

State of Wisconsin Supreme Court Dane County

STATE OF WISCONSIN,
Plaintiff-Respondent,

vs.

Case No. 2017-CF-20
Appeal No. 20120AP00188-CRNM

MICHAEL J. TORRES,
Defendant-Appellant-Petitioner

FILED
AUG 06 2021
CLERK OF COURT OF APPEALS
OF WISCONSIN

DEFENDANT-APPELLANT-PETITIONER RESPONSE
REGARDING NO-MERIT REPORT

Pursuant to §809.62, I, Michael J. Torres, have exercised my right to file a petition for review in regards to the no-merit report filed by Attorney Philip J. Brehm pursuant to §809.32(1). Specifically, I am writing to address certain areas in not only the no-merit report but also in my criminal case proceedings, Case No. 17CF20. The following areas, I fervently believe, need to be brought to the attention of the Court and create a prima facie showing of merit regarding my appeal:

- My plea was otherwise entered unknowingly, unvoluntarily, and unintelligently;
• The trial court had erred in denying my motion to withdraw my plea of no-contest;
• The level of ineffective assistance of counsel prejudiced my defense under Attorney George Limbeck.

A defendant seeking to withdraw a plea before sentencing must present a fair and just reason which the trial court finds credible, and rebut evidence by the state that the state will be substantially prejudiced by the plea withdrawal (State v. Rhodes, 307 Wis.2d 350). Furthermore, a fair and just reason required for withdrawing a plea means some other adequate reason besides the defendant changing his or her mind, and a claim of innocence alone is insufficient to support a motion to withdraw; it must be supported with credible evidence. (State v. Canedy, 161 Wis.2d 565, 469 N.W.2d 163)

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In reference to both Attorney Brehm's no-merit report and District Attorney Tlusty's letter brief to the Honorable Judge Knox-Bauer (document 57, filed 4-1-19), both filings take the plea colloquy directed under *State v. Bangert* (131 Wis.2d 246) into account, stating that I had entered my plea knowingly, intelligently, and willingly to the court. I strike an argument towards the plea colloquy itself due to a capricious amount of misinformation and coercion of Attorney George Limbeck. I can honestly say that despite answering the court's questions, my answers were given under a cloud of ignorance as I was unknowing of all my options.

My first attorney, Paul Goetz, disagreed on how to present my defense. He would not entertain a trial, though I was adamant on that right, and recused himself from my case. Following that, I had spoken to a secretary from the State Public Defender's office about appointing a new attorney. I was told over the phone that, "It would take some time to find someone that is qualified to take my case," and, "...we [the State Public Defender's office] are only allowed to appoint two attorneys, so hopefully this one works for you."

In referencing Wisconsin State Statute 977.08, "If a defendant makes a request for change of attorney assignment, the change of attorney must be approved by the circuit court." There are no additional regulations pertaining to the defendant, yet as such, I was misinformed of my ability to be assigned subsequent counsel had my assigned attorney and I suffered an irreconcilable conflict. Additionally, there was to be a written communication from the State Public Defender's office reiterating this information as well as detailing whom my new attorney would be. To support this claim, I have included a copy of the letter dated July 3, 2018 following Attorney Limbeck's removal from my defense. As highlighted, the verbiage clearly demonstrates that the State Public Defender's office, "...is required only to appoint two attorneys to an individual's criminal case. Attorney Limbeck was your second attorney." Furthermore, the letter states, "Once a new attorney has been appointed, we will mail you a letter letting you know who that attorney is."

This inaccurate information served as the basis of my decision-making process, and as such, creates an issue as to whether I knowingly and intelligently entered my plea under a *Bangert* analysis. This is not the only facet to take under consideration.

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It is common knowledge that, prior to a plea colloquy, defense counsel and the defendant discuss the questions the court will be asking as part of a Bangert analysis. In the interest of time, it's common practice for the defense counsel to coach the defendant to give certain "emphatic" answers to the court's questions, and document this discussion using a CR-227, "Plea Questionnaire/Waiver of Rights" form. At the time of this discussion, Attorney Limbeck and I had been enduring an irreconcilable conflict and I was insufferably distraught by his actions. Due to this conflict, and the previous incorrect knowledge that I could not remove Mr. Limbeck from my defense, I was left with no other choice but to agree to the terms of the plea questionnaire and mimic those answers to Judge Knox-Bauer.

