

STATE OF WISCONSIN
IN THE SUPREME COURT

APPEAL No. 2014AP583

STATE OF WISCONSIN,
PLAINTIFF-RESPONDENT,

-V-

WILLIAM J. LEE,
DEFENDANT-APPELLANT-PETITIONER.

FILED
NOV 03 2015
CLERK OF SUPREME COURT
OF WISCONSIN

PETITION FOR REVIEW

TO: DIANE M. FREMGEN
CLERK OF SUPREME COURT
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SUBMITTED BY:
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ISSUES PRESENTED

- I. WHETHER DEFENDANT WAS DENIED HIS CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL, WHEN, AS HERE APPELLATE COUNSEL ABANDONED DEFENDANT'S DIRECT APPEAL BY ALLOWING OVER FOUR AND A HALF YEARS TO PASS WITHOUT AN APPEAL BEING FILED, AND IGNORING DEFENDANT'S LETTERS AND IGNORING INQUIRIES ON WHETHER COUNSEL WOULD DO AN APPEAL OF THE CONVICTION? 13 Ex Br.
THE COURT OF APPEALS ANSWERED, No.

- II. WHETHER THE FOUR AND A HALF YEAR DELAY BY BOTH ATTORNEY THERESA SCHMIEDER, AND THE STATE PUBLIC DEFENDER OFFICE UNDER KELLI S. THOMPSON HAD A DETREMENTAL IMPACT ON THE OUTCOME OF PETITIONER'S APPEAL AND DENIED HIM FUNDAMENTAL RIGHT TO A DIRECT APPEAL AND APPELLATE COUNSEL? 32 Ex Br.
THE COURT OF APPEALS ANSWERED, No.

- III. WHETHER THE BROWN COUNTY CIRCUIT COURT JUDGE, PRESIDED OVER BY KENDALL KELLEY, IMPROPERLY DENIED PETITIONER'S WRIT OF HABEAS CORPUS SEEKING RELEASE FROM HIS ILLEGAL RESTRAINT DUE TO ABANDONMENT OF APPEAL BY COUNSEL? 37 Ex Br.
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ISSUES PRESENTED CONTINUED

- IV. WHETHER THE SINGLE COURT OF APPEALS JUDGE, HOOVER ERRED WHEN HE GRANTED COUNSEL'S REQUEST TO FILE A FIVE YEAR LATE NO MERIT REPORT TO AVOID FROM HAVING TO ANSWER FOR A CLAIM OF ABANDONMENT AGAINST HER. DID THE RULING BY THE JUDGE VIOLATE STATE V. EVANS, 2004 WI 84, 273 Wis. 2d 192, WHICH PROHIBITS APPELLATE COURTS FROM ERRONEOUS EXERCISING OF THEIR AUTHORITY BY UTILIZING WIS. STAT. § 809.82(2) WHEN THERE IS NO APPARENT REASON FOR DOING SO? 42 Ex Br.
- THE COURT OF APPEALS IGNORED THE QUESTION.**
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CRITERIA RELIED UPON

PETITIONER WILLIAM J. LEE, RELIES UPON THE CRITERIA THAT IS SPECIFICALLY ARTICULATED IN WIS. STAT. § 809.62(1), (A)(B)(C) AND (1), (3)(D). WHEREAS, A REAL AND SIGNIFICANT QUESTION OF FEDERAL OR STATE CONSTITUTIONAL LAW IS PRESENTED. (A) SUPRA., THE PETITION FOR REVIEW DEMONSTRATES A NEED FOR THE SUPREME COURT TO CONSIDER ESTABLISHING, IMPLEMENTING OR CHANGING A POLICY WITHIN ITS AUTHORITY, (B) SUPRA., A DECISION BY THIS SUPREME COURT WILL HELP DEVELOP, CLARIFY OR HARMONIZE THE LAW, (C) SUPRA., THE CASE CALLS FOR THE APPLICATION OF NEW DOCTRINE, RATHER THAN MERELY THE OLD APPLICATION OF WELL-SETTLED PRINCIPLES TO THE FACTUAL SITUATION, (1) SUPRA., THE QUESTION PRESENTED IS NOT FACTUAL IN NATURE, BUT RATHER IS A QUESTION OF LAW OF THE TYPE THAT IS LIKELY TO RECUR AS IT HAS, UNLESS RESOLVED BY THIS SUPREME COURT, (3) SUPRA., AND (D), SUPRA., THE COURT OF APPEALS DECISION IS IN CONFLICT WITH MANY OF THE CONTROLLING OPINIONS OF THE UNITED STATES SUPREME COURT, WITH THIS SUPREME COURT, AND WITH OTHER COURT OF APPEALS, INCLUDING OUR OWN SEVENTH CIRCUIT COURT OF APPEALS.

