18-8685

No.

ORIGINAL

IN THE

Supreme Court of the United States

ERVIN THOMAS,
Petitioner,

v.

CATHY A. JESS,
Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals For the Seventh Circuit

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PETITION FOR WRIT OF CERTIORARI

ERVIN THOMAS
Layman (*Pro Se*) Litigant

Prisoner ID 328450
Oshkosh Correctional Institution
P.O. Box 3310
Oshkosh, Wisconsin 54903-3310

QUESTION(S) PRESENTED

Whether a federal district court should deny petitioners petitions for a of writ of habeas corpus as untimely and failed to issue a certificate of appealability, where extraordinary circumstance when the state courts refuses to liberally construe the *pro se* litigants pleadings, thus stands in *pro se* litigants' ways and preventing them from timely filing their 28 U.S.C. § 2254 petitions.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.[1]

[1] While preparing this petition, Warden Judy P. Smith retired; new warden, Cathy A. Jess, succeeded her.

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INTRODUCTION

This is a case involves courts not liberally construing the filing of laypersons (*pro se*) litigants' pleadings, that causes the laypersons (*pro se*) litigants' pleadings not to be filed in a timely manner. This Court for years has informed all courts below, federal and state to liberally construe all laypersons (*pro se*) litigants' pleadings, it held that "[a] document filed *pro se* is 'to be liberally construed,' ... however inartfully pleaded, must be held to less stringent standard than formal pleading drafted by lawyers." ***Estelle v. Gamble***, 429 U.S. 97, 106 (1976); *also* ***Erickson v. Pardus***, 551 U.S. 89, 94 (2007) ("A document filed *pro se* is 'to be liberally construed,' ... however inartfully pleaded, must be held to less stringent standard than formal pleading drafted by lawyers."). The opinions of this Court are only as good as the courts below respects and follow them, thus, when a court below fails to respect and follow the opinion, we, laypersons (*pro se*) litigants will receive no justice.

It is noted that this Court has stated, "[e]ven the intelligent and educated layman has small and sometimes no skill in the science of law." ***Powell v. Alabama***, 287 U.S.

45, 69 (1932). Most laypersons (*pro se*) litigants are unlettered in the law and this reflects on their filings.

The only ones can actually understand what goes on in the mind of laypersons (*pro se*) litigants when filing their pleadings are they, the laypersons (*pro se*) litigants. In the hope of a better understanding us, laypersons (*pro se*) litigants, we submit what goes on in our mind when filing our pleadings,

> We as laypersons (*pro se*) litigants feel that we are often discriminated by the judicial system, because we are *pro se* litigants, without an attorney, thus alone, our pleadings are not respected. We, laypersons just keep on going hoping that a reasonable court will hold the balance nice, clear, and true between the State's attorney and us. We as laypersons feel that when we have made a prima facie claim, supported by case law or statutory law, this is not good enough; we are provided with a false since of hope by the case laws and statutory laws. What is wrong with losing in court is not being given an opportunity to obtain relief. Being poor, unable to afford counsel to protect our valuable interest, we rely on others and ourselves, unquestionably we make mistakes. We do our best to comply with all the rules and statutes, because one mistake we make in law of the many rules and statutes will cost us our liberty. So we wait, we hope, and we pray for justice.

The Wisconsin Supreme in ***Amek Bin-Rilla v. Isreal***, 113 Wis.2d 514, 335 N.W.2d 384 (Wis. 1983), the court stated, "Amek bin-Rilla had filed [a] '*pro se*' petition for a writ of habeas corpus in this court." *Id.* at 516 n.2, 335 N.W.2d at 386 n.2. The court then stated that Amek bin-Rilla's "petition, like many *pro se* petitions, is difficult to understand," however, "[w]hen read with other documents in the record, the petition appears to allege four violations of constitutional rights...." 113 Wis.2d at 517-518, 335 N.W.2d at 386. Next, the Wisconsin Supreme Court stated:

> "We have long adhered to the view that *pro se* prisoner complaints, whether offered in petition or any other form, including letters to judges, must be construed liberally to determine if the complaint states any fact giving rise to a cause of action. In ***State ex rel. Terry v. Traeger***, 60 Wis.2d 490, 497, 211 N.W.2d 4 (1973), we explained the necessity for construing *pro se* complaints liberally to do substantial justice:
>
> > "We recognize that the confinement of the prisoner and the necessary reasonable regulations of the prison, in addition to the fact that many prisoners are unlettered and most are indigent, make it difficult for a prisoner to obtain legal assistance or to know and observe jurisdictional and procedural requirements in submitting his grievances to a court. Accordingly, we must follow a liberal policy in judging the sufficiency of *pro se* complaints filed by unlettered and indigent prisoners."

