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SUPREME COURT

STATE OF WISCONSIN

IN SUPREME COURT

Case No. 2022AP1350-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JEREMY JOSEPH HAMILTON,

Defendant-Appellant-Petitioner.

PETITION FOR REVIEW

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ISSUE PRESENTED

> Whether the State breached the plea agreement by stating that the "landscaped had changed" after it entered into the plea agreement, and implying that it was making the agreed-upon sentencing recommendation only because it was "ethically bound" to do so.

The circuit court found that although the State came "dangerously close" to a breach, any potential breach was "technical which would have been cured by the later explanation." (R.163:25; App.88).

The court of appeals agreed that, "this is a 'very, very close' case." *State v. Jeremy Joseph Hamilton*, No. 2022AP11350-CR, unpublished slip op. ¶14 (WI Ct. App. Mar. 1, 2023) (App.13). However, it found that, "even close cases have to be decided one way or another, and in this case, Hamilton has failed to convince us the court erred in determining the State did not materially and substantially breach the plea agreement." (*Id.*).

This Court is asked to find that the State breached the plea agreement, and to reverse and remand for a resentencing hearing, or alternatively, for a *Machner* hearing so that he may complete his claim of ineffective assistance of counsel.[1]

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[1] *State v. Machner*, 92 Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979) (defendant must request evidentiary hearing in an ineffective assistance of counsel claim).

CRITERIA FOR REVIEW

A defendant has a constitutional right to enforcement of a plea agreement. *Santobello v. New York*, 404 U.S. 257, 262 (1971). When a negotiated sentencing recommendation is part of the plea agreement, a plea breach occurs if the State fails to convey that recommendation, or makes comments "implicitly conveying the message that it is questioning the wisdom of the plea agreement." *State v. Williams*, 2002 WI 1, ¶39, 249 Wis. 2d 492, 637 N.W.2d 733.

In Mr. Hamilton's case, both the circuit court and court of appeals emphasized that this was "dangerously close" or a "very, very close" case before ruling in favor of the State. Yet, a finding that this was a dangerously close case should have resulted in a ruling in Mr. Hamilton's favor. In *State v. Williams*, 249 Wis. 2d 492, ¶6, this Court declined to adopt a "close case" rule for evaluating plea breaches, after finding that it "would incorrectly apply an evidentiary standard for persuasion as a standard of review for questions of law."

The *Williams'* ruling regarding the "close case" rule should be revisited. The rule was incorrectly argued as an evidentiary burden of persuasion. But "close case" rule is not an evidentiary standard of persuasion. It is a legal standard of review. Mr. Hamilton asks the Court to join the federal courts and other jurisdictions in holding that, on review of an alleged plea breach, courts should construe

ambiguities against the government. *See In re Altro*, 180 F.3d 372, 375 (2d Cir. 1999).

This Court's review is warranted because *Williams* is "ripe for reexamination." Wis. Stat. § 809.62(1r)(e). Mr. Hamilton's case likewise "calls for the application of a new doctrine" in Wisconsin, and therefore, review is warranted under Wis. Stat. § 809.62(1r)(c)1.

Even if the Court does not ultimately adopt a close case rule—or similar rule requiring courts to resolve ambiguities in favor of the defendant—in plea breach cases, it should still reverse the lower courts in Mr. Hamilton's case because the State unambiguously breached the plea agreement.

STATEMENT OF THE CASE AND FACTS

Mr. Hamilton accepted a plea agreement whereby he would plead to amended charges, and in return, the State would make a specific sentencing recommendation. The State promised to recommend an overall disposition of three years of probation with an imposed and stayed prison sentence of two years of initial confinement and two years of extended supervision. (R.91:2).

On July 6, 2021, the Sheboygan County Circuit Court held a plea and sentencing hearing, the Honorable Daniel J. Borowski presiding. (R.140). The court engaged Mr. Hamilton in a plea colloquy, and accepted his plea. (R.140:16-33). The court then asked

the State if it was going to play audio of the jail calls between Mr. Hamilton and the victim that were referenced in the criminal complaint. (R.140:34). The State answered no, but offered to provide the court with the calls. (R.140:35).

