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CLERK OF WISCONSIN
SUPREME COURT

STATE OF WISCONSIN

IN SUPREME COURT

No. 2023AP2414-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

CORDERO D. COLEMAN,

Defendant-Appellant-Petitioner.

RESPONSE TO PETITION FOR REVIEW

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Petitioner Cordero Coleman was convicted of one count of repeated sexual assault of a child after a jury trial. At trial, his eight-year-old goddaughter described the sexual assaults in vivid detail.

Coleman argued on appeal that his right to a speedy trial was violated and that his trial counsel rendered ineffective assistance of counsel by not moving to dismiss the case on speedy trial grounds prior to trial. The court of appeals affirmed the judgment of conviction in a published opinion. *State v. Coleman,* 2025 WI App 7. Coleman's petition does not satisfy this Court's criteria for granting review. Second, his claims lack merit.

THIS COURT SHOULD DENY THE PETITION FOR REVIEW BECAUSE IT DOES NOT SATISFY THE CRITERIA IN WIS. STAT. § (RULE) 809.62(1r) AND COLEMAN'S CLAIMS ARE MERITLESS

Coleman's petition for review does not satisfy the criteria set forth in Wis. Stat. § (Rule) 809.62(1r). As shown below, the court of appeals applied the settled legal standards applicable to speedy trial violation claims. Specifically, it analyzed his claim pursuant to the well-established factors set forth in *Barker v. Wingo*, 407 U.S. 514, 530 (1972). As to Coleman's ineffective assistance of counsel claim, the court of applies likewise applied the well-settled legal standard. Moreover, the court of appeals correctly determined that Coleman's claims lack merit.

I. Coleman's claim that his right to a speedy trial was violated

The amount of time that elapsed from Coleman's arrest until his trial was 32 months. For the purposes of an analysis pursuant to *Barker*, the parties agree that the time period at issue is comprised of three parts: (1) the period from the filing of the complaint to the suspension of jury trials (roughly nine

months), (2) the suspension of jury trials due to the COVID-19 pandemic (approximately 15 months), and (3) the period between the resumption of jury trials and Coleman's trial (roughly eight months). Aside from several weeks after his arrest, Coleman was not in pretrial custody while awaiting trial. He also never made a speedy trial demand.

The parties agree that, under the first *Barker* factor, the 32 months that elapsed between the arrest and trial is presumptively prejudicial, thus requiring an analysis of the remaining *Barker* factors. *Coleman*, 2025 WI App 7, ¶ 27.

Regarding the second *Barker* factor, Coleman does not appear to dispute the determination by the court of appeals that, during the nine-month pre-COVID period, 12 days of delays attributed to the State. (Coleman's Pet. 11); *Coleman*, 2025 WI App 7, ¶ 62. Instead, he focuses on his claim that delays caused by the COVID-19 pandemic should be weighed against the state. (Coleman's Pet. 12–14.) However, the court of appeals correctly determined that the period during which jury trials were suspended due to the COVID-19 pandemic does not weigh against the state because the suspension was the result of the public health crisis created by the COVID-19 pandemic. *Coleman*, 2025 WI App 7, ¶¶ 54–57. In reaching this conclusion, the court of appeals surveyed persuasive caselaw from other jurisdictions in which courts across the country have almost universally concluded that delays caused by the COVID-19 pandemic were "valid" reasons for delay. *Id.*; *see*, *e.g.*, *State v. Paige*, 977 N.W.2d 829, 838–43 (Minn. 2022) ("We do not weigh against the State the fact that the Minnesota judicial system responded to the then-unclear and largely unprecedented risks posed by COVID-19 by postponing jury trials."); *Labbee v. State*, 869 S.E.2d 520, 530 (Ga. Ct. App. 2022) (delays caused by COVID-19 should "not be weighed against the State" because "neither party is responsible for the delays caused by the COVID-19 pandemic.") (citation omitted); *Ali v. Commonwealth*, 872

S.E.2d 662, 676 (Va. Ct. App. 2022) ("The cause for the delay due to the pandemic was valid, unavoidable, and outside the Commonwealth's control," so it is not counted against the Commonwealth); *State v. Conatser*, 645 S.W.3d 925, 930 (Tex. App. 2022) ("Delay caused by the onset of a pandemic cannot be attributed as fault to the State."). The court of appeals noted that this Court had suspended jury trials statewide due to the pandemic and that the Governor had declared a state of emergency based on the "uncontrolled spread" of the COVID-19 virus. *Coleman*, 2025 WI App 7, ¶ 57. Moreover, it further noted that this Court had determined that, under the information available at the time, "continuing to have jury trials would put members of the public, jurors, witnesses, law enforcement personnel, lawyers, judges, and court employees at an unacceptable level of risk to their health and for some at an unacceptable level of risk for the loss of their lives. *Id*. Though it is true that no published Wisconsin opinion has applied the *Barker* factors in the context of the COVID-19 pandemic, the court of appeals' application of *Barker* is in accordance with the prevailing holdings on the issue throughout the country. This Court need not further review this matter.

