APPENDIX

COURT OF APPEALS
DECISION
DATED AND FILED

October 13, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP583 **Cir. Ct. No. 2002CF886**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

WILLIAM J. LEE,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Brown County: KENDALL M. KELLEY, Judge. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. William Lee, pro se, appeals an order denying his petition for a writ of habeas corpus in which he alleged ineffective assistance of appellate counsel pursuant to ***State v. Knight***, 168 Wis. 2d 509, 484 N.W.2d 540 (1992). We affirm the order because his petition was filed in the wrong forum,

Lee had other adequate remedies at law, and he failed to establish abandonment by his appellate attorney.

BACKGROUND

¶2 In 2009, Lee was convicted of armed robbery. The State Public Defender appointed Attorney Theresa Schmieder to represent Lee in postconviction proceedings.[1] Schmieder concluded there was no arguable basis for appeal and advised Lee of his options consistent with those set forth in ***State ex rel. Flores v. State***, 183 Wis. 2d 587, 605-07, 516 N.W.2d 362 (1994): (1) to have the attorney file a no-merit report; (2) to have the attorney close the file without an appeal; or (3) to have the attorney close the file and to proceed pro se or with an attorney retained at the defendant's expense. Lee refused to choose among those options, insisting on having a copy of the transcripts from his case before making that decision. Schmieder apparently believed Lee chose the second or third option.

¶3 In April 2013, Lee filed petitions for a writ of habeas corpus in the circuit court, the court of appeals, and the Wisconsin Supreme Court. The court of appeals promptly struck the petition because it was not verified as required by WIS. STAT. § 782.04 (2013-14).[2]

¶4 In October 2013, Schmieder filed a motion to extend the time for filing a no-merit report, citing her difficulties receiving and reviewing fifty-three

[1] Lee questions whether the State Public Defender appointed Schmieder at the time she notified him of her appointment. We attach no significance to the timing of her appointment.

[2] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

transcripts from Lee's case and her belief Lee chose to abandon his appeal. The motion also stated Schmieder filed motions to withdraw as counsel in the circuit court, and the circuit court would not rule on that motion until counsel filed a motion with this court to extend the time for filing a no-merit report. On October 7, 2013, this court granted the motion to extend the time for filing a no-merit notice of appeal and no-merit report.

¶5 On November 23, 2013, the Wisconsin Supreme Court dismissed the habeas corpus petition as moot, based on this court's order for extending the time for filing a no-merit notice of appeal.

¶6 On December 2, 2013, Schmieder filed a no-merit notice of appeal. Lee promptly filed a motion to discharge Schmieder, strike the no-merit notice of appeal, and grant permission for him to pursue an appeal or postconviction motion pro se. This court granted the motion. Lee then elected to voluntarily dismiss the appeal and pursue his issues in the circuit court by prosecuting the writ of habeas corpus filed in that court. On February 7, 2014, the circuit court denied Lee's habeas corpus petition because Lee failed to demonstrate he had no other adequate remedy at law. Lee appeals the circuit court's denial of the petition for a writ of habeas corpus.

DISCUSSION

¶7 Much of Lee's brief on appeal is devoted to challenging this court's order extending the time for filing a no-merit notice of appeal. He contends that decision was contrary to ***State v. Evans***, 2004 WI 84, 273 Wis. 2d 192, 682 N.W.2d 784. In ***Evans***, this court extended the time for filing a postconviction motion or notice of appeal, without giving the State an opportunity to oppose the motion. ***Id.***, ¶13. The supreme court reversed that decision, concluding this court

could not circumvent the procedures set out in ***Knight***. ***Id.***, ¶37, n.3. In Lee's case, no ***Knight*** petition was pending in the court of appeals at the time the court granted the extension. The extension was not granted based on ineffective assistance of appellate counsel. Therefore, this court did not circumvent habeas corpus procedures by granting the motion. Furthermore, even if this court erred by granting the extension, the appropriate avenue for relief would have been for Lee to file a petition for review in the supreme court. To the extent Lee challenges the supreme court's denial of the writ of habeas corpus based on its conclusion that the issue was rendered moot by this court's extension order, this court has no authority to review the supreme court's decision.

¶8 The circuit court properly denied Lee's petition for several reasons. First, a claim that postconviction or appellate counsel abandoned a defendant must be presented to the court of appeals by a ***Knight*** petition. *See* ***State ex rel. Santana v. Endicott***, 2006 WI App 13, ¶4, 288 Wis. 2d 707, 709 N.W.2d 515. The relief available upon proving abandonment by counsel is reinstatement of direct appeal rights. ***Id.***, ¶8. The circuit court lacks authority to reinstate direct appeal rights. ***State ex rel. Kyles v. Pollard***, 2014 WI 38, ¶32, 354 Wis. 2d 626, 847 N.W.2d 805.

¶9 Lee cites cases in which the remedy for delay in bringing an appeal could be release from custody rather than reinstatement of appellate rights. Those cases require a showing of prejudice to the appeal before that remedy will be considered. *See* ***Mathis v. Hood***, 937 F.2d 790, 794 (2d Cir. 1991); ***Cody v. Henderson***, 936 F.2d 715, 719 (2d Cir. 1991). However, all of the ten issues Lee

identifies as potential appellate issues could have been raised despite the passage of time, and Lee makes no argument to the contrary.[3]

¶10 The circuit court also properly denied the petition because Lee had an adequate remedy at law. *See* ***State ex rel. Haas v. McReynolds***, 2002 WI 43, ¶12, 252 Wis. 2d 133, 643 N.W.2d 771. That rule applies when relief may be had or could have been procured by resort to another general remedy. ***State ex rel. Doxtater v. Murphy***, 248 WI 593, 603, 22 N.W. 685 (1948), *modified on other grounds by* ***VanVoorhis v. State***, 26 Wis. 2d 217, 221 & n.2, 131 N.W.2d 833 (1965). Lee could have raised all of his ten issues by following through with the no-merit process and filing a response raising those issues, or by presenting them by postconviction motion in the circuit court and/or appeal after he discharged counsel, or by motion under WIS. STAT. § 974.06.

¶11 Finally, Lee's petition failed to establish ineffective assistance of appellate counsel. Schmieder correctly informed Lee of the three options available, and Lee's refusal to elect one of the options substantially contributed to the delay. Lee insisted on reviewing the transcripts from his case before making the decision of which option to pursue. His right to copies of the court record arises only after the decision is made to proceed pro se or upon request after a

[3] The ten issues Lee identifies are: (1) a "one-man showup" contrary to ***State v. Dubose***, 2005 WI 126, 285 Wis. 2d 143, 699 N.W.2d 582; (2) Lee's allegation that the State's main witness is a person who was mistaken or lied about previous contact with Lee because Lee could prove he was in prison and not in the Green Bay area; (3) a speedy trial violation; (4) the circuit court's lack of jurisdiction because the State failed to timely file the information; (5) ineffective assistance of trial counsel for failing to challenge the court's jurisdiction; (6) ineffective assistance of counsel for failing to request dismissal based on ***Dubose***; (7) a denial of Lee's compulsory process; (8) a "total lack of evidence"; (9) the circuit court's "plain error" by allowing the trial to proceed when it never obtained jurisdiction; and (10) the circuit court's failure to suppress all of the identification evidence.

no-merit report is filed. *See* WIS. STAT. RULE 809.32(1)(d). Schmieder's delay in filing the notice of appeal did not constitute abandonment of her client.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

E X H I B I T ("Br.")

EXHIBIT BRIEF

PETITION FOR REVIEW

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III

APPEAL No. 2014AP583[2]

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,[3]

-V-

WILLIAM J. LEE,

DEFENDANT-APPELLATE-PETITIONER.

PETITIONER-APPELLATE'S BRIEF IN SUPPORT OF GRANTING A WRIT OF HABEAS CORPUS IN RELIEF OF ILLEGAL RESTRAINT

TO: DIANE M. FREMGEN, CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
POST OFFICE BOX 1688
MADISON, WISCONSIN 53701-1688

SUBMITTED BY:

WILLIAM J. LEE #229110
PRO SE LITIGANT.

2/ THIS IS AN APPEAL OF A DENIAL OF WRIT OF HABEAS CORPUS. THERE SHOULD BE A "W" BEHIND THE NUMBER.

3/ THIS IS A STATE EX REL. CASE, AS IT IT APPEAL A DENIAL OF THE WRIT OF HABEAS CORPUS. THIS IS NOT A POSTCONVICTION APPEAL.

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 FILINGS OF MOTIONS IN THE COURT OF APPEALS.

ARGUMENT

I. DEFENDANT-APPELLATE-PETITIONER WAS DENIED HIS CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL, WHEN APPELLATE COUNSEL, DURING DIRECT APPEAL ABANDONED CASE COMPLETELY BY ALLOWING OVER "4½" 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 WRONGFUL CONVICTION.

A. Standard Of Review - Effective Counsel.

THE TEST FOR EFFECTIVE ASSISTANCE OF COUNSEL IN THE STATE OF WISCONSIN IS WELL SETTLED. THE TEST FOR DETERMINING COMPETENCY OF COUNSEL IS WHETHER THE REPRESENTATION RENDERED IN THE CASE WAS EQUAL TO THAT WHICH AN ORDINARILY PRUDENT LAWYER, TRAINED AND VERSED IN CRIMINAL LAW WOULD GIVE TO CLIENTS WHO HAD PRIVATELY RETAINED HIS SERVICES. STATE V. BURROGHS, 117 WIS.2D 293, 344 N.W.2D 149 (1985).

HOWEVER, COUNSEL'S ASSISTANCE, EVEN IF PROFESSIONALLY UNREASONABLE, DOES NOT JUSTIFY VACATING THE SENTENCE IF THE ERRORS BY COUNSEL HAD NO EFFECT ON THE CONVICTION. THE BURDEN IS ON THE DEFENDANT TO PROVE THAT, ABSENT THE ALLEGED ERRORS BY COUNSEL, AS ALLEGED, THERE IS A REASONABLE PROBABILITY THAT THE JURY WOULD HAVE HAD A REASONABLE DOUBT RESPECTING GUILT. UNITED STATES V. MOSIMAN, 604 F.SUPP. 1003, 1008 (E.D. WIS. 1985). A DEFENDANT CAN PREFAIL ON A CLAIM OF INEFFECTIVE ASSISTANCE ONLY IF HE PROVES THAT COUNSEL'S PERFORMANCE WAS DEFICIENT IN THAT IT FELL BELOW AN OBJECTIVE STANDARD OF PROFESSIONAL PERFORMANCE, AND THAT COUNSEL'S DEFICIENCY WAS SO PREJUDICIAL AS TO DEPRIVE DEFENDANT OF A FAIR TRIAL. STRICKLAND V WASHINGTON, 466 U.S. 668, 104 S.CT 2052, 2064-65 (1984).

WITH RESPECT TO THE "PREJUDICE" COMPONENT OF THE TEST FOR INEFFECTIVE ASSISTANCE OF COUNSEL, THE DEFENDANT MUST AFFIRMATIVELY PROVE THAT THE ALLEGED DEFECT IN COUNSEL'S PERFORMANCE ACTUALLY HAD AN ADVERSE EFFECT ON THE DEFENSE. STRICKLAND, 466 U.S. AT 693. THE DEFENDANT CANNOT MEET HIS BURDEN BY MERELY SHOWING THAT THE ERROR HAD SOME CONCEIVABLE EFFECT ON THE OUTCOME RATHER, HE "MUST" SHOW THAT THERE IS A REASONABLE PROBABILITY THAT, BUT FOR COUNSEL'S UNPROFESSIONAL ERRORS, THE RESULT OF THE PROCEEDINGS WOULD HAVE BEEN DIFFERENT. A REASONABLE PROBABILITY IS A PROBABILITY SUFFICIENT TO UNDERMINE CONFIDENCE IN THE OUTCOME. ID. AT 694.

"AN INEFFECTIVE ASSISTANCE CLAIM ASSERTS THE ABSENCE OF ONE OF THE CRUCIAL ASSURANCES THAT THE RESULT OF THE PROCEEDING IS RELIABLE. THE RESULT OF A PROCEEDING CAN BE RENDERED UNRELIABLE, AND HENCE THE PROCEEDING ITSELF, UNFAIR, EVEN IF THE ERRORS OF COUNSEL CANNOT BE SHOWN BY A PREPONDERANCE OF THE EVIDENCE TO HAVE DETERMINED THE OUTCOME." ID. (QUOTING STRICKLAND, 466 U.S. AT 694).

THE PRINCIPLES ENUNCIATED IN STRICKLAND, DO NOT ESTABLISH RULES. RATHER, THEY MERELY "GUIDE THE PROCESS OF DECISION [AND] THE ULTIMATE FOCUS OF INQUIRY MUST BE ON THE FUNDAMENTAL FAIRNESS OF THE PROCEEDING WHOSE RESULT IS BEING CHALLENGED. IN EVERY CASE THE COURT SHOULD BE CONCERNED WITH WHETHER, DESPITE THE STRONG PRESUMPTION OF RELIABILITY, THE RESULT OF THE PARTICULAR PROCEEDING IS UNRELIABLE BECAUSE OF A BREAKDOWN IN THE ADVERSARIAL PROCESS THAT OUR SYSTEM COUNTS ON TO PRODUCE JUST RESULTS." PITSCH, 124 WIS.2D AT 642 —— (QUOTING STRICKLAND, 466 U.S. AT 696).

THE APPROPRIATE STANDARD FOR MEASURING COUNSEL'S PERFORMANCE IS REASONABLENESS, CONSIDERING ALL THE CIRCUMSTANCES. STATE V. BROOKS, 124 WIS.2D 349, 352, 369 N.W.2D 183 (CT. APP. 1985). IT IS PRESUMED THAT COUNSEL RENDERED ADEQUATE ASSISTANCE, THEREFORE JUDICIAL SCRUTINY OF COUNSEL'S ACTIONS IS HIGHLY DEFERENTIAL. STATE V PITSCH, 124 WIS 2D 628, 637, 369 N W.2D 711 (1985). ALTHOUGH A COURT MUST NOT SECOND-GUESS COUNSEL'S CONSIDERED SELECTION OF TRIAL TACTICS OR THE EXERCISE OF HIS OF HER PROFESSIONAL JUDGMENT. STATE V. FELTON, 110 WIS 2D 485, 502, 329 N.W.2D 161 (1983), APPELLATE

COURTS WILL SECOND-GUESS COUNSEL, HOWEVER, WHEN THE TRIAL TACTICS ARE IRRATIONAL OR BASED UPON CAPRICE RATHER THAN JUDGMENT. STATE V. FELTON, 110 WIS.2D 485, 503, 329 N.W.2D 161 (1983).

WHETHER COUNSEL'S ASSISTANCE IS INEFFECTIVE IS A MIXED QUESTION OF LAW AND FACT. STATE V. LUDWIG, 124 WIS.2D 600, 369 N.W.2D 722 (1985). THE QUESTIONS OF WHETHER COUNSEL'S PERFORMANCE WAS DEFICIENT I.E., UNREASONABLE UNDER THE FACTS OF THE CASE, AND WHETHER THE DEFICIENCY WAS PREJUDICIAL TO THE DEFENDANT ARE QUESITONS OF LAW. STATE V. PITSCH, 124 WIS 2D 628, 634, 369 N.W 2D 711 (1985). IF THE TRIAL COURT, IN A POSTCONVICITON PROCEEDING, DETERMINES THAT COUNSEL'S ACTIONS WERE UNREASONABLE AND THEREFORE VIOLATIVE OF THE SIXTH AMENDMENT RIGHT TO ASSISTANCE OF COUNSEL, THE TRIAL COURT "MUST" FURTHER DETERMINE WHETHER SUCH ACTION WAS PREJUDICIAL TO THE DEFENDANT. STATE V. DAVIS, 114 WIS.2D 252, 338 N.W.2D 301 (1983).

IN EVALUATING THE EFFECTIVENESS OF AN ATTORNEY'S ASSISTANCE TO A CRIMINAL DEFENDANT, THE REVIEWING COURT MUST FIRST DETERMINE WHETHER THERE IS A BASIS IN REASON FOR THE ATTORNEY'S ACTIONS WHICH ARE ALLEGED TO BE ERRORS WHICH COMPETENT COUNSEL WOULD HAVE AVOIDED GIVEN THE SAME SET OF CIRCUMSTANCES, AND THEN, IF THE ATTORNEY'S CONDUCT IS FOUND TO BE UNREASONABLE AND CONTRARY TO ACTIONS BY AN ORDINARILY PRUDENT LAWYER, DETERMINE WHETHER SUCH ACITON WAS PREJUDICIAL TO THE DEFENDANT. STATE V. FENCL, 109 WIS.2D 224, 325 N.W 2D 703 (1982).

