-45, 271 Wis. 2d 633, 681 N.W.2d 110. Only when

statutory language is ambiguous may an appellate court consider other construction aids, such as legislative history, scope, context and subject matter. *State v. Delaney*, 2003 WI 9, ¶14, 259 Wis. 2d 77, 658 N.W. 416.

When scrutinizing multiple statutes, appellate courts must seek to harmonize them and avoid conflict, construing each in a manner that serves its purpose. *State v. Szulczewski*, 216 Wis. 2d 495, ¶21, 574 N.W.2d 660 (1998). "It is a cardinal rule of statutory construction that conflicts between statutes are not favored and will be held not to exist if the statutes may otherwise be reasonably construed." *Delaney,* 2003 WI 9, ¶13. (quoting *Wyss v. Albee*, 193 Wis. 2d 101, 110, 532 N.W.2d 444 (1995)); *State v. Anthony D.B.*, 2000 WI 94, ¶11, 237 Wis. 2d 1, 614 N.W.2d 435.

B. The SAP early release statute and the OWI minimum sentence statute can be plainly read and harmonized to avoid conflict and both given effect.

The prison-based Substance Abuse Program known as SAP[2] was established in 2003 by the legislature's creation of Wis. Stat. §§302.05 and 973.01(3g). 2003 Wis. Act 33, §2505, effective July 26, 2003. The program "allows judges to sentence non-

[2]The program was originally named the Earned Release Program or ERP, but the name was changed to the Substance Abuse Program by 2011 Wis. Act 38, §19. It is still referred to in Wis. Stat. §973.01(3g) as the Earned Release Program.

violent, non-assaultive offenders with substance abuse needs to this full-time intensive program designed to reduce the incidence of future criminal behavior. The program's mission is to enhance safety in the community by providing a continuum of substance use disorder services." Wisconsin Department of Corrections Opportunities and Options Resource Guide (December 2018)[3] at 6-7.

Wis. Stat. §973.01(3g) requires the sentencing court, in the exercise of its discretion in imposing a bifurcated prison term, to determine whether a defendant is eligible for the Substance Abuse Program. The sentencing court's discretion is limited only by the legislature's ability to exclude certain offenses from eligibility for the SAP. *See State v. Lynch,* 2006 WI App 231, ¶¶18-20, 297 Wis. 2d 51, 725 N.W.2d 656. Wis. Stat. §973.01(3g) specifically excludes all Chapter 940 crimes, and certain offenses against children contained in Chapter 948. Notably, Wis. Stat. §973.01(3g) does *not* exclude offenders convicted of OWI under Wis. Stat. §346.63 from eligibility for SAP participation.

As our supreme court has found, where the legislature specifically enumerates certain exceptions to a statute, under the well-established canon of *expressio unius est exclusion alterius* ("the expression of one thing excludes another"), it intended to exclude

[3]https://doc.wi.gov/Documents/AboutDOC/AdultInstitutions/OpportunitiesOptionsResourceGuideEnglish.pdf (last accessed 4/1/2020).

any other exception. *Delaney*, 2003 WI 9, ¶¶22-23. And, this Court has in fact previously acknowledged, in rejecting an equal protection challenge to Wis. Stat. §§302.05(1) and 973.01(3g), that OWI offenders convicted under Wis. Stat. §346.63 are eligible for participation in the SAP, unlike offenders convicted of homicide by intoxicated use of a vehicle under Wis. Stat. §940.09. *Lynch*, 2006 WI App 231, ¶¶9-20.

The provisions of Wis. Stat. §302.05 (1)-(3)(a) authorize the DOC to administer the Substance Abuse Program as a treatment program within a correctional facility, and reiterates the eligibility requirements that the inmate is ineligible if incarcerated for the specified statutory offenses, and that the sentencing court has made a determination that the inmate is eligible to participate. Wis. Stat. §302.05(3)(c) provides that, upon an inmate's successful completion of the SAP, the DOC notify the circuit court, and that "the court shall modify the inmate's bifurcated sentence as follows:"

> 2.a. The court shall reduce the term of confinement in prison portion of the inmate's bifurcated sentence in a manner that provides for the release of the inmate to extended supervision within 30 days of the date on which the court receives the information from the department under subd. 1.
>
> b. The court shall lengthen the term of extended supervision imposed so that the total length of the bifurcated sentence originally imposed does not change.