This creates an argument regarding the voluntary aspect of my responses. During the hearing on March 21, 2018, Judge Knox-Bauer neither placed me under oath nor made the determination I was under oath from any previous proceeding. When asked the same questions as the plea questionnaire during the colloquy, I had no obvious choice but to answer in the affirmative. I was enduring an irreconcilable conflict, my attorney was unwaivering in his stance that my only defense -- my only option -- was accepting the plea negotiation, and as a first-time criminal offender, I was woefully ignorant to my options and rights at that time. Even had I answered contrarily to the plea questionnaire, I had signed my name stating I understood the waiver of my rights as dictated on the form and, as the form itself states, "...I am asking the court to accept my plea and find me guilty." Without any prior knowledge of the state legal system, the only path of action I knew to be available was to follow Attorney Limbeck's coaching, giving "emphatic" responses and accepting the plea bargain. I had testified to this aspect during a motion hearing on February 28, 2019, when I asked Attorney Limbeck what I was supposed to say in regards to the plea colloquy. He responded, "If you don't say -- if you don't follow the questions and say this, you know, then it just looks bad on you."

The second prong of my statement pertains to the error of the circuit court denying my motion to withdraw my plea. Citing *State v. Manke*, 230 Wis.2d 421, "Confusion resulting from misleading advice from the defendant's attorney may be sufficient ground for plea withdrawal." At 429, *supra*, "...Manke presented these reasons for seeking to withdraw his plea. He maintained that he misunderstood

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the consequences of his plea, was confused about the options available to him, and failed to withdraw his plea earlier because of misleading advice from his attorneys." See also *Libke v. State*, 60 Wis.2d at 129, 208 N.W.2d at 335.

Similar to Manke, I testified that, "It was very uncomfortable meeting with him [Attorney Limbeck]...he would always shut me down. He didn't want to hear anything I had to say... he wasn't listening to me." (Doc. 77, p. 6, lines 18-23) Additionally, I testified in regards to the misinformation from the State Public Defender's office (p. 7, lines 22-25), further exemplified to the court the unmitigated breakdown in communication between myself and Attorney Limbeck, and the irreconcilable conflict that arose from his statement, "...It's hard for me [Attorney Limbeck] to believe that something didn't happen between you and the accuser." (p. 7, lines 5-8)

Further addressing the trial court's error in denying my withdrawal of a guilty plea, I recall on Rhodes and Canedy that a defendant seeking to withdraw a guilty plea must show there is a fair and just reason to allow that withdrawal beyond simply a change in heart. The motion to withdraw the plea must be made in a timely manner (citing *State v. Pulaski*, 23 Wis.2d 138), and the defendant must prove a fair and just reason by a preponderance of the evidence, as in Canedy at 583-84, 469 N.W.2d 163. In regards to the burden on the defendant, I believe I have merit in my argument on the basis of ignorance pertaining to my pre-sentencing report (PSI) and the allegations of both District Attorney Tlusty and Judge Knox-Bauer were not factual-objective.

In violation of Federal Rule of Criminal Procedure 32(i)(1)(A), Attorney Limbeck and I had never discussed the results of the PSI prior to his removal from my defense counsel. As interpreted in *U.S. v. Senke*, 986 F.3d 300, the Third Circuit of Appeals held that:

"...We have declined to create 'an absolute requirement that the court personally ask the defendant if he has had the opportunity to read the report and discuss it with counsel.' Instead, we have 'allowed for a more functional fulfillment of the rule, requiring only that the [district] court 'somehow determine that the defendant has had this opportunity' before imposing sentence'."

Similar to *Senke, Id.*, the court did not ask me directly if I had an opportunity to discuss the PSI with Attorney Limbeck; rather, both the court and District Attorney Tlusty asserted that I had the opportunity to do so

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based on Attorney Limbeck's statements during the hearing on June 20, 2018:

"Mr. Limbeck: Judge, briefly, I can't give you the cite, but Mr. -- I came here today to review for the second time the PSI report with Mr. Torres. He almost immediately informed me that he had sent me a letter, which I have not yet received, but he sent me a letter terminating my representation on the grounds that he wishes to pursue a motion to withdraw his plea....there was some delay because originally when the PSI was filed with the court for some reason when they uploaded the e-file system, it was uploaded as a confidential record so there was a time when I didn't have access to it. I thought -- I assumed they were mailing me a hard copy."