Amek Bin-Rilla, 113 Wis.2d at 520, 335 N.W.2d at 388. Next, the Wisconsin Supreme

Court informed its lower courts again that, "[i]t is long-standing precedent of this court that pleadings generally, and the *pro se* complaints of prisoners specifically, be construed liberally." ***Lewis v. Sullivan***, 188 Wis.2d 157, 161, 524 N.W.2d 630, 631 (Wis. 1994). "Neither a trial nor an appellate court should dismiss a prisoner's pleading based on its label rather than on its allegations. If necessary the court should relabel the prisoner's pleading and proceed from there." *Id.* at 188 Wis.2d at 164-165, 524 N.W.2d at 632-633.

Petitioner Ervin Thomas ("Petitioner Thomas"), a layman (*pro se*) litigant, applies to the Justices of the Supreme Court of the United States for a Certificate Of Appealability ("COA) so that he may appeal in the above-entitled matter and Leave to Proceed In Forma Pauperis ("IFP") on Appeal.

There is no question in this case that Petitioner Thomas' petition for a writ of habeas corpus (28 U.S. C. § 2254) was untimely filed in the district court, however, the sole reason and cause for the petition being untimely is that the state courts failed to liberally construe his layman (*pro se*) litigant's pleadings, however inartfully pleaded. This set-off a change of events that caused Petitioner Thomas' petition for a writ of habeas corpus to be untimely.

OPINIONS BELOW

The Seventh Circuit's order denying application for a certificate of appealability to appeal appears in the Appendix-A at 1a. The district court's orders denying petition for a writ of habeas corpus and certificate of appealability appears at (App. 2a- 14a), and the Judgment of the district court appear at (App.15a). The order of the district court denying his motion to proceed *in forma pauperis* on appeal appears at (App. 16a -19 a).

JURISDICTION

The Seventh Circuit issued its order on January 25, 2019, denying certificate of appealability to appeal. This Court has jurisdiction over this subject-matter pursuant to 28 U.S.C. §1254(1).and 28 U.S.C. § 2253(c)(1)(A).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Sixth Amendment to the United States Constitution, which provides:

> In all criminal prosecution, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusations; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

This case involves Section 1 of the Fourteenth Amendment to the United States Constitution, which provides:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE AND FACTS

A. The Initial Criminal Proceedings.

On July 29, 2009, Ervin Thomas ("Petitioner Thomas") was charged in a criminal complaint with three counts, count 1, kidnapping, contrary to Wis. Stats.§ 940.31(1)(a); count 2, kidnapping, contrary to Wis. Stats.§ 940.225(2)(a); and count 3, sexual assault of a child under 16 years of age, contrary to Wis. Stats.§ 948.02(2). An warrant was issued on August 27, 2009, for Petitioner Thomas.

On March 10, 2010, Petitioner Thomas was informed that a detainer placed been in his prison file. Thomas completed the Agreement on Detainers forms requesting a final disposition of his charges and gave them to Jerry Buscher the Warden of Taylorville Correctional Center in Illinois whom sent copies by certified mail to the Milwaukee County District Attorney's Office and Clerk of Circuit Court.

Petitioner Thomas was escorted to Milwaukee, Wisconsin on June 3, 2010, and he made his initial appearance for his arraignment on June 4, 2010. A preliminary hearing

was scheduled for June 11, 2010, on the day of his preliminary hearing, Thomas' defense counsel told him that it would be in your best interest to waive the preliminary and a date for status conference was scheduled for June 21, 2010.

On July 13, 2010 at the scheduling hearing, the case was set for a *Miranda-Goodchild* hearing.

On July 28, 2010, Atty. Cossi filed a motion to suppress statements made by The defendant during the interrogation in Illinois because he invoked his Fifth and Sixth amendment rights of the United States Constitution. These rights were violated by the investigating detectives conducting the interrogation.

On August 26, 2010, Assistant District Attorney Miriam S. Falk sent a letter to the state circuit court stating pertinent part:

> ALSO: URGENT: THIS CASE HAS A DETAINER RUNNING OUT ON 9/9/10, WHICH MEANS THAT, IF THIS CASE IS NOT RESOLVED ON 9/2, THE TRIAL MUST COMMENCE ON OR BEFORE 9/9/10. I do not know how I missed this when we were setting the motion date, but I did. I have given [Trial Counsel Alex Cossi] Mr. Cossi the head- up on this issue as well.

On September 2, 2010, the morning court date was cancelled and the defense counsel was informed that the interstate detainer issue was to be discussed on the record in the afternoon. The Miranda Goodchild hearing was cancelled and a trial was set and the state circuit court indicated that:

> Miss Falk filed a letter on August 26, 2010, she and Trial Counsel Cossi came in I believe it was sometime around, or sometime early this week just off the record to advise me the issues raised in the letter, apparently detainer running on this case, an oversight by the State Pursuant to the detainer the matter is to be set for trial. Trial must commence by law on or before September 9th, that being next week Thursday.