STATEMENT OF THE CASE

THIS CASE BEGIN WITH THE FILING OF THE CRIMINAL COMPLAINT ON OCTOBER 9, 2002, IN CASE No. 02-CF-886, CHARGING THE DEFENDANT WITH PLAIN ROBBERY, CONTRARY TO WIS. STAT. § 943.32, A CLASS E. FELONY. (R. 2: 1-2). THROUGH NO FAULT OF DEFENDANT'S, THE STATE PROSECUTOR DELIBERATELY DELAYED PROSECUTION OF THE CASE FOR SIX YEARS DUE TO REPEATED REQUESTS FOR POSTPONEMENTS OF THE TRIAL AND EXCUSES UNTIL THE ALLEGED VICTIM HAD PASSED AWAY. ONCE THE TRIAL FINALLY STARTED IN LATE 2008, OCTOBER 8, 2008, A FULL SIX YEARS FROM THE DATE OF THE INITIAL CHARGING, DEFENDANT WILLIAM J. LEE WAS FOUND GUILTY OF THE CHARGE, AND ON JANUARY 13, 2009, (R. 273: 1-32), AND FEBRUARY 20, 2009, (R. 272: 1-27). THE SENTENCING JUDGE SENTENCED PETITIONER TO TEN YEARS INITIAL CONFINEMENT, AND THREE YEARS EXTENDED SUPERVISION. THE NOTICE OF INTENT TO APPEAL WAS FILED ON MARCH 18, 2009 AND LATER EXTENDED TO APRIL 8, 2009. SEE (R. 171: 1-2) & (R. 173: 1-2). SAID MOTION WAS FILED BY TRIAL COUNSEL. ON APRIL 27, 2009, ATTORNEY THERESA J. SCHMIEDER OF GREEN BAY, WISCONSIN WROTE TO THE PETITIONER CLAIMING THAT SHE WAS APPOINTED TO REPRESENT PETITIONER DURING DIRECT APPEAL. SEE ATTACHED (EXHIBIT #1). THE DATE FOR THE ALLEGED APPOINTED ATTORNEY TO FILE A NOTICE OF INTENT WITH THE COURT WAS APPROXIMATELY JUNE OF 2009. ON JUNE 5, 2009, PETITIONER

WROTE COUNSEL A LETTER TO INQUIRE ABOUT THE STATUS OF HIS APPEAL. THAT LETTER WAS FOLLOWED BY TEN LETTERS DATED BETWEEN AUGUST 5, 2009, AND FEBRUARY 5, 2013. ALL SOUGHT INFORMATION ON THE STATUS OF THE APPEAL, AND DEMANDED THAT THE CASE FILES BE SENT TO HIM TO ALLOW HIM TO WORK ON HIS OWN APPEAL. YET COUNSEL DID NEITHER, AND COUNSEL FAILED TO TURN OVER THE FILES. THAT'S A FACT THAT REMAINS TODAY. THIS IS A CASE WHERE PETITIONER HAD A VIABLE ISSUE THAT HE WANTED TO APPEAL DURING DIRECT APPEAL. HE HAD A SOLID ISSUE OF INEFFECTIVE COUNSEL DURING THE TRIAL. THAT ISSUE WAS A VIOLATION OF DUBOSE BY THE GREEN BAY POLICE. WHEREAS, PETITIONER WAS STOPPED BY OFFICERS AND PUT ON A ONE-MAN SHOW-UP FOR IDENTIFICATION PURPOSES. THE PROSECUTOR ADMITTED DURING A MOTION HEARING THAT THE IDENTIFICATION SHOULD BE SUPPRESSED AS A RESULT OF THE U.S. SUPREME COURT'S RULING IN DUBOSE, 699 N.W.2D 582 IN 2005. DURING A HEARING ON AUGUST 7, 2006, ON A MOTION TO SUPPRESS EVIDENCE AND SUPPRESS IDENTIFICATION, DEPUTY DISTRICT ATTORNEY JOHN F. LUETSCHER AGREED THAT ALL EVIDENCE SHOULD BE SUPPRESSED BECAUSE DUBOSE APPLIED IN PETITIONER'S CASE. (R. 111.2: 1).²

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THIS IS A TRANSCRIPT OF COURT PROCEEDINGS THAT JUDGE KENDALL KELLEY INSTRUCTED THE CLERK'S NOT TO SENT TO THE COURT FOR REVIEW. THAT TRANSCRIPT CONTAINED APPROXIMATELY 35 PAGES OF INFORMATION. MOST OF THE THINGS STATED IN THAT TRANSCRIPT IS OF THE PROSECUTOR INFORMING THE JUDGE THAT THE EVIDENCE MUST BE SUPPRESSED. PETITIONER HAS A RIGHT TO HAVE THIS TRANSCRIPT REVIEWED BY THIS COURT TO SEE THE MISCONDUCT BY THIS JUDGE.