In Ms. Tlusty's letter brief (document 57, p. 3) to Judge Knox-Bauer, she makes an opinion-objective claim that, "The defendant alleges that Attorney Limbeck was ineffective and that he desired a different attorney. However, it is more likely that the defendant discovered the recommendations of the PSI, which were highly negative, and thus his proffered reasons are a desperate attempt to avoid a prison sentence." This assumption follows similar to *State v. Leitner*, 633 N.W.2d 2007 (Wis App 2001) in which the court denied a motion to withdraw a plea after receiving an unfavorable PSI and fear of a harsher sentence. However, at the evidentiary hearing held on February 28, 2019, there is nothing on the record that creates a factual-objective basis that I read the PSI report with Attorney Limbeck prior to making the decision to terminate his representation and motion to withdraw my guilty plea. This is also evident in *U.S. v. Sustaita*, 1 F.3d 950, in which the sentencing judge's failure to determine whether defendant had read the presentence report or discussed it with her counsel, as required by Rules of Criminal Procedure, was prejudicial error.

Under cross-examination from Ms. Tlusty, the following conversation took place in regards to the PSI report:

"Q. The judge then asked if you were satisfied with the help that he's given up on the matter and you said yes, ma'am,

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"Q. and you're telling us that you weren't happy with the help that he gave you?

A. That's what I'm saying.

Q. And that's convenient because you've had time to read the PSI that recommends prison, correct?

A. I made the decision before I read that.

Q. Did you tell anybody about that decision?

A. Who was I supposed to tell?

Q. You could have told anybody. Did you call the public defender's office and tell them? Did you write them a letter?

A. I wrote Mr. Limbeck a letter saying that I want to change my mind."

Despite this evidentiary hearing taking place nine months following the submittal of the PSI report, the questions are retroactively applied to prior counsel who failed to discuss the report with me. This creates a plain error and should be found as a credible fair and just reason, satisfying both Rhodes and Canedy.

A major point the prosecution argues against my plea withdrawal is in regards to the length of time taken to file the motion. The record reflects that I had entered my plea on March 21, 2018, and that the PSI report was filed on May 21, 2018. One month later, on June 20, 2018, it was stated on the record that I had intended to pursue a withdrawal of my plea with subsequent appointed counsel.

I remind the court that there was not a hearing scheduled that day until I advised Attorney Limbeck he was being terminated. Citing *Pulaski, Id.*, "One who seeks in the name of justice to withdraw his plea of guilty on the grounds it was given or obtained through ignorance, fear, inadvertence, or in violation of his constitutional rights ought to be aware of and make known his complaint within a year." By that standard, the motion was timely made considering the circumstances that I needed a new attorney to be assigned to the case and said attorney would need to understand details surrounding the case at bar.

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Again, Ms. Tlusty argues using opinion-objective statements that, "...It's reasonable to infer Attorney Limbeck was reviewing the PSI with the defendant on that date [June 20,2018]." She cites *State v. Leitner, Id.*, *State v. Booth* (418 N.W.2d 20, 142 Wis.2d 232), and *State v. Jenkins* (2007 WI 96, 736 N.W.2d 24) to support her claims to Judge Knox-Bauer, yet failed to directly question whether or not I had viewed the findings in the PSI under cross-examination.

The final issue I raise in regards to the court erroneously denying my motion is the lack of a proper Machner hearing as part of the process. As set forth in *State v. Simmons*, 57 Wis.2d 285, 297, 203 N.W.2d 887, 894-5 (1973), it was determined, "where [appellate] counsel questions the effectiveness of trial counsel, trial counsel must be notified and should be present at hearing." Furthermore, *Simmons* determined that, "to where trial counsel's effectiveness is questioned, said counsel is to be required at hearing regarding effectiveness."

The record states that I refused to waive my attorney-client privilege prior to the motion hearing on February 28, 2019. Attorney Jon Padgham had stated, "Michael will testify. Michael is not waiving any confidentiality with regard to Mr. Limbeck." (Document 77, p. 3, lines 3-5) Ms. Tlusty stated as well, "The state had subpoenaed him [Limbeck] for the last hearing in anticipation that perhaps Mr. Torres would waive his attorney/client privilege...I think that the case law despite his refusal to waive that privilege I think is clear that it would be waived by making this motion anyway..." (p. 3, lines 13-19)

Citing *State v. Flores*, 170 Wis.2d 272, 488 N.W.2d 116, "We hold that when a defendant charges that his or her attorney has been ineffective, the defendant's lawyer-client privilege is waived to the extent that counsel must answer question relevant to the charge of ineffective assistance." (Emphasis added) I also call upon ABA Standards for Criminal Justice, Standard 4-8.6 at 4-117 (2d ed. Supp. 1986), "By raising the issue [of ineffective assistance], the client draws the true facts into controversy and waives the privilege." This is also stated in Wisconsin Statutes Annotated (W.S.A.) §905.03, §905.03(4)(c), and U.S.C.A. Constitutional Amendment 6.

