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COURT OF APPEALS

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II
Case Nos. 2023AP900-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

THEODORE J. POLCZYNSKI,

Defendant-Appellant.

REPLY BRIEF OF DEFENDANT-APPELLANT

On Appeal from the Judgment of Conviction of the Waukesha
County Circuit Court, Case No. 2019CF811
The Honorable Paul F. Reilly, Presiding

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INTRODUCTION

Mr. Polczynski disputes the Respondent's characterization that the disputed conditions of community supervision are not a permanent deprivation of his property rights or that the findings by the sentencing Court otherwise defeat Mr. Polczynski's argument that these conditions are unduly harsh and reflect the Court's own idiosyncrasies.

Further, it appears that the Respondent fails to address Mr. Polczynski's argument that the presence of more narrowly tailored alternative conditions would equally advance the sentencing interests identified by the Court, thereby rendering the stricter conditions imposed here as excessive (App. Br. 6-7 & 8 (pp. 10-11 & 12 as filed)).

In support of this Reply Brief, Mr. Polczynski stands on the arguments provided in his Initial Brief, as well as the following.

PERMANENT DEPRIVATION

The Respondent's technical argument, that conditions of probation are by nature temporary (Resp. Br. 9, ¶5), overlooks the long-term practical implications of selling an asset that took years to build. Once divested, Mr. Polczynski no longer has control over the asset, whether the new owner would be willing to sell it back to Mr. Polczynski, nor whether the value of the asset would merit repurchasing following the term of his community supervision. Another likely outcome is that Mr. Polczynski starts over after these conditions are lifted, foregoing years of growth and goodwill. These uncertainties represent real and permanent consequences that can be avoided by imposing the less intrusive conditions outlined in Mr. Polczynski's Initial Brief.

UNREASONABLE OR UNJUSTIFIABLE BASIS

Mr. Polczynski does not dispute the Respondent's framework of reviewing the record to analyze whether the conditions were imposed for some unreasonable or unjustifiable basis (Resp. Br. 9-11). Mr. Polczynski also does not dispute the underlying factual basis giving rise to the need for conditions that restrict Mr. Polczynski's business activities (i.e. protecting the public, rehabilitative needs, and deterrence; see Resp. Br., 10). However, again, where the parties diverge is on the issue of whether these conditions were excessive, unusual, would shock public sentiment or violate the judgement of reasonable people.

Finally, Mr. Polczynski pushes back on the Respondent's contention that the Court's deterrence message (Resp. Br., 11) would be furthered through the imposition of these conditions, nor, as Mr. Polczynski maintains, that less onerous conditions would not have the same deterrent effect.

CONCLUSION

Based on the foregoing, this Court should grant Mr. Polczynski's appeal, thereby overturning the Trial Court's denial of Mr. Polczynski's postconviction motion, and remanding this case to the Circuit Court for further proceedings.

Dated this 9th day of November, 2023.

Respectfully submitted,

Electronically Signed by Nathan M. Jurowski
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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in s. 809.19(8)(b), (bm) and (c) for a brief. The length of this brief is 441 words.

Dated this 9th day of November, 2023.

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**CERTIFICATE OF COMPLIANCE
WITH RULE 801.18(6)**

I hereby certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Court of Appeals Electronic Filing System, which will accomplish electronic notice and serve for all participants who are registered users.

Dated this 9th day of November, 2023.

Signed:

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