

RECEIVED
06-29-2022
CLERK OF WISCONSIN
SUPREME COURT

STATE OF WISCONSIN

IN SUPREME COURT

No. 2021AP1163-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DOMINIC A. CALDIERO,

Defendant-Appellant-Petitioner.

RESPONSE TO PETITION FOR REVIEW

JOSHUA L. KAUL
Attorney General of Wisconsin

JOHN A. BLIMLING
Assistant Attorney General
State Bar #1088372

Attorneys for Plaintiff-Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 267-3519
(608) 294-2907 (Fax)
blimlingja@doj.state.wi.us

The Plaintiff-Respondent State of Wisconsin opposes the petition for review filed by Dominic A. Caldiero on the following grounds:

1. The petition does not satisfy this Court's criteria for review as set forth in Wis. Stat. § (Rule) 809.62(1r). Caldiero asks this Court for an interpretation of the 2013-2014 version of Wis. Stat. § 343.301, which concerned judicial orders for ignition interlock devices. This statutory scheme has been amended multiple times since the sentencing hearing underlying Caldiero's claim in this case. A decision from this Court on this issue would therefore be of extremely limited value; it would apply only to a narrow set of cases where a defendant was subject to an order under the pre-amendment version of the statutory scheme, failed to seek reinstatement of his license, and then was charged with another offense where the continued effect of the order dictated the outcome (*e.g.* whether the defendant was subject to a .08 or a .02 BAC restriction when his BAC tested somewhere between those two values).

2. To the extent Caldiero's claim is based on the specific language of the circuit court's order underlying his case, the claim involves a fact-specific question unique to him. Instead of offering broader guidance or clarifying the law, this Court's review would be limited primarily to determining whether the court of appeals erred in applying the law. This Court generally does not review cases that concern matters of error correction. *See State v. Gajewski*, 2009 WI 22, ¶ 11, 316 Wis. 2d 1, 762 N.W.2d 104.

3. Moreover, the court of appeals' decision was correct. The nut of Caldiero's argument is that he was not subject to an order restricting his driver's license because that restriction period had run at the time of his arrest in 2019. But Caldiero never had his license reinstated after his 2015 offense. (Pet-App. 7.) His position, then, is that a person could evade a court order requiring installation of an ignition

interlock device by electing to simply drive without a license. Alternatively, his argument would be that an ignition interlock restriction on a driver's license under the old statutory scheme would run concurrently to the license revocation. Either way, Caldiero's argument—if correct—would produce absurd results. The court of appeals' decision represents a far more reasonable interpretation of the statutory scheme: Caldiero's license was revoked for a period of time, and upon reinstatement, would then be restricted by the ignition interlock order for a period of time. Because Caldiero's license was never reinstated, the time period for the ignition interlock order never ran and therefore never expired. (Pet-App. 14.) He thus remained subject to an ignition interlock order—and was subject to a .02 BAC restriction—at the time of the offense underlying this appeal.

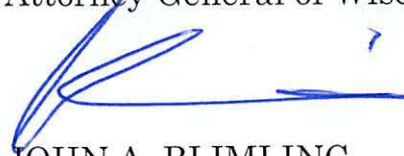
4. Finally, the decision below is a single-judge opinion. It is of no precedential value but may be cited as persuasive authority. *See* Wis. Stat. § (Rule) 809.23(3). Thus, to the extent this issue might arise in rare cases in the future, the decision may offer guidance to litigants and courts alike, but it is not binding.

Dated this 29th day of June 2022.

Respectfully submitted,

JOSHUA L. KAUL

Attorney General of Wisconsin



JOHN A. BLIMLING

Assistant Attorney General

State Bar #1088372

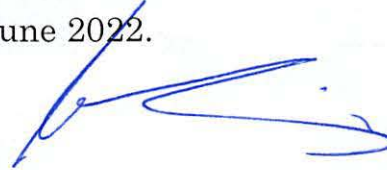
Attorneys for Plaintiff-Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 267-3519
(608) 294-2907 (Fax)
blimlingja@doj.state.wi.us

FORM AND LENGTH CERTIFICATION

I hereby certify that this response conforms to the rules contained in Wis. Stat. §§ (Rules) 809.19(8)(b), (bm) and 809.62(4) for a response produced with a proportional serif font. The length of this response is 518 words.

Dated this 29th day of June 2022.



JOHN A. BLIMLING
Assistant Attorney General

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. §§ (RULES) 809.19(12) and 809.62(4)(b) (2019-20)

I hereby certify that:

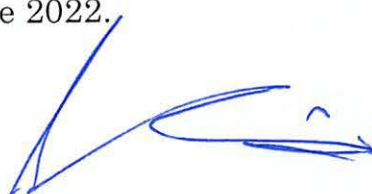
I have submitted an electronic copy of this response, excluding the appendix, if any, which complies with the requirements of Wis. Stat. §§ (Rules) 809.19(12) and 809.62(4)(b) (2019-20).

I further certify that:

This electronic response 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 response filed with the court and served on all opposing parties.

Dated this 29th day of June 2022.



JOHN A. BLIMLING
Assistant Attorney General