Despite acknowledging this fact, Ms. Tlusty argued to Judge Knox-Bauer that, by my denial of waiving that privilege, my actions diminish my credibility. In her letter brief, she asks, "...wouldn't it be valuable to the defendant's claims to have Attorney Limbeck corroborate the defendant's testimony?"

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During the motion hearing, she also states on the record, "...I guess if we get into the motion and the court decides that the burden sifts to the state, I would ask for a continuance to allow Mr. Limbeck to be able to testify if we get to that point." (Doc. 77, p. 3, lines 19-23) Again, Ms. Trusty reiterates in her letter brief, "If the Court finds that the defendant's reason is credible, the State would like the opportunity to call Attorney Limbeck to provide testimony to rebut that finding."

Similar to Flores, Id., the trial court had erred by not requiring Attorney Limbeck to be present to provide testimony relevant to the charge of ineffective assistance and by using my maintenance of the attorney-client privilege against me. As decided in Flores, Id., "because a full record was not made due to this error, and because this error prejudiced not only the defendant in attempting to meet his burden, but also the state in eliciting relevant testimony, a new hearing is appropriate." I agree with the findings of Flores as it grants me the opportunity to provide factual-objective supporting evidence towards my fair and just reason for withdrawing my guilty plea beyond a simple change of heart and desire to have a trial.

The final prong of my statement addresses the level of ineffective counsel I had received from Attorney George Limbeck and how his detrimental actions, advice, and our irreconcilable conflict prejudiced my defense. "To demonstrate that there was constitutionally ineffective assistance, a defendant has the burden to prove both: (1) that counsel's performance was deficient; and (2) that the deficiency was prejudicial," quoting State v. Dillard (2014 WI 123, 358 Wis.2d 543, 859 N.W.2d 44) and Strickland v. Washington (466 U.S. 668, 687 S.Ct. 2052, 80 L.Ed.2d 674 (1984)).

"To prove prejudice, a defendant must establish "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different," according to State v. Jeninga, 386 Wis.2d 336, quoting Strickland, Id. In regards to proving prejudice, I refer the court to State v. Basley, 2006 Wis App 253, 298 Wis.2d 232, 726 N.W.2d 671, where defense counsel's conduct improperly coerced him into pleading guilty despite wanting to go to trial. In Rhodes, Id., the defendant made a similar claim, yet was denied due to the fact Rhodes' attorney advised the defendant he could still go to trial.

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In the case at bar, I had been advised by Attorney Limbeck to waive both my right to a speedy trial as well as a preliminary hearing because, "There's nothing to be gained or lost by having one [a preliminary hearing], thus wasting a bunch of time." Considering I was woefully ignorant to the legal system and judicial process, I followed his advisements. Once he received and discussed the discovery from the state, he told me, "They [the prosecution] have no case. We can challenge and disprove this, and get that thrown out or suppressed. We're definitely going to trial."

A few weeks later, Mr. Limbeck came back to discuss my case and had adopted a completely different view of my case. He began adamantly pressuring me into taking the negotiated plea deal, refusing to listen to any mentioning of trial strategies. When I asked about going to trial, Mr. Limbeck jumped to his feet, knocking the chair to the floor and slammed his hands on the table, shouting, "Do you really think you can win?" I asked him about issuing a subpoena for the alleged victim's medical records to disprove her statements, to which he replied, "None of that stuff matters! It's all irrelevant!"

In reference to Wisconsin Supreme Court Rules, effective July 1, 2007, chapter 20:1.3 states, "A lawyer shall act with reasonable diligence and promptness in representing a client." In an appended comment by the ABA, it is stated, "A lawyer should pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience...take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor...must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's belief." Mr. Limbeck's actions and statements run contrary to the SCR determination of performing due diligence and served as the beginning of our irreconcilable conflict.

Returning to the same visit, Mr. Limbeck stated, "Look, I'm not passing judgment, however, it's hard for me to believe that something didn't happen between you and the accuser," which I reiterated on the record during the hearing on February 28, 2019. Before leaving, Mr. Limbeck told me, "Think about that plea," not once entertaining any conversation about pre-trial motions or strategies.