The court initially determined that it would move forward to sentencing. (R.140:35). The State began its remarks. The State noted that Mr. Hamilton was not revoked for this case, and had spent approximately a year in jail. (R.140:36-37). The State asserted that probation was "a closed [sic] case, but I don't think we're necessarily past the threshold consideration of probation, at least with what we have here." (R.140:36). Defense counsel then made initial sentencing remarks. At that point, the court determined that it would not sentence Mr. Hamilton until after it had reviewed the jail calls. (R.140:41-43). The court would hear further argument and allocution at an adjourned sentencing hearing. (R.140:43).

On August 19, 2021, the court held the adjourned sentencing hearing. (R.122:1-44; App.19-62). At the outset of the hearing, the court summarized the plea agreement, including the State's recommendation. (R.122:4-5; App.22-23). Then, a lengthy exchange about a pending case took place:

> [PROSECUTOR]: Judge, I -- the State would first note that -- or rather would stand by its recommendation, noting that it's ethically bound by the recommendation in this case. That be -- but I would suggest that the landscape has changed between our previous hearing and this one. Such

> that, I'm ethically bound to the recommendation, and I would strongly --
>
> THE COURT: Well, what landscape is that?
>
> [PROSECUTOR]: Your Honor, the defendant has been charged with additional felonies[2] from -- dating before this case, for an incident that happened before this case was charged. It was not brought to my attention until after our previous hearing. He was charged for those incidents, and the Victim in this case is currently -- is sitting in jail on serious felony charges as well. So I'm ethically bound by the recommendation and would ask that the Court follow it, but beyond that–
>
> THE COURT: Well, but I –
>
> [PROSECUTOR]: -- I have no further argument.
>
> THE COURT: There's nothing that prevents you -- I -- first of all, you make your -- whatever recommendation you want. And obviously, for the record, the Court was very concerned, and has been very concerned about the State's recommendations in this case, and the plea deal that was struck, that's no secret.

(R.122:8-9; App.26-27).

The court noted that it had been critical of the plea agreement from the outset, and stated that its role as the sentencing court was to have "accurate,

[2] The State used the plural "felonies" and "charges," but it was later clarified that there was a single charge. (R.122:19; App.37).

complete, and current information." (R.122:10; App.28).

> [PROSECUTOR]: And Your Honor, my argument in that regard is for purposes of recognizing that the State's recommendation is what it is, and the State stands by it, recognizing that the landscape has changed. I would ask that you follow it, and I would note -- or would suggest that the Court has everything before it, and has analyzed everything that the State would be referencing as argument. So the State would ask that you follow the recommendation with no further arguments.
>
> THE COURT: Except I don't -- what – you're very cryptically telling me he's been charged with something else and I –
>
> [PROSECUTOR]: And Judge, I don't want to tread over my plea agreement, so I would just ask that you follow the recommendation.

(R.122:11; App.29).

The court continued to press for more information. (R.122:13; App.31).

> THE COURT: Well, I mean, I'm – I'm just mystified, again. I've been mystified a lot lately. 'Cause you're saddling on to the trial court, I've got a State that won't -- that claims he's going to breach a plea agreement if you tell me he picked up additional charges. I don't know where that comes from, you honor your plea agreement by making your recommendation.

(R.122:14; App.32).

The court noted its impression that a "cloud" had been cast over the hearing.

> The State has raised a specter and it's cast a cloud in part over the sentencing, by saying there is something more I should know, but I can't tell you because it could jeopardize the recommendation they're making. And I think that's a worse situation than finding out what it is and determining if it should be any weight at all.

(R.122:17; App.35).

Finally, the court directed the State to provide the information. (R.122:19; App.37). The State indicated that the charge was manufacture or delivery of cocaine between five and fifteen grams, as a repeater. *See State v. Jeremy Joseph Hamilton*, Sheboygan County Case No. 2021CF000495.[3] The alleged offense occurred two months before the incident in the case at hand. (*Id*). The court asked the State to clarify the terms of the plea agreement. The State affirmed the agreement, and made no further argument. (R.122:21; App.39).

The court rejected probation, and instead imposed an overall disposition of four years of imprisonment, with two years of initial confinement

[3] The complaint was filed on July 9, 2021. The offense date was listed as May 15, 2020—two months before the incident in the case at hand. Wisconsin Circuit Court Access (WCCA), https://wcca.wicourts.gov/caseDetail.html?caseNo=2021CF000495&countyNo=59&index=0&mode=details.

followed by two years of extended supervision. (R.122:37-38; App.55-56).