STATEMENT OF FACTS

THE TIMELINE OF EVENTS FROM OCTOBER 9, 2002 CONCERNING EVERY THING THAT BROUGHT THIS MATTER TO THIS PARTICULAR EVENT IN APPEAL PROCESS IS. ON OCTOBER 9, 2002, THIS PETITIONER WAS ENROUTE TO A COURT HEARING FOR CASE NO. 01CF970 WHICH WAS SCHEDULED FOR 8:15 - A.M.; AS PETITIONER PROCEEDED ONTO HIGHWAY 172 EAST BOUND TOWARD DOWNTOWN GREEN BAY, HE EXITED THE HIGHWAY TO PICK UP A FRIEND WHO WAS TO ACCOMPANY HIM TO COURT. THE EXIT WAS NEAR UNIVERSITY AVENUE. WHEN PETITIONER LEARNED THAT THE FRIEND WAS ALREADY GONE TO COURT AHEAD OF HIM, HE RESUMED HIS ROUTE TOWARDS THE COURTHOUSE. AS HE WAS DRIVING, GREEN BAY POLICE BEGAN TO FOLLOW HIS CAR WITHOUT ANY SQUAD LIGHTS OR SIRENS ON. PETITIONER KNEW OFFICERS WERE FOLLOWING HIM BECAUSE THE OFFICER WAS RIDING HIS BUMPER VERY CLOSE. ONCE HE GOT BACK ONTO INTERSTATE 43, THE OFFICER ACTIVATED THE SIGNALS TO IDENTIFY THEMSELVES TO PETITIONER. PETITIONER PULLED OVER THINKING THERE WOULD BE A DRIVING INFRACTION OR SOMETHING OF THAT NATURE. PETITIONER WAS ORDERED OUT OF HIS VEHICLE AT GUN POINT AND PLACED IN HANDCUFFS ON THE SIDE OF THE HIGHWAY. HE WAS QUESTIONED VERY AGGRESSIVELY ABOUT HIS WHEREABOUTS AT 6:30 A.M. — THE OFFICER QUESTIONING PETITIONER MADE SURE HE FACED A CERTAIN DIRECTION TO BE SEEN BY CARS PASSING BY. THE OFFICERS FORCED PETITIONER TO JUST STAND THERE UNTIL ANOTHER POLICE VEHICLE CAME TO THE AREA WITH A PASSENGER IN IT AND SLOWED DOWN. IT WAS OBVIOUS THAT PETITIONER

WAS BEING FORCED INTO A ONE MAN SHOWUP FOR SOME REASON. THE OFFICER STANDING NEXT TO PETITIONER SAID, "ITS A POSITIVE IDENTITY-" AS THE OFFICER ON THE RADIO WAS TALKING TO THEM. PETITIONER PROTESTED HIS FALSE ARREST AND REQUESTED THAT HE BE PERMITTED TO MAKE A PHONE — CALL HOME. PETITIONER INFORMED OFFICERS THAT HE WAS ON HIS WAY TO A COURT HEARING. PETITIONER WAS TAKEN TO JAIL AND FINGER PRINTED — AND BOOKED FOR ROBBERY. PETITIONER LEARNED THAT THE DISCRPTION OF THE PERPETRATOR WAS A BLACK MALE, 5'10 TO 6'0 TALL. THE PHYSICAL HIGHT OF PETITIONER IS 6'5½. ATTORNEY MICHAEL HANNA WAS APPOINTED TO REPRESENT PETITIONER DURING PRETRIAL STAGES. TRIAL COUNSEL DID NOT BOTHER TO FOLLOW UP ON PETITIONER'S CLAIM THAT HE HAD A COURT HEARING ON THAT MORNING, AND THAT WAS THE REASON HE WAS DRIVING IN THE DIRECTION HE WAS HEADING THAT MORNING IN SUCH AN EARLY HOUR, AND COUNSEL DID NOT LOOK INTO WHY THE ALLEGED VICTIMS WERE NEVER ASKED OR REQUIRED TO LOOK AT PHOTOS OR PARTICIPATE IN A LINE UP TO MAKE AN IDENTIFICATION, AS THE PERSON WHO MADE THE IDENTIFICATION WAS NOT THE VICTIM. AND WITHIN AN HOUR OF THE ALLEGED ROBBERY, AN UNKNOWN MALE TURNED OVER THE WALLET TO THE VICTIM'S RESIDENCE, AND IT WA^{ll}: RECEIVED BY HER HUSBAND ROBERT JACKSON. THE ALLEGED VICTIM MRS. JEAN JACKSON NEVER TOOK PART IN ANY IDENTIFICATION PROCESS, OR TOOK PART IN ANY COURT PROCEEDINGS PRIOR TO HER PASSING AWAY. AFTER ALL THE PRETRIAL HEARINGS AND ACTUAL TRIAL WHERE PETITIONER WAS CONVICTED ON THE WORD OF A PERSON WHO WAS NOT PART OF ANYTHING RELATED TO BEING ROBBED. ON APRIL 27, 2009, SEVEN YEARS AFTER THE BEGANNING OF CRIMINAL CHARGES BEING INITIATED, APPELLATE COUNSEL