B. INEFFECTIVENESS OF POST-CONVICTION COUNSEL.

THE RECORD REFLECTS THAT ATTORNEY ERIC PANGBURN WAS INITIALLY APPOINTED TO REPRESENT THE DEFENDANT-PETITIONER DURING HIS TRIAL, AND HAD THE RESPONSIBILITY TO FILE THE NOTICE OF INTENT AFTER THE SENTENCING TO PUT THE STATE PUBLIC DEFENDER'S OFFICE ON NOTICE OF DEFENDANT'S DESIRE TO APPEAL HIS CONVICITON. ERIC PANGBURN FILED A TIMELY NOTICE. (R.170:1-2) & (R 171:1-2). ATTORNEY THERESA J. SCHMIEDER OF GREEN BAY, WISCONSIN, ON APRIL 27, 2009 CLAIMED THAT SHE WAS ASSIGNED TO REPRESENT DEFENDANT-PETITIONER ON HIS DIRECT APPEAL. SEE (EXHIBIT #1). THE DATE FOR THE ALLEGED ATTORNEY TO FILE A NOTICE OF INTENT WITH THE COURT OF APPEALS WAS APPROXIMATELY JUNE OF 2009. COUNSEL NEVER BOTHERED TO FILE ANY DOCUMENTS WITH THE COURT AFTER THE INITIAL FILING FOR AN EXTENSION OF TIME FILED ON APRIL 8, 2009. SEE (R.173:1-2).

DEFENDANT-PETITIONER WAS CONVICTED AND SENTENCED ON FEBRUARY 20, 2009. (R.272:1-27). THE NOTICE OF APPEAL WAS DUE NO LATER THAN MARCH OF 2009 BY TRIAL COUNSEL. ONCE APPELLATE COUNSEL WAS ASSIGNED BY THE STATE PUBLIC DEFENDER'S OFFICE A SECOND TIME LIMIT STARTED WHICH REQUIRED THERESA SCHMIEDER TO ABIDE BY THE JUNE OF 2009 TIME PERIOD. HAD COUNSEL FOLLOWED THE RULES OF APPELLATE PROCEDURE UNDER WIS. STAT. § 809.30(2)(B), AND UNDER WIS. STAT. § 809.30(2)(H), A MOTION FOR POSTCONVICTION RELIEF SHOULD HAVE BEEN FILED NO LATER THAT JUNE OF 2009. THE RECORD FAILS TO SHOW ANY ACTION BY COUNSEL PROCEEDING ACCORDING TO RULES OF APPELLATE PROCEDURE. NOR DOES IT SHOW ANY MEMBER OF THE STATE PUBLIC DEFENDER NOTIFYING THE COURT AS TO WHY THERE WOULD BE A DELAY IN CONNECTION WITH DEFENDANT'S CASE FROM THE DATE TRIAL COUNSEL DID HIS JOB AND FILED A NOTICE.

A DEFENDANT HAS A CONSTITUTIONAL AS WELL AS STATUTORY RIGHT TO AN APPEAL. ARTICLE 1, SECTION 21 OF WIS. CONST., AND WIS. STAT. § 808.03(1). THE RIGHT TO AN APPEAL IS AN INTEGRAL PART OF EVERY DEFENDANT'S RIGHT TO A FINAL DETERMINATION OF THE MERITS OF HIS OR HER CASE. IT SERVES AS A SAFEGUARD TO PROTECT A DEFENDANT AGAINST ERRORS IN THE CRIMINAL PROCEEDINGS. STATE V KRYSHESKI, 119 WIS.2D 84, 349 N.W.2D 729 (CT. APP. 1984).

ALTHOUGH POST-CONVICTION AND APPELLATE COUNSEL ARE OFTEN THE SAME PERSON, THEIR FUNCTIONS DIFFER. SEE STATE EX REL SMALLEY V. MORGAN, 211 WIS. 2D 795, 797, 565 N.W. 2D 805 (CT APP. 1997). — WHILE "POST-CONVICTION REPRESENTATION INVOLVES PROCEEDINGS IN THE TRIAL COURT WHERE SUCH ARE PREREQUISITE TO FILING A NOTICE OF APPEAL," APPELLATE COUNSEL'S WORK "INVOLVES BRIEFING AND ORAL — ARGUMENT IN THE COURT OF APPEALS." ID.

IN SMALLEY, THE COURT RECOGNIZED THAT PURSUANT TO STATE EX REL ROTHERING V. MCCAUGHTRY, 205 WIS.2D 675, 672-74, 556 N.W.2D 136 (CT. APP 1996), A CLAIM OF INEFFECTIVE ASSISTANCE OF POST-CONVICTION COUNSEL "SHOULD BE RAISED IN THE CIRCUIT COURT EITHER BY A PETITION FOR A WRIT OF HABEAS CORPUS OR A MOTION UNDER WIS. STAT. § 974.06." SMALLEY, 211 WIS.2D AT 797-98.

IN STATE V ESCALONA-NARANJO, 185 WIS.2D 168, 517 N.W.2D 157 (1994), THE WISCONSIN SUPREME COURT HELD THAT "A MOTION UNDER SEC. § 974.06 COULD NOT BE USED TO REVIEW ISSUES WHICH WERE OR COULD HAVE BEEN LITIGATED ON DIRECT APPEAL." ID AT 172. THE STATUTE,

HOWEVER, DOES NOT PRECLUDE A DEFENDANT FROM RAISING "AN ISSUE OF CONSTITUTIONAL DEMENSION WHICH FOR SUFFICIENT REASON WAS NOT PRIOR ASSERTED OR WAS INADEQUATELY RAISED IN HIS ORIGINAL, SUPPLEMENTAL OR AMENDED POST-CONVICITON MOTIONS." Id. AT 184 (EMPHASIS ADDED).

ALTHOUGH THE DEFENDANT ACKNOWLEDGES THAT HIS PRESENT ISSUES COULD, ARGUABLY, HAVE BEEN LITIGATED ON DIRECT APPEAL, PETITIONER ASSERTS THAT THE FAILURE OF HIS ALLEGEDLY ASSIGNED POSTCONVICTION COUNSEL, MS. THERESA J SCHMIEDER FAILED TO FILE ANY MOTIONS FOR POSTCONVICITON RELIEF RAISING THIS OR ANY OTHER ISSUE IN THIS CASE OR TO SEEK TO OTHERWISE PRESERVE PETITIONER'S RIGHT TO DIRECT —— APPEAL PRIOR TO THE EXPIRATION OF THE TIME LIMITS ESTABLISHED BY WIS. STAT. § 809.30(2)(H) CONSTITUTES INEFFECTIVE ASSISTANCE OF POST-CONVICTION COUNSEL SUFFICIENT TO OVERCOME THE BAR OF STATE V. ESCALONA-NARANJO. (CITE OMITTED).

IT IS CLEAR THAT POST-CONVICTION COUNSEL IS NOT CONSTITUTIONALLY INEFFECTIVE SOLELY BECAUSE THE ATTORNEY FAILS TO RAISE EVERY ISSUE WHICH APPEARS TO HAVE MERIT. SEE SMITH V ROBBINS, 528 U.S. 259, 287-88 (2000)(CITING THE COURT'S PREVIOUS HOLDING IN JONES V BARNES 463 U.S. 745 (1983). RATHER, IT IS PART OF THE FUNCTION OF POST-CONVICTION COUNSEL TO SELECT FROM AMONG THE POTENTIAL ISSUES IN ORDER TO MAXIMIZE THE LIKELIHOOD OF SUCCESS ON A POST-CONVICTION MOTION. SEE ROBBINS, 528 U.S. 287-88. HOWEVER, AS THE SEVENTH CIRCUIT COURT OF APPEALS POINTED OUT IN GRAY V GREER, 800 F.2D 644, 646 (7TH CIR. 1986), COUNSEL'S DECISIONS IN CHOOSING AMONG ISSUES CANNOT BE ISOLATED FROM REVIEW. THE RELEVANT INQUIRY IS STILL ——

GUIDED BY THE STRICKLAND RULING AND THE QUESITON OF WHETHER POST-CONVICTION COUNSEL'S DECISIONS FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS INVOLVES A REVIEW OF THE DEFENDANT'S MOTION AND THE CIRCUIT COURT RECORD TO ASSESS THE RELATIVE STRENGTH OF ISSUES THE ATTORNEY DID RAISE. SEE GRAY, 800 F.2D AT 646-47. AS THE DEFENDANT CAN SHOW IN THIS CASE, COUNSEL FAILED TO RAISE ANY ISSUES AT ALL. WHEN THE ALLEGED APPELLATE COUNSEL FAILED TO FILE AN APPEAL AFTER NOTIFYING PETITIONER OF HER ASSIGNMENT TO HIS CASE. THEN FAILED TO FUNCTION AS COUNSEL BY FILING WITH THE COURTS A TIMELY REQUEST TO CLOSE THE CASE OR FILE A NO MERIT REPORT, SHE IN EFFECT MAINTAINED HER POSITION AS COUNSEL OF RECORDS BECAUSE SHE DID NOT MAKE THE PROPER TRANSFER WHICH WOULD HAVE ALLOWED THE COURTS TO ALLOW HER TO WITHDRAW FROM REPRESENTATION. THEN APPELLATE COUNSEL WAITED FOR ALMOST FIVE YEARS TO REQUEST TO WITHDRAW FROM REPRESENTATION IN AN ATTEMPT TO UNDERMINE A PENDING WRIT OF HABEAS CORPUS FILED IN THE CIRCUIT COURT AGAINST HER FOR ABANDONMENT OF THE CASE, SUCH A LONG DELAY CANNOT BE ATTRIBUTED TO THE CLIENT. THE RECORDS PROVE THAT NO MATTER HOW MANY TIMES PETITIONER WROTE COUNSEL SEEKING A WORD ON THE PROGRESS OF HIS CASE, COUNSEL WOULD NOT RESPOND TO HIM. IT WAS THE FILED WRIT OF HABEAS CORPUS IN THE CIRCUIT COURT THAT CAUSED COUNSEL TO FILE ANY MOTIONS IN COURT. PETITIONER DID PROPERLY FILE A WRIT OF HABEAS CORPUS WITH THE CIRCUIT COURT —— ALLEGING INEFFECTIVE ASSISTANCE OF COUNSEL ON HIS APPELLATE COUNSEL FOR FAILING TO FILE HIS APPEAL. SEE STATE EX REL. FLORES V STATE 183 WIS 2D 587, 602, 516 N.W.2D 362 (1994). AND AGAINST THE STATE

PUBLIC DEFENDER'S OFFICE FOR FAILURE TO APPOINT COUNSEL AFTER THEY LEARNED THAT ATTORNEY THERESA SCHMIEDER HAD FAILED TO REPRESENT A CLIENT AS ASSIGNED BY THEM, AND ALLOWING PETITIONER'S CASE TO BE CLOSED BY THEIR NON-ACTION OF REAPPOINTING REPRESENTATION TO SOMEONE WHO MADE IT CLEAR THAT HE WANTED TO EXERCISE HIS RIGHT TO HAVE A DIRECT APPEAL AS OF RIGHT. THE NON-ACTION BY BOTH COUNSEL AND BY THE PUBLIC DEFENDER'S OFFICE WAS TANTAMOUNT TO CLOSING THE CASE FILES WITHOUT FILING A MOTION TO WITHDRAW. STATE EX REL. FORD V. HOLM, 676 N.W.2D 500, 2004 WI APP 22, 2004 WISC. APP LEXIS 74, No. 02-1828-W (WI APP. JAN. 29, 2004).

THE QUESTION OF WHETHER POSTCONVICITON COUNSEL MUST ALWAYS MOVE TO WITHDRAW FROM REPRESENTATION IN EVERY CASE WAS DECIDED IN STATE V. MARIONEAUX, 269 WIS. 2D 889, 675 N.W. 2D 810 (2004), AND IS THE LEADING CASE IN WISCONSIN MAKING IT MANDATORY THAT COUNSEL FIRST SEEK PERMISSION BEFORE CLOSING ANY CASE, OR FILE A NO MERIT REPORT UNDER ANDERS. DEFENDANT HAS DEMONSTRATED THAT HE WANTED TO APPEAL HIS CONVICTION. YEAR AFTER YEAR HE CONTINUED TO COMMUNICATE HIS DESIRE TO APPELLATE COUNSEL WHO REFUSED TO VISIT HIM, REFUSED TO TALK TO HIM ON THE PHONE, AND REFUSED TO RESPOND IN WRITING TO THE MANY WRITTEN LETTERS STATING HIS DESIRE FOR AN APPEAL. HIS ONLY RECORSE WAS TO NOTIFY THE STATE PUBLIC DEFENDER'S OFFICE WHO ALLEGEDLY ASSIGNED THE PRIVATE ATTORNEY TO HIS CASE. THE RESPONSE BY THE STATE PUBLIC DEFENDER'S OFFICE REPRESENTATIVE WAS TO ADMIT THAT COUNSEL DID NOT DO HER DUTY TOWARDS HIM, STATING:

> "... MR. LEE, ATTORNEY SCHMIEDER SHOULD HAVE FOLLOWED UP WITH YOU AFTER THE FAILED ATTEMPT AT A IN-PRISON MEETING AND EITHER RESCHEDULED ANOTHER MEETING OR EXPLAINED WHY THE EARLIER MEETING DID NOT OCCUR AND WHY A RESCHEDULED MEETING WOULD NOT BE NECESSARY. ALSO, RATHER THAN TAKING NO ACTION BASED UPON THE ASSUMPTION THAT YOU DID NOT WANT A NO MERIT REPORT — BECAUSE YOU DID NOT INFORM HER THAT YOU WANTED A NO MERIT REPORT, THE RULES OF APPELLATE PROCEDURE DICTATE THAT UNLESS A DEFENDANT AFFIRMATIVELY CONSENTS TO CLOSE THE CASE OR TO DISCHARGE THE ATTORNEY, THE ATTORNEY SHALL FILE A NO MERIT REPORT. IN OTHER WORDS, THE DEFAULT ACTION FOR ATTORNEY SCHMIEDER IN THE ABAENCE OF YOUR AFFIRMATIVE CONSENT TO CLOSE YOUR CASE OR DISCHARGE HER SHOULD HAVE BEEN FOR HER TO FILE A NO MERIT REPORT, EVEN IF YOU DID NOT ASK THAT ONE BE FILED..."

ID. AT (EXHIBIT #20). AND WITHOUT LOOKING AT THE FACT THAT COUNSEL DID ABSOLUTELY NOTHING FOR ALMOST FIVE YEARS, THE STATE PUBLIC — DEFENDER'S OFFICE DID NOT CONSIDER RECTIFYING THE MATTER. IT ONLY GAVE PETITIONER THE OPTION OF AGREEING WITH COUNSEL'S OPTIONS OF ALLOWING HER TO CLOSE HIS CASE OR FILE THE LATE NO MERIT. THEY DID NOT EVEN CONSIDER LOOKING AT THE ISSUES PETITIONER PRESENTED TO THEM PROVING THAT COUNSEL WAS LYING ABOUT THE CASE NOT HAVING ANY MERIT; AND THE ONLY REASON SHE NOW TALKS ABOUT A NO MERIT REPORT AFTER SO MANY YEARS OF NON-ACTION WAS TO USE IT AS A SELF-SERVING DEVICE TO COVER UP HER DEFICIENT PERFORMANCE ON THIS CASE. WHEN PETITIONER FILED HIS WRIT OF HABEAS CORPUS WITH THE CIRCUIT COURT HE ALSO PROVIDED THAT COURT WITH COPIES OF ALL COMMUNICATION HE'D ATTEMPTED WITH COUNSEL. SO THAT COURT KNEW THAT THIS WAS NOT ANY CASE THAT EVEN REQUIRED CONSIDERATION OF A LATE NO MERIT REPORT. THAT COURT KNEW EXACTLY WHAT COUNSEL WAS DOING, HOW SHE WANTED TO UNDERMINE THE COURT'S OBLIGATION TO MAKE A DETERMINATION CONCERNING ABANDONMENT OF PETITIONER'S DIRECT APPEAL BY COUNSEL. FOR OVER FOUR AND A HALF YEARS, OFFICIALS RESPONSIBLE FOR ENSURING THAT A

CONVICTED PRISONER GETS HIS DUE PROCESS RIGHT TO DIRECT APPEAL HAS FAILED THIS DEFENDANT-PETITIONER. THAT INCLUDES COURT OF APPEALS JUDGE HOOVER TOO, WHOM THIS PETITIONER BELIEVES IS DELIBERATELY - NOW INVOLVED IN A JUDICIAL CONSPIRACY TO PREVENT HAVING TO HEAR A HABEAS CORPUS APPEAL. THERE IS NO CONTRADICTING THAT THIS IS A DUE PROCESS ISSUE.