Wis. Stat. §302.05(3)(c)2.

Subsequent to the creation of the Substance Abuse Program, the legislature passed 2009 Wis. Act 100, §97, effective July 1, 2010, which required circuit courts to impose a minimum confinement term for repeat offenders convicted of OWI seven or more times. Under Wis. Stat. §346.65(2)(am)6, for offenders with 7th, 8th or 9th OWI convictions:

> …The court shall impose a bifurcated sentence under s. 973.01 and the confinement portion of the bifurcated sentence imposed on the person shall be not less than 3 years.

In addition, for OWI-10th or more convictions, Wis. Stat. §346.65(2)(am)7 required that:

> …The court shall impose a bifurcated sentence under s. 973.01 and the confinement portion of the bifurcated sentence imposed on the person shall be not less than 4 years.

In modifying these OWI sentencing statutes, the legislature made no change to the circuit court's discretionary authority to determine eligibility for participation in the SAP under Wis. Stat. §973.01(3g), nor did it change the sentence modification provisions upon SAP completion contained in Wis. Stat. §302.05(3)(c).

Courts presume that the legislature is aware of existing law and the courts' interpretation of those laws when it enacts a statute. *Schill v. Wisconsin Rapids Sch. Dist.,* 2010 WI 86, ¶103, 327 Wis. 2d 572, 786 N.W.2d 177; *State v. Lalicata*, 2012 WI App 138, ¶15, 345 Wis. 2d 342, 824 N.W.2d 921. Thus,

following the 2010 OWI minimum sentence legislation, OWI offenders remained eligible for participation in the SAP and its sentence modification provisions.

Under the basic principles of statutory interpretation, these statutes can be harmonized to give effect to both, because a plain reading of the language of Wis. Stat. §346.65(2)(am)6 reflects that this sentencing statute requires only that the circuit court *impose* at least a three-year term of confinement for an OWI-7th, 8th or 9th offense. Further, because the plain language of Wis. Stat. §973.01(3g) does not exclude OWI offenders from participation in the SAP, this reflects the legislature's intention that OWI offenders be permitted to participate in the program. *See Delaney*, 2003 WI 9, ¶22.

In addition, the plain language of Wis. Stat. §302.05(3)(c)2 – that the court "**shall** modify the inmate's sentence" - *requires* a circuit court, upon DOC's notification of an inmate's successful SAP completion, to in fact modify the sentence as provided to effectuate the inmate's early release. The word "shall" is "presumed mandatory." *State v. Fitzgerald*, 2019 WI 69, ¶25, n8, 387 Wis. 2d 384, 929 N.W.2d 165; *State ex rel. Department of Natural Resources v. Wisconsin Court of Appeals, District IV*, 2018 WI 25, ¶13, n7, 380 Wis. 2d 354, 909 N.W.2d 114 (quoted source omitted). Modification of a sentence after notification by the DOC of an inmate's successful

completion of the SAP is, therefore, non-discretionary.

Construing Wis. Stat. §§346.65(2)(am)6 and 302.05(3)(c) to avoid conflict and give effect to both statutes is also supported by the supreme court's opinion in *State v. Williams,* 2014 WI 64, 355 Wis. 2d 581, 852 N.W.2d 467. In *Williams*, while holding that Wis. Stat. §346.65(2)(am)6 required the court to impose a minimum bifurcated sentence with at least three years initial confinement for an OWI-7th, 8th or 9th conviction, the supreme court also recognized the role that the SAP and other early release mechanisms play in Wisconsin sentencing law:

> The truth in sentencing law eliminates parole and requires that when a court orders a person to serve a bifurcated sentence, the person must serve the entire term *unless the person* qualifies for a sentence adjustment or *successfully completes an earned release program*.

Williams, 2014 WI 64, ¶28 (emphasis added).