However, no trial date was available on or before September 9, 2010, so the court Judge on his own accord, scheduled a jury trial for September 13, 2010. Mr. Thomas, through Attorney Cossi, made it clear that he was not "waiving any of his IDA or his sixth amendment constitutional rights" in regards to the court setting the jury trial for 9/13/10, due to the prosecution withheld the IDA evidence from the defense that contained information for the actual commencement date that started the 180 – day

time limit. Trial Counsel Cossi then filed a motion to dismiss on September 7, 2010. The State filed a response on September 9, 2010.

The state circuit court held a motion hearing and final pretrial on September 10, 2010 the day that the IDA 180- days should have expired. At the hearing, the trial Court indicated that the 180 – day time limit under the IDA began to run on March 18 2010 the alledged date for the delivery asserted by the State prosecutor. Without any evidence of proof that shows that, their office received Thomas' IDA notice on that date instead of March 15, 2010 as is reflected by the IMSD Mailroom log pages that are signed by an employee of the D.A.'s office and an employee of the clerk of the state circuit court office. The State's copy of the certified letter file stamped March 18, 2010, was not

The State's copy of the certified letter file stamped March 18, 2010, was not provided to Petitioner Thomas or his counsel because it does not exist. The false stamp date of March 18, 2010, that the prosecutor or someone else who work in the D.A.'s office placed on the IDA forms, is not what determines when the notice was delivered to the Prosecuting officer and to the clerk of court, however, it is the stamp date of the return certified mail receipts and the date and signatures on the IMSD mailroom log pages of the person(s) whom signed for the delivery to the designated entities that determines the start of the 180 – day clock.

The state circuit court then gave Petitioner Thomas time to review the *Whittmore* case and bring any further objections based on the court's interpretation of *Whittmore;* no further arguments were made as to the application of *Whittmore*.

On September 13, 2010, Petitioner Thomas entered guilty pleas to count 1, And 3 at the insistence of his then counsel Alex D. Cossi. After Petitioner Thomas entered his guilty pleas, his counsel indicated the reasoning for the plea such that: And it does looks like the detainer issue is from the point that the State receives the request, not when the defendant actually sends it out, so I advised my client based upon the March 18th date that that is the controlling law, and that is our understanding that it's from the March 18th, date, and essentially a guilty plea waives those detainer rights.

Trial Counsel Cossi also stated that if it were found that the district attorney's office received the notice before March 18, 2010 he would like to file a motion to withdraw the

plea. Which he should have done due to erroneous information and falsified documents submitted to the courts by the prosecution.

On November 4, 2010, Trial Counsel Cossi informed the state circuit court in a letter that he received a copy of the certified mail return receipt that showed that the Office of the District Attorney and the clerk of the state circuit court had actually received the request notice under the IDA on March 15, 2010, and that the 180- days had already run when Mr. Thomas's plea was entered. The state circuit court adjourned to allow Attorney Cossi to do some further investigating; instead Atty. Cossi filed a motion to withdraw form the case. The state circuit court granted Attorney Alexander Cossi's motion to withdraw on December 13, 2010. New counsel, Attorney Richard Prolusion filed a motion to withdraw guilty pleas on February 14, 2011. The motion hearing commenced on March 17, 2011.

At the hearing, Attorney Poulson again argued that the IDA 180-day time limit had expired prior to the entry of the plea. Further, the State provided information that the signature on the notice of the certified mailed letter containing the IDA forms was signed for by Sharon Scmadl (Schmall), and she works for the courthouse annex room too, which is Information Management Service Distribution **(IMSD).**

The state circuit court determined that it needed to review transcripts of the prior motion hearings and adjourned the hearing without making a decision. At the conclusion of the motion hearing on June 20, 2011, Attorney Poulson argued that Petitioner Thomas should be allowed to withdraw his plea.

The State disagreed with Attorney Polson, and believed that the certified mailed receipts for the IDA request letter was not controlling since it was personnel for IMSD that signed the certified mail receipts for the letter and not the district attorney's office.

A letter dated August 26, 2010 form the prosecutor addressed to the Circuit Court Hon. Judge Kevin E. Martens 821W. State Street Milwaukee WI 53233. The state circuit court made the following ruling:

> The defense has not provided a sufficient showing or adequate showing that, indeed the detainer would have expired based on that body of facts on a date prior to September 13, 2010.

The motion to withdraw was denied and the case set for sentencing. The state circuit court denied Attorney Richard Poulson's motion to withdraw as counsel on August 3, 2011.

