

**Wisconsin State Public Defender**

735 N. Water St. – Ste 912
Milwaukee, WI 53202-4116
Office Number: 414-227-4805
Fax Number: 414-227-4508
www.wisspd.org

Kelli S. Thompson
State Public Defender

Katie R. York
Appellate Division Director

Andrea Cornwall
Regional Attorney Manager

For Official Use

FILED**JUL 06 2022****CLERK OF COURT OF APPEALS
OF WISCONSIN**

July 5, 2022

Ms. Sheila Reiff, Clerk of the Supreme Court and Court of Appeals
110 East Main Street, Suite 215
P.O. Box 1688
Madison, WI 53701-1688

Re: *Ozaukee County v. J.D.A.*, Appeal No. 2021AP1148.

Ms. Reiff:

I am writing in response to the Court's order dated June 23, 2022.¹ The Court's order directs counsel to address the applicability of *Sauk County v. S.A.M.*, Appeal No. 2019AP1033 and *Sheboygan County v. M.W.*, Appeal No. 2021AP6 on the pending petition for review filed by the County.

S.A.M.

S.A.M. involves four discrete legal issues.

First, *S.A.M.* asked the Court to determine whether his appeal from a recommitment order was moot, as that recommitment order expired before the Court of Appeals had an opportunity to address the appeal on the merits. *Sauk County v. S.A.M.*, 2022 WI 46, ¶¶ 15-16. This Court concluded that recommitment appeals are not moot because of two collateral consequences that will seemingly exist in every case: (1) the ability to exercise a 2nd Amendment right to bear arms and (2) financial liability for services provided during commitment. *S.A.M.*, 2022 WI 46, ¶ 27.

J.D.A.'s recommitment order has expired and the County has not filed for a new extension. As a result, J.D.A. has asked this Court to find that further review would be moot. Based on today's decision, it appears that the appeal is categorially *not* moot. Mootness was not issue addressed in the Court of Appeals, however, so further review of the mootness question is not warranted at this time.

Second, *S.A.M.* asked the Court to assess whether the County satisfied its burden of proof at the recommitment hearing. *Id.*, ¶ 30. This Court assessed the particular facts and circumstances of *S.A.M.*'s hearing and concluded that the statutory requirements had been met. *Id.*, ¶ 32. In this case, the County is also asking this Court to examine the sufficiency of the evidence in J.D.A.'s recommitment hearing. However, *S.A.M.* did not develop any new law in this area and thus has

¹ This letter was previously transmitted without a "wet ink" signature. I am updating the document and retransmitting it with the requested signature and number of copies on today's date.

no impact on this petition. As set forth in the response to the petition for review, the County has also not shown that this case presents any special reason to assess the sufficiency of the evidence.

Third, S.A.M. argued that “ the County's imprecise pretrial filings violate his due-process right to adequate notice as to which specific theory of dangerousness justified his recommitment.” *Id.*, ¶ 28. S.A.M. adequately preserved this issue by presenting it to the circuit court in a pretrial motion. *Id.*, ¶ 9. The Court rejected the due process argument because it was inadequately developed. *Id.*, ¶ 29. In this case, the County has stated in its petition for review that it is asking the Court to require petitioners in Chapter 51 cases to do exactly what S.A.M. requested—identify the standard of dangerousness they are relying on in their pretrial submissions. (Petition for Review at 16). However, J.D.A. never filed a pretrial motion and also did not raise this issue as an independent basis for reversal in the Court of Appeals. While J.D.A. agrees with the County that such a requirement should exist, J.D.A. also concedes that this issue has not been adequately developed at any prior point in litigation. Accordingly, review of this unpreserved issue which has not been previously addressed at any stage of the proceedings does not justify review, notwithstanding S.A.M.

Fourth, the Court asked the parties to address whether it should formally require Chapter 51 appeals to be expedited. *Id.*, ¶ 16. The Court did not reach this issue. As noted above, the mootness issue does not impact the issues presented in the petition for review.

M.W.

In its petition for review, the County raised a number of objections as to how the Court of Appeals applied *Langlade County v. D.J.W.*, 2020 WI 41, 391 Wis.2d 231, 942 N.W.2d 277 to J.D.A.'s appeal when it reversed the underlying recommitment order. However, the underlying commitment in this case has expired. In *M.W.*, this Court held that the remedy for a *D.J.W.* error in a case where the commitment has expired is reversal. *Sheboygan County v. M.W.*, 2022 WI 40, ¶ 4. Accordingly, the Court of Appeals applied the correct remedy and further review will not develop or clarify the law.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher P. August", written over a horizontal line.

Christopher P. August
Assistant State Public Defender

Cc: Attorney Rhonda Gorden
J.D.A.