THERESA J. SCHMIEDER OF GREEN BAY, WISCONSIN WROTE A LETTER TO THE PETITIONER ALLEGING THAT SHE WAS APPOINTED TO REPRESENT PETITIONER DURING DIRECT APPEAL. SEE ATTACHED (EXHIBIT #1). THE FILING DATE - TO FILE THE NOTICE OF INTENT WITH THE COURT WAS APPROXIMATELY JUNE OF 2009. ON JUNE 5, 2009, PETITIONER WROTE A LETTER TO COUNSEL TO INQUIRE ON THE STATUS OF HIS CASE, AND NOTIFIED COUNSEL OF — TWO WITNESSES WHO OFFERED "NEW EVIDENCE" INFORMATION OF TESTIMONY PROVING THAT A STATE'S KEY WITNESS HAD DELIBERATELY LIED ON THE WITNESS — STAND. THESE WITNESSES INFORMATION ALSO VERIFIED PETITIONER'S SWORN VERSION OF ALIBI. WHEN COUNSEL IGNORED DEFENDANT'S LETTER, HE AGAIN WROTE HER ON AUGUST 5, 2009 AND REMINDED HER OF HIS JUNE 5, 2009 LETTER^{II}, AND INFORMED HER OF HOW HIS FAMILY HAD ALSO ATTEMPTED TO GET HER ON THE TELEPHONE NO LESS THAN TEN TO FIFTEEN TIMES, BUT WERE UNABLE TO TALK TO HER. SEE (EXHIBITS #2 & #3). WITH NO WORD FROM COUNSEL, PETITIONER AGAIN WROTE COUNSEL A LETTER SEVERAL MONTHS LATER, A THIRD TIME TO INQUIRE OF THE STATUS OF HIS CASE. HE MADE IT CLEAR THAT HE WANTED COUNSEL TO CONTACT HIS FAMILY SO SHE CAN TALK TO THE TWO WITNESSES WITH THE CRUCIAL INFORMATION CONCERNING A KEY WITNESS FOR THE STATE WHO DELIBERATELY LIED TO OBTAIN THE FALSE CONVICTION OF HIM. AND AGAIN, COUNSEL FAILED TO RESPOND TO THE LETTER OR CONTACT THE FAMILY MEMBERS TO FIND OUT ABOUT THOSE WITNESSES WHO ONLY WANTED TO DISCUSS MATTERS WITH COUNSEL AND NOT THE FAMILY. SEE (EXHIBIT #4). TWO MONTHS LATER ON JANUARY 18, 2010 THE FOLLOWING YEAR, DEFENDANT WROTE A LETTER TO COUNSEL INFORMING HER THAT HE WAS STILL AWAITING HER RESPONSES TO PREVIOUS LETTERS

NOTED SUPRA., AND NOTIFIED HER OF HIS ISSUES THAT HE WANTED TO PURSUE ON DIRECT APPEAL, CITING DUBOSE, 285 Wis.2d 143 WHEN HE WAS FORCED INTO A ONE-MAN SHOWUP BY POLICE FOR THE STATE'S KEY WITNESS. PETITIONER REMINDED COUNSEL OF HIS ATTEMPTS TO TELEPHONE HER, AND HOW SHE REFUSED TO ACCEPT HIS CALLS, AND HE LET HER KNOW THAT HIS FAMILY WOULD CONTINUE TO TRY AND CONTACT HER, AND HOW IT WAS HER POSITION NOT TO TALK TO ANYONE CONCERNING HIS CASE. AGAIN HE ASKED COUNSEL TO RESPOND. SEE (EXHIBIT #5). FOR THE REST OF THE YEAR PETITIONER CONTINUED TO TRY AND CONTACT COUNSEL VIA THE TELEPHONE, AND HIS FAMILY MEMBERS CALLED HER OVER THIRTY TIMES, - BUT WITH NO LUCK IN TALKING TO HER BECAUSE SHE SCREENED HER CALLS. SHE REFUSED TO TALK TO PETITIONER AND ANY MEMBER OF HIS FAMILY.

ON NOVEMBER 15, 2010, TEN MONTHS LATER AND WITHOUT A RESPONSE TO ANY OF HIS LETTERS, PETITIONER AGAIN WROTE A LETTER TO COUNSEL AND REMINDED HER OF ALL THE PREVIOUS LETTERS WRITTEN TO HER ABOUT ALL APPEALABLE ISSUES, AND TO INQUIRING OF HIS CASE. PETITIONER BLASTED COUNSEL FOR REFUSING TO RESPOND TO HIM OR HIS FAMILY BY SIMPLY INFORMING SOMEONE OF THE STATUS OF HIS CASE. PETITIONER MADE A REQUEST FOR COPIES OF HIS FILES TO ALLOW HIM TO WORK ON HIS OWN APPEAL. SEE (EXHIBIT #6).