The sentencing hearing proceeded on August 31, 2011. As to count 1, kidnapping, contrary to Wis. Stat. § 940.31(1)(a); count 2, kidnapping, contrary to Wis. Stats.§ 940.31(1)(a), Petitioner Thomas was sentenced to an indeterminate period of 18- years in the Wisconsin State Prison. On count 3, sexual assault of a child under 16 years of age, contrary to Wis. Stat. § 948.02(2). Petitioner Thomas was sentenced to an indeterminate period of 18- years in the Wisconsin State Prison, to be run concurrent to count 1, but both to be ran consecutive to any other sentence.

B. The Proceedings On Direct Appeal.

Petitioner Thomas through his appointed-counsel sought a direct appealed from the state circuit court's Judgment of Conviction to the Wisconsin Court of Appeals. On May 29, 2013, the Wisconsin Court of Appeals affirmed the decisions of the state circuit court stating that "[w]ithout any evidence demonstrating that Information Management was an agent of the district attorney's office, we conclude that Petitioner Thomas failed to demonstrate that his speedy trial request was delivered to the prosecuting officer on March 15, 2010." ***State v. Thomas***, 2013 WI App 78, ¶18, 348 Wis.2d 699, 709.

On June 28, 2013, Petitioner Thomas through his appointed-counsel filed a timely petition for review to the Wisconsin Supreme Court. On November 26, 2013,[1] the Wisconsin Supreme Court denied the petition for review. ***State v. Thomas***, 2014 WI 3, 352 Wis.2d 353 (Wis. 2013) (Table Opinion). Thereafter, Petitioner Thomas sought reconsideration in the Wisconsin Supreme Court of its November 26, 2013 denial. On January 7, 2014, Chief Deputy Clerk Christopher Paulsen of the Wisconsin Supreme Court informed Petitioner Thomas that,

> "The decisions of a state's highest court are reviewable at the discretion of the United States Supreme Court. Information pertaining to the filing of petition to the U.S. Supreme Court can be obtained by writing to:
>
> Supreme Court of the United States

[1] From this date, Petitioner Thomas had 15-months to file his federal 28 U.S.C. § 2254 in the United States District Court for the Eastern District of Wisconsin, February 27, 2015.

Office Of The Clerk
Washington, D.C. 20543-0001"

On April 11, 2014, the Wisconsin Supreme Court stated:

> "The court having considered the motion of defendant- appellant, Ervin Thomas, pro se, to reconsider its November 26, 2013, order denying the petition for review filed in this case, and the court noting that there is no statutory authority permitting a motion for reconsideration of an order denying a petition for review, Archdiocese of Milwaukee v. City of Milwaukee, 91 Wis. 2d 625, 284 N.W. 2d 29 (1979).
>
> IT IS ORDERED the motion is dismissed. No cost."

On June 18, 2014, Petitioner Thomas sent a letter to the Milwaukee County Office of corporation Counsel requesting information regarding Milwaukee County Courthouse mailroom, requesting information as to whether "IMSD has the legal authority to sign and stamp date certified mail receipts for the D.A.'s office and Clerk of the Court."

On August 8, 2014, Petitioner Thomas sent a letter to an Illinois Prison Taylorville Correctional Center / Records office requesting copies of the Interstate Agreement Detainers Forms VI and VII that were filed in 2010 when he was a prisoner at the time when the State of Wisconsin filed a detainer against him.

Petitioner Thomas received a correspondence letter dated September 10, 2014, from Ms. Kathryn M. West Assistant Corporation Counsel for the Milwaukee County Office of Corporation Counsel Stating:

> RE: Request for Information regarding Milwaukee County Courthouse Mail room
>
> Dear Petitioner Thomas This is in response to your letter of June 18, 2014 requesting information as to whether "IMSD" has the legal authority to sign and stamp date certified mail for the D.A.'s office and clerk of court."

On page two of the response letter from Ms. West Asst. Corporation Counsel, she stated:

> For your general information, the mail delivery system for the Milwaukee County Courthouse Complex ("Complex") generally operates out of a centralized location in the complex, which includes the Milwaukee county courthouse, the Safety building and the Community Justice Facility (CMJ). Mail from the United States

post office directed to agencies and departments in the complex is retrieved from a USPS substation and dropped off in the complex' mailroom. Personnel in the mailroom then sort it and deliver it to the various offices in the complex. Certified Mail is delivered to the complex mailroom where personnel sign for the delivery and enter it in a system log. Mailroom personnel then deliver the certified mail directly to the department or agency to which it is directed, obtain a signature from the person who receives it in the office, and enter that information in the log.