C. THE DUE PROCESS INQUIRY APPLIES IN THIS CASE.

WHILE NO STATE (INCLUDING WISCONSIN) MAY DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW, IT IS WELL SETTLED THAT ONLY A LIMITED RANGE OF INTERESTS FALL WITHIN THIS PROVISION. LIBERTY INTEREST PROTECTED BY THE FOURTEENTH AMENDMENT MAY ARISE FROM TWO SOURCES. THEY BEING THE DUE PROCESS CLAUSE ITSELF, AND THE LAWS OF THE STATE. WALLACE V ROBINSON, 914 F.2D 869 AT 872 (7TH CIR. 1990); KELLAS V. LANE, 923 F.2D 492 AT 494 (7TH CIR. 1990); HEWITT V. HELMS, 459 U.S. 460 AT 466, 103 S.CT. 684 AT 688-89, 74 L.ED.2D 675 (1983); AND MEACHUM V. FANO, 427 U.S. 215 AT 223-27, 96 S.CT. 2532 AT 2537-2540, 49 L.ED.2D 451 (1976).

IT IS WELL ESTABLISHED THAT UNDER THE FOURTEENTH AMENDMENT, WHEN THE STATE DEPRIVES A PERSON OF LIBERTY, IT MUST PROVIDE THE REQUISITE PROCEDURAL PROTECTION TO SATISFY THE COMMANDS OF THE DUE PROCESS. MATHEWS V. ELRIDGE, 424 U.S. 319 AT 335, 96 S.CT. 893 AT 903, 47 L.ED.2D 18 (1976). IN KEEPING WITH THIS CHERISHED TRADITION, THE UNITED STATES SUPREME COURT HOLDS THAT, "PUNISHMENT ——

CANNOT BE IMPOSED WITHOUT DUE PROCESS OF LAW." ANY LESSER HOLDING WOULD IGNORE THE CONSTITUTIONAL MANDATE UPON WHICH OUR ESSENTIAL LIBERTIES DEPEND. KENNEDY V. MENDOZE-MARTINEZ, 327 U.S. 144 AT — 186, 83 S.CT. 554, 9 L.ED.2D 644 AT 671 (1963).

"THE REQUIREMENTS OF PROCEDURAL DUE PROCESS APPLY ONLY TO THE DEPRIVATION OF INTERESTS ENCOMPASSED BY THE FOURTEENTH AMENDMENT'S PROTECTION OF LIBERTY AND PROPERTY." BOARD OF REGENTS V. ROTH, 408 U.S. 564, 92 S.CT. 2701, 33 L.ED.2D 548 (1972). THE FOURTEENTH AMENDMENT EMBODIES THREE DIFFERENT PROTECTIONS: FIRST, A PROCEDURAL DUE PROCESS PROTECTION REQUIRING THE STATE TO PROVIDE INDIVIDUALS WITH SOME TYPE OF PROCESS BEFORE DEPRIVING THEM OF ANY OF THEIR LIFE, LIBERTY, OR PROPERTY; SECOND, A SUBSTANTIVE DUE PROCESS PROTECTION, WHICH PROTECTS INDIVIDUALS FROM ARBITRARY ACTS THAT DEPRIVE THEM OF LIFE, LIBERTY, OR PROPERTY; AND THIRD, AN INCORPORATION OF SPECIFIC PROTECTIONS AFFORDED BY THE BILL OF RIGHTS AGAINST THE STATES. GRIFFIN V. STRONG, 983 F.2D 1544 AT 1547 (10TH CIR. 1991); MILLER V. CAMPBELL COUNTY, 945 F.2D 348 AT 352 (10TH CIR. 1991); DANIELS V WILLIAMS, 474 U.S. 327 AT 337, 106 S.CT. 662 AT 677, 88 L.ED.2D 662 (1986). AND, "CERTAINLY THE CONSTITUTIONAL RIGHT TO 'SUBSTANTIVE' DUE PROCESS IS NO GREATER THAN THE RIGHT TO 'PROCEDURAL' DUE PROCESS." JEFFRIES V. TURKEY RUN CONSOLIDATED SCHOOL DISTRICT, 492 F.2D 1 (7TH CIR. 1974); AND BOARD OF REGENTS V. ROTH, SUPRA.

STATE PROCEDURAL GUIDELINES IN THEMSELVES DO NOT GIVE RISE TO A LIBERTY INTEREST. KELLAS V. LANE, SUPRA.; RUSS V. YOUNG, 895 —

F.2D 1149 AT 1152 (7TH CIR. 1990). THE TEST FOR WHETHER A STATUTORY OR REGULATORY PROCEDURE CREATES A PROTECTED DUE PROCESS IS WHETHER THE STATE STATUTE OR REGULATION HAVE USED LANGUAGE OF AN UNMISTAKABLE MANDATORY CHARACTER, REQUIRING THAT CERTAIN PROCEDURES "SHALL", OR "WILL", OR "MUST" BE EMPLOYED. KELLAS V. LANE, SUPRA.; WALLACE V. ROBINSON, SUPRA.; MERRITT V BROGLIN, 891 F.2D 169 AT 172 (7TH CIR. 1989); QUOTING, HEWITT V HELMS, SUPRA.

BY THE USE OF SUCH LANGUAGE THE STATE PLACES SUBSTANTIVE - LIMITATION ON OFFICIALS DISCRETION, BOTH BY ESTABLISHING SUBSTANTIVE PREDICATES TO GOVERN THE OFFICIALS DECISION MAKING PROCESS AND BY MANDATING A CERTAIN OUTCOME IF THE CRITERIA HAVE BEEN MET. KELLAS V. LANE, SUPRA.; JOIHNER V MCEVERS, 898 F.2D 569 AT 571 (7TH CIR. 1990). IF SUCH STATE CREATED LIBERTY INTEREST AFFECTS FUNDEMENTAL RIGHTS (DUE PROCESS), IT IS TO BE GIVEN THE MOST EXACTING SCRUTINY. CLARK V. JETER, 486 U.S. 456, 108 S.CT. 1910, 100 L.ED. 2D 465 (1988); HARPER V. VIRGINIA BOARD OF ELECTIONS, 383 U.S. 663, 86 S.CT. 1079, 16 L.ED.2D 169 (1966). WHEN THE LEGISLATURE WAS INCLUDED IN STATUTORY CONSTRUCTION, THE WORDS "SHALL", "MUST", OR ANY OTHER MANDATORY WORD, IN CONJUNCTION WITH WHAT IS TO BE DONE, AND BY WHOM, A MANDATE OF RESULT IS CREATED. KENTUCKY DEPT. OF CORRECTIONS V. THOMPSON, 109 S.CT. 2237, 104 L.ED. 2D 506 (1989). IT IS VERY WELL ESTABLISHED THAT THE USE OF THE WORDS "SHALL" AND "MUST" CREATES PRESUMPTION THAT THE STATUTE IS MANDATORY AND THAT THE PRESUMPTION IS STRENGTHENED WHERE THE LEGISLATURE USE THE WORD "MAY" IN SAME OR RELATED SECTION, THUS DEMONSTRATING THAT THE LEGISLATURE WAS AWARE OF THE DIFFERENT DENOTATION AND INTENDED THE

WORDS TO HAVE THEIR PRECISE MEANING. IN INTEREST OF F.T., 150 WIS. 2D 216, 441 N.W. 2D 322 (1989); RUDI V. PAIGE, 139 WIS. 2D 300, 407 N.W.2D 323 AT 327 (WIS. APP. 1987); KAROW V. MILWAUKEE COUNTY CIVIL SERVICE COMM., 82 WIS. 2D 565 AT 570-71, 263 N.W. 2D 214 AT 217 (1978). IN ASSESSING WHETHER THIS DEFENDANT-PETITIONER WAS DENIED DUE PROCESS WHEN BOTH THE STATE PUBLIC DEFENDER'S OFFICE AND APPELLATE COUNSEL REFUSED TO FILE HIS APPEAL, THE COURT NEED LOOK NO FURTHER THAN THE STATUTORY LANGUAGE IN WIS. STAT. § 809.10 DEALING WITH ATTORNEY THERESA SCHMIEDER'S RESPONSIBILITY TO FILE A TIMELY NOTICE OF INTENT WITH THE CLERK'S OFFICE AFTER CONVICTION. THROUGH-OUT THE ENTIRE SECTIONS OF THAT STATUTE THE "SHALL" OR THE "MUST" MANDATORY WORDS ARE USED. IN PARTICULAR, IN SUB (E) TIME FOR FILING, STATES: "THE NOTICE OF APPEAL MUST BE FILED WITHIN THE TIME SPECIFIED BY LAW. THE FILING OF A TIMELY NOTICE OF APPEAL IS NECESSARY TO GIVE THE COURT JURISDICTION OVER THE APPEAL." - ALSO, IN WIS. STAT. § 809.85, AGAIN SPECIFICALLY DEALING WITH ATTORNEY THERESA SCHMIEDER'S ABILITY TO WITHDRAW FROM REPRESENTATION PRIOR TO A COURT RELIEVING HER. THAT STATUTE MAKES IT CLEAR THAT COUNSEL WAS STILL REPRESENTING THIS PETITIONER WHEN SHE FAILED TO PUT IN A TIMELY NOTICE OF APPEAL. THAT RULE STATES A MANDATORY LANGUAGE ON COUNSEL'S CONTINUED REPRESENTATION. STATING: "AN ATTORNEY WHO IS APPOINTED BY A LOWER COURT IN A CASE OR PROCEEDING APPEALED TO THE COURT SHALL CONTINUE TO ACT IN THE SAME CAPACITY IN THE COURT UNITL THE COURT RELIEVES THE ATTORNEY." AND, THE STATE PUBLIC DEFENDER'S OFFICE HAD A MANDOTORY DUTY UNDER WIS. STAT. § 977.06, WIS. STAT. § 977.07, AND WIS. STAT. § 977 08 TO APPOINT DEFENDANT, WHO WAS

INDIGENT, NEW COUNSEL TO REPRESENT HIM DURING DIRECT APPEAL ONCE IT WAS LEARNED THAT ATTORNEY THERESA SCHMIEDER HAD ABANDONED THE OBLIGATION FOR YEARS. THE LANGUAGE IN ALL THREE OF THOSE STATUTES ARE MANDATORY IN LANGUAGE, AND THERE IS NO ROOM FOR DISCRETION. THOSE STATUTES WERE CREATED LIBERTY INTERESTS PASSED BY WISCONSIN LEGISLATURE TO PROTECT DEFENDANTS DUE PROCESS RIGHTS.

THE UNITED STATES SUPREME COURT AND OTHER CIRCUITS HAVE MADE IT VERY CLEAR THAT, ONCE A STATE HAS PROVIDED DEFENDANTS IN CRIMINAL CASES WITH THE RIGHT TO APPEAL, "THE DUE PROCESS REQUIRES THAT AN APPEAL BE HEARD PROMPTLY." MATHIS sII, 937 F.2D AT 794; SEE, E.G., CODY V. HENDERSON, 936 F.2D 715, 719 (2D CIR. 1991); DIAZ V. HENDERSON, 905 F.2D 653 (2ND CIR. 1990); SIMMONS V. REYNOLDS, 898 F.2D 865, 868 (2D CIR. 1990); SEE GENERALLY, EVITTS V LUCEY, 469 U.S. 387, 393, 83 L.ED.2D 821, 105 S.CT. 830 (1985)("THE PROCEDURES USED IN DECIDING APPEALS MUST COMPORT WITH THE DEMANDS OF THE DUE PROCESS CLAUSE OF THE CONSTITUTION.") WITH RESPECT TO WHETHER A GIVEN DELAY CONSTITUTES A DUE PROCESS VIOLATION, THE COURT HAVE NOTED THAT THE ANALYTICAL FRAMWORK SET FORTH IN BARKER V. WINGO, 407 U.S. 514, 33 L.ED. 2D 101, 92 S.CT. 2182, IS GENERALLY THE APPLICABLE ANALYSIS WITH WHICH ALL COURTS SHOULD RELAY. SEE, E.G., MATHIS II, 937 F.2D AT 794; CODY V. HENDERSON, 936 F.2D AT 719; AND SIMMONS V. REYNOLDS, 898 F.2D AT 868. THE BARKER V. WINGO ANALYSIS REQUIRES EXPLORATION OF WHETHER THE DELAY WAS EXCESSIVE, WHETHER THERE WAS AN ACCEPTABLE EXCUSE FOR IT, AND, WHETHER THE DEFENDANT WAIVED HIS RIGHTS TO A PROMPT APPEAL, AND WHETHER HE WAS PREJUDICED BY THE DELAY. THE SAME COURTS HAVE RULED APPELLATE

DELAYS OF SIX TO TEN YEARS EXCESSIVE. SEE E.G., DIAZ V. HENDERSON, 905 F.2D AT 653 ("7 YEARS EXCESSIVE"); SIMMONS V. REYNOLDS, 898 - F 2D AT 868 ("6 YEARS CLEARLY EXCESSIVE"); AND BROOKS V JONES, 875 F.2D 30, 31 (1989)("8 YEAR DELAY DEEMED EVIDENCE OF INEXCUSABLE NEGLECT").

THERE CAN BE NO CONTRADICTION IN THE RECORD THAT PETITIONER IN THIS CASE WAS DELAYED FOR OVER FOUR AND A HALF YEARS ("4½"). - PETITIONER DID EVERYTHING IN HIS LIMITED POWER AND KNOWLEDGE SEEKING AN APPEAL IN WISCONSIN COURTS. THE ACCOMPANYING EXHIBITS WHICH ARE NUMBERED FROM #1 THRU #20 DEMONSTRATE THE DILIGENCY PETITIONER PURSUED FOR FOUR AND A HALF YEARS TRYING TO GET HIS CASE APPEALED. BRIEFLY STATING, EXHIBITS #2 THRU #6 ARE EVIDENCE OF HOW MANY TIMES PETITIONER MADE IT KNOW THAT HE WANTED TO APPEAL HIS CONVICITON. HOW HE WANTED COUNSEL TO COMMUNICATE WITH HIM AND PROVIDE HIM THE FREE COPY OF HIS TRANSCRIPTS. EXHIBITS #9 AND #10 IS EVIDENCE OF PETITIONER'S CONTINUED DEMANDS FOR HIS CASE FILES. EXHIBITS #12, #14, #15, #19 AND ALL BETWEEN ARE EVIDENCE THAT BOTH COUNSEL AND THE STATE PUBLIC DEFENDER'S OFFICE WERE AWARE THAT PETITIONER IN THIS CASE WANTED TO APPEAL HIS CASE, WANTED HIS CASE FILES, AND REPEATEDLY CHALLENGED COUNSEL ABOUT HER ABANDONMENT OF HSI APPEAL RIGHTS. SEE (PAGES 4-11 OF THIS BRIEF). PETITIONER DID NOT SIT AROUND FOR YEARS DOING NOTHING. HE WAS DILIGENT IN HIS ATTEMPTS TO GET COUNSEL TO DO HER DUTY SHE WAS ASSIGNED TO DO. FUNDAMENTAL REQUISITE OF "DUE PROCESS" IS THE OPPORTUNITY TO BE HEARD ON THE DIRECT APPEAL IN THIS CASE; TO BE AWARE THAT A MATTER OF APPEAL IS PENDING, AND MAKE AN INFORMED DECISION WHETHER TO ACQUIESCE

OR CONTEST THE MANNER OF THE CONVICTION, AND TO ASSERT BEFORE THE APPROPRIATE DECISION-MAKING BODY, E.G., CIRCUIT COURT OR COURT OF APPEALS, THE REASON FOR SUCH DECISION. SEE TRINITY EPISCOPAL CORP. V. ROMNEY, D.C.N.Y., 387 F.SUPP. 1044, 1084. WHEN CONSIDERING ALL THE MANY COMMUNICATIONS BY PETITIONER ATTEMPTING, AS BEST HE COULD TO GET THE SYSTEM TO AFFORD HIM HIS APPEAL. AND TAKING INTO CONSIDERATION THAT BOTH THE CIRCUIT COURT AND COURT OF APPEALS OF WISCONSIN WERE MADE AWARE THAT A LONG PERIOD OF TIME HAD EXPIRED DUE TO COUNSEL, AND NOT DUE TO AN ACT OF THIS PETITIONER. IT WAS ERROR TO DENY THE PETITIONER A WRIT OF HABEAS CORPUS SIMPLY DUE TO SOME MISTAKEN ASSUMPTION THAT PETITIONER HAD AN AVAILABLE REMEDY BY SEEKING PERMISSION FROM THE COURT OF APPEALS TO EXTEND THE TIME UNDER WIS. STAT. § 809 82(2) TO ALLOW FOR COUNSEL TO DO A FIVE YEAR LATE NO MERIT REPORT TO AVOID FROM HAVING TO RESPOND TO THE ABANDONMENT OF PETITIONER'S DIRECT APPEAL RIGHTS. WHEN THE COURTS, BOTH CIRCUIT COURT AND COURT OF APPEALS TOOK PART IN THIS FUNDAMENTAL ABUSE OF DISCRETION, THEY BOTH VIOLATED THE RULING IN STATE V. EVANS, 2004 WI 84, 273 WIS.2D 192, 682 N.W.2D 784; 2004 WISC. LEXIS 449, WHICH SPECIFICALLY STATED A DIRECTIVE TO JUDGES THAT, "WE REAFFIRM OUR HOLDING IN STATE V. KNIGHT, 168 WIS.2D 509, 522, 484 N.W.2D 540 (1992), THAT A CLAIM OF INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL MUST BE BROUGHT BY PETITION FOR WRIT OF HABEAS CORPUS. UTILIZING WIS. STAT. § (RULE) 809.82(2), A PROCEDURAL MECHANISM, AS A SUBSTITUTE FOR A KNIGHT PETITION FOR HABEAS CORPUS, SO AS TO AVOID MAKING A SUBSTANTIVE DETERMINATION THAT A DEFENDANT WAS DENIED THE EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL CONSTITUTES AN ERRONEOUS EXERCISE OF DISCRETION."