ON NOVEMBER 18, 2010 COUNSEL FINALLY RESPONDED TO PETITIONER IN A LETTER. COUNSEL REFUSED TO ADDRESS ANY ISSUE PETITIONER HAD WRITTEN HER ABOUT. SHE ONLY NOTIFIED PETITIONER THAT SHE WAS MISSING FIVE TRANSCRIPTS AND SHE HAD WRITTEN TO COURT REPORTER RENEE PARIZEK TO OBTAIN SAME. SEE (EXHIBITS #7 & #8). ON JANUARY

6, 2011, PETITIONER WROTE COUNSEL AND INFORMED HER THAT HE HAD BEEN IN CONTACT WITH COURT REPORTER RENEE PARIZEK, AND HAD BEEN TOLD BY HER THAT COUNSEL RECEIVED SAID TRANSCRIPTS ON DECEMBER 20, 2010, A MONTH AFTER COUNSEL'S NOVEMBER 18, 2010 LETTER TO HIM SAYING SHE ORDERED THE MISSING TRANSCRIPTS. (EXHIBITS #9). THREE MONTHS LATER PETITIONER WROTE COUNSEL ON APRIL 30, 2011 AFFIRMING THAT HE WANTED TO APPEAL HIS CASE, AND THAT HE WAS IN NO WAY ABOUT TO ABANDON HIS RIGHT TO APPEAL. HE AGAIN REQUESTED A COPY OF THE COURT TRANSCRIPTS. (EXHIBIT #10). SIX WEEKS LATER ON MAY 16, 2011, COUNSEL WROTE A LETTER TO PETITIONER INFORMING HIM THAT SHE DID NOT FIND ANY VIABLE AVENUE OF APPEAL IN HIS CASE, WITHOUT PROVIDING PETITIONER A COPY OF HIS RECORDS TO REVIEW FOR ANY ISSUES HIMSELF, TO MAKE HIS OWN DETERMINATION OF ISSUES ON APPEAL, COUNSEL GAVE PETITIONER THREE CHOICES TO CHOOSE FROM ON HIS APPEAL. FIRST, HE COULD HAVE HER CLOSE THE CASE, SECOND, HE COULD ALLOW HER TO FILE A LATE NO MERIT REPORT, OR THIRD, HE COULD FIND NEW COUNSEL TO DO THE APPEAL SHE'D ABANDONED. (EXHIBIT #11). ON MAY 28, 2011, THIS PETITIONER RESPONDED TO COUNSEL'S MAY 16TH LETTER, MAKING IT VERY CLEAR THAT HE WOULD NOT ALLOW HER TO GIVE HIM THREE CHOICES TO DECIDE HIS APPEAL RIGHTS WITHOUT HER PROVIDING HIM WITH A COPY OF HIS RECORDS, AND TALKING TO HIM PERSONALLY SO THAT HE CAN MAKE A INFORMED INTELLIGENT DECISION ON HOW TO PROCEED. (EXHIBIT #12). - ON AUGUST 3, 2011, THREE MONTHS LATER, COUNSEL WROTE AGAIN TRYING TO GET PETITIONER TO APPROVE WAIVING HIS RIGHTS WITHOUT HAVING ANY PERSONAL CONTACT OR CONVERSATIONS WITH COUNSEL, OFFERING THE SAME OPTIONS, YET DENYING PETITIONER ANY RIGHTS TO REVIEW HIS RECORDS.

