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STATE OF WISCONSIN

C O U R T O F A P P E A L S

DISTRICT IV

Case No. 2020AP000605-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

WILLIAM C. MACDONALD,

Defendant-Appellant.

On Appeal from an Amended Judgment of Conviction and Order Denying In Part Defendant's Postconviction Motion, Entered in the Marquette County Circuit Court, the Honorable Mark T. Slate, Presiding

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BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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ISSUES PRESENTED

William C. MacDonald was charged with 10 counts of possession of child pornography and pled no contest to a single count. At sentencing, the court imposed a $50,000 child pornography surcharge.

1. Whether Wis. Stat. § 973.042(2) authorized the circuit court to order Mr. MacDonald to pay a $50,000 child pornography surcharge related to Mr. MacDonald's single conviction?

The circuit court concluded that Wis. Stat. § 973.042(2) authorized the surcharge imposed and denied Mr. MacDonald's postconviction motion to reduce the surcharge from $50,000 to $500.

2. Whether the $50,000 surcharge assessed against Mr. MacDonald, if authorized by Wis. Stat. § 973.042(2), is unconstitutionally excessive under the Eighth Amendment's Excessive Fines Clause?

The circuit court concluded that the $50,000 surcharge was not unconstitutionally excessive and, as noted above, denied Mr. MacDonald's postconviction motion.

POSITION ON ORAL ARGUMENT AND PUBLICATION

The issues presented involve the interpretation of Wis. Stat. § 973.042(2) and the application of the Eight Amendment's Excessive Fines Clause to the $50,000 surcharge imposed by the circuit court. No published or unpublished decision has yet interpreted Wis. Stat. § 973.042(2) or applied the Excessive Fines Clause to a surcharge assessed under this statute. Further, Wis. Stat. § 973.042(2) is applicable every time someone is convicted under Wis. Stats. §§ 948.05 (sexual exploitation of a child) or 948.12 (possession of child pornography). Therefore, publication would appear to be necessary and appropriate under Wis. Stats. §§ (Rules) 809.23(1)(a)1. and 5.[1]

For the same reasons, Mr. MacDonald would welcome the opportunity for oral argument.

[1] It should be noted that the interpretation of Wis. Stat. § 973.042(2) is an issue raised in *State v. Keuhn*, No. 2018AP002355 (submitted on briefs on November 5, 2019, and currently awaiting decision from District I of the Court of Appeals). However, that case concerns a $5,000 surcharge assessed for 10 images and does not address the Excessive Fines Clause's application to Wis. Stat. § 973.042(2). (*See* State's Resp. Br. at 26, n.8 (admitting that *had* the circuit court imposed a surcharge for the 462 images allegedly possessed by Keuhn, then "the Eighth Amendment's Excessive Fines Clause might well limit a court's authority to impose a surcharge for each image."

STATEMENT OF THE CASE AND FACTS

The state charged William C. MacDonald with 10 counts of possession of child pornography, in violation of Wis. Stat. § 948.12(1m)(7). With respect to each count, the state invoked Wis. Stat. § 973.042(2), which directs the circuit court, [i]f a court imposes a sentence or places a person on probation for a crime under s. 948.05 or 948.12," to impose a $500 child pornography surcharge for each image "associated with the crime." (7:1-5).

Shortly thereafter, Mr. MacDonald pled no contest to count one. (19). Pursuant to the plea agreement, the state agreed to dismiss and read-in counts two through ten and any "uncharged" offenses related to the investigation initiated into Mr. MacDonald. (51:2, 4-6, 10).

The Presentence Investigation ordered by the court set forth the following facts relevant here. The PSI writer explained that "[b]y all accounts, Mr. MacDonald's first few years on earth could only be described as a nightmare." (16:32). While the writer noted "the extent of abuse suffered by Mr. MacDonald by his biological mother and/or others" is unknown, Mr. MacDonald's adoptive mother, Mrs. MacDonald, noted that Mr. MacDonald's was "one of the worst cases of abuse that Dodge County had at the time." (16:16). Mrs. MacDonald also noted that when she adopted Mr. MacDonald at the age of two years, he had "cigarette burns all over his body and other signs of physical abuse" and that doctors "weren't able to definitively state whether or not sexual abuse had

occurred." (16:16). Mrs. MacDonald noted that Mr. MacDonald was "not able to walk on his own" at the time, "had a seizure disorder, some learning disabilities, an abnormal frontal lobe, and was in Special Education classes until he was in 2nd grade," when the family began homeschooling Mr. MacDonald. (16:16).