THE COURT WENT ON TO STATE IT WAS AN ERRONEOUSLY EXERCISE OF THE COURT'S DISCRETION WHEN IT REINSTATED EVAN'S DIRECT APPEAL RIGHTS BY GRANTING HIS § (RULE) 809.82(2) MOTION TO EXTEND THE TIME FOR FILING HIS DIRECT APPEAL BECAUSE THE BASIS OF THE MOTION WAS A CLAIM OF INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL. GRANTING EVANS HIS RIGHT TO FILE HIS KNIGHT PETITION. PETITIONER'S CASE IS EVANS CASE ALL OVER AGAIN. WHEN DEFENDANT WANTED TO CONTINUE WITH HIS WRIT OF HABEAS CORPUS PETITION, BOTH THE CIRCUIT COURT, AND THE COURT OF APPEALS FORCED HIM INTO POSTCONVICTION PROCEEDING UNDER A LATE § 809.30 BY GRANTING COUNSEL'S MOTION TO REINSTATE THE DIRECT APPEALS RIGHTS SO THAT SHE COULD FILE A LATE NO MERIT REPORT. TO USE SUCH A METHOD OF EXTENDING THE TIME LIMIT TO FILE A LATE NO MERIT REPORT, IS TO SAY THAT COUNSEL IS COMPLETELY AND UNQUESTIONABLY FORGIVEN FOR HER DEFICIENT PERFORMANCE; DEFENDANT IS THEREFORE FORBIDDEN AND DENIED ANY RIGHTS TO RAISE ISSUES THAT COUNSEL WAS DELIBERATELY INEFFECTIVE. NO MATTER WHAT SHE DID TO THE PETITIONER, HE DOES NOT HAVE A RIGHT TO CHALLENGE HER ACTION. THE BLAME OF THE FOUR AND A HALF YEAR DELAY IS THUS SHIFTED TO THE PETITIONER WHO HAD NO PART IN THE DELAY. BOTH THE CIRCUIT COURT AND THE COURT OF APPEALS SINGLE JUDGE HOOVER, ARE ATTEMPTING TO MAKE LAW FROM THE BENCH, BECAUSE THERE IS NO EXISTING LAW THAT SUPPORTS WHAT THEY HAVE DONE IN THIS CASE. THE END GAME IS THIS. HAD COUNSEL DID HER JOB TO REPRESENT THIS PETITIONER, THIS ISSUE OF DELAY WOULD NOT BE IN THIS COURT OF APPEALS TODAY. DENIAL OF DUE PROCESS IS PROVEN IN THIS CASE. THEREFORE, THIS COURT IS ASKED TO ASSESS THE MERITS OF LEE'S CLAIMS OF BEING DENIED DUE PROCESS

WITHIN THIS FRAMEWORK. FIRST, THAT THE 4½ YEARS DELAY IS EXCESSIVE AND WAS WITHOUT EXCUSE; SECOND, THAT THIS PETITIONER HAS PRESENTED NUMEROUS ATTEMPTS VIA LETTERS HE HAD WRITTEN TO COUNSEL AND STATE PUBLIC DEFENDER'S OFFICE TRYING TO SPEED UP THE PROCESS; THIRD, — THAT THERE IS NOWHERE IN THE RECORD WHERE PETITIONER WAIVED ANY OF HIS APPELLATE RIGHTS TO APPEAL HIS CASE; FOURTH, THE PETITIONER IN THIS CASE HAS SUFFERED PREJUDICE IN THE FORM OF UNNECESSARY CONCERN AND ANXIETY; AND FIFTH, THE CIRCUIT COURT'S DECISION DATED FEBURARY 10, 2014, (R.208:1-3) BY JUDGE KENDALL KELLEY, AND THE COURT OF APPEALS DECISION AND ORDER GRANTING EXTENSION OF TIME UNDER WIS. STAT. § 809.82(2) TO ALLOW FOR COUNSEL TO FILE A LATE NO MERIT REPORT FIVE YEARS AFTER THE TIME HAD EXPIRED, (R.199:1) ARE BOTH ERRONEOUS EXERCISE OF DISCRETION IN VIOLATION OF STATE V. EVANS, 273 WIS.2D 192, 682 N.W.2D 784, AND NO JUSTIFICATION FOR DENYING PETITIONER'S WRIT OF HABEAS CORPUS. SEE BROOKS V. JONES, 875 F.2D 30, 31 (1989) WHERE THAT COURT RULED THAT AN EIGHT YEAR DELAY WAS DEEMED EVIDENCE OF "INEXCUASABLE NEGLECT". IN BROOKS THAT COURT ALLOWED THE ISSUE TO BE HEARD ON THE MERITS, AND THE RESPONSIBLE PARTIES HAD TO ANSWER FOR THE DELAY AND RESPOND. IN THIS CASE, NEITHER APPELLATE COUNSEL NOR THE STATE PUBLIC DEFENDER'S OFFICE HAVE HAD TO RESPOND IN ANY COURT TO THE FIVE YEAR DELAY, AND NO COURT HAS DEMANDED BRIEFING ON THE ISSUE. RATHER, THE SINGLE —— COURT OF APPEALS JUDGE, HOOVER, AND CIRCUIT COURT JUDGE KENDALL KELLEY PLOTTED TO GO THE ROUTE OF FINDING A ILLEGAL TECHNICLE LOOPHOLD OF EXTENDING THE TIME TO FILE A LATE NO MERIT REPORT TO AVOID HAVING TO MAKE A SUBSTANTIVE DETERMINATION OF PETITIONER'S CLAIM OF INEFFECTIVE COUNSEL.

II. THE 4½ YEAR DELAY BY BOTH ATTORNEY THERESA SCHMIEDER, AND THE STATE PUBLIC DEFENDER'S OFFICE UNDER KELLI S. THOMPSON HAD A DETERMENTAL IMPACT ON THE OUTCOME OF LEE'S APPEAL AND DENIED HIM A FUNDAMENTAL RIGHT TO A DIRECT APPEAL, AND TO EFFECTIVE COUNSEL ON FIRST APPEAL

WHEN A DEFENDANT-PETITIONER SUCH AS WILLIAM J. LEE HAS MADE A SHOWING THAT HIS DUE PROCESS RIGHTS HAVE BEEN VIOLATED BY SUCH A UNREASONABLE DELAY LIKE FOUR YEARS PLUS, WITH NO APPEAL STARTED BY THE APPOINTED COUNSEL, SOME COURTS HAVE REQUIRED MORE, "TO BE——A SUFFICIENT BASIS FOR RELEASE FROM CUSTODY". BUT HAVE ALSO RULED — THAT SOME SHOWING OF PREJUDICE TO THE APPEAL IS NECESSARY FOR HABEAS CORPUS RELIEF. SEE MATHIS II, 937 F.2D AT 794., WHERE IT IS RULED THAT SUCH A LONG DELAY HAS ALSO CAUSED SUBSTANTIAL PREJUDICE TO AN APPEAL DISPOSITION. CODY V. HENDERSON, 936 F.2D AT 719. AND IN MR. LEE'S CASE IT IS HIGHTLY LIKELY AND A REASONABLE PROBABILITY THAT, BUT FOR THE DELAY OF 4½ YEARS, THE RESULTS OF THE APPEAL WOULD HAVE BEEN DIFFERENT. SEE MATHIS II, 937 F.2D AT 794. THE LONG DELAY BY COUNSEL PREVENTED AN APPEAL ON SEVERAL CONSTITUTIONAL ISSUES. THOSE ISSUES BEING: FIRST, THE ISSUE OF DEFENDANT-PETITIONER BEING PUT ON DISPLAY DELIBERATELY BY ARRESTING OFFICERS TO BE VIEWED BY SOME ONE THAT WAS NOT THE ALLEGED VICTIM. OFFICERS STOP THE CAR OF THE DEFENDANT-PETITIONER, TOOK HIM OUT, HANDCUFFED HIM, MADE HIM STAND FACING IN THE DIRECTION OF CARS DRIVING BY. THEN THEY BROUGHT THE PERSON THEY WANTED TO VIEW HIM. THAT CAR WITH THE WITNESS IN IT THEN SLOWED DOWN TO ALMOST A STOP WHILE THE PERSON LOOKED AT THE

DEFENDANT-PETITIONER FOR IDENTIFICAITON PURPOSES WHILE OFFICERS ON EACH SIDE OF HIM HELD HIM WHILE HE STOOD IN HANDCUFFS. AND ONCE IT WAS BROUGHT OUT IN COURT HOW OFFICERS HAD VIOLATED DEFENDANT'S RIGHTS BY THE ILLEGAL ONE MAN SHOWUP, THE PROSECUTOR ADMITTED AT A MOTION HEARING HELD ON AUGUST 7, 2006, THAT THE WISCONSIN SUPREME COURT CASE IN STATE V. DUBOSE APPLIED TO DEFENDANT'S SITUATION AND THE IDENTIFICATIONS MADE BY BOTH STATE'S WITNESSES HAD TO BE ——— SUPPRESSED. (JUDGE KENDALL KELLEY REFUSED TO SEND UP THE TRANSCRIPTS OF THAT HEARING TO BE REVIEWED). SECOND, THE ISSUE OF THE STATE'S MAIN WITNESS TESTIFYING FALSELY CLAIMING THAT SHE KNEW DEFENDANT AND HE COMES INTO THE PLACE OF BUSINESS. PETITIONER HAD PROOF THAT THE WITNESS WAS LYING, BECAUSE THE YEARS AND TIME SHE CLAIM THAT HE USE TO COME INTO THE PLACE OF BUSINESS, HE WAS NOT IN THE GREEN BAY AREA. IN FACT, HE WAS SERVING TIME IN PRISON, HAD NEVER BEEN IN GREEN BAY, HAD NEVER BEEN SEEN BY THE WITNESS, AND HAD NEVER BEEN IN THE PLACE OF BUSINESS. HIS PRISON RECORDS PROVED THAT THE WITNESS WAS DELIBERATELY LYING TO GAIN A CONVICITON; THIRD, THE ISSUE OF A SPEEDY TRIAL VIOLATION. DEFENDANT HAD REQUESTED THAT HE BE GIVEN A FAST AND SPEEDY TRIAL. BECAUSE THE ALLEGED VICTIM HAD PASSED AWAY, AND THE STATE DID NOT HAVE ANY RELIABLE WITNESSES TO PROSECUTE THE CASE, THE STATE REQUESTED POSTPONEMENT OF THE CASE MANY TIMES, AND IT TOOK SEVEN YEARS TO BRING THE MATTER TO TRIAL. THIS VIOLATED DEFENDANT'S SPEEDY TRIAL RIGHTS; FOURTH, THE ISSUE OF THE CIRCUIT COURT NEVER HAVING JURISDICITON OVER THE CASE DUE TO THE STATE'S FAILURE TO FILE A TIMELY INFORMATION. IN THIS

CASE, THE STATE PROSECUTOR HAD ONLY FILED A SUMMONS AND COMPLAINT ON OCTOBER 10, 2002. SEE (R.1:1) AND (R.2:1-2). NO INFORMATION AT ALL HAD BEEN FILED WHEN THE JUDGE BOUND OVER AT INITIAL APPEARANCE AND COUNSEL HAD DEFENDANT WAIVE PRELIMINARY HEARING. THE WAVER AT THE PRELIMINARY HEARING WAS DONE WITHOUT PROPER JURISDICTION, SO AFTER DEFENDANT HAD WAIVED HIS RIGHTS, THE PROSECUTOR FILED A LATE INFORMATION LATER THAT DAY, BUT NEVER SERVED IT UPON THE COURT OR SERVED IT UPON DEFENDANT. SEE (R.8:1). BECAUSE OF THE LONG DELAY DEFENDANT WANTED TO PRESENT TO THE COURT OF APPEALS THE ISSUE OF "WITHOUT THE ESSENTIAL FILED INFORMATION, THE CIRCUIT COURT FAILED TO ACQUIRE PROPER JURISDICTION TO PROCEED, AND NO PARTY, NOT EVEN THE DEFENDANT COULD CONSENT TO WAIVE THAT ISSUE UNDER EX PARTE CARLSON, 106 N.W.2D 722 (1922), AND WITHOUT A VALID COMPLAINT OR INFORMATION, ANY AND ALL JUDGMENTS OR SENTENCES RENDERED ARE VOID AS INITO. RALPH V POLICE COURT OF FL CERRIOTO, 190 P.632, 634, 84 CAL.APP.2D 257 (1948). FIFTH, THE ISSUE OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL FOR FAILING TO CHALLENGE THE JURISDICTION OF THE COURT WHEN THERE WAS NO VALID INFORMATION FILED; SIXTH, THE ISSUE OF INEFFECTIVE ASSISTANCE WHEN TRIAL COUNSEL FAILED TO REQUEST A DISMISSAL OF THE CASE WHEN THE STATE CONCEDED THE DUBOSE VIOLATION AND ADMITTED THAT THE CASE HAD TO BE DISMISSED; SEVENTH, THE ISSUE OF DEFENDANT NEVER BEING ALLOWED HIS COMPULSORY PROCESS. WHEREAS, THE ALLEGED VICTIM WAS DEAD, HAD NEVER CLAIMED THAT DEFENDANT WAS THE PERSON WHO ROBBED THEM, HAD NEVER GONE TO ANY IDENTIFICATION PROCESS, AND HAD NEVER SAID THAT HE HAD BEEN ROBBED. DEFENDANT HAD A RIGHT TO CONFRONT HIS ACCUSOR.

EIGHTH, THE ISSUE OF A TOTAL LACK OF EVIDENCE AGAINST DEFENDANT TO JUSTIFY PLACING HIM ON TRIAL AT ALL. NINTH, THE ISSUE OF PLAIN ERR BY THE CIRCUIT COURT JUDGE IN ALLOWING A TRIAL TO PROCEED WHEY THE NEVER OBTAINED JURISDICTION PERSONALLY OR SUBJECT-MATTER; NINTH, THE ISSUE OF PLAIN ERROR FOR THE JUDGE'S FAILURE TO SUPPRESS ALL OF THE IDENTIFICAITON EVIDENCE OBTAINED IN VIOLATION OF DUBOSE AS ADMITTED BY THE PROSECUTOR. FINALLY, TENTH, THE ISSUE OF COUNSEL'S FAILURE TO APPEAL DEFENDANT'S CONVICITON. THE FOUR AND A HALF YEAR DELAY WAS AN ABANDONMENT OF PETITIONER'S DIRECT APPEAL BY COUNSEL THERESA SCHMIEDER AND THE STATE PUBLIC DEFENDER'S OFFICE, AND IT HAD A DETRIMENTAL IMPACT ON THE OUTCOME OF THIS PETITIONER'S FIRST APPEAL AS OF RIGHT, DENYING HIM A FUNDAMENTAL RIGHT TO APPEAL. AS A DIRECT RESULT, HE WAS COMPLETELY DENIED COUNSEL ON APPEAL, AND HE WAS DENIED AN APPEAL.

