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STATE OF WISCONSIN

SUPREME COURT OF WISCONSIN

Case No. 2010-AP-767

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs. Case No. 2010-AP-767

Sean Fitzgerald Rowell,

Defendant-Appellant-Petitioner.

ON PETITION FOR REVIEW OF A DECISION
OF THE COURT OF APPEALS, DISTRICT I,
FILED ON DECEMBER 14, 2010, AND OF
DENIAL OF MOTION FOR RECONSIDERATION
DATED JANUARY 4, 2011.

Sean Fitzgerald Rowell
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100 Corrections Drive
Stanley, WI. 54768-6500

Defendant-Appellant-Petitioner
(Pro se)

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ISSUE RAISED IN THE COURT OF APPEALS

I. Does an agency's statutorily created quasi-judicial capacity implicate the circuit court's jurisdiction, when the agency fails to precisely conform to the statute from which it derives it's power?.....4

The above issue was raised on appeal. The Court of Appeals, Dist. I., decided the issue adversely to the petitioner.

CRITERIA FOR REVIEW

1. This court should accept review because this case presents a real and significant question of federal and state constitutional law. issue I is not factual but rather is a question of law of type which is likely to recur unless resolved by the Supreme Court. §809.62(1)(c)(3) Wis. Stats.

2. The controversy involved in this case involves the legal question of what procedure satisfies the interface requirement of the prosecutor to give a trial court jurisdiction of the defendant after non-waiver of preliminary hearing and bindover under §971.01(1), in order for the statutory mandates and procedures under that statute to comport with due process? As to petitioner's legal position regarding the question, the appeals court stated "We are aware of no case holding that"; which requires this Supreme Court's development and clarification of the law. §809.62(1)(c)(3).

STATEMENT OF THE CASE

Sean Fitzgerald Rowell, petitioner herein, was charged with first degree intentional homicide, while armed, as a habitual offender, in violation of **§940.01(1), §939.63(1)(a)(2), and §943.32(1)(b)(2), Wis. Stats.** A jury trial was conducted in the courtroom of the honorable Victor Manian and Rowell was convicted of first degree intentional homicide, while armed

as a habitual offender on February 27, 1997. On April 25, 1997, judge Manian sentenced Rowell to life with a parole eligibility date of April 25, 2022, and credit for 190 days of pretrial incarceration. **(App. C)** Rowell filed a motion for postconviction relief (Newly Discovered Evidence). The motion was denied by the honorable David A Hansher in a decision filed and released on March 18, 1998. Rowell filed his notice of appeal on May 14, 1998. The Court of Appeals, Dist. I., filed and released their decision affirming the trial court on September 28, 1999. Rowell filed a petition for review to the Supreme Court of Wisconsin which was denied on October 27, 1999. Rowell then filed a pro se motion pursuant to **§974.06(8)**, intending to invoke the habeas corpus review standard for reviewing his claim regarding the statutory interpretation issue he raised in reference to what the requirements of **§971.01(1)** confer on the prosecution in order for the prosecution to confer jurisdiction over a criminal defendant to the circuit court in order for the circuit to have jurisdiction of that defendant to hold him over to be tried before the court, and seeking an evidentiary hearing and/or release from custody. That motion was denied by the honorable Jeffrey A. Conen in a decision filed and released on February 16, 2010. Rowell filed and received acknowledgement of his notice of appeal and the circuit court record index on March 25, 2010. Rowell received notification of filing of circuit court record on April 28, 2010. The Court of Appeals, Dist. I., filed and released their de-

-cision December 14, 2010 and Rowell's motion for reconsideration filed with the Appeals Court was denied on January 4, 2011.

I. Did the Circuit Court and Court of Appeals Erroneously misconstrue petitioner's habeas petition, as a §974.06 postconviction motion, thereby erroneously applying Escalona-Naranjo's procedural bar to his claims?

The Court of Appeals determined that the trial court, in it's exercise of discretion, properly denied the petitioner's motion to vacate sentence under **State v. Escalona-Naranjo 517 N.W.2d 157 (Wis. 1994). (Ct. of App. Decision at pp.3-5)**

Petitioner Rowell contends that the circuit court of Milw., and the Court of Appeals, Dist. I., erroneously misconstrued petitioner's habeas Corpus motion as that of a **§974.06** post-conviction motion without giving full weight and effect to three very vital aspects, which are necessary to bring forth a habeas corpus claim, verses that of a mere **§974.06** post-conviction claim and the are the fact that:

1) **Petitioner Rowell addressed within the initial circuit court petition the contents as verified articles, which is only relevant when pursuing a habeas corpus claim, and not that of a §974.06 postconviction claim;**

2) **Petitioner Rowell having addressed the initial circuit court petition pursuant to §974.06, however, specifically attached subsection "(8)", that his intent was to raise his claim in substance as a writ of habeas corpus pursuant to §782.04. Further, the Court of Appeals, Brief-in-chief caption, states the contents represent "memorandum of law in support of petition and writ of habeas corpus, §974.06(8)., (pp.1);**

3) And lastly, petitioner asserts that the only remedy at law to address petitioner's claim wherein a question of statutory interpretation may be considered on a writ of habeas corpus onl[y] if noncompliance with the statute or issue resulted in the restraint of the petitioner's liberty in violation of the constitution or the court's jurisdiction. State ex rel., Hagar v. Marten 226 Wis.2d 687, 594 N.W.2d 791 (1979).