IN THAT AUGUST 3, 2011 LETTER, COUNSEL CLAIMED THAT SHE DID NOT RECEIVE THE MAY 28, 2011 LETTER FROM PETITIONER. SO ON AUGUST 13, 2011, PETITIONER WROTE COUNSEL AND PROVIDED HER WITH A COPY OF THE MAY 28, 2011 LETTER, AND MADE IT VERY CLEAR THAT HE WILL NOT MAKE A DECISION WITHOUT FIRST HAVING HIS RECORD TO MAKE AN INTELLIGENT CHOICE ON FORGOING ANY OF HIS RIGHTS. (EXHIBIT #13). FROM AUGUST 13, 2011 OF THE LAST LETTER BY DEFENDANT, COUNSEL REFUSED TO GIVE A RESPONSE OR TO SEND THE RECORDS SO THAT DEFENDANT-PETITIONER COULD MAKE A INTELLIGENT, INFORMED CHOICE ON WHAT TO DO IN HIS CASE. ON JANUARY 20, 2012 ("5 MONTHS LATER") DEFENDANT WROTE ANOTHER LETTER AND INFORMED COUNSEL THAT SHE HAD COMPLETELY ABANDONED HIS APPEAL, AND AS A DIRECT RESULT OF FAILING TO COMMUNICATE WITH HIM AND HIS NEWLY DISCOVERED WITNESSES WHO HAD CRUCIAL INFORMATION — CONCERNING FALSE STATEMENTS PROVIDED BY A KEY STATE'S WITNESS, THE TWO WITNESSES WERE NOW LOST DUE TO TIME WASTED BY COUNSEL. COUNSEL WAS ACCUSED OF ABANDONMENT OF DIRECT APPEAL. (EXHIBIT #14). AGAIN, PETITIONER REQUESTED COPIES OF HIS CASE FILES. ON FEBRUARY 1, 2013 ATTORNEY THERESA J SCHMIEDER WROTE A LETTER TO DEFENDANT CLAIMING SHE WAS UNABLE TO ADDRESS HIS CONCERNS FOR COPIES OF THE RECORDS UNTIL AFTER FEBRUARY 12, 2013. A FALSE CLAIM BY COUNSEL WAS THAT SHE PROPERLY CLOSED OUT PETITIONER'S FILE. AND SHE JUSTIFIED HER ACTS OF CONTINUING TO REFUSE TO SEND HIM A COPY OF HIS CASE FILES. COUNSEL TRIED TO TWIST THE FACTS BY FALSELY CLAIMING THAT IT WAS THE PETITIONER WHO HAD ABANDONED HIS OWN APPEAL. ATTEMPTING TO DO A REVERSAL OF ROLES FOR THE LONG DELAY IN APPEALING THE CONVICTION. (EXHIBIT #16).

ON FEBRUARY 11, 2013, COUNSEL WROTE PETITIONER A LETTER IN AN ATTEMPT TO DOCTOR RECORDS AND MAKE IT APPEAR THAT SHE AND — THE PETITIONER HAD BEEN HAVING MANY DIFFERENT CONVERSATIONS CONCERNING HIS CRIMINAL APPEAL. (FAR FROM THE TRUTH) AS THE TELEPHONE — CONVERSATION MENTIONED BY COUNSEL WAS THE ONLY VERBAL COMMUNICATIONS EVER HAD BY THIS PETITIONER AND COUNSEL IN ALMOST FIVE YEARS. AND THE ONLY WAY THIS ONE CONVERSATION TOOK PLACE WAS DUE TO RCI'S ASSIGNED SOCIAL WORKER FOR PETITIONER CALLING THE ATTORNEY, AND AS SOON AS COUNSEL GOT ON THE PHONE, THE SOCIAL WORKER HANDED THE PHONE TO THE PETITIONER, PREVENTING COUNSEL FROM FURTHER PRETENDING NOT TO BE IN HER OFFICE. COUNSEL WAS VERY SHOCKED TO REALIZE THAT SHE HAD BEEN TRICKED BY THE SOCIAL WORKER TO GET HER ON THE TELEPHONE TO TALK TO PETITIONER. A LONG SILENCE TOOK PLACE BEFORE COUNSEL WOULD SAY ANOTHER WORD. THE FIRST THING COUNSEL DID WAS TO LIE TO PETITIONER AND SAY SHE WAS COMING UP TO VISIT HIM SOON. IN THE FEBRUARY 11, 2013 LETTER TO PETITIONER COUNSEL REITERATED THE PROMISE TO VISIT PETITIONER, AND IN THAT SAME LETTER SHE THEN OFFERED MORE EXCUSES AS TO WHY SHE COULD NOT KEEP THAT PROMISE. AND FOR THE FIRST TIME IN ALMOST FIVE YEARS, SHE SENT DEFENDANT A COPY OF PORTIONS OF TWO TRANSCRIPTS OUT OF HIS CASE FILES. SEE, (EXHIBIT #17). ON FEBRUARY 7, 2013, PETITIONER WROTE TO THE STATE PUBLIC DEFENDERS OFFICE TO REQUEST NEW COUNSEL BE APPOINTED TO REPRESENT HIM. HE EXPLAINED HOW COUNSEL HAD ABANDONED HIM AND HAD NOT FILED ONE SINGLE DOCUMENT IN COURT IN FIVE YEARS, HAD REFUSED ALL CALLS FROM PETITIONER, AND HAD REFUSED TO VISIT HIM FOR THE SAME PERIOD OF TIME. (EXHIBIT #18).

