



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

BRAD D. SCHIMEL
ATTORNEY GENERAL

Andrew C. Cook
Deputy Attorney General

17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857
www.doj.state.wi.us

January 19, 2016

The Honorable Angela Sutkiewicz
Sheboygan County Circuit Court B-3
615 N. 6th Street,
Sheboygan, WI 53081-4692

Re: *State of Wisconsin v. Steven A. Avery*
Case No. 2005-CF-381

Dear Judge Sutkiewicz:

The State has received a copy of the Wis. Stat. (Rule) § 809.31 motion for release on bond pending appeal filed by Defendant-appellant Steven A. Avery in this court. Please accept this letter as the State's response in opposition to that motion.¹

Substantial reasons exist for this court to deny Avery's motion.

The serious nature of Avery's crimes, the lengthy sentence imposed, and Avery's failed Wis. Stat. § 809.30 direct appeal all militate against release pending appeal from this court's denial of his Wis. Stat. § 974.06 postconviction motion. See Rule 809.31(4). Avery no longer enjoys any presumption of innocence. He stands convicted of first-degree intentional homicide and possession of a firearm as a convicted felon, and he received a life sentence without possibility of parole. The Wisconsin Court of Appeals affirmed his convictions, and the Wisconsin Supreme Court denied his petition for review. Avery has unsuccessfully tested the validity of his convictions. The State is entitled to insist that he remain imprisoned during the pendency of his current appeal.

There is a substantial risk Avery will not appear to answer the judgment following the conclusion of postconviction proceedings. See Rule 809.31(a). Avery has already lost his Wis. Stat. (Rule) § 809.30 direct appeal, as well as his § 974.06 postconviction motion. Every

¹ Mr. Avery has also filed a similar Rule 809.31 motion in the court of appeals. That court may remand this matter back to you to obtain your ruling on the motion. "A defendant convicted of a felony who seeks release on bond pending appeal first files a motion seeking such relief with the trial court pursuant to Rule 809.31(1), Stats." *State v. Whitty*, 86 Wis. 2d 380, 388, 272 N.W.2d 842 (1978). The court of appeals then reviews that decision for an erroneous exercise of discretion. *Id.*

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reviewing court that has considered his case has found no reason to upset his convictions or sentences. He has nothing left to lose.

Avery has made absolutely no showing of a likelihood of success on the merits of his appeal from the denial of his § 974.06 postconviction motion. This is a condition precedent to his release on bond pending appeal, and Avery has failed to fulfill it:

A person convicted of a felony has lost the presumption of innocence and, if imprisoned, his right to unfettered liberty. The possibility of release on bail pending appeal exists to protect against the risk that a defendant whose conviction is ultimately reversed will have been irreparably injured by imprisonment pending appeal. That injury only occurs, however, if the defendant's conviction is reversed. The likelihood that an appeal will be successful is, therefore, a necessary consideration in determining whether a defendant should be released on bail pending appeal. If the defendant is not likely to succeed on the merits of the appeal, the risk of irreparable injury is minimal and the justification for release on bail pending appeal is not present.

State v. Salmon, 163 Wis. 2d 369, 374-75, 471 N.W. 2d 286 (Ct. App. 1991).

The State asks this court to deny Avery's motion.

Sincerely,



Thomas J. Fallon
Assistant Attorney General

TJF:tjf

C: Steven Avery, Waupun Correctional Institution, PO Box 351, Waupun, WI 53963
Lynn Zigmunt, Clerk of Manitowoc County Circuit Court
Diane Fremgren, Clerk of the Wisconsin Court of Appeals