STATE OF WISCONSIN

I N S U P R E M E C O U R T

Case No. 2020AP298-CR

STATE OF WISCONSIN,

Plaintiff-Respondent-Petitioner,

v.

JOSEPH G. GREEN,

Defendant-Appellant.

RESPONSE IN OPPOSITION TO PETITION FOR REVIEW

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REASONS FOR DENYING REVIEW

This Court Should Deny Review Because the Court of Appeals Correctly Interpreted the Plain Language of Wis. Stat. § 971.14(5)(a)1.

The state attempts to portray the court of appeals' decision as contrary to legislative intent and as one having severe consequences for the state and defendants. In fact, the decision simply, and correctly, interprets the plain language of the statute to give effect to the legislature's intent.

The tolling order requested by the state, and granted by the circuit court, in this case was contrary to Wis. Stat. § 971.14(5)(a)1. The language of the statute is clear, once Mr. Green was found incompetent, the court was allowed to commit him to the custody of the Department for a period not to exceed 12 months.

Section 971.14(5)(a)1., Wis. Stats., states, in relevant part:

> If the court determines that the defendant is not competent but is likely to become competent within the period specified in this paragraph if provided with appropriate treatment, the court shall suspend the proceedings and *commit the defendant to the custody of the department for treatment for a period not to exceed 12 months*, or the maximum sentence specified for the most serious offense with which the defendant is charged, whichever is less.

Wis. Stat. § 971.14(5)(a)1. (emphasis added).

This court construes statutes to determine legislative intent and such review begins with the plain language of the statute. *State ex rel Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶¶44-45, 271 Wis. 2d 633, 681 N.W.2d 110. "If the language is plain and unambiguous, [the] analysis stops there." *Wisconsin Dep't of Workforce Dev. v. Wisconsin Lab. & Indus. Rev. Comm'n*, 2015 WI App 56, ¶7, 364 Wis. 2d 514, 869 N.W.2d 163. Importantly, the court's "role is not to justify the legislative action or to substitute [it's] judgment for that of the legislature. Rather, [it's] role is to examine and interpret the legislative language." *State v. Green*, 2021 WI App 18, ¶58, __ Wis. 2d __, __ N.W.2d __. (quoting *Braverman v. Columbia Hosp., Inc.*, 2001 WI App 106, ¶24, 244 Wis. 2d 98, 629 N.W.2d 66.).

Here, the court of appeals correctly construed the plain language of § 971.14(5)(a)1. in reaching its conclusion that "the legislature intended to limit the period for which a defendant can be committed to bring him or her to competency to a maximum of twelve months." *Green*, 2021 WI App 18, ¶54. It rightly found that the language of the statute is unambiguous; a defendant may not be committed, for purposes of competency restoration, for a period longer than 12 months. *Id*.

As the state concedes, the statute contains no tolling provision, or other means through which the government may commit a defendant for a single period longer than 12 months for purposes of

competency restoration. It does, however, provide that if the circuit court determines that a defendant cannot be restored to competency within the statutory commitment period, he must be discharged from his commitment and released. Wis. Stat. § 971.14(6)(a). The court may then order the defendant to continue appearing in court periodically to redetermine his competency or, if appropriate, the state may take him back into custody and initiate proceedings under Chapters 51 or 55. Wis. Stat. § 971.14(6)(a)-(b). These provisions, along with other subsections in § 971.14, confirm that the plain language of the statute reflects the legislature's intent to limit the period of commitment – not treatment – to a maximum of 12 months. *See* Wis. Stat. §§ 971.14(5)(b)-(d).

The court of appeals found that the statutory language "reflects the legislature's policy position in balancing the State's interest in bringing a defendant to trial with a defendant's liberty interest in his or her own freedom." *Green*, 2021 WI App 18, ¶57. Reading the statute to permit the tolling of the statutory time limits, as the state proposes, would not only be counter to this clear legislative intent and policy choice, it would lead to an absurd and unreasonable result. It would allow the state to punish defendants for exercising their right to appeal an involuntary medication order by committing them for far longer than twelve months, and possibly longer than the maximum sentence they could be ordered to serve if convicted, contrary to *State ex rel. Deisinger v. Treffert*, 85 Wis. 2d 257, 268-269, 270 N.W.2d 402 (1978)(holding that due process requires

a defendant to be released from a commitment when it reaches the length of the maximum sentence). *See also State ex rel. Haskins v. County Court of Dodge County*, 62 Wis. 2d 250, 214 N.W.2d 575 (1974).

Finally, the state's perceived consequences of the court of appeals' decision are unconvincing. The state does not explain how a tolling order would prevent defendants, like Mr. Green, from being "warehoused" and taking up "precious treatment space." In fact, a tolling order only prolongs the length of time a defendant may remain in a facility, with or without treatment. Further, the state's ability to move to lift the automatic stay pending appeal provides a means of preventing a defendant from using up the entire commitment period on a frivolous appeal. If the state presents sufficient evidence to satisfy *Sell*, it should have little difficulty getting the automatic stay lifted and, therefore, involuntarily medicating the defendant while the appeal is pending.

The plain language of the statue unambiguously prohibits a circuit court from ordering that a defendant remain in custody – for purposes of competency restoration – for longer than twelve months, or the maximum sentence faced, whichever is less. *See Green*, 2021 WI App 18, ¶¶61-62. Accordingly, the court of appeals correctly decided that the circuit court lacked authority to enter an order tolling the commitment period in this case. *Id.* ¶63.

CONCLUSION

For the reasons set forth above, Mr. Green respectfully requests that the court deny the state's petition for review.

Dated this 9th day of April, 2021.

Respectfully submitted,

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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this petition conforms to the rules contained in §§ 809.19(8)(b) and 809.62(4) for a petition produced with a proportional serif font. The length of this petition is 976 words.

CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that I have submitted an electronic copy of this petition, excluding the appendix, if any, which complies with the requirements of § 809.19(12). I further certify that this electronic petition is identical in content and format to the printed form of the petition filed on or after this date.

A copy of this certificate has been served with the paper copies of this petition filed with the court and served on all opposing parties.

Dated this 9th day of April, 2021.

Signed:

KATHILYNNE A. GROTELUESCHEN
Assistant State Public Defender