ON FEBRUARY 14, 2013, AFTER RECEIVING A PHONE CALL FROM MR. JOSEPH N. EHMANN OF THE PUBLIC DEFENDER'S OFFICE, MS. THERESA J. SCHMIEDER WROTE ANOTHER LETTER TO PETITIONER. MR. EHMANN WANTED TO AFFIRM WHETHER IT WAS TRUE THAT PETITIONER WANTED TO DISCHARGE COUNSEL. SO COUNSEL AFFIRMED THAT PETITIONER HAD INDEED ASKED HER TO REMOVE HERSELF FROM THE CASE. HOWEVER, COUNSEL FAILED TO TELL MR. EHMANN THAT PETITIONER'S REQUEST FOR REMOVAL WAS BASED ON HER ABANDONING PETITIONER'S DIRECT APPEAL. COUNSEL MADE A POINT TO SAY THAT DIFFERENT COUNSEL WOULD NOT BE APPOINTED, AND PETITIONER WOULD BE STUCK WITH WHAT EVER ATTORNEY SCHMEIDER DECIDED TO DO IN HIS CASE. THIS MEANT THAT EVEN IF COUNSEL ABANDONED THE APPEAL, PETITIONER WAS NOT TO BE GIVEN NEW COUNSEL TO ADDRESS ABANDONMENT ISSUES ON BEHALF OF PETITIONER. (EXHIBIT #19). ON FEBRUARY 18, — 2013, FIRST ASSISTANT STATE PUBLIC DEFENDER JOSEPH N. EHMANN WROTE A LETTER TO PETITIONER AND REPEATED WHAT COUNSEL HAD UTTERED, AND INSISTED THAT PETITIONER ALLOW COUNSEL TO FILE A FIVE YEAR LATE NO MERIT REPORT AGAINST HIM, EVEN THOUGH JOSEPH N. EHMANN ADMITTED THAT COUNSEL HAD NEVER FOLLOWED ANY OF THE RULES WHICH GOVERNS COUNSEL'S RESPONSIBILITIES TOWARDS HER CLIENT. SUGGESTING THAT PETITIONER ALLOW COUNSEL TO PETITION THE COURT AND REINSTATE THE PETITIONER'S DIRECT APPEAL RIGHTS. PETITIONER REFUSED TO ALLOW A LATE MOTION TO BE FILED ON HIS BEHALF AFTER FIVE YEARS OF ABANDONMENT, BECAUSE SUCH A AGREEMENT WOULD BE WHAT IS CONSIDERED "CONSTRUCTIVE WAIVER" OF THE DENIAL OF AN APPEAL BY COUNSEL AS RULED IN STATE V EVANS, 2004 WI 84, 273 Wis.2d 192, 682 N.W.2d

784; 2004 Wisc. LEXIS 449. SEE (EXHIBIT #20). PRIOR TO THE COURT OF APPEALS EVENTS, PETITIONER HAD APPEARED IN FOUR EVIDENTIARY — HEARINGS WHICH WERE POSTPONED REPEATEDLY AFTER TAKING UNSWORN — TESTIMONY FROM ATTORNEY THERESA J. SCHMIEDER CONCERNING WHY SHE HAD ABANDONED PETITIONER'S DIRECT APPEAL. THE DATE OF EACH OF THE HEARINGS WERE, AUGUST 6, 2013, SEPTEMBER 6, 2013, SEPTEMBER 11, 2013, AND MAY 10, 2013. THE ENTIRE HEARINGS WERE ON THE ACTIONS OF COUNSEL FOR THE PAST FIVE YEARS AND WHY SHE DID NOT FILE THE DIRECT APPEAL ON BEHALF OF PETITIONER. THE BOTTOM LINE CONCERNS OF JUDGE KENDALL M. KELLEY WAS TO FORCE PETITIONER TO FORGIVE THE ATTORNEY'S ABANDONMENT AND ALLOW HER TO FILE A LATE NO MERIT AND END HER REPRESENTATION IN THE CASE. AT EACH EVIDENTIARY HEARING PETITIONER MADE IT CLEAR TO THE COURT THAT COUNSEL HAS NEVER BEEN A REPRESENTATIVE IN HIS CASE, AND HE WOULD NOT ALLOW HER TO FILE AWAY HIS RIGHTS TO BE HEARD ON HIS PENDING WRIT OF HABEAS CORPUS. SEE (R. 273: 1-32), (R. 274: 1-23), (R. 193: 1-2), AND (R. 196: 1-2).² A FIFTH HEARING WAS HELD ON APRIL 25, 2013. (R. 184: 1).

^{2/}

CIRCUIT COURT JUDGE KENDALL M. KELLEY, AND COURT OF APPEALS JUDGE HOOVER HAVE MADE A POINT IN NOT ALLOWING TRANSCRIPTS OF THE SEPTEMBER 6, 2013, AND SEPTEMBER 11, 2013 EVIDENTIARY HEARING TO BE PART OF THIS APPEAL. LIKEWISE, KENDALL KELLEY HAS ALSO BLOCKED THE AUGUST 7, 2006 TRANSCRIPT FROM BEING A PART OF THE COURT OF APPEALS REVIEW RECORD. THAT TRANSCRIPT CONTAINS THE PROSECUTOR JOHN F. LUETSCHER'S VERBAL WORDS OF ACKNOWLEDGING THAT THE ARREST AND IDENTIFICATION OF MR. LEE HAS TO BE SUPPRESSED BECAUSE OF THE DUBOSE VIOLATION.