A. THE LONG DELAY & PREJUDICE WARRANTS UNCONDITIONAL RELEASE

THERE EXISTED A CONFLICT OF INTEREST FOR ATTORNEY THERESA J. SCHMIEDER TO FILE INEFFECTIVE ASSISTANCE OF COUNSEL AGAINST HERSELF. THERE IS NO DOUBT THAT THIS WAS PART OF THE REASONS WHY SHE REFUSED TO FILE AN APPEAL, AND YEARS LATER SHE OPTED TO ATTEMPT TO FILE A FIVE YEAR LATE NO MERIT REPORT TO AVOID HAVING TO RESPOND TO COURT INQUIRIES ON WHY SHE DID NOT APPEAL DEFENDANT'S FELONY CONVICTION. THE CIRCUITS ARE IN AGREEMENT WHEN IT COMES TO COUNSEL

FAILING TO FILE AN APPEAL ON BEHALF OF A DEFENDANT. COURTS HAVE RULED THAT COUNSEL'S FAILURE TO PERFECT A DIRECT APPEAL WHEN THE DEFENDANT REQUESTED COUNSEL TO FILE AN APPEAL IS PER SE VIOLATION OF THE SIXTH AMENDMENT AND CONSTITUTES INEFFECTIVE ASSISTANCE OF COUNSEL. SABA V. I.N.S , 52 F SUPP.2D 1117 (1999) AND BATISTA ZABALA V. U.S., 962 F.SUPP. 244 (1997); GRIFFIN V. U.S., 109 F.3D 1217 (7TH CIR. 1997); CASTELLANOS V. U.S., 26 F.3D 717 (7TH CIR. 1994); TURNER V. U.S., 961 F.SUPP. 189 (1997); AND LUDWIG V. U.S., 162 F.3D 456 (1998). LIKEWISE, APPELLATE COUNSEL'S ABANDONMENT OF AN APPEAL CONSTITUTES INEFFECTIVE ASSISTANCE OF COUNSEL, REQUIRING THE COURTS TO HEAR PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS TO BE HEARD. STATE V. EVANS, 2004 WI.84, 273 WIS.2D 192, 682 N.W. 2D 784; 2004 WISC. 449. IN EVANS SUPRA., CITING COLEMAN V. THOMPSON, 501 U.S. 722, 111 S.CT. 2546 (1991), THAT COURT SPECIFICALLY STATED THAT ANY PROCEDURAL DEFAULT ON PLAINTIFF'S BEHALF SHOULD BE IMPUTED TO THE STATE UNDER COLEMAN. AND LIKE COLEMAN AND EVANS, SUPRA., THERE IS NO QUESTION THAT THIS PETITIONER WAS DEPRIVED OF EFFECTIVE ASSISTANCE OF COUNSEL ON HIS DIRECT APPEAL BECAUSE COUNSEL FAILED TO DO ANYTHING IN HIS CASE FOR YEARS, ABANDONING HIS APPEAL. AND SUCH CONDUCT IS A PER SE VIOLATION OF THE RIGHT TO COUNSEL. THIS PETITIONER DID NOT WAIVE HIS RIGHT TO DIRECT APPEAL, AND HE DID NOT REQUEST THAT COUNSEL NOT FILE HIS APPEAL. THE LONG DELAY AND PREJUDICE SUFFERED BY THIS PETITIONER DESERVES A PROPER REMEDY. THE PROPER REMEDY WAS NOT TO REINSTATE THE DIRECT APPEAL AFTER ALL SOLID EVIDENCE COUNSEL ALLOWED TO GET AWAY IS LOST. THE PROPER REMEDY IS AN UNCONDITIONAL RELEASE, OR A RETRIAL OF THE CRIME.

III. THE BROWN COUNTY CIRCUIT COURT PRESIDED OVER BY JUDGE KENDALL KELLEY, IMPROPERLY DENIED PETITIONER'S WRIT OF HABEAS CORPUS SEEKING RELEASE BASED ON ABANDONMENT.

A. Relevant Law Regarding Review Of The Denial Of A Petition For Writ Of Habeas Corpus.

"An order of the circuit court denying a petition for writ of habeas corpus presents a mixed question of fact and law. Factual determination will not be reversed unless clearly erroneous. —— Whether writ of habeas is available to the party seeking relief is a question of the law that we review de novo." State V. Knight, 168 Wis.2d 509, 484 N.W.2d 540 (1992)(citation omitted); State V. Evans, 2004 WI 84, 273 Wis.2d 192, 682 N.W.2d 784. "The burden is on the petitioner to demonstrate by a preponderance of evidence that his detention is illegal." State ex rel. Hager V. Marten, 226 Wis.2d 687, 694, 594 N.W.2d 791 (1999)(citation omitted).

Habeas corpus provides extraordinary relief and is available only where specific factual circumstances are present. **First**, the party seeking habeas relief must be restrained of his or her liberty. See State ex rel. Hake V. Burke, 21 Wis.2d 405, 124 N.W.2d 457 (1963); State ex rel. Wohlfahrt V. Bodette, 95 Wis.2d 130, 132-33, 289 N.W.2d 366 (Ct.App.1980). **Second**, the person's restraint must have been imposed by a tribunal without jurisdictional power over the person or subject-matter, or the restraint must have occurred contrary to constitutional — protections. State ex rel. Warrender V. Kenosha County Ct., 67 Wis.2d 333, 339, 231 N.W.2d 193 (1975); Wolke V. Fleming 24 Wis.2d 606, 613-14, 129 N.W.2d 841 (1964); Edwin E. —— Bryant, 9 Wisconsin Pleading and Practice § 84.03, p.223-24 (3d ed. 1998). **Third**, the person improperly restrained must have no other adequate remedy available in law. State ex rel. Dowe V. Waukesha County Circuit Court, 184 Wis. 2d 724, 729, 516 N.W.2d 714 (1994).

STATE EX REL. FUENTES V. WISCONSIN COURT OF APPEALS, 225 WIS.2D 446, 451, 593 N.W.2D 48 (1999). "UNLESS THESE CRITERIA ARE MET, THE WRIT OF HABEAS CORPUS WILL NOT BE AVAILABLE TO A PRISONER." STATE EX REL. HASS V. MCREYNOLDS, 2002 WI 43, ¶ 12, 252 WIS. 2D 133, 643 N.W.2D 771.

THE "LACK OF ADEQUATE REMEDY" REQUIREMENT MEANS THAT 'RELIEF BY HABEAS CORPUS WILL NOT BE GRANTED WHERE RELIEF MAY BE HAD, OR COULD HAVE BEEN PROCURED BY RESORT TO ANOTHER GENERAL REMEDY.' — STATE EX REL. DOXTATER V. MURPHY, 248 WIS. 593, 602, 22 N.W.2D 685 (1946), (MODIFIED ON OTHER GROUNDS BY VANVOORHIS V. STATE, 26 WIS.2D 217, 221 N.2, 131 N.W.2D 833 (1965)(EMPHASIS ADDED). IN ADDITION,

> IN A POSTCONVICTION SETTING, A PETITION FOR [A] WRIT OF HABEAS CORPUS WILL NOT BE GRANTED WHERE (1) THE PETITIONER ASSERTS A CLAIM THAT HE OR SHE COULD HAVE RAISED DURING A PRIOR APPEAL, BUT FAILED TO DO SO, AND OFFERS NO VALID REASON TO EXCUSE SUCH FAILURE, OR (2) THE PETITIONER ASSERTS A CLAIM THAT ——— WAS PREVIOUSLY LITIGATED IN A PRIOR APPEAL OR MOTION — AFTER THE APPEAL.

STATE V POZO, 258 WIS 2D 796, ¶ 9 (CITATION OMITTED).

B. THE WRIT OF HABEAS CORPUS WAS PROPERLY COMMENCED IN THE CIRCUIT.

IN ITS DECISION DENYING LEE'S PETITION FOR WRIT OF HABEAS — CORPUS, THE CIRCUIT COURT WRONGLY ASSUMED THAT THE PETITIONER HAD AN OPTION TO ANOTHER ADEQUATE REMEDY AVAILABLE UNDER THE LAWS OF

THE STATE OF WISCONSIN. THE CIRCUIT COURT WRONGLY ALLEGED THAT A MOTION FOR POSTCONVICTION RELIEF COULD HAVE BEEN FILED WITH THE WISCONSIN COURT OF APPEALS. THE COURT FAILED TO EXPLAIN A STATUTE THAT WAS AVAILABLE TO BRING ABOUT THIS RESULT. BUT PETITIONER CAN AND WILL ASSUME THAT THE CIRCUIT COURT JUDGE WAS SUGGESTING THAT COUNSEL COULD FILE A MOTION UNDER WIS. STAT. § 809.82(2) AND ASK THE COURT OF APPEALS TO EXTEND THE TIME TO FILE A FOUR AND A HALF YEAR LATE APPEAL. THIS IS WHAT WAS DONE BY THE COURT OF APPEALS SINGLE JUDGE TO UNDERMINE THIS PETITIONER'S WRIT OF HABEAS CORPUS APPEAL. WHAT WAS DELIBERATELY OVER-LOOKED BY JUDGE HOOVER WAS THE FACT THAT HE DID NOT HAVE THE AUTHORITY TO OVER-RULE STATE V. EVANS, 2004 WI 84, 273 WIS.2D 192, 682 N.W.2D 784; 2004 WIS. LEXIS 449, WHICH SPECIFICALLY RULED AND STATED THAT,

> "...[W]E REAFFIRM OUR HOLDING IN STATE V KNIGHT, 168 WIS.2D 509, 522, 484 N.W.2D 540 (1992), THAT A CLAIM —— OF INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL MUST BE BROUGHT BY A PETITION FOR WRIT OF HABEAS CORPUS. UTILIZING WIS. STAT § (RULE) 809.82(2), A PROCEDURAL MECHANISM, AS A SUBSTITUTE FOR A KNIGHT PETITION FOR HABEAS CORPUS, SO AS TO AVOID THE COURT MAKING A SUBSTANTIVE DETERMINATION THAT A DEFENDANT — WAS DENIED THE EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL ON DIRECT APPEAL, CONSTITUTES AN ERRONEOUS EXERCISE OF A COURTS DISCRETION. THEREFORE, WE HOLD THAT THE COURT OF APPEALS IN THIS CASE ERRONEOUSLY EXERCISED ITS DISCRETION WHEN IT REINSTATED EVANS'S DIRECT APPEAL RIGHTS BY GRANTING HIS § (RULE) 809.82(2) MOTION TO EXTEND THE TIME FOR FILING HIS DIRECT APPEAL BECAUSE THE BASIS FOR THE MOTION WAS A CLAIM —— OF INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL. AS SUCH, WE DO NOT REACH THE OTHER ISSUES PRESENTED IN THIS CASE. EVANS REMAINS FREE TO FILE A KNIGHT PETITION WITH THE COURT OF APPEALS..."

THIS DEFENDANT-PETITIONER-APPELLATE, WILLIAM J. LEE SUBMITS THAT HIS CASE MIRRORS THE EVANS CASE. WHAT IS DIFFERENT BETWEEN THE -

CASES IS THAT IN EVANS, IT WAS THE STATE ATTORNEY GENERAL'S OFFICE WHO TOOK THE POSITION THAT APPELLATE COURT ERRED IN REINSTATING - EVANS DIRECT APPEAL RIGHTS BY UTILIZING WIS. STAT. § 809.82(2) TO SUBSTITUTE A KNIGHT PETITION WHICH WAS ALLEGING INEFFECTIVENESS ON APPELLATE COUNSEL. THE WISCONSIN SUPREME COURT AGREED WITH THE STATE. AND BECAUSE OF THAT MISUSE OF THE EXTENSION STATUTE, THAT JUDGMENT WAS REVERSED.

PETITIONER LEE FOLLOWED EVANS TO THE LETTER. NOW THE STATE WANTS TO PUT ON ITS HYPOCRISY MASK AND TAKE THE POSITION THAT THE PETITIONER SHOULD HAVE BEEN PERMITTED TO USE "A PROCEDURAL ESCAPE MECHANISM" STATUTE, § 809.82(2) TO ALLOW THE COURT OF APPEALS TO EXTEND THE TIME TO FILE THE NOTICE OF APPEAL TO AVOID CHALLENGES BY THE PETITIONER TO INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL. IF SUCH AN ACT WAS WRONG IN EVANS IT IS WRONG IN LEE'S CASE TOO. THE COURT OF APPEALS SINGLE JUDGE, HOOVER WAS PROVIDED WITH THE EVANS CASE AUTHORITY PRIOR TO HIS MAKING THE DECISION TO UNDERMINE PETITIONER'S WRIT OF HABEAS CORPUS PROCESS. JUDGE HOOVER KNEW HE WAS GOING AGAINST THE WISCONSIN SUPREME COURT'S DIRECTIONS, AND HE DID SO WITHOUT GIVING A THOUGHT TO THE LAW HE WAS VIOLATING.

PETITIONER LEE TAKES THE POSITION THAT THE COURT OF APPEALS ERRED IN REINSTATING HIS DIRECT APPEAL RIGHTS. FIRST, THE MOTION TO EXTEND THE TIME WAS PREMISED ON A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL ON DIRECT APPEAL BY THIS PETITIONER IN CIRCUIT COURT AS HE ASKED THAT COURT TO ENTERTAIN A WRIT OF HABEAS CORPUS UNDER THE KNIGHT RULE.

AS SUCH A CLAIM IS PROPERLY ADDRESSED BY A HABEAS CORPUS PETITION ONLY. SECOND, THERE WAS NO OTHER OPTION FOR POSTCONVICTION RELIEF UNDER WIS. STATS., BECAUSE ANY MOTIONS FILED UNDER A RULE § 809.-82(2) EXTENSION OF TIME REQUEST AFTER THE TIME FOR APPEAL HAS EXPIRED CANNOT BE BASED UPON A CLAIM OF INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL FOR A NUMBER OF REASONS. ONE REASON PARTICULARLY IS THE FACT THAT CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL WILL REQUIRE FACT-FINDING, REQUIRING TESTIMONY FROM APPELLATE COUNSEL AS TO WHY NO APPEAL WAS FILED IN ORDER TO DETERMINE WHETHER THAT ATTORNEY WAS DEFICIENT. THIRD, AND IN SOME CASES, BECAUSE A HABEAS PETITION WILL USUALLY BE SUBJECT TO THE DEFENSE OF LACHES, TESTIMONY WAS REQUIRED FROM THIS DEFENDANT AS TO WHY HE WAITED A LENGTHY PERIOD OF TIME BEFORE BRINGING A HABEAS CORPUS PETITION. FINALLY, THE HABEAS CORPUS PETITION WAS BETTER IN PUTTING THE STATE ON — NOTICE THAT THIS DEFENDANT WAS MAKING A CLAIM OF INEFFECTIVE ASS-ISTANCE OF COUNSEL. FOR ALL THE FOLLOWING REASONS, THE WRIT OF HABEAS CORPUS WAS PROPERLY COMMENCED IN THE CIRCUIT COURT. THE SINGLE COURT OF APPEALS JUDGE GRANTED COUNSEL'S MOTION TO FILE A LATE NO MERIT JUST TO AVOID ALLOWING ALL QUESTIONS OF COUNSEL'S DELIBERATE ABANDONMENT OF PETITIONER'S DIRECT APPEAL RIGHTS. THIS GOES AGAINST THE Evans RULING. THIS DEFENDANT-PETITIONER MADE HIS OBJECTIONS KNOWN THAT THE GRANTING OF A RULE § 809.82 (2) MOTION WAS NOT IN THE JUDGE'S AUTHORITY IN THIS CASE, AND WENT AGAINST THE Evans RULING. AND ALTHOUGH JUDGE HOOVER WAS TRYING HARD TO GET THIS DEFENDANT PETITIONER TO LITIGATE HIS CASE UNDER A POSTCONVIC-TION STATUS AND ABANDON HIS WRIT, THIS PETITIONER HAS REFUSED TO DO SO.

IV. 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. THE RULING VIOLATED 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.