The PSI also noted that Mr. MacDonald had no prior criminal or juvenile record and that he was working at Family Dollar at the time of his arrest. (16:10, 19). Financially, the PSI noted that Mr. MacDonald admitted to receiving some financial assistance "to help him get caught up on bills," but that he had never received food stamps or medical assistance." (16:20). Further, the PSI noted that Mr. MacDonald owed $1,200 to his former landlord, $8,000-10,000 on a car loan, that he had outstanding student loans, and that the IRS had recently notified him that they would be garnishing 15% of his income. (16:20-21).[2] The PSI recommended the mandatory minimum term of initial confinement (three years) and two to three years extended supervision. (16:33).

At sentencing, the state recommended a sentence of seven years imprisonment consisting of four years initial confinement and three years extended supervision. (48:3).

Further, the state asked the court to "make a finding" regarding the "number of images" and

[2] Further, Mr. MacDonald qualified for public defender representation based on indigency at the trial level and on appeal.

specifically requested that the court "make a finding of 100 at $500 an image." (48:6-7). The court went along with the state's sentencing recommendation and imposed a sentence of seven years imprisonment and a $50,000 child pornography surcharge. (48:13-14). With regard to the child pornography surcharge, the court stated the following:

> The Court also has to be concerned about the surcharge with regard to the number of images. While the defense counsel has argued that I should find a limited number based upon the ability of the defendant to pay any amount that the Court might impose in this charge. It is the Court's opinion that is not a consideration that the Court should be involved with. I need to be involved with making a determination of exactly how many images this particular defendant was involved with. It was mentioned by the district attorney, and I note that it did come out in my review of the case, that at certain times, he acknowledged that there may be up to 200 images. The Court does find, given the concern that I have with regard to my responsibility and also the history in this case, that at least 100 images were involved, and the Court is going to accept that number, in terms of the number that the surcharge applies to. I recognize that the $50,000 calculation that comes to does put Mr. MacDonald in a very difficult position, in terms of ever paying that off, but that is the Court's opinion, but quite frankly, that is the minimum number of images, I think, that

> Mr. Macdonald dealt with. I find that to be appropriate under the directive of the legislature.

(48:14-15; App. 104-05).

After sentencing, Mr. MacDonald filed a postconviction motion to reduce the child pornography surcharge from $50,000 to $500. (30). Mr. MacDonald argued that Wis. Stat. § 973.042(2) authorized only a single $500 surcharge in his case because only one image was "associated with the crime" for which sentence was imposed. (30:4-5). Further, Mr. MacDonald argued that, if the court were to conclude that Wis. Stat. § 973.042(2) did authorize a $50,000 child pornography surcharge related to his single conviction, then the surcharge was an unconstitutional fine under the Eighth Amendment's Excessive Fines Clause. (30:5-6).

The court held a hearing on Mr. MacDonald's postconviction motion and denied his request to reduce the child pornography surcharge from $50,000 to $500. (55). The court concluded that Wis. Stat. § 973.042(2) authorized the $50,000 surcharge and that $50,000 was not unconstitutionally excessive. (55:5-7; 39; App. 101-02, 106).[3]

This appeal follows.

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[3] The court granted the portion of Mr. MacDonald's motion in which he requested modification of his judgment of conviction and sentence to grant eligibility for the Wisconsin Substance Abuse Program and the Challenge Incarceration Program. (30; 40; 55; App. 101-02, 106).

ARGUMENT

At issue is the unlawful $50,000 child pornography surcharge imposed by the circuit court contrary to Wis. Stat. § 973.042(2) and in violation of the Eighth Amendment's Excessive Fines Clause. Because Mr. MacDonald possessed a single image of child pornography "associated with the crime" for which he was convicted and sentenced and because the $50,000 surcharge assessed against him is "grossly disproportionate to [Mr. MacDonald's] offense," this Court must reverse the circuit court's order denying Mr. MacDonald's postconviction motion and order the circuit court to reduce the surcharge from $50,000 to $500.