In his petition for review, Coleman does not meaningfully address the determination by the court of appeals and courts of other jurisdictions that delays caused by the suspension of jury trials should not be counted against the State. (Coleman's Pet. 9–15). Instead, he simply asserts, without further elaboration, that it was the responsibility of the courts to bring him to trial during the pandemic. (Coleman's Pet. 12.) His underdeveloped argument is without merit.

Regarding the roughly eight months from when jury trials resumed in Dane County and when Coleman's trial was held, the court of appeals determined that, though the delay was attributable to the state, it would not weigh the delay

heavily because it was largely the result of a significant backlog created by the suspension of jury trials during the pandemic. *Coleman*, 2025 WI App 7, ¶¶ 58–61. It noted that Coleman did not dispute that the trial court had a system in place to prioritize the trials of defendants who were held in custody and that he did not argue that the system was inappropriate. *Id.* ¶ 58. It also noted that the record did not indicate that the trial court used its resources inefficiently in addressing the unique challenges posed by the pause in trials required by the COVID-19 pandemic. *Id.* ¶ 61.

In his petition, Coleman claims that because there were no "hearing[s] of any substance" for a period of time prior to his trial and because the delays after the resumption of jury trials were purportedly avoidable and unexplained, they should be heavily weighed against the State. (Coleman's Pet. 13–14.) However, only "deliberate attempt[s] by the government to delay the trial in order to hamper the defense [are] weighted heavily against the State." *State v. Urdahl*, 2005 WI App 191, ¶ 26, 286 Wis. 2d 476, 704 N.W.2d 324. "[D]elays caused by the government's negligence or overcrowded courts . . . are weighted less heavily." *Id.* Additionally, Coleman never explains what "substantive hearings" the court should have held and why any such hearings would have resulted in an earlier trial. (Coleman's Pet. 13–14.) Finally, as the postconviction court explained, the "judicial system was dealing with the backlog related to COVID-19 restrictions coupled with other disruptions due to the lingering pandemic." (R. 179:6–7.) It also noted that "trial priority was generally being given to those defendants who were held in pretrial custody," and Coleman was not in custody. (R. 179:7.) There is simply no evidence of a "deliberate" attempt to hamper Coleman's defense. *See Urdahl*, 286 Wis. 2d 476, ¶ 26. Coleman's claim that these delays should weigh heavily against the state is meritless.

With respect to the third *Barker* factor, Coleman does not appear to dispute that he did not make a speedy trial demand and that this weighs against his claim. (Coleman's Pet. 9–18.)

Finally, as to the fourth *Barker* factor, Coleman disagrees with the determination by the court of appeals and the postconviction court that the prejudice he alleged was speculative. (Coleman's Pet. 15–18.) Coleman primarily argues that his mother, who passed away prior to the start of trial, would have provided testimony refuting the victim's account. (Coleman's Pet. 16–18.) He relies on statements his mother made to police that were memorialized in a police report. However, even though the trial court had permitted him to admit his mother's statements in the police report, he elected not to. *Coleman*, 2025 WI App 7, ¶ 75. Additionally, those statement would not have refuted the victim's testimony because the victim reported that several assaults occurred in a different apartment than the mother's, that the mother was asleep during one of the assaults in her apartment, and it is undisputed that Coleman's mother was "virtually bedridden" due to illness at the time of the assaults. *Coleman*, 2025 WI App 7, ¶ 76.

Balancing the *Barker* factors, the court of appeals and postconviction court correctly determined that Coleman's right to a speedy trial was not violated. His claim is meritless.

II. Coleman's ineffective assistance of counsel claim

Coleman claims he was prejudiced when his trial counsel did not make a speedy trial demand on his behalf because it is "likely" that he would have received a trial before his mother passed away. (Coleman's Pet. 21–22.) However, as the postconviction court found, Coleman, who was not in pretrial custody, would not have received an earlier trial. It explained this was because of the backlog of cases caused by the COVID-19 pandemic and the priority placed on cases in

which defendants were in pretrial custody. (R. 179:6–7.) Indeed, at the *Machner* hearing, trial counsel indicated he understood the speedy trial demand would not have resulted in an earlier trial for these reasons. (R. 166:20–22.) Moreover, even if trial counsel had moved to dismiss the case, that motion would have been denied. An attorney does not perform deficiently for not filing a motion when that motion is meritless. *Coleman*, 2025 WI App 7, ¶¶ 80–83; *see State v. Harvey*, 139 Wis. 2d 353, 380, 407 N.W.2d 235 (1987).

CONCLUSION

This Court should deny Coleman's petition for review.

Dated this 4th day of March 2025.

Respectfully submitted,

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FORM AND LENGTH CERTIFICATION

I hereby certify that this petition or response conforms to the rules contained in Wis. Stat. §§ (Rules) 809.19(8)(b), (bm) and 809.62(4) for a petition or response produced with a proportional serif font. The length of this petition or response is 1,683 words.

Dated this 4th day of March 2025.

Electronically signed by:

Hector S. Al-Homsi
HECTOR S. AL-HOMSI
Assistant Attorney General

CERTIFICATE OF EFILE/SERVICE

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

Dated this 4th day of March 2025.

Electronically signed by:

Hector S. Al-Homsi
HECTOR S. AL-HOMSI
Assistant Attorney General