C. The Collateral Proceedings.

On November 18, 2014, Petitioner Thomas filed his *pro se* motion for postconviction to the state circuit court,

On November 18, 2014, Petitioner Thomas filed in the state circuit court a Motion for Postconviction Relief under Wis. § 974.06, Stat. and ***State ex rel. Rothering v. McCaughtry***, 205 Wis.2d 675 (Ct. App. 1996). Petitioner Thomas alleged in the motion that:: (1) He received ineffective assistance from both his Pre-trial court appointed counsels and postconviction/appellate counsel; and, (2) The State withheld IDA documents that would have shown that the speedy trial time limit had expired two days prior to him entering in pleas on September 13, 2010, because he was not brought to trial within 180- days after his IDA request notice was received in the Milwaukee County district attorney's office on March 15, 2010, and not on March 18, 2010, as asserted by the State.

On November 21, 2014, the state circuit court stated that:

> The motion contains nothing but conclusory allegations. The court is unable to intelligently evaluate any of the defendant's claims with regard to the purported ineffective assistance of counsel because it does not know what any of the specifics are. Moreover, even if the motion were sufficiently pled, the claims are properly before the Court of Appeals pursuant to *Starks* because a postconviction motion was never filed.
>
> THEREFORE, IT IS HEREBY ORDERED that the defendant's motion for postconviction relief is DENIED.
>
> Dated November 21, 2014 Judge Jeffrey A. Wagner presiding.

(Pet. App. 20a-21a). Here, is the first time the Wisconsin state courts failed to liberally construed Petitioner Thomas' *pro se* motion, 1) however inartfully pleaded, the motion must be held to less stringent standard than formal pleading drafted by lawyers. Estelle v. Gamble, 429 U.S. 97, 106 (1976), ***Erickson v.***

Pardus, supra.; 2) the motion was difficult to understand, however, "when read with other documents in the record, the motion appeared to allege violations of constitutional rights, ***Amek Bin-Rilla v. Isreal*** *supra*; and, 3) the state circuit court should not have dismissed his pleading based on its label rather than on its allegations. If necessary, the state circuit court should relabel his pleading and proceed from there. ***Lewis v. Sullivan***, *supra*. This set-off a change of events that caused Petitioner Thomas' federal petition for a writ of habeas corpus (28 U.S.C. § 2254) to be filed untimely in the district court.

Next, Petitioner Thomas filed timely documents in the Wisconsin Court of Appeals that should have been liberally construed as a Notice of Appeal, however, on December 26, 2014, the Wisconsin Court of Appeals stated:

> Ervin Thomas, *pro se*, has submitted a document entitled "motion for postconviction relief pursuant to Wis. Stat. § 974.06" and a brief in support of the motion. This court cannot grant relief under § 974.06. see Wis. Stat. § 974.06 (1) (2011-12) (after a time for appeal or postconviction remedy provided in s. 974.02 has expired, a prisoner in custody under sentence of a court ... may move the court which imposed the sentence to vacate, set aside or correct the sentence.") (Emphasis added).
>
> Electronic docket entries for Thomas circuit court case, Milwaukee County Circuit Court case No. 2009CF3972, indicate that he filed a motion for post conviction relief pursuant to Wis. Stat.§ 974.06 on November 18, 2014, and that the circuit court denied the motion on November 21, 2014.
>
> It therefore may be that Thomas is attempting to commence an appeal.
>
> However, an appeal is not started by letter or motion to this court. See Wis. Stat. §§808.03 & 808.04 See also Wis. Stat. Rule 809.10. Therefore,
>
> **IT IS ORDERED**, that this court shall take no action on Thomas's motion for postconviction relief. Slip Or. Wis. Sup. Ct. of January 13, 2015.

(Pet. App. 22a-23a). Here, is the second time the Wisconsin state courts failed to liberally construed Petitioner Thomas' *pro se* pleadings. The Wisconsin Court of Appeals stated:

> that it looked up "[e]lectronic docket entries for Thomas circuit court case, Milwaukee County Circuit Court case No. 2009CF3972, indicate that he filed a motion for post conviction relief pursuant to Wis. Stat.§ 974.06 on November 18, 2014, and that the circuit court denied the motion on November 21, 2014.
>
> It therefore may be that Thomas is attempting to commence an appeal.