I. Wisconsin Stat. § 973.042(2) authorized the circuit court to impose a single $500 child pornography surcharge against Mr. MacDonald.

A. Introduction and the standard of review.

This case concerns the interpretation and application of Wis. Stats. §§ 973.042(2) and 948.12(1m). Statutory interpretation begins with the language of the statue and if the meaning is plain, a reviewing court ordinarily stops its inquiry. *State v. Johnson*, 2007 WI 107, ¶28, 304 Wis. 2d 318, 735 N.W.2d 505 (citing *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110). Courts interpret statutory language in the context in which it is used; not in isolation but as part of a whole; in relation to the language of

surrounding or closely-related statutes. *Id.* The interpretation and application of a statute presents a question of law reviewed de novo. *State v. Friedlander*, 2019 WI 22, ¶22, 385 Wis. 2d 633, 923 N.W.2d 849.

B. Wisconsin Stats. §§ 973.042(2) and 948.12.

The child pornography surcharge statute, Wis. Stat. § 973.042(2), provides that "[i]f a court imposes a sentence or places a person on probation for a crime under s. 948.05 or 948.12 … the court shall impose a child pornography surcharge of $500 for each image or copy of an image associated with the crime." Further, the subsection states that "[t]he court shall determine the number of images or copies of images associated with the crime by a preponderance of the evidence and without a jury." Wis. Stat. § 973.072(2).

Wisconsin Stat. § 973.042(2) clearly applies whenever a court imposes sentence on an adult convicted of possessing child pornography in violation of Wis. Stat. § 948.12(1m). The text is also clear that the court is required to determine, "by a preponderance of the evidence and without a jury" the number of images "associated with the crime and impose a $500 surcharge based on the number of images "associated with the crime."

But Wis. Stat. § 973.042(2) does not itself define the phrase "associated with the crime." Thus, in order to determine the plain meaning of the phrase "associated with the crime," as used in Wis. Stat.

§ 973.042, it is necessary to examine the "crime" at issue: Mr. MacDonald's possession of child pornography, in violation Wis. Stat. § 948.12(1m).

Wisconsin Stat. § 948.12(1m) establishes the crime of possession of child pornography for anyone who "possesses, or accesses in any way with the intent to view, any … recording of a child engaged in sexually explicit conduct." In terms of the unit of prosecution of alleged violations of Wis. Stat. § 948.12(1m), Wisconsin courts have long-held that the legislature intended for separate charges for each recording or image of child pornography a defendant possesses. *State v. Multaler*, 2002 WI 35, ¶67, 252 Wis. 2d 54, 643 N.W. 2d 437. Thus, where a defendant is alleged to have possessed 10 images the state may charge 10 counts in violation of Wis. Stat. § 948.12(1m). If the state alleges the defendant possessed 100 images of child pornography, the state may charge 100 counts. In each case, whether 10 images and 10 counts or 100 images and 100 counts, each charge, and possible conviction, must be based on a separate and distinct image of child pornography. *See State v. Multaler*, 252 Wis. 2d 54, ¶¶56-59 (explaining that Multaler's 28 counts at issue were not identical in fact because each count represented a distinct and separate volitional act of downloading and possessing each image).

C. In this case, Mr. MacDonald possessed a single image of child pornography associated with his crime.

In this case, and in line with precedent interpreting Wis. Stat. § 948.12, the state prosecuted Mr. MacDonald based on the number of individual images he allegedly possessed. (7). Specifically, the state charged Mr. MacDonald with 10 violations of Wis. Stat. § 948.12(1m). (7). Necessarily, those original 10 counts related to 10 separate images Mr. MacDonald allegedly possessed. Thus, when Mr. MacDonald pled no contest to count one only, Mr. MacDonald's conviction and sentence on that count is associated with a single image. If Mr. MacDonald had been convicted of all 10 counts, then each of his crimes would have each been associated with one separate image of child pornography. Likewise, if the state had charged and convicted Mr. MacDonald of possessing 100 images of child pornography, then each count would be "associated with" a single image for a total of 100.