In its discretionary authority under Wis. Stat. §973.01(3g), the sentencing court could have denied Mr. Gramza eligibility to participate in the SAP altogether. Alternatively, as this Court has previously held, the sentencing court could have set a specific period when his eligibility would begin. *State v. White*, 2004 WI App 237, ¶2, 277 Wis. 2d 580, 690 N.W.2d 880 (relying on *State v. Lehman*, 2004 WI App 59, 270 Wis. 2d 695, 677 N.W.2d 644, interpreting a similar statute involving the Challenge

Incarceration Program (CIP)). The sentencing court here did neither, instead finding Mr. Gramza eligible for the SAP, without requiring service of any threshold term before his eligibility. (24; App. 108-109; 37:29). Therefore, there was no barrier to the DOC's placement of Mr. Gramza in the SAP at the time that it did. Upon the DOC's notification of Mr. Gramza's completion of the program, the circuit court was therefore required by Wis. Stat. §302.05(3)(c)2 to modify the sentence to reduce the initial confinement term and lengthen the extended supervision term accordingly in order to effectuate his release.

The record clearly indicates, and there is no dispute that, Mr. Gramza successfully completed the SAP program. (27; App. 107). Under Wis. Stat. §302.05(3)(c)2, his successful SAP completion required the circuit court to modify Mr. Gramza's sentence to effectuate his release within 30 days. Nothing in either Wis. Stat §§302.05 or 973.01(3g) authorized the circuit court to, in effect, "revisit, impose new requirements, or otherwise reverse its decision" to grant SAP eligibility. *See State v. Hemp*, 2014 WI 129, ¶24, 359 Wis. 2d 320, 856 N.W.2d 811 (circuit court cannot subsequently reverse a sentencing determination that found defendant eligible for expungement). As such, reversal of the circuit court's order denying modification of Mr. Gramza's sentence is required.

II. Where a sentencing court has granted eligibility for early release through SAP participation, the subsequent denial of release upon successful completion of the program violates double jeopardy.

A. Legal principles and standard of review.

The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution, applicable to the states through the Fourteenth Amendment, protects an individual from being twice put in jeopardy for the same offense: "[N]or shall any person be subject to the same offence to be twice put in jeopardy of life or limb." Article I, § 8(1) of the Wisconsin Constitution also guarantees protection from double jeopardy, stating in relevant part, "[N]o person for the same offense may be put twice in jeopardy of punishment...." Wisconsin courts have traditionally treated these provisions as co-extensive. *State v. Robinson*, 2014 WI 35, ¶21, 354 Wis. 2d 351, 847 N.W.2d 352. Whether an individual's constitutional right to be free from double jeopardy has been violated is a question of law that this court reviews *de novo*. *Id.*, ¶19.

The guarantee against double jeopardy encompasses three separate constitutional protections: (1) a second prosecution for the same offense following acquittal; (2) a second prosecution for the same offense following conviction; and (3) multiple punishments for the same

offense. *Robinson*, ¶22 (citing *North Carolina v. Pearce,* 395 U.S. 711, 717 (1969)).

The third double jeopardy aspect - the protection against multiple punishments - is at issue here. In this context, the United States Supreme Court has focused on whether a defendant has a legitimate expectation of finality in his or her sentence, finding that where such a legitimate expectation exists, an increase in the sentence violates double jeopardy protections. *United States v. DiFrancesco*, 449 U.S. 117 (1980). Similarly, Wisconsin courts have recognized that "the analytical touchstone for double jeopardy is the defendant's legitimate expectation of finality in the sentence, which may be influenced by many factors, such as the completion of the sentence, the passage of time, the pendency of an appeal, or the defendant's misconduct in obtaining sentence." *State v. Jones*, 2002 WI App 208, ¶10, 257 Wis.2d 163, 650 N.W.2d 844; *State v. Gruetzmacher*, 2004 WI 55, ¶¶33-34, 271 Wis. 2d 585, 679 N.W.2d 533; *Robinson*, 2014 WI 35, ¶¶31-32,43.

B. Mr. Gramza had a legitimate expectation of finality in the terms of his sentence, entitling him to early release upon his successful completion of the SAP.

As argued in Section I, the sentencing court in this case (Judge Colon) complied with the statutory requirements by imposing the three-year minimum confinement term required by Wis. Stat. §346.65(2)(am)6, and in exercising his discretion

under Wis. Stat. §973.01(3g) to grant eligibility for Mr. Gramza to participate in the Substance Abuse Program. This was a valid sentence in which Mr. Gramza had a legitimate expectation of finality.