Petitioner Rowell contends that had the circuit court of Milw., and subsequently the Court of Appeals, Dist. I., liberally construed petitioner's non-intended **§974.06(8)** post-conviction motion as that of an intended **§782.04 habeas Corpus petition**, especially after reviewing the contents to be in accordance with **§782.04** habeas Corpus requirements; the procedural bar under **Escalona-Naranjo** would not have been held to control against petitioner's claim. Also, petitioner would not have been held to have for the first time addressed the sufficient reason application, under **Escalona-Naranjo** in the Court of Appeals, Dist. I. decision, pp.3; & not during direct appeal. Since the sufficient reason appli-cation does not attach to **[§782.04]** habeas corpus petitions and this being the reason petitioner did not address said ap-plication in direct appeal.

II. Does an Agency's statutorily created quasi-judicial capacity implicate the circuit court's jurisdiction, when the agency fails to precisely conform to the statute from which it derives it's power?

Petitioner further contends that the issue before this court is whether the district attorney as quasi-judicial officer is required to conduct the **"interface"** phase of examination after bind-over of non-waived preliminary examination. Peti

-tioner relies on what has been held in **State v. Hooper 101 Wis.2d 517, at 530-31, 305 N.W.2d 110 (1981),** that the district attorney, not the trial court, is vested with the responsibility of weighing and examining the testimony received at the preliminary hearing and to issuing the appropriate charge. This being the case, petitioner believes that it would not be appropriate for the district attorney, as quasi-judicial officer, after the bindover from preliminary examination, to have filed information immediately after bindover from preliminary examination, without first weighing and examining the testimony received at preliminary hearing. This is the matter before this court in the case at bar. In **Hooper,** this court recognized that a separate responsibility of the prosecutor as contrasted to that of the court's in criminal proceedings, and **particularly in the [i]nterface between the complaint and the filing of an information,** after the preliminary hearing stage of a felony prosecution. **101 Wis.2d at 537, Hobbins, 214 Wis.2d 456 (emphasis added).** That court also stated that following a bindover, it becomes the duty of the district attorney to review and weigh the preliminary hearing evidence and file charges in the information in accordance with that evidence. **see §971.01(1).** However, at no time relevant to the filing of the information in the case at bar, did the district attorney comply with it's statutorily mandated duties which are imposed as a prerequisite to the power conferred upon it's quasi-judicial character. **O'Neil v. State 189 Wis. 259, 261, 207 N.W. 280**

-(1926); see also, State v. Hooper at 531, 305 N.W.2d 110. In the exercise of quasi-judicial powers entrusted to boards, councils, commissions, and quasi-judicial officers, a clear violation of law in reaching a result which is within the power of the officer or body to reach, proceedings in a legal matter, are considered as jurisdictional errors. **State ex - rel., Durner v. Huegin 110 Wis. 189, 85 N.W. ___ (1946); State ex rel., Augusta v. Cosby 115 Wis. 57 (1902).** If an officer or board, in reaching a determination is required to act upon evidence, and it acts without resorting to the evidence, or any evidence recognized by a view, or if it is required to receive evidence and refuses to do so, it commits a clear violation of law....a jurisdictional error...and it's final determination can be challenged as void. **id., but see, Schmidt v. Local Affairs & Development Dept. 39 Wis.2d 46, 56, 57, 158 N.W.2d 306 (1968); Folding Furniture Works v. - Wisconsin Labor Relations Board 232 Wis. 170, 191, 285 N.W. 851, 286 N.W. ___ (1939), State ex rel., Moreland v. Whitford 54 Wis. 150, 11 N.W. ___ (1882).**

Whereas, contrary to **§971.01(1) Wis. Stats.,** the district attorney's procedural failures in non-compliance of their statutorily mandated duties, for skipping the procedure of weighing and examining the evidence during the **"[i]nterface [p]hase",** before the filing of the information, as a constitutional safeguard, never conferred their quasi-judicial

jurisdiction onto the trial court as a result of the jurisdictional defect of the district attorney in their quasi-judicial capacity. Mark v. State 93 Wis.2d 287, 286 N.W.2d 563 (1980) Petitioner, contends there are three very important, separate and distinct phases to a defendant's due process felony prosecution, and they are interdependant when conferring a circuit court's personal matter and subject matter and subject matter jurisdiction, from the probable cause phase of the pre-trial court, to the weighing and examining of the interface phase, onto the beyond a reasonable doubt phase of the trial court-which petitioner asserts did not occur in the prescribed constitutional and jurisdictional order in Case No. F-965047--the case at bar.

C O N C L U S I O N

Based upon the foregoing, the petitioner respectfully requests that this court [grant petitioner's relief to vacate criminal Case No. F-965047], or in the alternative remand this case to the lower court for a ruling on the merits of the issues herein, pursuant to **§782.04 habeas corpus standard of review.**

Dated this 18th day of January, 2011.

Respectfully Submitted,

Sean F. Rowell

Sean F. Rowell # 255649 **, 1C/** 22C
(Pro se)--Petitioner.

C E R T I F I C A T I O N

I, certify that this petition meets the form and length requirements of rule **§809.19(8)(b)(3)(b)**, in that it is a Monospaced Font used; 10 characters per inch, double spaced; 1.5 inch margin on the left side and 1 inch margin on all other sides; the length of this petition is 7 **pages exclusive of the appendix, and:**

I also hereby certify that filed with this brief either as a separate document or as part of this petition, is a appendix that complies with **§809.19(2)(a)**, and that contains:

(1) A table of contents;
(2) Relevant trial court record entries;
(3) The findings and opinions of the trial court;
(4) And portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial court's reasonings regarding those issues.

I also certify, that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 18th day of January, 2011.

Respectfully Submitted,

Sean F. Rowell

Sean F. Rowell #255049 1C/32C
(Pro se)--Petitioner.