Further, this is not a case where the state chose to prosecute Mr. MacDonald for his total possession of child pornography in a single count or in multiple counts each based on a separate medium or device on which the images were stored. While the unit of prosecution intended by the legislature is one count per image or recording, *see Multaler*, 252 Wis. 2d 54, ¶67, it is permissible for the state to choose to prosecute by a larger or more inclusive unit of prosecution. For example, the state could charge one count of possession of child pornography for each

disc or hard drive or device that contained relevant images. *See Multaler*, 252 Wis. 2d 54, ¶62 n.8 (citing *State v. Whistleman*, 2001 WI App 189, ¶1, 247 Wis. 2d 337, 633 N.W.2d 249 for the proposition that the medium on which child pornography is stored or viewed is not the "only" unit of permissible prosecution).

In such a case, if a defendant's conviction and sentence for the crime of possessing child pornography was factually and legally "associated with" multiple images or the total number of images on a specified medium, then Wis. Stat. § 973.042(2) would require the court to find that the total number of images or recordings "associated with the crime" of conviction, that could include hundreds if not thousands of images even from a single conviction.

Here, however, Mr. MacDonald was charged with ten separate counts (ten images) and pled no contest to possessing one count (one image). While the state alleged that he possessed hundreds of images, (48:6-7), the crime Mr. MacDonald stands convicted of is possessing a single image associated with count one.

Moreover, the phrase "associated with the crime," which is neither defined by the statute itself nor has it been interpreted by any prior case, cannot be read to include Mr. MacDonald's entire "course of conduct" or all of the "crime[s] considered at sentencing." *See e.g.* Wis. Stats. §§ 973.155(1)(a) (the sentence credit statute) and 973.20(1g) (the criminal restitution statute).

The contrasting statutory frameworks utilized by the legislature in the sentence credit and criminal restitution contexts, which were both in existence and previously interpreted by multiple courts prior to the enactment of Wis. Stat. § 973.042(2),[4] proves that the legislature understands how to write a more broadly encompassing framework that would have or could have included all of the "crimes" the state alleged Mr. MacDonald committed. *See Schill v. Wisconsin Rapids Sch. Dist.*, 2010 WI 86, ¶103, 327 Wis. 2d 572, 786 N.W.2d 177 (citing *Heritage Farms, Inc. v. Markel Ins. Co.*, 2009 WI 27, ¶40, 316 Wis. 2d 47, 762 N.W.2d 652 and *State v. Rosenburg*, 208 Wis. 2d 191, 198, 560 N.W.2d 266 (1997) for the principle that "[t]he legislature is presumed to be aware of existing laws and the courts' interpretations of those laws when it enacts a statute.") (Internal footnotes omitted).

The legislature is therefore at least presumed to be aware of other related statutes previously interpreted by our courts that utilize the phrase "course of conduct" as used in another statute with the "Sentencing" Chapter of the Wisconsin Statutes. The phrase "course of conduct for which sentence was imposed" has been used for decades in Wis. Stat. § 973.155(1)(a) and courts have long interpreted the phrase to cover "the specific offense or acts embodied in the charge for which the defendant is being sentenced." *State v. Zahurones*, 2019 WI App 57, ¶14,

[4] Wis. Stat. § 973.042 was created pursuant to 2005 Wisconsin Act 433 § 26. Wis. Stat. § 973.155 was created in 1978 and Wis. Stat. § 973.20 was created 1988.

389 Wis. 2d 69, 934 N.W.2d 905 (citing *State v. Tuescher*, 226 Wis. 2d 465, 471-72, 595 N.W.2d 443 (Ct. App. 1999). The phrase "course of conduct" has even been interpreted to cover conduct that was "dismissed and read-in at sentencing." *See State v. Floyd*, 2000 WI 14, ¶2, 232 Wis. 2d 767, 606 N.W.2d 155 *abrogated on other grounds by State v. Strazkowski*, 2008 WI 65, 310 Wis. 2d 259, 750 N.W.2d 835 (holding that time spent in custody related to the course of conduct connected to read-in offenses falls within the phrase "course of conduct" as used in Wis. Stat. § 973.155(1)(a)). If Wis. Stat. § 973.042(2) utilized the phrase "course of conduct for which sentence was imposed" rather than "associated with the crime," then the statute could be read to include all of the images the state alleged Mr. MacDonald possessed because that phrase would encompass Mr. MacDonald's full "course of conduct for which sentence was imposed." However, only one image is associated with Mr. MacDonald's crime for which sentence was imposed. *See* Wis. Stat. § 973.042.