Moreover, the Department of Corrections, in relying on and executing the valid sentence as contained in the judgment of conviction, then placed Mr. Gramza in the Substance Abuse Program, which he successfully completed in September 2019. Both the DOC and Mr. Gramza had every reason to believe that under the plain terms of Wis. Stat. §302.05(3)(c)2, upon his successful completion of that program, Mr. Gramza's sentence would be modified to convert the remaining confinement time to extended supervision so that he would be released early from custody. Consequently, there was clear reliance both by Mr. Gramza, who began serving the sentence, and by the Department of Corrections, which executed its terms, on the sentence as imposed by Judge Colon.

In its cases following the *DiFrancesco* decision focusing upon the expectation of finality, this Court and the Wisconsin Supreme Court have identified circumstances in which a defendant *did not* have a legitimate expectation of finality in the sentence imposed, including *State v. Burt*, 2000 WI App 126, ¶11, 237 Wis.2d 610, 614 N.W.2d 42 (sentencing court realized it misspoke at sentencing and recalled case later the same day before the judgment of conviction was entered in order to correct it); *Gruetzmacher,* 2004 WI 55 (sentencing court made an

obvious error in imposing a sentence that exceeded the maximum and promptly resentenced the defendant); and *Jones*, 2002 WI App 208 (defendant lied at sentencing about being a war veteran). None of these circumstances affecting a defendant's expectation of finality in the sentence imposed exist in this case.

In contrast, similar to this case, in *State v. Willett*, this Court concluded that the defendant *did* have a legitimate expectation of finality in the sentence imposed where he had already begun serving it. In *Willett*, the circuit court concluded that it could not impose sentences for three convictions consecutive to a sentence the defendant was to receive four days later upon revocation of his probation. *Willett,* 2000 WI App 212, ¶2, 238 Wis. 2d 621, 618 N.W.2d 881. Four months later, the court concluded that the defendant's initial sentence was based on an erroneous understanding of the law and modified the three sentences so that they were consecutive to the later revocation sentence. *Id.* at ¶1.

This Court reversed, concluding that Willett had a legitimate expectation of finality under the circumstances, reasoning that, unlike the defendant in *Burt* who was resentenced on the same day, Willett had already been serving his sentence for four months when the court changed it from concurrent to consecutive. *Id.* at ¶6. This Court also emphasized that, unlike *Burt,* this was clearly not a "slip of the tongue" by the circuit court. *Id.* Instead, the circuit court misunderstood the law, and subsequently

attempted to change the terms of the sentence from concurrent to consecutive. *Id.* This Court concluded that Willett had a legitimate expectation of finality in the sentence, and that "[t]he double jeopardy clause prevents the trial court from going back, four months later, to redo the sentence." *Id.*

As in *Willett*, Mr. Gramza likewise had a legitimate expectation of finality in the sentence Judge Colon imposed, which prevented the circuit court from attempting to redo sentence after he had already commenced serving it and after he had successfully completed the SAP program for which the sentencing court granted him eligibility. The circuit court's subsequent refusal to effectuate his release as required under Wis. Stat. §302.05(3)(c)2 in effect lengthens the confinement term Mr. Gramza expected to serve under the specific terms of the sentence imposed, which granted him the potential for early release upon successful completion of the Substance Abuse Program. Such action infringes upon Mr. Gramza's legitimate expectation of finality in his sentence, and violates the constitutional protection against double jeopardy contained in the Fifth Amendment to the United States Constitution, and Art. 1, §8 of the Wisconsin Constitution. The circuit court's order denying modification of the sentence to effectuate Mr. Gramza's release under Wis. Stat. §302.05(3)(c)2 must therefore be reversed.

CONCLUSION

As argued herein, Wis. Stat. §§346.65(2)(am)6 and 302.05(3)(c)2 can be plainly read and harmonized to give effect to both statutes, and the circuit court's refusal to modify Mr. Gramza's sentence to effectuate his release violates double jeopardy. This Court should reverse the circuit court, and remand the case with directions that the circuit court immediately enter an order modifying Mr. Gramza's sentence based on his successful completion of the Substance Abuse Program, as required by Wis. Stat. §302.05(3)(c)2.

Dated this 3rd day of April, 2020.

Respectfully submitted,

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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 3,950 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 3rd day of April, 2020.

ANDREA TAYLOR CORNWALL
Assistant State Public Defender

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 § 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 3rd day of April, 2020.

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APPENDIX

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