EVANS, SUPRA. PROHIBITED JUDGES FROM UTILIZING WIS. STAT. § 809.82(2) WHICH IS A PROCEDURAL MECHANISM, AS A SUBSTITUTE FOR A KNIGHT PETITION FOR HABEAS CORPUS, SO AS TO AVOID MAKING A SUBSTANTIVE DETERMINATION THAT A DEFENDANT WAS DENIED THE EFFECTIVE — ASSISTANCE OF APPELLATE COUNSEL. THE EVANS COURT RULED THAT THIS TYPE OF USE BY A COURT OF APPEALS JUDGE WAS AN ERRONEOUS EXERCISE OF THE COURT'S DISCRETION WHEN IT REINSTATE SOMEONE'S APPEAL AS OF RIGHT, THE DIRECT APPEAL. JUDGE HOOVER KNEW THIS WAS A CASE WHERE THE DEFENDANT-PETITIONER WAS CHALLENGING HIS APPELLATE —— COUNSEL'S ACTION OF ABANDONING THE DIRECT APPEAL FOR ALMOST FIVE YEARS. THE JUDGE KNEW THAT THIS DEFENDANT-PETITIONER WAS MAKING A CHARGE OF INEFFECTIVE ASSISTANCE OF COUNSEL AGAINST THAT LAWYER. THE JUDGE ALSO KNEW THAT THERE WAS A PENDING WRIT OF HABEAS CORPUS IN THE BROWN COUNTY CIRCUIT COURT BEFORE JUDGE KENDALL KELLEY THAT HAD NOT BEEN RULED UPON, AND THERE HAD BEEN DAYS OF COURT HEARINGS BEFORE JUDGE KENDALL KELLEY QUESTIONING COUNSEL'S ACTIONS FOR NOT APPEALING DEFENDANT'S CASE. THE COURT OF APPEALS DID NOT HAVE ANY JURISDICTION, PRIOR TO AN APPEAL BY THIS PETITIONER TO MAKE SUCH RULINGS CONCERNING POSTCONVICTION RELIEF TO TAKE AWAY JURISDICTION AND CONSIDERATION FROM JUDGE KENDALL KELLEY'S ABILITY TO RULE ON THE WRIT PENDING IN HIS COURT.

THERE WAS NO REASON FOR THE SINGLE COURT JUDGE, HOOVER TO UTILIZE WIS. STAT. § 809.82(2) AND EXTEND THE TIME TO FILE A LATE NO MERIT REPORT, AS THAT MATTER WAS ALREADY BEING ADDRESSED IN THE CIRCUIT COURT ON WHY COUNSEL HAD ABANDONED THE DEFENDANT'S — DIRECT APPEAL. ATTORNEY THERESA SCHMEIDER WAS NOT COUNSEL ON THE RECORD, THERE WAS NO PROOF THAT COUNSEL HAD EVER BEEN APPOINTED TO REPRESENT THIS DEFENDANT-APPELLATE-PETITIONER. THESE QUESTIONS ARE THE QUESTIONS THAT WERE BEING ASKED OF THE CIRCUIT COURT, AND THE ANSWER WAS BEING DAMANDED BY THIS PETITIONER. THIS PETITIONER HAD DISCOVERED A CRIMINAL SCHEME INVOLVING ATTORNEY SCHMEIDER AND SOMEONE WORKING WITHIN THE STATE PUBLIC DEFENDER'S OFFICE WHO DID LAWYER ASSIGNMENTS TO INDIGENT DEFENDANTS. SCHMEIDER AND A PERSON WORKING WITH THE PUBLIC DEFENDER'S OFFICE WOULD GATHER NAMES OF INDIVIDUALS CONVICTED OF FELONIES AND PLACED IN PRISON, WHO THEY THOUGHT WERE NOT VERY BRIGHT, AND WHOM THEY FELT WOULD NOT DO ANY DIGGING INTO THE ACTIVITIES OF AN ASSUMED APPOINTED COUNSEL IF OR WHEN THE COUNSEL CLOSE THEIR CASE AFTER PRETENDING TO REPRESENT A PERSON AFTER APPOINTMENT. MS. THERESA SCHMEIDER CONTACTED MR. LEE VIA LETTER ON APRIL 27, 2009 , "FALSELY" CLAIMING THAT SHE HAD BEEN APPOINTED TO REPRESENT HIM IN HIS POSTCONVICTION CLAIMS. SEE ATTACHED (EXHIBIT #1). BUT AFTER MANY YEARS OF COUNSEL IGNORING EVERY LETTER WRITTEN BY THIS DEFENDANT-APPELLATE-PETITIONER, AND AFTER AN INVESTIGATION BY THIS DEFENDANT TRYING TO FIND OUT JUST WHO MADE THE ASSIGNMENT OF MS. SCHMEIDER. DEFENDANT-APPELLATE LEE

SOUGHT OUT THE DATE OF THE ASSIGNMENT OF COUNSEL, AND SOUGHT JUST WHO MADE THE ASSIGNMENT. ATTORNEY SCHMEIDER REFUSE TO PROVIDE THE DEFENDANT A COPY OF ANY ASSIGNMENT DOCUMENTS BY THE STATE PUBLIC DEFENDER'S OFFICE. DEFENDANT HAD FAMILY MEMBERS CALL THE STATE PUBLIC DEFENDER'S OFFICE ASKING WHO HAD MADE THE ASSIGNMENT, AND ASKING WHAT DATE THE ASSIGNMENT WAS MADE. THERE WAS NO RECORD ON ANY ACTUAL ASSIGNMENT RECORDS WITH THAT DEPARTMENT. THERE WERE A NUMBER OF COURT HEARINGS HELD IN THE CIRCUIT COURT TO QUESTION IF COUNSEL WAS ACTUALLY REPRESENTING THIS DEFENDANT-APPELLATE. THIS DEFENDANT MAINTAINED THROUGH OUT ALL HEARINGS THAT COUNSEL WAS NO ATTORNEY OF HIS, SHE DID NOT REPRESENT HIM, AND SHE HAD NO RIGHT TO BE IN COURT ASKING PERMISSION TO FILE A NO MERIT REPORT UNTIL SHE PROVIDE PROOF OF HER ACTUAL ASSIGNMENT TO HIS CASE. COUNSEL COULD NOT AND WOULD NOT PRODUCE ANY ASSIGNMENT DOCUMENTS. BUT SHE CONTINUED TO TRY AND GET THE COURT TO SAY SHE WAS COUNSEL OF RECORD IN DEFENDANT'S CASE. CIRCUIT COURT JUDGE KENDALL KELLEY AND COURT OF APPEALS JUDGE HOOVER IGNORED DEFENDANT'S CLAIM THAT COUNSEL WAS NOT REPRESENTING HIM. TO PROVE TO THE COURT OF APPEALS THAT COUNSEL WAS NOT REPRESENTING THE DEFENDANT-PETITIONER, THIS DEFENDANT WAITED UNTIL JUDGE KENDALL KELLEY HAD ISSUED A DECISION DENYING THE WRIT OF HABESA CORPUS ON FEBRUARY 7, 2014. HE ALLOWED THE CLERK OF CIRCUIT COURT FOR BROWN COUNTY TO COMPILE EVERYTHING THAT BELONG IN THE RECORD DATED BACK TO OCTOBER 10, 2002 UP UNTIL THE FINAL DOCKETED ITEM DATED AUGUST 16, 2013. IDENTIFIED BY THE DOCKET NUMBERS 1 THRU 274. EVERY APPOINTMENT OF COUNSEL NOTICE

AND ASSIGNMENT HAS TO BE PART OF THE RECORDS. THE RECORD PROVES, WITHOUT DOUBT THAT THERE WAS NEVER AN ASSIGNMENT OR APPOINTMENT OF COUNSEL MADE BY THE STATE PUBLIC DEFENDER'S OFFICE DURING THE DIRECT APPEAL IN DEFENDANT-PETITIONER'S CASE. THE ONLY RECORD OF COUNSEL'S WITHDRAWAL AND APPOINTMENT WERE IN FEBRUARY THRU MAY OF 2004. SEE (R.55:1-8), (R.60:1), (R.61:1), (R.66:1) AND (R.67:1). THE ONLY LATER ASSIGNMENT OF ANY APPELLATE COUNSEL WAS DATED BACK ON MAY 11, 2014. SEE (R.68:1). THIS APPOINTMENT OF COUNSEL WAS MADE LONG AFTER PETITIONER FILED HIS PETITION FOR WRIT OF HABEAS CORPUS IN THE CIRCUIT COURT, COURT OF APPEALS, AND SUPREME COURT. SEE (R.178:1-45); IT WAS MADE LONG AFTER COUNSEL FILED A MOTION WITH THE COURTS TO WITHDRAW. (R.180:1-3); LONG AFTER A SECOND — MOTION WAS FILED BY COUNSEL SEEKING PERMISSION TO WITHDRAW FROM REPRESENTATION. (R.188:1-3) DATED JUNE 26, 2013, AND LONG AFTER THE COURT ISSUED ITS ORDER EXTENDING THE TIME FOR COUNSEL TO FILE A LATE NO MERIT REPORT. COUNSEL FILED A MOTION WITH THE COURT OF APPEALS ON OCTOBER 4, 2013 SEEKING TO FILE A NO MERIT REPORT BY HAVING THE TIME EXTENDED UNDER WIS. STAT. § 809.82(2) IN VIOLATION OF THE EVANS RULING. (R.198:1-7). THIS COURT, BY JUDGE HOOVER DID GRANT SAME AND IGNORED DEFENDANT'S CLAIM THAT COUNSEL NEVER DID REPRESENT HIM. HOOVER NEVER BOTHERED TO REVIEW THE RECORDS TO SEE WHETHER THERE EXISTED AN APPOINTMENT ORDER AS CLAIMED BY COUNSEL. WHEN COUNSEL SEEN THAT THE DEFENDANT WOULD NOT STOP CLAIMING THAT THERE WAS NO ASSIGNMENT SHEET, COUNSEL MANAGED TO GET SOMEONE SIC FROM THE STATE PUBLIC DEFENDER'S OFFICE TO SEND AN ASSIGNMENT PAGE

ORDER SHEET DATED MAY 11, 2014 TO THE CLERK'S OFFICE FOR FILING TO BE PART OF THE RECORD TO SAY COUNSEL WAS ASSIGNED AT SOME POINT IN THE APPEAL, AS IF THIS LATE ASSIGNMENT WOULD ERASE THE FRAUD THAT HAS BEEN DONE IN THIS CASE. THIS IS WHERE THE FRAUD IS READILY AND CLEARLY APPARENT. THIS COURT OF APPEALS IS ASKED TO TAKE NOTICE OF THE DATES OF THE EVENTS AND DOCUMENTS FILED. IF THE CLERK'S DOCKET SHEET WAS PREPARED AND SENT ON THE DATES IDENTIFIED BY CLERK OF BROWN COUNTY IN GREEN BAY, WISCONSIN. THE COURT NEEDS TO ASK ITSELF THESE QUESTIONS. FIRST, HOW IS IT THAT THE CLERK CAN PREPARE A NOTICE OF COMPILATION OF RECORD ON APRIL 24, 2014, AND SEND IT TO ALL PARTIES, INCLUDING THIS DEFENDANT TO INFORM THEM THAT THIS RECORD WILL BE FORWARDED TO THE CLERK OF THE COURT OF APPEALS ON MAY 8, 2014 AFTER EVERYONE HAS INSPECTED THE RECORD TO SEE IF IT IS A COMPLETE RECORD. YET THE CONTENT OF THE RECORD HAS THE SHEET DATED MAY 11, 2014 IN CLAIMING THAT COUNSEL WAS APPOINTED TO THIS CASE ONE MONTH AND THIRTEEN DAYS BEFORE THE RECORD WAS PREPARED? HOW CAN AN ATTORNEY ASSIGNMENT DOCUMENT FIND ITSELF INTO A RECORD A MONTH AND A HALF BEFORE THAT DATE EVEN COMES? I'LL TELL YOU! IT WAS A PLANTED DOCUMENT BY COUNSEL, JUDGE KENDALL KELLEY, AND SOME ONE WILLING TO CONTINUE THIS FRAUD AGAINST THIS DEFENDANT. THERE WAS NEVER AN APPOINTMENT OF COUNSEL MADE BY THE STATE PUBLIC DEFENDER'S OFFICE TO DEFENDANT'S CASE. COUNSEL IS INVOLVED WITH A GROUP OF WISCONSIN LAWYERS WHO ARE PROFESSIONAL NO MERIT REPORT WRITERS. BECAUSE MOST INMATES DO NOT UNDERSTAND THE PROCESS OF HOW COUNSEL IS APPOINTED, THESE LAWYERS AND A PERSON WORKING WITH THAT

AGENCY TAKE INMATES CONVICTED OF CRIMES NAMES, THEY SUBMIT BILLS FOR PAYMENT TO THE AGENCY AS IF THEY ACTUALLY WORKED ON INMATES' CASE, AND THEY FILE NO MEWRIT REPORTS ON THE INMATES WITHOUT EVEN REVIEWING THEIR RECORDS FOR ISSUES OF MERIT. 90% OF MOST INMATES DO NOT KNOW HOW TO QUESTION WHETHER OR NOT THERE WAS AN ACTUAL ASSIGNMENT BY THAT AGENCY. AND SINCE THE AGENCY WHO MAKE THE ASSIGNMENTS ARE SEPARATED FROM THE BILLING DEPARTMENT, BILLS ARE SUBMITTED BY THESE UNASSIGNED ATTORNEYS TO THE BILLING DEPARTMENT AND PAYMENT IS GIVEN WITHOUT QUESTION OF ACTUAL ASSIGNMENT. THIS DEFENDANT KNOWS THIS TO BE TRUE, AS HE CONTACTED THAT BILLING PART OF THE AGENCY, AND WAS TOLD THAT COUNSEL HAD BEEN PAID AS A CLIENT, BUT WAS NO LONGER WORKING ON DEFENDANT'S CASE. IF THIS DEFENDANT COULD FIND OUT THIS INFORMATION. CERTAINLY A JUDGE WHO HAS TO ACTUALLY RULE ON COUNSEL BEING ALLOWED TO WITHDRAW FROM A DEFENDANT'S CASE, CAN DO SO IF SHE ACTUALLY WAS REPRESENTING THE DEFENDANT. IN THIS CASE, COUNSEL WAS NOT REPRESENTING DEFENDANT WHEN THE COURT ALLOWED HER TO FILE A LATE NO MERIT REPORT. IT WAS AN ABSOLUTE ERROR FOR JUDGE HOOVER TO GRANT COUNSEL PERMISSION TO FILE A LATE FIVE YEAR NO MERIT REPORT. WHAT MAKES IT EVEN WORSE IS THE FACT THAT THE JUDGE SHOULD HAVE CHECKED THE RECORDS TO SEE IF WHAT DEFENDANT WAS SAYING WAS TRUE. HOOVER NEVER BOTHERED TO EVEN CHECK. AND HE IGNORED THE WISCONSIN SUPREME COURT DECISION IN EVANS WHICH PROHIBITED HIM FROM ISSUING THAT ORDER. IN A CASE OF THIS NATURE, THIS DEFENDANT IS ENTITLED TO IMMEDIATE RELEASE FROM HIS ILLEGAL RESTRAINT. THE WRIT OF HABEAS CORPUS MUST BE GRANTED.

V. THE ACTIONS BY JUDGE HOOVER AMOUNT TO JUDICIAL MISCONDUCT AND IS CRIMINAL IN NATURE. JUDGE HOOVER HAS AN OBLIGATION TO DISQUALIFY HIMSELF FROM PRESIDING OVER ANY DECISIONS CONCERNING THIS CASE, AS THERE IS THE CLEAR APPEARANCE OF JUDICIAL BIAS THAT MAKES IT IMPOSSIBLE FOR THERE TO BE A FAIR DETERMINATION, AND RULING ON THE MERITS THAT ARE NOT SUSPECT.