Second, the restitution statute, which also falls within Chapter 973, utilizes the phrase "crime considered at sentencing" to explicitly cover "any crime for which the defendant was convicted" and "any crime that is uncharged or that is dismissed as part of the plea agreement." Wis. Stats. § 973.20(1g)(a) and (b). Clearly, had the legislature utilized the phrase "crime considered at sentencing" or cross-referenced the restitution statute, the court would have been tasked with determining the number of images associated with any "crime

considered at sentencing," which would have included at least 100 images.

However, the legislature did no such thing in Wis. Stat. § 973.042(2), and there is no such corollary statutory definition or precedent concerning the phrase "associated with the crime." Rather, the plain meaning of the phrase, as used in Wis. Stat. § 973.042(2), simply covers any images "associated with the crime" of conviction and for which the defendant is sentenced.

While it is undisputed that at least 100 potential crimes were uncharged and that counts two through ten were dismissed pursuant to the plea agreement, this case concerns neither sentence credit nor restitution and the over-encompassing statutory language of "course of conduct" or "crime considered at sentencing" do not appear in Wis. Stat. § 973.042(2). As such, the state cannot rework, at sentencing or beyond, the unit of prosecution it proceeded with, and the court cannot read into the child pornography surcharge statute text that is not there simply because the state alleges that Mr. MacDonald was "involved with" more than one image. (48:8, 14; App. 104-05). Only one image, that image upon which the charge alleged in count one was based, is "associated with" Mr. MacDonald's crime. Any more expansive reading would ignore the statutory text and read into the text a more expansive meaning than set forth by the legislature.

II. If authorized by Wis. Stat. § 973.042(2), the $50,000 child pornography surcharge imposed on Mr. MacDonald's single count of conviction is an unconstitutionally excessive fine imposed in violation of the Eighth Amendment.

A. Introduction and the standard of review.

The Eighth Amendment protects against excessive financial penalties imposed by the government: "Excessive bail shall not be required, *nor excessive fines imposed*, nor cruel and unusual punishments inflicted." U.S. Const. Amend. VIII; *see also Timbs v. Indiana*, 139 S.Ct. 682, 687-88 (incorporating the Excessive Fines Clause against the states through the Due Process Clause of the Fourteenth Amendment); *State v. Boyd*, 2000 WI App 208, ¶¶7-8, 238 Wis. 2d 693, 618 N.W.2d 251 (applying the Excessive Fines Clause to a state civil forfeiture action).

A financial penalty is punitive, and thus subject to the Excessive Fines Clause, if its purpose is *at least in part* to punish. *State v. Boyd*, 238 Wis. 2d 693, ¶7. (Emphasis added). For example, property forfeiture under Wis. Stat. § 973.075(1)(b) is subject to the Excessive Fines Clause because the legislature chose to tie the forfeiture to the commission of a felony. *See State v. Hammad*, 212 Wis. 2d 343, 351, 569 N.W.2d 68 (Ct. App. 1997) (explaining that the United Stated Supreme Court, in *Austin v. United States*, 509 U.S. 602, 610-11 (1993), "expanded the breadth of the Excessive Fines Clause

to include civil forfeiture actions that are commenced by a government, and that are, *in whole or in part*, driven by a desire to punish a person") (emphasis added); *contra State v. Williams*, 2018 WI 59, ¶43, 381 Wis. 2d 661, 912 N.W.2d 373 (applying the intents-effects test to determine whether the DNA surcharge was either punitive *or* non-punitive under the Ex Post Facto Clauses).

To determine whether a financial penalty is excessive, courts apply a proportionality test: "[t]he amount of the forfeiture must bear some relationship to the gravity of the offense it is designed to punish." *State v. Boyd*, 238 Wis. 2d 693, ¶11. Further, "a punitive forfeiture violates the Excessive Fines Clause if it is grossly disproportional to the gravity of a defendant's offense." *Id.* Courts use the following factors in applying the proportionality test: the nature of the offense, the purpose for enacting the statute, the fine commonly imposed upon similarly situated offenders, and the harm resulting from the defendant's conduct. *Id.*, ¶14. Whether the financial penalty imposed violates the Excessive Fines Clause is a constitutional question reviewed de novo by this Court. *Id.*, ¶7.

