

STATE OF WISCONSIN

SUPREME COURT

Case No. 2020AP001058-CR

FILED
MAY 06 2021
CLERK OF SUPREME COURT
OF WISCONSIN

STATE OF WISCONSIN,

Plaintiff-Respondent-Petitioner,

v.

TERESA L. CLARK,

Defendant-Appellant.

**STATE PUBLIC DEFENDER'S MOTION FOR
LEAVE TO FILE A NON-PARTY BRIEF**

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Attorneys for the Office of the
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Pursuant to Wis. Stat. § 809.19(7), the State Public Defender moves the Wisconsin Supreme Court for leave to file a non-party brief in this case. The grounds for this motion are:

1. This case involves the procedure for collaterally attacking a prior operating while intoxicated (OWI) conviction when it is alleged there was not a knowing, intelligent, and voluntary waiver of counsel in that prior case. More specifically, the question is whether the burden should shift to the state – as is currently the rule - to prove a knowing, intelligent, and voluntary waiver of counsel after the defendant makes a prima facie showing based upon an affidavit that there was not a sufficient waiver even though there is no transcript of the prior proceeding. Deciding the burden does not shift to the state in this circumstance would be a departure from prior precedent. *See State v. Baker*, 169 Wis. 2d 49, 485 N.W. 2d 237 (1992); *State v. Drexler*, 2003 WI App 169, 266 Wis. 2d 438. 699 N.W.2d 182.

2. The Office of the State Public Defender is an independent, executive branch agency and law office that provides legal representation to the indigent in criminal cases throughout Wisconsin. The SPD's mission is to provide high-quality, compassionate and cost-effective legal representation, to protect the rights of the accused, and to advocate for effective defender services and a fair and rational criminal justice system. SPD staff attorneys represent indigent

criminal defendants, but the SPD is also responsible for appointing private bar attorneys for the same purpose.

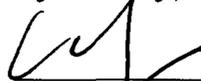
3. Most Wisconsin criminal cases are litigated by SPD staff or appointed attorneys. Thus, the SPD is in a good position to explain how collateral attack motions occur in practice and how the Supreme Court's decision in this case will impact the criminal justice system.

4. According to Wis. Stat. § (Rule) 809.19(7)(c), a person can request permission to file a nonparty brief no later than 14 days after the respondent's brief is filed. Review was accepted in this case on April 27, 2021. The order states that the previously submitted briefs in the court of appeals may stand as the parties' briefs in this Court. Given that, the exact deadline for requesting permission to file a nonparty brief is unclear. Nonetheless, this request is within 14 days of this Court's order accepting review.

5. This case has not yet been scheduled for oral argument. Due to work in other cases and administrative responsibilities at the State Public Defender, the undersigned counsel requests until June 11, 2021, to file the proposed nonparty brief.

For the reasons stated above, the State Public Defender respectfully requests that the Supreme Court grant this motion.

Dated and filed this 6th day of May, 2021.



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