> However, an appeal is not started by letter or motion to this court. See Wis. Stat. §§808.03 & 808.04 See also Wis. Stat. Rule 809.10. Therefore,
>
> **IT IS ORDERED**, that this court shall take no action on Thomas's motion for postconviction relief. Slip Or. Wis. Sup. Ct. of January 13, 2015,

Id. However, the Wisconsin Court of Appeals refused to liberally construed Petitioner Thomas' *pro se* pleadings as a timely Notice of Appeal, as the Wisconsin Supreme Court as stated that it has "long adhered to the view that *pro se* prisoner complaints, whether offered in petition or any other form, including letters to judges, must be construed liberally to determine if the complaint states any fact giving rise to a cause of action." ***Amek Bin-Rilla***, 113 Wis.2d at 520, 335 N.W.2d at 388. Moreover, this Court's mandated that "[a] document filed *pro se* is 'to be liberally construed,' ... however inartfully pleaded, must be held to less stringent standard than formal pleading drafted by lawyers." ***Estelle v. Gamble***, *supra*, 429 U.S. at 106; *also* ***Erickson v. Pardus***, *supra*, 551 U.S. at 94. This continued to set-off a change of events that caused Petitioner Thomas' federal petition for a writ of habeas corpus (28 U.S.C. § 2254) to be filed untimely in the district court.

It gets worst, because Petitioner Thomas thereafter filed his *pro se* pleadings in the Wisconsin Supreme Court, and on January 13, 2015, it stated:

> The Appellant - Petitioner filed a document in the Supreme Court of Wisconsin entitled "motion for postconviction relief pursuant to Wis. Stat. § 974.06" and a brief in support of the motion. He previously filed the same documents in the court of appeals. As that court noted in its order of December 26, 2014, an appellate court cannot grant relief under § 974.06. Stats. and motions brought pursuant to § 974.06 must be filed in the court which imposed the sentence. Accordingly,
>
> It IS ORDERED that the motion is dismissed.

(Pet. App. 24a). The Wisconsin Supreme Court not only refused to follow its decisions in ***Amek Bin-Rilla v. Isreal*** *supra* and ***Lewis v. Sullivan***, *supra,* and refused to follow this Court's mandates in ***Estelle v. Gamble***, *supra*, 429 U.S. at 106 and ***Erickson v. Pardus***, *supra*, 551 U.S. at 94. This continued to set-off a change of events that caused Petitioner Thomas' federal petition for a writ of habeas corpus (28 U.S.C. § 2254) to be filed untimely in the district court. Petitioner Thomas' 15-month deadline to file his 28 U.S.C. § 2254 petition had been eaten-up and reined by the Wisconsin state courts refusal to liberally construe his *pro se* pleadings, however inartfully pleaded. There was

no question that Petitioner Thomas was unlettered in the law, however, he was diligent in his efforts for keeping his case alive, although, his pleadings were inartfully plead, and they should have been construed liberally. This extraordinary circumstance stood in Petitioner Thomas' way and prevented him from timely filing his 28 U.S.C. § 2254 in the United States District Court for the Eastern District of Wisconsin on or before February 25, 2015. ***Holland v. Florida,*** 560 U.S. 631, 649). (2010).

D. The Diligent Efforts Of Petitioner Thomas

Petitioner Thomas unlettered in law made diligent efforts to keep his case alive and attempting to correct the manifest injustice and he was not negligent in any way. On November 6, 2015, Petitioner Thomas filed a postconviction motion, alleging newly discovered evidence to constitute a manifest injustice and warrant the withdrawal of a plea, alleged:

> For newly discovered evidence to constitute a manifest injustice and warrant the withdrawal of a plea, *see* ***State v. Krieger,*** 163 Wis.2d 241, 255, 471 N.W.2d 599, 605 (Ct. App. 1991), a defendant must prove "by clear and convincing evidence, that: (1) the evidence was discovered after conviction; (2) the defendant was not negligent in seeking evidence; (3) the evidence is material to an issue in the case; and (4) the evidence is not merely cumulative." *See* ***State v. McCallum***, 208 Wis.2d 463, 473, 561 N.W.2d 707, 710-711 (Wis. 1997). If the evidence meets these criteria by clearly and convincing evidence, the trial court must then determine "whether a reasonable probability exists that a different result would be reached in a trial." *Id.*

Petitioner Thomas submitted:

> 1) he has discovered newly evidence after his conviction[2] that support his allegations that the State actually violated his speedy trial rights under the Interstate Agreement on Detainers ("IAD") as adopted by WIS. STAT. § 976.05(3)(a) when it failed to bring him to trial within the 180 day time limitation period after his request was delivered to the prosecuting officer and court on March 15, 2010.
>
> 2) Mr. Thomas has not been negligent in seeking the newly discovery evidence as he has clearly demonstrated on pages 8-11 of this brief.[3]

---

[2] Petitioner Thomas was sentenced on August 31, 2011, and a Judgment of Conviction was entered on the same.