Mr. Hamilton filed a postconviction motion, in which he requested resentencing based on the State's breach of the plea agreement. He argued that the State violated the principles in *Williams*, 249 Wis. 2d 492, ¶38, when it "disowned and backed away from" the negotiated sentencing recommendation. (R.146:8). He further argued that his attorney provided ineffective assistance of counsel when counsel did not object to the breach. (R.146:11-12). On July 13, 2022, and July 19, 2022, the court held two nonevidentiary hearings. (R.168, R.163:1-33; App.64-96).

At the close of the July 19, 2022, hearing, the court made an oral ruling. The court stated that the case was "dangerously close" and that it had gone "back and forth on this." (R.163:9; App.72, R.163:15; App.78). The court stated that, "every time I go through the authorities, I somewhat flip flop, because I do think this case is that close." (R.163:18; App.81). The court found that the State's comments about the landscape having changed were not the "best words," but that they did not "in and of themselves create a breach." (R.163:22; App.85). The court found that the State's repeated comments about being "ethically bound" to the agreement were "problematic." (*Id.*). However, the court concluded that the State said enough to "save it" by asking the court to follow the recommendation. (R.163:23-25; App.86-88).

Mr. Hamilton appealed. By decision and order dated March 1, 2023, the court of appeals affirmed. *State v. Jeremy Joseph Hamilton*, No. 2022AP11350-CR, unpublished slip op. (App.3-18). The court of appeals stated that, "[a]s the circuit court noted, this is a 'very, very close' case. That said, even close cases have to be decided one way or another, and in this case, Hamilton has failed to convince us the court erred in determining the State did not materially and substantially breach the plea agreement." (*Id*., ¶14; App.13). The court of appeals held that, "[w]hile the prosecutor was inartful in his choice of terms, i.e., that 'the landscape has changed' since the plea hearing and he was 'ethically bound' to the sentencing recommendation he had agreed to as part of the plea agreement, he stood clearly and unwaveringly behind the agreement." (*Id*., ¶18; App.15).

ARGUMENT

The State breached the plea agreement by stating that the "landscape had changed" after it entered into the plea agreement, and implying that it was making the agreed-upon recommendation only because it was "ethically bound" to do so.

A. Legal principles and standard of review.

A defendant has a constitutional right to fulfillment of a plea agreement. *Santobello*, 404 U.S. at 262. A "material and substantial" breach of a plea agreement provides grounds for a defendant to seek

resentencing before a different judge. *Williams*, 249 Wis. 2d 492, ¶38. "A material and substantial breach is a violation of the terms of the agreement that defeats the benefit for which the accused bargained." *Id*. A defendant is not required to prove that a breach was intentional. That a breach "may have been inadvertent does not lessen its impact." *State v. Howard*, 2001 WI App 137, ¶20, 246 Wis. 2d 475, 630 N.W.2d 244.

Although the State is not required to enthusiastically present a negotiated sentencing recommendation, it "may not render less than a neutral recitation of the terms of the plea agreement." *State v. Poole*, 131 Wis. 2d at 364, 394 N.W.2d 909. In addition, "[e]nd runs" around a plea agreement are prohibited. *State v. Hanson*, 2000 WI App 10, ¶ 24, 232 Wis. 2d 291, 606 N.W.2d 278. The State breaches the plea agreement by "implicitly conveying the message that it is questioning the wisdom of the plea agreement." *Williams*, 249 Wis. 2d 492, ¶39. A prosecutor's overt affirmation of the plea agreement is not always sufficient to overcome the prosecutor's covert message to the circuit court that a more severe sentence is warranted. *Id*., ¶51. If the State violates its agreement, it is irrelevant that the remarks may not have influenced the sentencing judge. *Santobello*, 404 U.S. at 262-63.

On appeal, the historical facts are upheld unless clearly erroneous. *Williams*, 249 Wis. 2d 492, ¶5. Whether the State's conduct constituted a material

and substantial a breach of the plea agreement is a question of law, reviewed de novo. *Id*.