Citing *United States v. Army*, 831 F.3d 725 (2016), "Counsel has a duty to make reasonable investigations or make a reasonable decision that makes particular investigations unnecessary. In any ineffectiveness case, a particular

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decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." (Citing *Strickland, Id.*, 466 U.S. at 691, 104 S.Ct. 2052) I had asked Mr. Limbeck to perform an investigation into the alleged victim's medical reports following statements made, yet he offered no reason for disregarding those investigations which may have produced exculpatory evidence. This is a similar situation to *Vick v. Lockhart*, 952 F.2d 999 (1991) where the petitioner alleged inefficient assistance of counsel due to the particular decision not to investigate potential exculpatory evidence that would have influenced the alleged victim's credibility and the failure to obtain relevant medical reports.

After another status hearing, I again met with Mr. Limbeck and asked, "Why did you tell the judge we were close to a plea? I don't want a plea, I want to go to trial."

Angered, Mr. Limbeck refuted my desire for a jury trial, further deteriorating our attorney-client relationship. "Michael, do you really think you can win? I thought we went over this before. None of that stuff matters. It's irrelevant!" Every time I would attempt to speak, I would be cut off by Mr. Limbeck shouting over me, "You can't win, you need to plea!" This coercion made me believe I had no other choice but to agree to the plea, which I addressed earlier in this statement.

The Constitution of the State of Wisconsin, Article 1, Statute 7 states, "In all criminal prosecutions the accused shall enjoy the right to be heard by himself and counsel...to meet the witnesses fact to face; to have compulsory process to compel the attendance of witnesses in his behalf...", yet there is no denying the ineptitude of Mr. Limbeck refusing to listen to his client. In *United States v. Walker*, 915 F.2d 480, it was determined that, "Walker's lack of confidence in his attorney arose out of a disagreement over trial preparation and potential witnesses, rather than any general unreasonableness or manufactured discontent." Furthermore, in *Walker, Id.*, cites *Brown v. Craven*, 424 F.2d 1166, 1169 (9th Cir. 1970) that, "We think, however, that to compel one charged with grievous crime to undergo a trial with the assistance of an attorney with whom he has become embroiled in irreconcilable conflict is to deprive him of the effective assistance of any counsel whatsoever." (*Brown*, 424 F.2d at 1170) In relation to the case at bar, I was scared, lacking all confidence in Mr. Limbeck to make any decision that would be beneficial to

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my defense, and was still under the impression that I was only allowed two attorneys through the State Public Defender's office as mentioned previously.

The most egregious showing of Mr. Limbeck's ineffectiveness as defense counsel pertains to his advisements regarding the pre-sentencing investigation. When asked what I should say to the investigator, Mr. Limbeck replied, "You can't go in there with all this talk about how you didn't do anything, that you're innocent. You have a copy of the discovery and the criminal complaint. Talk about what's in there and nothing more than that." This runs counter to U.S.C.A. 5 where there's a privilege against self-incrimination and that privilege continues after a plea and through sentencing. The use of compelled, incriminating statements are an improper factor in determining a defendant's sentence because their use would violate the defendant's Fifth Amendment right against self-incrimination.

In *State v. Alexander*, 360 Wis.2d 292, 858 N.W.2d 662, the defendant-appellant contended that the use of compelled statements were appended to his PSI report and the court erred by denying his motion because of basing its sentencing on those incriminating statements. Citing *State v. Tjepelman*, 291 Wis.2d 179, 717 N.W.2d. 1, "The two-step framework to determine whether a circuit court erroneously exercised its sentencing discretion based on an improper factor is helpful here...a defendant must prove that (1) information was inaccurate, and (2) the court actually relied on the inaccurate information in the sentencing."

On page 3 of my PSI report, it reads, "He [the defendant] states he began sexually abusing JRB when their family moved to Medford, WI and when she was 9 years old by showering with her, making her touch him "in his private areas" while showering, as well as touching her "private areas"." This statement directly relates to the first incident outlined in the criminal complaint (p. 4) almost verbatim, substituting "downstairs area" for "private areas". Based on Mr. Limbeck's prior advice and direction, one can reasonably infer that that statement, as well as the remainder of my statement made to the pre-sentencing investigator, was self-incriminating, a direct violation of my Fifth Amendment right.

Ms. Hartwig, the agent who compiled the PSI report, neglected to include any further statements in regards to the other instances of sexual assault. The statements I made closely mimicked the information in the criminal complaint

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not because of any sworn testimony nor accurate recollection of events, but rather because I was advised by my attorney, Mr. Limbeck, to self-implicate in my responses.