[3] In addition, Petitioner Thomas attempted to file his newly discovered evidence earlier than the date of this motion and brief, however, he was unlettered in the law and his pleadings were inartfully pleaded according to the state circuit court, court of appeal and Supreme Court. The

3) The newly discovered evidence is material to an issue in the case because it shows clearly and convincingly that the prosecuting officer actually received his speedy trial request on March 15, 2010, .and not March 18, 2010.

4) The newly discovered evidence is not merely cumulative because the court of appeals stated that Mr. Thomas "[w]ithout any evidence demonstrating that Information Management was an agent of the district attorney's office, we conclude that Thomas failed to demonstrate that his speedy trial request was delivered to the prosecuting officer on March 15, 2010." ***State v. Thomas***, 2013 WI App 78, ¶18, 348 Wis.2d 699, 709.

In support of Petitioner Thomas' newly discovered evidence claims, he submits his affidavit and incorporates that affidavit herein by reference. In addition, showing how Petitioner Thomas discovered the evidence. The newly discovered evidence clearly and convincing shows that the Milwaukee County District Attorney's Office did receive the Interstate Detainer request notice for final disposition on March 15, of 2010 and not March 18, 2010, as claimed by the prosecutor. In addition, that the Information Management Service Division employee, Sharon L. Schmall was the authorized mailroom agent whom signed for the certified mail receipts on the behalf of the D.A.'s office and the clerk of the court. The newly discovered evidence was as follows: On September 12, 2014, Petitioner Thomas received a letter from the Kathryn M. West, Assistant Corporation Counsel - Milwaukee County Office of Corporation Counsel stating:

"[I]n response to your letter of June 18, 2014, requesting information as to whether " IMSD has the legal authority to sign and stamp date certified mail for the D.A.'s office and clerk of the court.

For your general information, the mail delivery system for the Milwaukee County Courthouse Complex ("Complex")generally operates out of a centralized location in the complex, which includes the Milwaukee county courthouse, the Safety building and the Community Justice Facility (CMJ). Mail from the United States post office directed to agencies and departments in the complex is retrieved from a USPS substation and dropped off in the complex' mailroom. Personnel in the mailroom then sort it and deliver it to the various offices in the complex. Certified Mail is delivered to the complex mailroom where personnel sign for the delivery and enter it in a system log. Mailroom personnel then deliver the certified mail directly to the department or agency to which it is directed, obtain a signature from the person who receives it in the office, and enter that information in the log. Of course, it is not unusual for mail or packages to be hand – delivered directly to a particular office, either by a messenger or a private service, and the mailroom would have neither a role in nor a record of such a delivery.

Clerk of the Milwaukee Circuit Court twice returned Mr. Thomas' pleadings for improper filing, one on March 26, 2015, and the other on June 1, 2015.

In addition, Ms. West stated "[a]t all times relevant to this case, the mailroom was operated by the Milwaukee County Department of Administrative Services – Information Management Services Division, i.e., IMSD. Starting on January 1, 2014, those responsibilities were transferred within the Department of Administrative Services, to the Facilities Management Division." Ms. West foregoing letter constituted as newly discovered evidence. On January 23, 2015, I received for the Milwaukee County IMSD – Office Of Corporation Counsel, Kathryn M. West, Assistant Corporation Counsel , 1) Letter dated January 23, 2015; and, 2) Incoming Signature Required Mail Logs.[4] The logs clearly and convincingly show that on March 15, 2010, the IIDA notice delivery was made to the Milwaukee County District Attorney "(D A) Rm 405," Where a Ms. Sheila Stanelle signed the mailroom log page as the person whom received the IDA request notice delivery on 3/15/10. In addition, the logs clearly and convincingly show that on the same date M. Bond, whom works in the Milwaukee Circuit Court Clerks Office signed the mailroom log page as the person whom received the IDA request notice delivery on 3/15/10. The foregoing newly discovered evidence clearly and convincingly shows that Petitioner Thomas' Interstate Detainers, request for a speedy trial was received and signed by the District Attorney Office and the Office of the Clerk on March 15, 2010. In addition, Ms. West stated:

> "The response letter dated January 23, 2015 from a Kathryn M. West reads as follows:
>
> We are construing the request for information you made in those letters as a records request, pursuant to Wisconsin Statutes, Chapter 19. As requested, I am enclosing copies of the mailroom log pages that reflect delivery of certified mail # 7006 0810 0003 7748 0766 to the Milwaukee County Clerk of Courts Office, and certified mail # 7006 0810 0003 7748 0773 to the Milwaukee County District Attorney's Office. Those IMSD mailroom log pages show that the IDA request notice was delivered to the D.A.'s office of Milwaukee County on March 15, 2010, and signed for by an employee named Sheila Stannelle, and the Second Mailroom