B. The State breached the plea agreement.

The State's comments at Mr. Hamilton's sentencing hearing breached the plea agreement by conveying to the court that it was questioning the wisdom of the plea agreement. The State asserted that the "landscape had changed" between plea and sentencing, but conceded that, despite the change, it was "ethically bound" to stand by its agreement.

> The State would first note that - - or rather would stand by its recommendation, noting that it's ethically bound to the recommendation in this case. That be - - but I would suggest that the landscape has changed between our previous hearing and this one. Such that, I'm ethically bound to the recommendation, and I would strongly - - [the court interjecting]

(R.122:8; App.26).

Subsequently, the State did not make any effort to explain why the recommendation was still appropriate. Instead, after casting doubt on recommendation, the State made no further argument. The State asserted, "[s]o I'm ethically bound by the recommendation and would ask that the Court follow it, but beyond that - - [Court interjecting]—I have no further argument." (R.122:9; App.27).

These comments implied to the court that the State had reservations about the plea agreement, and may not have entered into the agreement had it known about the new case. As the circuit court itself acknowledged, the State "raised a specter [sic]" and "cast a cloud in part" over the sentencing hearing. (R.122:17; App.35).

In *Williams*, 249 Wis. 2d 492, this Court found an implicit breach despite the State's explicit endorsement of the negotiated recommendation. There, the State discussed the victim's opinion and findings of the pre-sentence investigation report in a less-than-neutral manner. *Id*., ¶45. Defense counsel objected, and in response, the State told the court that it was not adopting the recommendations of the other parties. *Id*., ¶29. The court concluded that the State's argument indirectly and implicitly advocated for a more severe sentence than it had bargained during its sentencing remarks. *Id*., ¶¶48- 49. The court held that, the State "undercut the essence of the plea agreement" which was to recommend probation. *Id*., ¶46. The impression that the State was backing away from the plea agreement was furthered by the fact that the prosecutor began her comments to the sentencing court by stating, "'[w]hen Mr. Williams entered his plea. . .we had told the Court that we *would be* recommending. . .that he be placed on probation, that he pay arrearages and pay current child support.'" *Id*., ¶49 (emphasis in original). The Court took issue with the words "would be," finding that they "intimate that a change of the State's plans would be revealed." *Id*.

The facts of Mr. Hamilton's case rise at least to the level of *Williams*. Although the State recited the terms of its recommendation, as in *Williams*, it did so while using language that distanced itself from its recommendation. It implied that the recommendation was something from the past, and the "landscape had changed" since then. To be clear, Mr. Hamilton does not now argue that the State was precluded from informing the court of the new case. *See State v. Liukonen*, 2004 WI App 157, ¶10, 276 Wis. 2d 64, 686 N.W.2d 689. In fact, had the State noted the case in a matter of fact manner, this would have avoided the prolonged exchange with the court amplifying the case and distancing the State from the plea agreement.[4]

In the court of appeals, Mr. Hamilton made an extensive comparison of his facts to *State v. Poole*, 131 Wis. 2d at 364, but the court of appeals ignored *Poole*. In *Poole*, the defendant pleaded guilty to burglary. The State agreed to recommend a fine. At sentencing, the State asked the court to impose a fine, "but noted that this recommendation was agreed to 'before we knew of the other instances. But that is our agreement.'" *Id.* at 360. The *Poole* court held that this

[4] It is worth noting, however, that the Sheboygan County District Attorney's Office was the prosecuting entity in both cases. The State chose to file a new charge in the month-and-a-half between plea and sentencing, despite the fact that the offense date predated the offense in the case at hand. Thus, the "landscape had changed" only because the State decided to change the landscape. Sheboygan County Case No. 2021CF000495, Wisconsin Circuit Court Access (WCCA), https://wcca.wicourts.gov/caseDetail.html?caseNo=2021CF000495&countyNo=59&index=0&mode=details.

was a breach because, "the prosecutor's comments implied that circumstances had changed since the plea bargain, and that had the state known of the other instances of defendant's misconduct, they would not have made the agreement they did." *Id*. at 364.

In sum, although the State spoke the terms of the plea agreement at the sentencing hearing, the State's bare endorsement of the agreement was not adequate to overcome the "cloud" cast upon the sentencing hearing by the State's remarks. Mr. Hamilton should be granted a resentencing hearing.