The second prong of *Tiepelman, Id.*, addresses whether the court relied on those errors during sentencing. Throughout the sentencing hearing on June 20, 2019, both Ms. Tlusty and Judge Knox-Bauer referenced the compelled, incriminating statements I had made to Ms. Hartwig as part of my PSI. On page 7, lines 21-25 reads, "It's more likely to believe that at the time that he made these statements to the PSI writer that those are the statements that are true, that he admits to the touching, he admits to what he did." Ms. Tlusty continues on, stating, "There would be no reason for an innocent person to have made those statements to a PSI writer."

Following Attorney Padgham's statement, the court acknowledges on the record that, "The court has reviewed in detail the presentence investigation including the sex offender evaluation report that's been referenced here conducted by Dr. Dickey..." (p. 16, lines 2-5), "...and this [alleged assault] ties in with what Mr. Torres told the PSI writer when he talked about his explanation of the allegations in the offense to which he pled..." (p. 17, lines 17-20), and, "...what strikes me is that initially in the presentence investigation, Mr. Torres seems to admit he did this."

Following Judge Knox-Bauer's analysis, she ruled, "The court is going to impose a 16-year prison term consisting of ten years of initial confinement followed by six years of extended supervision. The reason I'm doing that is because that's, first of all, within the range recommended by the Department of Corrections." (p. 26, lines 15-20) This recommendation mimics Agent Hartwig's suggestion of, "the defendant be sentenced to the Wisconsin State Prison System for 10-12 years followed by 5-6 years extended supervision," from page 29 of the PSI report.

Through the statements made on the record, I believe I met my burden of a prima facie showing to honor both prongs of *Tiepelman, Id.*, and by extension, the showing of harmful prejudice against my defense per *Strickland*. To further warrant a showing of prejudice would be excessive in the case at bar. The trial court erred in not holding a proper Machner hearing, despite my charge of ineffective assistance of counsel against Mr. Limbeck, and even after I raised the concerns of his ineffectiveness during the hearing on February 28, 2019, the court neglected to appropriately inquire into the conflict between myself and Mr. Limbeck.

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I believe it bears mentioning that had I received effective assistance, there would have been a different outcome. I would not have waived my preliminary hearing, which by doing so would have allowed me to witness a brief outline of the state's case against me and discern information and potential evidence for my defense. I also would not have waived any rights nor accepted the state's proffered plea negotiation, and had Mr. Limbeck acted in a similar, coercive manner, I would have removed him earlier in the proceedings rather than simply giving up and taking a plea. By having effective assistance of counsel, my defense would not have been prejudiced by being advised to deliver compelling and self-incriminating statements to an agent of the Department of Corrections for use in a pre-sentencing investigation, which goes against my Fifth Amendment right. The case at bar would have gone to a jury trial where I would have called the alleged victim to testify per my right of Article 1, Statute 7 in the Wisconsin State Constitution, and been able to mount a proper, unprejudiced defense.

In conclusion, I believe that the factors I have discussed create a prima facie showing that there is merit in my appeal. I understand and accept that, would the court rule in my favor, the maximum penalty could be imposed. Despite knowing that, I continue to assert my innocence in the case at bar and ask that the issues I have raised be addressed and proper action be taken. In this case, I ask that the court determine a proper Machner hearing be held to elicit Mr. Limbeck's testimony in regards to the charge of ineffective assistance of counsel, and should his testimony corroborate my own, reverse and vacate my sentence on the grounds of harmful prejudice and constitutional ineffective assistance of counsel, to be remanded for a new trial.

I humbly and respectfully thank you for your time and your consideration of my statement.

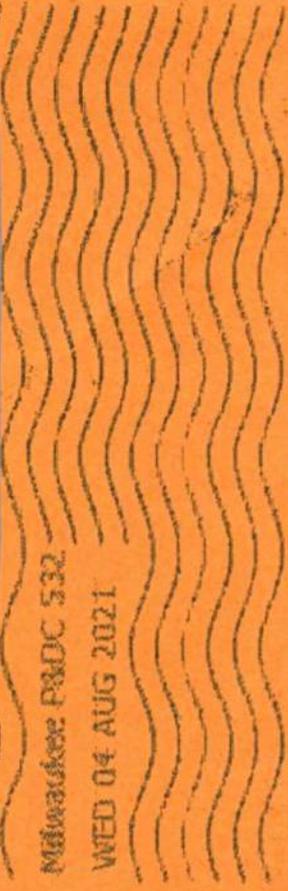
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