B. The $50,000 child pornography surcharge imposed on count one is an unconstitutionally excessive fine.

First, the child pornography surcharge is at least in part designed to punish because it is tied directly to the commission of a specific and serious felony offense and because the scope of the penalty increases, at least in some cases, based on the nature

or scope of the criminal offense(s) for which sentence is imposed. *See State v. Boyd*, 238 Wis. 2d 693, ¶7; *State v. Hammad*, 212 Wis. 2d 343, 351, 569 N.W.2d 68.

For example, for a defendant convicted of possessing a single image of child pornography is assessed a single surcharge of $500. However, a defendant convicted of 1000 counts based on possession of 1000 images of child pornography would be assessed a surcharge of $500,000. While child pornography surcharge funds are used to fund investigation of "offenses under s. 948.05 or 948.12 and for making grants under s. 165.93(2)(a)," it is undeniable that at least a part of the child pornography surcharge is intended to punish defendants convicted of possessing child pornography on an escalating basis as the scope or gravity of the offense increases. *See* Wis. Stats. §§ 973.042(5) and 20.445(5)(gj).

Second, under the proportionality test, the $50,000 surcharge assessed in this case is "grossly disproportional to the gravity of [Mr. MacDonald's] offense."

It must be acknowledged that possession of child pornography is a serious criminal offense. Wisconsin classifies possession of child pornography as a Class D felony and permits a maximum sentence of 25 years imprisonment and a $100,000 fine. *See* Wis. Stats. §§ 948.12(3)(a) and 939.50(3)(d). Further, to the extent that part of the purpose of the surcharge statute is to fund investigations into child pornography and sexual exploitation of children

cases, the $500 surcharge per image associated with a defendant's crime is facially reasonable and purports to accomplish a laudable goal.

That being said, whether the surcharge in this case is excessive must weigh those factors against Mr. MacDonald's specific offense. Again, Mr. MacDonald pled no contest to a single count based on possession of a single image of child pornography. Further, the state conceded that "there is no evidence of any kind that Mr. MacDonald acted on his interest in child pornography or being a predator of any kind for an actual child." (48:4). Mr. MacDonald did seek out and possess child pornography, but he pled no contest to a single offense.

In terms of the "fine commonly imposed upon similarly situated offenders," it is unclear how this factor applies or how many "similarly situated offenders" exist. Mr. MacDonald's excessive fine argument hinges on the fact that he stands convicted of a single count and the court imposed a financial penalty that equates to half the maximum fine for the offense itself. At the same time, to impose a lawful "fine" under Wis. Stat. § 939.50(3)(d), the court would have been required to consider Mr. MacDonald's ability to pay the $50,000 fine, and exercise its discretion to determine whether any fine was necessary to accomplish the court's sentencing objectives. *See State v. Ramel*, 2007 WI App 271, ¶¶10-20, 306 Wis. 2d 654, 743 N.W.2d 502. However, as the circuit court recognized, Wis. Stat. § 973.042(2) requires the court to impose a $500 surcharge for

each image of child pornography "associated with the crime." (48:14-15; App. 104-05).

Yet, because the state alleged at sentencing that its investigation yielded at least 100 images, the court in effect imposed a fine of $50,000 pursuant to statute that ignores Mr. MacDonald's inability to pay such a sum and which is grossly disproportionate to Mr. MacDonald's offense.

CONCLUSION

For the reasons argued above, Mr. MacDonald respectfully asks this Court to reverse the circuit court's order denying his postconviction motion and remand this case to the circuit court with directions to reduce the child pornography surcharge from $50,000 to $500.

Dated and filed by U.S. Mail this 1st day of June, 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 3,942 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 and filed by U.S. Mail this 1st day of June, 2020.

Signed:

JEREMY A. NEWMAN
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.

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Signed:

JEREMY A. NEWMAN
Assistant State Public Defender

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