PETITIONER MOVES THIS COURT OF APPEALS PURSUANT TO WIS. STAT. § 757.19(2)(G), AND THE DUE PROCESS CLAUSE OF THE STATE, AND THE STATE AND FEDERAL CONSTITUTIONS, TO HAVE JUDGE HOOVER DISQUALIFY HIMSELF FROM PRESIDING IN ANY MANNER OVER THIS APPEAL. IT IS THE PETITIONER'S POSITION THAT JUDGE HOOVER IS A MAIN PART OF WHAT CAN BEEN SEEN AS THE DRIVING FORCE TO DELIBERATLY UNDERMINE AN APPEAL BY THIS PETITIONER. IT WAS JUDGE HOOVER WHO DISMISSED THE WRIT OF HABEAS CORPUS BY WRONGLY CLAIMING THAT IT WAS NOT VARIFIED; THEN JUDGE HOOVER CONSPIRED WITH AN ATTORNEY THAT WAS NOT REPRESENTING THIS DEFENDANT ACCORDING TO ALL THE RECORDS BEFORE THE JUDGE, TO FILE A FIVE YEAR LATE NO MERIT AGAINST THE Evans RULING; WHEN HE CONSPIRED WITH THIS ATTORNEY THAT WAS NOT COUNSEL OF RECORDS, HE FAILED TO EVEN NOTIFY THIS PRO SE DEFENDANT THAT THE MOTION, THAT COUNSEL HAD FILED WAS FILED WITH THE CLERK'S OFFICE, AND BEFORE A RESPONSE COULD BE MADE BY THIS DEFENDANT-PETITIONER, JUDGE HOOVER IMMEDIATELY RULED ON THE MOTION IN TWO DAYS. NEITHER HOOVER, NOR THE ATTORNEY NOTIFIED THIS PRO SE PETITIONER OF SAID MOTION. THE ONLY WAY THAT THIS PETITIONER LEARNED OF THE PLOT BY COUNSEL AND JUDGE HOOVER WAS BECAUSE THE ASSISTANT ATTORNEY GENERAL DECIDED THAT THIS PRO SE DEFENDANT WAS ENTITLED TO HAVE SAID NOTICE OF THE FILING BY COUNSEL TO FILE A LATE NO MERIT REPORT. HOWEVER, HOOVER

HAD ALREADY GRANTED COUNSEL'S REQUEST TO FILE A NO MERIT - REPORT. THEN HOOVER GRANTED COUNSEL'S REQUEST TO WITHDRAW FROM — REPRESENTATION, EVEN THOUGH SHE DID NOT REPRESENT THIS DEFENDANT ON ANY LEVEL OF HIS APPEAL, AND HOOVER WAS NOT PRESENTED WITH ANY EVIDENCE THAT SHE WAS EVER COUNSEL OF RECORD, THAT SHE RECEIVED A ASSIGNMENT FROM THE STATE PUBLIC DEFENDER'S OFFICE TO REPRESENT THIS DEFENDANT-PETITIONER. THIS PETITIONER HAS ALREADY PRESENTED THE FACTS SHOWING HOW THE RECORDS WERE DOCTORED TO MAKE IT APPEAR THAT COUNSEL WAS ASSIGNED TO THIS CASE. SHE NEVER WAS. FINALLY, A CLEAR CASE OF BIAS IS IN THE FACTS THAT HOOVER CONTINUES TO DENY THIS DEFENDANT HIS RIGHT TO AN EFFECTIVE APPEAL BY DENYING HIM A RIGHT TO BE HEARD ON A COMPLETE RECORD. EVER RECROD TRANSCRIPTS THAT DEMONSTRATES EITHER PETITIONER'S ISSUES HE WANTS TO RAISE ON APPEAL, OR ISSUES DEALING WITH APPELLATE COUNSEL'S FAILURES TO DO AN APPEAL, HOOVER AND JUDGE KENDALL KELLEY HAVE PLOTTED TO MAKE SURE NONE OF THOSE TRANSCRIPTS ARE REVIEWED ON THE APPELATE LEVEL BECAUSE THE DEFENDANT'S WRIT OF HABEAS CORPUS HAS TO BE GRANTED. WISCONSIN STATUTE AND CONSTITUTION RECOGNIZES THE APPEARANCE OF BIAS AS REASONS TO JUSTIFY A JUDGE DISQUALIFYING THEMSELVES. THIS CASE IS A CLEAR CASE WHERE THERE IS AN APPEARANCE OF BIAS REQUIRING A COURT OF APPEALS JUDGE NOT TO TAKE PART IN A DECISION MAKING PROCESS INVOLVING A CRIMINAL CASE. THE IMPARTIALITY IN THIS CASE CAN REASONABLY BE QUESTIONED. SEE STATE V. WALBERG, 109 WIS 2D 96, 106, 325 N.W. 2D 687 (1982). EITHER JUDGE HOOVER SHOULD DISQUALITY HIMSELF, OR THIS CASE SHOULD BE TRANSFERRED TO ANOTHER DISTRICT.

CONCLUSION

THE DEFENDANT-PETITIONER-APPELLATE HAS PROVEN THAT HE WAS ENTITLED TO A WRIT OF HABEAS CORPUS. HE HAS DEMONSTRATED THAT HIS CASE CONVICTION SHOULD BE REVERSED. DUE PROCESS OF THE LAW REQUIRES THIS COURT OF APPEALS TO REMAND THIS MATTER BACK TO THE CIRCUIT COURT WITH DIRECTIONS TO JUDGE KENDELL KELLEY TO GRANT THE WRIT OF HABEAS CORPUS, AS DEFENDANT-PETITIONER-APPELLATE IS BEING RESTRAINED OF HIS LIBERTY.

DATED THIS 30th DAY OF January 2015.

SUBMITTED BY:

William Lee

WILLIAM J. LEE #229110
PRO SE LITIGANT.

CC:FILE
WJL:STM

APPENDIX
AND
EXHIBITS

Melissa J. Schmieder
Attorney at Law

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EXHIBIT
#1

April 27, 2009

William J. Lee #00229110
c/o Racine Correctional Institution
2019 Wisconsin Street
P.O. Box 900
Sturtevant, WI 53177-0900

Re: State. v. Lee
Case No. 02-CF-886

Dear Mr. Lee,

I have been appointed to represent you in your post conviction claims in the above matter. I will be quite honest with you, and tell you that I am very busy over the next 30 to 45 days because of other trial and case commitments. Therefore, I will likely not be able meet with you until late in June or sometime in July. I make it a practice to have at least one face to face meeting with my post conviction clients prior to filing any significant documents with the court.

During the next 60 days I will be receiving the various transcripts that have been ordered. I have 60 days after that time to review the transcripts and then must do one of the following: request additional time to review and prepare your claims; or consult with you regarding one of the following resolutions: if there are possible claims: whether to file a post conviction motion or notice of appeal – whichever is warranted by your facts; if there are no possible claims: discuss with you closure of your file, determine if you wish to obtain private counsel, or wish me file a no-merit report. (When the time comes I will explain these choices in greater detail.)

I am sending you several releases that I ask you sign and return to me. These will enable me to gain your records from your prior counsel, the Department of Corrections, and the Brown County Jail. In those instances where a defendant is resentenced, their conduct while

Theresa J. Schmieder
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incarcerated under the original sentence may be considered by the court. I don't know if re-sentencing is or will be an issue in your case, but I make it a practice to inform myself of my client's incarceration records (pre and post sentencing) to be prepared in any case. I have also taken the liberty of sending a couple of blank releases so that if there are other entities that you believe might have records helpful to me, that you can complete their name, and sign and send those back as well.

I would like you to also write me back and let me know what errors you believe were committed during your trial, or pre-trial process that have lead you to pursue post-conviction relief. I have very little knowledge about your case at this time, so when you write please take the time to explain your concerns as though you were talking to someone unfamiliar with your case – because at this time I am. I assure you that I will not remain that way for long, but until I have a chance to get your trial attorney's materials and the transcripts – you are my only source of information.

You may telephone my office collect when necessary. If you call collect while I am in the office, and available I will accept the charges. If I am not available, then I will not accept the charges...I am sure you can understand my hesitancy to incur extra costs just to tell you that I cannot speak with you because I have a prior commitment.

I look forward to working with you on this matter, and hope that we can achieve a just result.

Sincerely,

Theresa J. Schmieder
Enclosure: SASE, Releases (Eleven)

June 5, 2009

EXHIBIT #2

Dear Attorney Schmieder,

On April 27th, I received a letter from you stating that you had been appointed to represent me on my appeal. You also said that you would be busy for the next 30-45 days. Ma'am, that time has passed and I was wondering when were you planning on scheduling a attorney visit with me, or set up a phone conference. I have witnesses that I would like you to interview. I'm confident these individuals will support my position as to my whereabouts and the time of morning in question. I look forward to hearing back from you at your earliest possible convenience. Your attention to this matter is appreciated.

Thank You,

William Lee

William Lee

cc: Attorney Schmieder

EXHIBIT #3

August 5, 2009

Dear Ms. Schmieder

On June 5th, I wrote you in an attempt to find out when you were planning on scheduling a time when you'd be coming to meet with me here at Racine Correctional Institution to discuss my appeal issues. Since then my family has made several attempts at contacting you at the office number you provided me to inquire with you on my behalf, without any success. Specifically, my older sibling has called your office at least 10-15 times so far and continuously gets your voicemail indicating that you are unavailable. I've also been attempting to make contact with you via a collect call which in your introduction letter you sent on April 29th, that I could call collect from thi institution. And each attempt that I have made has been "refused". I need to know Ms. Schmieder, are you representing me or not?

Sincerely
William Lee
William Lee

cc: Ms. Schmieder

[Lee's Copy]

EXHIBIT #4

November 6 , 2009

Dear Ms. Schmieder,

This letter is to inquire about the status of my appeal. I want to inform you that I've located (2) witnesses, and they've told me that they would not be discussing my case with anyone except my attorney. It's imperative that you contact my family so they can connect you with these witnesses. They have crucial information that will only help me in corroborating my alibi. These witnesses were not known to me or my trial counsel. I need to hear from you as soon as possible. I do not know how long I will be in communication with these witnesses from my current predicament and limited access to phones, etc.

Sincerely,

William Lee

William Lee

cc: Ms. Schmieder

["Lee's Copy"]

EXHIBIT #5

January 18 , 2010

Dear Ms. Schmieder,

To date, I'm still waiting to hear something from you. I've been doing research and have recently come across a case I believe will help me. State v. Dubose (285 Wis. 2d 143). I've again, been calling and calling your office attempting to get through with a collect phone call from here at Racine Correctional Institution, and I keep getting a " refused charges " recording. I've not received any responses to any of my previous letters to you. I continue to have my family call your office, and you are always out of the office. I would appreciate a response.

Thank You,

William Lee

William Lee

cc: Ms. Schmieder

[Lee's Copy]

EXHIBIT #6

November 15, 2010

Dear Attorney Schmieder,

I recently wrote you two letters, one dated; October 7th, the other dated; November 8th, and so far I've written letters to the P.O. Box address you provided dated; June 5th, August 5th, November 6th, 2009 and January 18th, 2010. A total of 6 unanswered letters. And so far, the only correspondence initiated by you that I'm in possession of is dated; April 27th, 2009 when you officially informed me that you were appointed to represent me. I'm wondering are you screening my calls Ms. Schmieder? Also, I've had my immediate family continue at trying to make contact with you on my behalf because of my inability to do so with the information and contact numbers you provided me in your one letter to me outlining what i was to expect from you. They're getting the same results as I am and they're not under any of the communication restrictions i currently am. since you're not willing to consult with me nor my immediate next of kins, then th alternative or the least you can do is forward me a copy of my transcripts so that I can research my case.

Sincerely,

William Lee

William Lee

cc: Attorney Schmieder

Theresa J. Schmieder
Attorney at Law

Post Office Box 697
Green Bay, Wisconsin 54305-0697
Phone: 920-863-1890
Fax: 920-863-1891
Email: tjslaw@sbcglobal.net
Email: attorney@schmieder-law.org

EXHIBIT
7

November 18, 2010

William J. Lee #00229110
c/o Racine Correctional Institution
2019 Wisconsin Street
P.O. Box 900
Sturtevant, WI 53177-0900

Re: State. v. Lee
Case No. 02-CF-886

Dear Mr. Lee,

Enclosed is a copy of the letter that was sent today to the court reporter that has several outstanding transcripts (5).

I will be sending you a more detailed letter of my analysis of the possible avenues of appeal, once I receive them. As I indicate in my enclosed letter, if I do not receive them shortly I will be filing a motion for sanctions and ask the Court of Appeals to compel the court reporter to complete them. I do not know how successful that will be, so I am hopeful that my reminder letter will be sufficient to gain her cooperation.

I have received your letters of October 7, 2010 and November 8, 2010, and have read them. Thank you for confirming that your appeal is only to 02-CF-886 and not the other files. This will help me as I complete my analysis of your appeal.

Theresa J. Schmieder
Attorney at Law

Post Office Box 697
Green Bay, Wisconsin 54305-0697
Phone: 920-863-1890
Fax: 920-863-1891
Email: tjslaw@sbcglobal.net
Email: attorney@schmieder-law.org

Once I have received the last transcript, I will have 60 days to file a Notice of Appeal, a Post-Conviction Motion, or obtain your permission to close the file. If you do not grant permission, I will have six months to file a no-merit report.

I will arrange a phone conference with you sometime in mid-December, after I have received (hopefully) the awaited transcripts. I appreciate your patience, but the delay is beyond my control and it took me substantial time to locate the court reporter who has the outstanding transcripts.

Sincerely,

Theresa J. Schmieder

Enclosure: November 18, 2010 letter to R. Parizek

Theresa J. Schmieder
Attorney at Law

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Email: tjslaw@sbcglobal.net
Email: attorney@schmieder-law.org

EXHIBIT
#8

November 18, 2010

Ms. Renee Parizek
1706 Shoto Road
Two Rivers, WI 54241-9308

Re: State v . William Lee
Case No. 02-CF-886

Dear Ms. Parizek,

I had spoken with you on or about October 5, 2010 and at that time forwarded to you a Request of Transcripts. To date I have not received the transcripts requested. They are listed below again for your reference:

June 1, 2006 (previously ordered April 21, 2009 not yet received)
June 19, 2006 (not previously ordered)
June 26, 2006 (not previously ordered)
August 7, 2006, (not previously ordered)
August 11, 2006 (previously ordered April 21, 2009 not yet received)

I am writing to inform you that if you do not promptly prepare and file the requested transcripts that I will be filing a Motion for Sanctions with the Court of Appeals. Two of these transcripts were requested nearly one year ago and remain undone. Please be aware that I must receive these transcripts on or before December 5, 2010 – or I will proceed to seek sanctions.

Sincerely,

COPY

Theresa J. Schmieder

EXHIBIT #9

January 6, 2011

Dear Attorney Schmieder,

I received your November 18th, 2010 letter stating you were ordering missing transcripts that were missing from my file, and also a copy of the letter you forwarded to the Court Reporter Renee Parizek. Thank you for providing me with her information. As a result of you providing that information, Ms. Parizek was contacted, and we've learned that she provided a transcribed copy of the missing transcripts to you on December 20th, 2010. So again, I'm asking you to send me a copy of my transcripts so I can assist you in researching my case and appeal.

Sincerely,

William Lee

William Lee

cc: Attorney Schmieder

EXHIBIT #10

April 30, 2011

Dear Attorney Schmieder,

In my last correspondence to you, I requested that you send me a copy of my transcripts that the court reporter Ms. Parize had provided to you on December 20th, 2010. For the record, I am stating to you that i want my appeal filed. If you do not intend to appeal my case, please notify me at once. So I"m again reiterating, Please send me a copy of my transcripts.

Sincerely,

William Lee

William Lee

cc: Attorney Schmieder

Theresa J. Schmieder
Attorney at Law

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Email: attorney@schmieder-law.org

EXHIBIT
11

May 16, 2011

William J. Lee #00229110
c/o Racine Correctional Institution
2019 Wisconsin Street
P.O. Box 900
Sturtevant, WI 53177-0900

Re: State. v. Lee
Case No. 02-CF-886

Dear Mr. Lee,

I have received the missing transcripts. At this juncture I have not found a viable avenue of appeal regarding 02-CF-886.

There are three choices that are available to you:

1. You accept my analysis and I close the case.
2. You decline my analysis and I issue a no merit report to the Court of Appeals. If the Court of Appeals agrees with me then your appeal will be dismissed/closed.
3. You decline my analysis and obtain other counsel to review the matter for you. In order for this to occur I have to inform the trial court of your desire to obtain other counsel.

Theresa J. Schmieder
Attorney at Law

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Green Bay, Wisconsin 54305-0697
Phone: 920-863-1890
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Email: attorney@schmieder-law.org

I apologize that I was not able to speak with you in December. I did not receive the transcripts as quickly as I had anticipated.

I will be out of the office for the remaining of May. Upon my return I will schedule a visit with you to discuss these issues so that you may make an informed decision.

Sincerely,

Theresa J. Schmieder

EXHIBIT #12

May 28, 2011

Dear ms. Schmieder,

I received your letter dated; May 16, whereas you are finally acknowledging to receiving the missing transcripts in my file, albeit, it took you 6 months to do so. I will respond to the contents of your letter wher you are giving me three choices to make all of a sudden. I will not allow you or anyone else for that matter, to Demand that i operate in the dark regarding my appeal and make a choice without providing me with my record to review. Until such time, as I receive the transcripts, I will not choose any of your options.