JUDGE KENDALL KELLEY REFUSED TO RULE ON THE PENDING WRIT OF HABEAS CORPUS DUE TO HAVING TO RULE IN FAVOR OF PETITIONER'S RELEASE, AND THE FACT THAT PETITIONER REFUSED TO GO ALONE WITH A PLOT TO ALLOW COUNSEL TO FILE A LATE (FIVE YEARS) NO MERIT REPORT. INSTEAD OF JUDGE KELLEY RULING ON THE WRIT OF HABEAS CORPUS THAT PROMPTED THE FOUR EVIDENTIARY HEARING DATES TO HEAR WHAT COUNSEL HAD TO SAY IN EXPLAINING WHY SHE HAD ABANDONED THE DIRECT APPEAL, JUDGE KELLEY DIRECTED COUNSEL TO FILE A MOTION WITH THE COURT OF APPEALS AND TO ASK FOR PERMISSION TO FILE A LATE NO MERIT REPORT. THEN HE PLACED THE WRIT IN AN INACTIVE STATUS UNTIL SUCH TIME AS THE COURT RULED ON THE NO MERIT REQUEST. ON APRIL 19, 2013, COUNSEL SCHMIEDER FILED A MOTION WITH THE CIRCUIT COURT TO WITHDRAW AS COUNSEL. ON APRIL 25, 2013 KENDALL KELLEY ISSUED AN ORDER TO PRODUCE PETITIONER TO COURT TO BE HEARD ON THAT MOTION. (R. 184:1). AFTER KELLEY HAD PLACED THE CASE IN AN INACTIVE STATUS, COUNSEL FILED A MOTION IN THE COURT OF APPEALS SEEKING TO WITHDRAW ON JUNE 26, 2013. (R.188:1-3). ON OCTOBER 4, 2013 COUNSEL THEN FILED A MOTION TO EXTEND THE TIME FOR FILING OF A NO MERIT REPORT. (R.198:1-7), AND THE NO MERIT NOTICE OF APPEAL WAS FILED ON DECEMBER 2, 2013 (R.201:1) AFTER THE COURT OF APPEALS GRANTED SAID FILING ON OCTOBER 9, 2013. (R.199:1). ON DECEMBER 27, 2013, JUDGE HOOVER OF THE COURT OF APPEALS GRANTED COUNSEL'S REQUEST TO BE DISCHARGED FROM THE CASE. JUDGE HOOVER DISMISSED THE CASE AS PRESENTED BY COUNSEL, AND HE EXTENDED THE TIME TO FILE A POSTCONVICTION MOTION BY PETITIONER TO SIXTY DAYS. PETITIONER THEN ADDRESSED THE COURT OF APPEALS AND

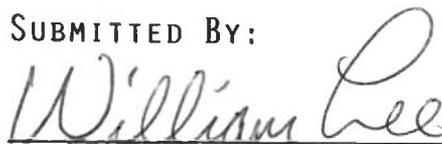
INFORMED JUDGE HOOVER THAT HE WOULD NOT BE FILING A POSTCONVICTION MOTION SEEKING TO REINSTATE A DIRECT APPEAL. HE WOULD CONTINUE IN HIS PENDING WRIT OF HABEAS CORPUS BEFORE JUDGE KENDALL M. KELLEY. ON FEBRUARY 7, 2014, JUDGE KENDALL KELLEY DENIED PETITIONER'S WRIT OF HABEAS CORPUS THAT HAD ALREADY BEEN PENDING PRIOR TO COUNSEL'S FILING OF MOTION IN THE COURT OF APPEALS. THE ATTACHED OCTOBER 13, 2015 DECISION BY THE COURT OF APPEALS THAT IS NOW THE SUBJECT OF THIS PETITION FOR REVIEW IS THE RESULTS OF THE APPEAL. PETITIONER WILL RELY ON THE ARGUMENTS AS PRESENTED IN HIS ORIGINAL BRIEF THAT WAS FILED WITH THE COURT OF APPEALS, AND IS NOW ATTACHED TO THIS PETITION FOR REVIEW AS EXHIBIT "Br".

C O N C L U S I O N

DEFENEANT-PETITIONER BELIEVES THIS CASE MEETS THE CRITERIA TO BE REVIEWED BY THIS SUPREME COURT. HE PRAYS THE COURT REVIEW SAME

DATED THIS 1ST DAY OF NOVEMBER, 2015.

SUBMITTED BY:


WILLIAM J. LEE #229110
PRO SE LITIGANT.