C. This Court should hold that, in close cases where it is alleged that the State breached the plea agreement by undercutting its agreed-upon sentencing recommendation, ambiguity should be resolved in favor of the defendant.

In Mr. Hamilton's case, both the circuit court and court of appeals emphasized how close this case was—before ultimately ruling in favor of the State. If this was such a close case, the courts should have ruled in favor of Mr. Hamilton. In 2002, this Court declined the defendant's request to adopt a "close case" rule in *Williams*, 249 Wis. 2d 492, ¶17. However, Mr. Hamilton disagrees with the reasoning in

Williams, and believes that the issue should be revisited.[5]

As this Court explained in *Williams*, "close cases are those in which it is difficult to discern whether the State presented information to the circuit court in a way that implied that the State had second thoughts about the plea agreement." *Id*., ¶16. The Court defined the proposed close case rule as follows: "plea agreements should be construed in favor of the defendants." *Id*., ¶17 (quoting *Witte*, 245 N.W.2d at 439). The Court next observed that the defendant, Williams, "interprets the close case rule to create a standard that is 'lower' than the 'preponderance of the evidence' standard." *Williams*, 249 Wis. 2d 492, ¶17.[6] Mr. Hamilton agrees with the definition of "close case" as set forth in *Williams*. He also agrees with the description of the rule, that "plea agreements should be construed in favor of the defendants." However, he disagrees with the remainder of the court's analysis.

The *Williams* court declined the proposed close case rule "for several reasons." First, Wisconsin courts had not applied the close case rule in previous cases. 249 Wis. 2d 492, ¶19. Second, "determinations of

[5] Ultimately, *Williams* reached the correct result, and a relatively short portion of the decision was dedicated to the proposed close case rule. Therefore, Mr. Hamilton does not argue that the case should be overruled—only modified.

[6] At the same time, the Court clarified that the defendant is not required to prove by "clear and convincing evidence" that a breach occurred. That, too, would incorrectly apply an evidentiary standard of persuasion. *Id*.

questions of law are not ordinarily discussed in terms of burden of persuasion." *Id*. Third, the close case rule did "not give sufficient recognition" to the values the State used to argue in favor of the clear and convincing evidence rule (*e.g.* finality of judgments, the free flow of information to sentencing courts, the protection of legislatively mandated rights of crime victims, and the importance of negotiated pleas in efficiently disposing of criminal cases while protecting the public). *Id*.

Mr. Hamilton disagrees that the "close case" rule is an evidentiary burden of persuasion. The defendant in *Williams* had apparently argued that the "close case" rule would create a standard that was "lower" than the "preponderance of the evidence" standard. *Williams*, 249 Wis. 2d 492, ¶17. It is not surprising that the *Williams* court was not persuaded to adopt the rule when framed as an evidentiary standard of proof. Yet, a rule that resolves ambiguity in favor of the defendant is not an evidentiary rule of persuasion; it is a legal standard of review. An analogy can be made to the rule of lenity in a challenge to a statute. *State v. Kizer*, 2022 WI 58, ¶27, 403 Wis. 2d 142, 976 N.W.2d 356 ("[w]hen an ambiguity exists in a criminal statute, we apply the rule of lenity to resolve the ambiguity in the defendant's favor unless the legislative history clarifies the statute's meaning"). The rule of lenity does not place a burden on the party. It guides the reviewing court. Similarly, when reviewing a grant of directed verdict, "in close cases the better practice is to reserve ruling on the motion for directed verdict and submit the matter to the jury." *Tombal v. Farmers Ins. Exchange*, 62 Wis. 2d 64, 72,

214 N.W.2d 291 (1974). This is a standard of review, not a burden of persuasion.

Cases from other jurisdictions that consider this issue do not discuss the standard as a burden of persuasion. In the court of appeals decision in *Williams*,[7] the court of appeals relied favorably on a Minnesota case, *State v. Witte*, 245 N.W.2d 438, 439 (Minn. 1976). In *Witte*, the prosecution agreed to make no recommendation as to sentence. At the sentencing hearing, the prosecutor stated that it had "no formal recommendation," however it "would indicate for the record" the substance of the juvenile authority's recommendation. *Id*. at 216. The *Witte* court held that,

> Although the issue is not free from doubt, since it can be argued that the prosecutor presented information, not his personal recommendation, we think that in close cases plea agreements should be construed to favor defendants. This practice best serves the important interest in fair, honest, and open plea bargaining as an integral part of the criminal justice system.