Sincerely,

William Lee

William Lee

cc: Ms. Schmieder

Theresa J. Schmieder
Attorney at Law

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Phone: 920-863-1890
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Email: tjslaw@sbcglobal.net
Email: attorney@schmieder-law.org

EXHIBIT
13

August 3, 2011

William J. Lee #00229110
c/o Racine Correctional Institution
2019 Wisconsin Street
P.O. Box 900
Sturtevant, WI 53177-0900

Re: State. v. Lee
Case No. 02-CF-886

Dear Mr. Lee,

I have not received a response to my letter of May 16, 2011. I am in the process of arranging a meeting with you on or about August 12, 2011. I am awaiting a return call from the social worker at your facility to complete that process.

As I indicated in my prior letter, I have not found a viable avenue of appeal regarding 02-CF-886.

There are three choices that are available to you:

1. You accept my analysis and I close the case.
2. You decline my analysis and I issue a no merit report to the Court of Appeals. If the Court of Appeals agrees with me then your appeal will be dismissed/closed.
3. You decline my analysis and obtain other counsel to review the matter for you. In order for this to occur I have to inform the trial court of your desire to obtain other counsel.

Theresa J. Schmieder
Attorney at Law

Post Office Box 697
Green Bay, Wisconsin 54305-0697
Phone: 920-863-1890
Fax: 920-863-1891
Email: tjslaw@sbcglobal.net
Email: attorney@schmieder-law.org

In the meantime, if you have any specific questions or case law that you will want me to address at our meeting, please send those to me in writing so that I can make sure I have any necessary resources with me when we meet.

Sincerely,

Theresa J. Schmieder

EXHIBIT # 14

August 13, 2011

Dear Attorney Schmieder,

I just received your August 3rd letter where you claim I hadn't responded to your May 16th letter. I'm not in a position to say thta you're not being honest, because nothing is impossible. Things do occur with the post office which is out of our control. But I did in fact respond to your may 16th letter on May 28th. Instead of re-iterating that entire letter, I'm enclosing a copy of that particular letter. And my position remains the same. Please send me my file.

Thank You

William Lee

William Lee

cc: Attorney Schmieder

EXHIBIT #15

January 20, 2012

Dear Attorney Schmieder,

It has become quite apperent that no matter how many times you claim that you are either in the process of coming to visit with me or, setting up an attorney-client phone conference, it never has happened and is pretty clear that it's not gonna happen. I, upon receiving you August 3rd, 2011 letter, promptly asked my social worker here at the institution was she in the process of arranging a meeting date with myself and you. She, (Ms. Vinent) stated to me that she had not received any phone call regarding an attorney who was attempting to set up a professional visit with me. she also acknowledged that the Social Worker does not set up visits with attorney's. Only attorney-client phone calls. I do not want to claim that you have abandoned me, but it is becoming more and more clear to me that this may in fact be the case. You were appointed to represent me on April 27th, 2009. And I feel if you any intentions on doing anything on my behalf with my appeal, it would have been done long ago. We are now at over 3 years and counting to date, with absolutely nothing filed or placed before any appeals courts on my behalf by you. Please forward me a copy of my file.

Thank You,
William Lee
William Lee

cc: Attorney Schmieder

P.S.
As a result of your long delay and abandonment of my appeal, I have lost contact with the (2) witnesses who had new evidence that would have guaranteed a reversal of my conviction. How in the hell can you correct that!

Theresa J. Schmieder
Attorney at Law

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EXHIBIT
#16

February 1, 2013

William J. Lee #00229110
c/o Racine Correctional Institution
2019 Wisconsin Street
P.O. Box 900
Sturtevant, WI 53177-0900

Re: State. v. Lee
Case No. 02-CF-886

Dear Mr. Lee,

I received your letter requesting copies of transcripts. I will not be able to address your request until after February 12, 2013. You have recently claimed that I did not properly close out my file with you, and as such there may be a need for me to reference the transcripts. It is my understanding that the SPD will not compensate to provide you with a copy, although upon my conclusion of representation I can and will send you a copy.

As I told you during our last conversation, I had believed that you had released me from representation and that you had abandoned your appeal. You indicated that was not your understanding that you wanted to meet with me. I indicated that I would try to see in the month of January, but my trial schedule has prevented that. I begin a trial on February 4, 2013 that will last into the second week of February. At the conclusion of that trial I will see if I can arrange a courtesy visit with you.

Sincerely,

Theresa J. Schmieder

["Lee's Copy"]

EXHIBIT #17

Schmieder Law Office
Ms. Theresa J. Schmieder
Post Office Box 697
Green Bay, WI 54305-0697

Feburary 5, 2013

Re: State V. Lee, Case No. 02-CF-886.

Dear Attorney Schmieder:

After having received your most recent February 1, 2013 letter concerning your representation to me, I feel the time has come for me to finally address this scam representation you have been long pretended to do in my case. But first I want to remind you of the previous letters dated April 27, 2009, November 18, 2010, November 18, 2010 again, May 16, 2011, and August 3, 2011. A crucial point of all those letters were the pretense of representation by you.

In your April 27, 2009 letter you introduced yourself to me. You told me that you were quite busy and would be for the next 30 to 45 days because of other trial and case commitments. Also went into how you had 60 days after that to review my transcripts, et cetra. I even signed the releases allowing you to gain copies of my records from trial counsel. I had no problem with any of that. You even told me that I could call your office.

In your November 18, 2010 letter, (A year and 7 months later) you sent me a copy of a letter addressed to the Court Reporter for transcripts you had not received. You stated again that once you have received them, you have 60 days to file a Notice of Appeal or Post-conviction Motion, or obtain my permission to close the file. And if you do not gain my permission to close my file, you have a period of six months to file a No Merit Report. Finally, you wrote that the delay was beyond your control.

On that same day of November 18, 2010 you wrote a letter to Ms. Renee Parizek, the Court reporter and requested the June 1, 19, 26, 2006, and August 7, and 11 2006 transcripts.

On May 16, 2011 you wrote a letter informing me that you had received the missing transcripts, and had found no viable avenue - of appeal regarding my conviction. You stated the three options of recourse I had and stated that you would schedule a visit with me to discuss those options to allow me to make a informed decision.

On August 3, 2011 you wrote a letter to inform me that you're in the process of arranging a meeting with me on or about August - 12, 2011. You asked in that letter if I had any specific questions or case law that I wanted to address at our meeting, to send them to you. You never came. As a matter of fact you have not met with me the entire time you have been appointed to my case. That's four years and counting.

Now I get this letter dated February 1, 2013, challenging my position and opinion of you on how you have abandon my case, and have now insisted that you not send me my case file. Ms. Schmieder I have neither the time nor the patience to continue to allow you a platform to deny me an appeal of my conviction which was illegal. If I read your letter dated February 1, 2013 correctly, it appears that you are again trying to come up with another reason to justify not giving me my transcripts. And you are doing so under the guise of not being happy with my assessment of your representation. You are in no position to be displeased with me. Nor are you in any position — to truthfully claim that you have represented me.

Here's a short history of my case and things any prudent —— skilled attorney on appeal would have seen. I was arrested on the 9th of October, 2002. I was released on bond July 31, 2003. Trial was held in October of 2008. Between July 31, 2003 and October of 2008, the State repeatedly requested postponement of the trial to investigate what the state witnesses claimed, and the state knew a lie had been told to them by the key witness claiming she knew me prior to the alleged crime. This is a five year period of knowing the witness was lying. During that time, on August 7, 2006, I went to a Motion Hearing to suppress the identification due to the line up held on the streets, which was illegal.

At this Motion Hearing Deputy District Attorney Luetscher did what could be considered nothing less than a concession. Whereas, he point blank conceded that the identification of me should have been suppressed under Dubose. And although Dubose was ruled on at a time when my case was not finalized, the trial court had cases in existence that prohibited such conduct as the police in Green Bay committed. i.e., Wong Sun V. United States, 371 U.S. 471, 488, 83 S.Ct. 407 (1973).

The Fruit of the Poisonous Tree Doctrine include not merely physical evidence must be suppressed, Wong Sun supra., but include witnesses at trial who are discovered because of the illegal acts of police, or their misconduct. See Nix V. Williams, 467 U.S. 431, 442, 104 S.Ct. 2501 (1984). Once the state found out that there was no independent source with either witnesses knowing defendant, the lie they told claiming they had known me should have been suppressed. There was no inevitable discovery of personal knowledge of knowing me. The witnesses had never seem me before. Any skilled counsel would see this as a viable issue for appeal.

Likewise, any skilled attorney on appeal would have seen that their client had a viable issue with the trial court allowing such evidence to come in. There is two issues in that alone. The **first**, being abuse of discretion. The **second**, being plain error. Deviation from a legalrule is 'error' unless the rule has been waived. Dubose had just come down the pipeline and was retroactive to cases that had not been finalized. This fact was determined during the August 7, 2006 Motion Hearing. There was absolutely no justification, no legal one at least, to allow a judge to not suppress identification of those witnesses and their statements. So this was plain error on the part of the trial judge. See Olano, 507 U.S. at 732-33; and U.S. V. Wolfe, 245 F.3d 257 (2001). The error is clear.

The other issue would have been Ineffective Assistance on the part of trial counsel. Once the prosecutor conceded that evidence should be suppressed at that August 7, 2006 Motion Hearing. Counsel had an obligation to immediately move for dismissal of charges and base it on that concession. That would have been the end of all charges and that case on that day. But counsel did not do that and allowed the case to go unchallenged and untested. Other issues do exist in this case which you are the only person holding transcript on. I would have identified those issues long before now had you did your job and provided me a copy of my transcripts, instead of asking me to talk off the top of my head and tell you my issues.

Here's another issue. Or should I say two more issues. A long delay in getting me to trial (five years), and a long delay in my appeal being filed. (five years). The latter being owed to you. My point is this Ms. Schmieder. You are in no position to try and hold my transcripts any longer. I have solid grounds to take you before the ethics board and end your pretense of being an attorney in the State of Wisconsin. You would not have a leg to stand on. You have billed the State Public Defender's Office out of thousands of dollare and have not done one thing in my case. That's called fraud and theft.

You have five days to put all of my trial records in the mail and get it to me immediately. If I dc not recieve my files I will start litigation against you, and I will call on the ethics board to correct your behavior. Right now you are not my target, but you can be, and you will be if I do not receive my records immediately after you receive this letter. You are fired for failing to appeal my conviction. Your time limit to file an Andrews brief expired a long time ago. Have a good day.

Sincerely,

LEE, William J. #229110

cc:file

Theresa J. Schmieder
Attorney at Law

Post Office Box 697
Green Bay, Wisconsin 54305-0697
Phone: 920-863-1890
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Business Cell: 920-321-4711
Email: schmiederlaw@gmail.com

EXHIBIT
#18

February 11, 2013

William J. Lee #00229110
c/o Racine Correctional Institution
2019 Wisconsin Street
P.O. Box 900
Sturtevant, WI 53177-0900

Re: State. v. Lee
Case No. 02-CF-886

Dear Mr. Lee,

I received your letter of February 5, 2013 wherein you have indicated that you are releasing me as your counsel and that you wish to proceed on your own. As I indicated in my prior letter and phone call it was my opinion that you had abandoned your appeal. Approximately six weeks ago you called. I explained to you the status of your file and you indicated that in your opinion you did not abandon the appeal. I indicated to you that my analysis as to the merits of any claim remained that same...I did not believe you had any viable avenue of appeal. As a courtesy I had agreed to try and visit you by the end of January. On February 1, 2013 I indicated that my schedule had not permitted me to visit with you and that I would attempt to do so following a trial that was scheduled to begin on February 4 and last until the following week. On Saturday February 9, 2013 I received your latest letter indicated that you were 'firing me' and that you wanted your transcripts.

I am providing you with my copies of the transcripts and the court record. Based upon your letter I am again closing my file.

Sincerely,

Theresa J. Schmieder

Enclosure

Theresa J. Schmieder
Attorney at Law

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Green Bay, Wisconsin 54305-0697
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EXHIBIT
#19

February 14, 2013

William J. Lee #00229110
c/o Racine Correctional Institution
2019 Wisconsin Street
P.O. Box 900
Sturtevant, WI 53177-0900

Re: State. v. Lee
Case No. 02-CF-886

Dear Mr. Lee,

I received a telephone call from Joe Ehmann of the Wisconsin State Public Defender's Office.

I informed him that it is your desire to discharge me as your counsel. Mr. Ehmann advised me that based on your desire to discharge me - one of two things need to happen, you either need to sign a stipulation requesting that I withdraw which would then be submitted to the circuit court for approval, or I will need to file a motion to withdraw in the circuit court. Either way I need to inform you that if the circuit court permits you to discharge me that that the Wisconsin State Public Defender's Office will not appoint you subsequent appellate counsel. I believe that Mr. Ehmann will send you a letter to the same effect.

If you do not discharge me or if the court denies the motion, then I will proceed to file the no-merit report given the fact that you are not in agreement with my analysis of your case. As I indicated to you previously it had been my understanding that you had abandoned your appeal.

Let me know if given the information I have relayed to you from Mr. Ehmann if you want to proceed with discharging me as your counsel, or whether you wish to have me file the no-merit report. If I do not hear from you within the next two weeks then I will proceed to file a motion to withdraw based upon your last correspondence to my office.

Sincerely,

Theresa J. Schmieder
Enclosure

State Public Defender
Kelli S. Thompson

THE STATE OF WISCONSIN
STATE PUBLIC DEFENDER
APPELLATE DIVISION
17 South Fairchild Street, 3rd Floor (53703-3204)
P.O. Box 7862 (53707-7862)
Madison, Wisconsin
(608) 266-3440 <> Fax (608) 264-8563

Director, Appellate Division
Marla J. Stephens

First Assistant, Madison
Joseph N. Ehmann

EXHIBIT
#20

February 18, 2013

Mr. William Lee, #229110
Racine Correctional Institution
P.O. Box 900
Sturtevant, WI 53177-0900

Dear Mr. Lee:

Your letter dated February 7, 2013, in which you allege that Attorney Theresa Schmieder abandoned you and your appeal in Brown County Case No. 02-CF-886, was forwarded to me for response. I am the person responsible for appointing attorneys in public defender appeal cases. I have discussed your case with Attorney Schmieder. Initially, there was significant delay caused by a court reporter not timely producing necessary transcripts. After finally obtaining and reviewing the full record and transcripts, and consulting with you by phone, Attorney Schmieder concluded your case presented no issues of arguable merit for appeal. Attorney Schmieder's attempt to meet personally with you did not happen because another meeting ran long. Attorney Schmieder advised you in writing of your options which included having her close your case without court action, have her file a no-merit report, or discharging her so that you could proceed without an appointed attorney. Attorney Schmieder believed you did not want her to file a no-merit report and so she did not. Although your appeal deadline has lapsed, Attorney Schmieder's public defender case remains open.

Mr. Lee, Attorney Schmieder should have followed up with you after the failed attempt at a in-person meeting and either rescheduled another meeting or explained why the earlier meeting did not occur and why a rescheduled meeting would not be necessary. Also, rather than taking no action based upon the assumption that you did not want a no-merit report because you did not inform her that you wanted a no-merit report, rules of appellate procedure dictate that unless a defendant affirmatively consents to close the case or to discharge the attorney, the attorney shall file a no-merit report. In other words, the default action for Attorney Schmieder in the absence of your affirmative consent to close your case or discharge her should have been for her to file a no-merit report, even if you did not ask that one be filed.

At this point your options remain what they were when Attorney Schmieder first reviewed your case. If you want Attorney Schmieder to file a no-merit report, she will file a motion in the court of appeals to revive your lapsed appeal deadline and, if it is

granted, will file a no-merit report. If you want to proceed without an appointed appellate attorney, Attorney Schmieder will file a motion in the court of appeals to revive your lapsed appeal deadline and a motion in the circuit court to withdraw as counsel. If you choose to have Attorney Schmieder withdraw, no other public defender attorney will be appointed for you. If she withdraws and the court grants the motion to revive your appeal deadline, you will be responsible for all aspects of your appeal case. You will be responsible for complying with all deadlines and court rules.

My understanding is that Attorney Schmieder will be consulting with you to determine what you want her to do. As for your file, if you choose to discharge Attorney Schmieder she will send you your file when the court releases her. If you choose the no-merit option, Attorney Schmieder will send you a copy of the transcripts and record so that you can file a response to the no-merit report if you want to file one.

You must let Attorney Schmieder know what you want her to do with your case. There is no basis for appointing a second public defender attorney to render a second opinion regarding the no-merit conclusion.

Very truly yours,

JOSEPH N. EHMANN
First Assistant State Public Defender

JNE:jm

cc: Ms. Theresa Schmieder
Attorney at Law
414 E. Walnut Street, Ste. 210
Green Bay, WI 54301