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Supreme Court of Wisconsin

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October 13, 2022

To:

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You are hereby notified that the Court has entered the following order:

No. 2019AP2383-CR State v. Jackson, L.C. #2014CF1721

On September 30, 2022, appellate counsel for defendant-appellant-petitioner, Daimon Von Jackson, filed a motion to supplement the appellate record with two documents that the circuit court clerk had apparently omitted when compiling the record: (1) an October 19, 2016 pro se letter from Mr. Jackson to the circuit court; and (2) an October 28, 2016 pro se motion from Mr. Jackson to terminate trial counsel. According to Mr. Jackson's appellate counsel, these documents bear circuit court record numbers 41 and 44, respectively. Also on September 30, 2022, Mr. Jackson's appellate counsel filed an appellate brief citing and discussing the two documents described in the motion to supplement. Appellate counsel filed the motion to supplement and the appellate brief after having requested and received five briefing extensions in the months following this court's March 21, 2022 order granting review.

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On October 5, 2022, the State filed a response in opposition to the motion to supplement. The State claimed there is no need to supplement the record with the requested documents because the facts they support are undisputed and already established in the existing record. The State also objected to the fact that Mr. Jackson's appellate counsel brought the motion to supplement late in the appellate process, after having obtained several months' worth of extensions. The State further objected that it had not seen or been provided copies of the documents at issue, thereby hampering the preparation of its response brief. The State asked that the court strike any references to these documents from Mr. Jackson's appellate brief, or alternatively allow the State additional time to file its response brief.

On October 10, 2022, Mr. Jackson's appellate counsel filed a reply in support of the motion to supplement. Appellate counsel wrote that she "cannot explain why she did not realize previously that these two items, which were in the circuit court record, were not in the appellate court record." Appellate counsel claimed that these documents are important because they purportedly help establish that trial counsel had failed to communicate with Mr. Jackson about the status of his case. Appellate counsel noted that she provided the State with copies of the documents at issue on October 6, 2022.

Mr. Jackson's appellate counsel has put the court in a somewhat difficult position by contemporaneously filing her appellate brief along with a motion to supplement the record after repeatedly requesting extensions to her briefing deadline, even after the court had warned that "[t]his is the final extension of time that will be granted to defendant-appellant-petitioner" (August 26, 2022 order) and that "absolutely no further extensions for defendant-appellant-petitioner will be considered or granted" (September 21, 2022 order).

Nevertheless, given the State's representation that the documents at issue are largely redundant of other material in the record, and given Mr. Jackson's appellate counsel's representation that she provided the State with copies of the documents at issue on October 6, 2022;

IT IS ORDERED that the motion to supplement the record is granted. The clerk of circuit court shall immediately transmit record numbers 41 and 44, described above, by supplemental return; and

IT IS FURTHER ORDERED that the State's response brief shall be filed by October 27, 2022, and that Mr. Jackson shall either file a reply brief or a statement that no reply brief will be filed by November 7, 2022. With a firm oral argument date of November 29, 2022, there is no time available for additional extensions, so none will be granted.

Sheila T. Reiff
Clerk of Supreme Court