Id. at 439. This was not framed as an evidentiary burden on either party, but rather, a standard for the reviewing court to apply.

Federal courts also "construe ambiguities in favor of the defendant…" when evaluating alleged plea breaches. *United States v. Quach*, 302 F.3d 1096, 1100-01 (9th Cir. 2002). *See also, United States v. Munoz*,

[7] *State v. Williams*, 2000 WI App 7, ¶7, 241 Wis. 2d 1, 624 N.W.2d 164.

718 F.3d 726 (7th Cir. 2013) (using contract law principles, though with an eye to "the special public-interest concerns" and construing ambiguities against the government); *Abbott v. United States*, 871 A.2d 514, 520 (DC Ct. App. 2005) ("the government is held to 'a standard of strict compliance with its agreement,' and this court 'will construe any ambiguity against the government.'") (quoted source omitted).

Several courts construe ambiguities against the government "*both* in promise and performance." *In re Altro*, 180 F.3d 372, 375 (2nd Cir. 1999) (emphasis added). In other words, the rule of construction applies both to review of the terms of the agreement, as well as review of the State's conduct. *See White v. United States*, 425 A.2d 616, 618 (DC Ct App 1980) (when considering whether the State's sentencing comments amounted to an implicit breach of the plea agreement, the court will construe "ambiguity against the government"); *United States v. Velez Carrero*, 77 F.3d 11, 11 (1st Cir. 1996) (holding prosecutors "to the most meticulous standards of both promise and performance") (quoted source omitted).

The *Williams* court was concerned that a close case rule would not give sufficient recognition to the values argued by the State, including finality of judgments, the protection of victims' rights, and the importance of negotiated pleas in efficiently disposing of criminal cases. 249 Wis. 2d 492, ¶19. Yet, these values will in fact be furthered by a rule that resolves close cases in favor of the defendant, because such a rule would incentivize prosecutors to faithfully uphold

their plea agreements. This would promote finality for the courts and victims by avoiding appeals, while also incentivizing defendants to enter pleas by assuring them that the State will abide by its promises. The court was also concerned about hindering the free-flow of information to the court; yet, Mr. Hamilton concedes that the State was permitted to present information to the court about the new case. *See Liukonen*, 276 Wis. 2d 64, ¶10. It was the State's unnecessary and improper commentary distancing itself from the plea agreement that caused the breach.

This Court should grant review and hold that, in close cases where it is alleged that the State breached the plea agreement by undercutting its agreed-upon sentencing recommendation, ambiguity should be resolved in favor of the defendant.

D. Trial counsel was ineffective for not objecting to the State's plea breach.

Mr. Hamilton's right to directly challenge the breach was forfeited because there was no contemporaneous objection. *See Liukonen*, 276 Wis. 2d 64, ¶18. Whether trial counsel's failure to object to the State's plea breach was deficient turns on whether counsel advised Mr. Hamilton of his right to object, and whether he personally decided not to object. *State v. Sprang*, 2004 WI App 121, ¶28, 274 Wis. 2d 784, 683 N.W.2d 522. If counsel failed to object without his knowing waiver of such an objection, prejudice is presumed. *Howard*, 246 Wis. 2d 475, ¶25.

Mr. Hamilton asserted, and the transcript of the hearing confirms, that trial counsel did not consult him about whether or not to object to the breach. However, the circuit court did not grant Mr. Hamilton's request for a *Machner* hearing. Therefore, if the State does not concede this assertion, the court should remand for a *Machner* hearing so that Mr. Hamilton can complete his claim of ineffective assistance of counsel.

CONCLUSION

For the reasons stated above, Mr. Hamilton respectfully asks this Court to grant his petition for review.

Dated this 27th day of March, 2023.

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 (bm) and 809.62(4) for a petition produced with a proportional serif font. The length of this petition is 4,538 words.

CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that I have submitted an electronic copy of this petition, including 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 27th day of March, 2023.

Signed:

_____

COLLEN MARION
Assistant State Public Defender