[4] In addition, Ms. West stated that "[t]he response letter dated January 23, 2015 from a Kathryn M. West reads as follows: We are construing the request for information you made in those letters as a records request, pursuant to Wisconsin Statutes, Chapter 19. As requested, I am enclosing copies of the mailroom log pages that reflect delivery of certified mail # 7006 0810 0003 7748 0766 to the Milwaukee County Clerk of Courts Office, and certified mail # 7006 0810 0003 7748 0773 to the Milwaukee County District Attorney's Office. Those IMSD mailroom log pages show that the IDA request notice was delivered to the D.A.'s office of Milwaukee County on March 15, 2010, and signed for by an employee named Sheila Stannelle, and the Second Mailroom log page shows that an M. Bond as being the person whom received the notice for the Clerk of the Courts Office."

log page shows that an M. Bond as being the person whom received the notice for the Clerk of the Courts Office."

On March 2, 2015, Petitioner Thomas wrote Ms. West again, and she sent him a letter stating: "I received your letter addressed to my attention requesting additional documentation, namely: 'a copy of the incoming signature required certified mail article tracking numbers that was delivered to the Circuit Court Clerks Office and the Milwaukee County District Attorney's Office on March 18, 2010.' We are construing this request as a records request, pursuant to Wisconsin Statutes, Chapter 19. You have already received copies of certified mail receipts signed by Ms. Schmalling and on January 23, 2015, our office provided you with copies of the mailroom log pages that reflected delivery of certified mail to the Milwaukee County Clerk of Courts Office, and to the Milwaukee County District Attorney's Office." It is our belief that we have fully complied with your request for records. No additional records exist to your request (Emphasis added and supplied in brackets). The foregoing too constitutes as newly discovered evidence.

Petitioner Thomas also received copies of Interstate Agreement on Detainers (IAD) forms VI and VII on April 8, 2015, from the records office supervisor at Taylorville Correctional Center in Illinois. Form VI is evidence of agent's authority to act for the receiving State, and form VII is for the prosecutor's acceptance of temporary custody of the offender. The Deputy District Attorney ("DDA Lovern") Kent Lovern and Judge Richard J. Sankovitz, whom just happen to be Petitioner Thomas' sentencing judge, both signed the Agreement on Detainers form #VII Prosecutors Acceptance of Temporary Custody. Which States: The Prosecuting Officer DDA Lovern sent Agreement on Detainers Form # VII his letter of acceptance of temporary custody of the offender directed to the Illinois Prison Warden Buscher sometime in May of 2010. The letter states as follows:

> In response to your letter dated **03/15/10** and offer of temporary custody regarding the above named inmate who is presently under (indictment) (information) Complaint) in this Jurisdiction of which I am prosecuting officer, please be advised that I accept temporary custody and that I propose to bring this person to trial on the (indictment) (information) (Complaint) named in the offer within the time specified in Article III (a) of the Agreement on Detainers.
>
> I hereby agree that immediately after trial is completed in this jurisdiction, I will return the inmate directly to you or allow any jurisdiction you have designated

to take temporary custody. I agree also to complete Form IX, Prosecutors Report on Disposition of Charges, immediately after trial. "The date on detainer form # IV to the prosecuting officer offering temporary custody is 3/ 10/ 10 not 3/ 15/ 10, as alleged by Mr. Kent Lovern".

This IDA Form #VII bears the Signatures of the prosecuting Officer, DDA Lovern, and my sentencing Judge the Honorable Richard J. Sankovitz dated on May 10, of 2010. The prosecuting Officer waited 57 days from the date the March 15, 2010, delivery date until May 10, 2010, to accept temporary custody of prisoner Thomas.In addition, the envelope from IDA forms # VI and # VII the newly discovered evidence received from T.C.C. is dated April 3, 2015. *Id.* The foregoing too detainer forms constitutes as newly discovered evidence.

This petition is verified and signed pursuant to 28 U.S.C. § 1746, that I, Ervin Thomas declare under penalty of perjury that the facts contained in this petition are true and correct.

E. Both Courts, United States District Court's And United States Court of Appeals' Failure To Make The Determination On Whether Petitioner Thomas' Untimely Filing Of His Petition For A Writ Of Habeas Corpus Was The Direct Result Of The Wisconsin State Court's Refusal To Liberally Construed His Pleadings, However inartfully Pleaded, Cause and Prejudiced.

1. The district court in its screening order stated that Petitioner Thomas' petition for a writ of habeas corpus was time barred, however, it gave Petitioner Thomas time to address the "time limitation" period for his petition, stating that a potential exception is "equitable tolling." ***United States v Marcello,*** 212 F. 3d 1005, 1010 (7th Cir. 2000). Equitable tolling is "reserved for extraordinary circumstances far beyond the litigant's control that prevented timely filing." ***Socha v. Boughton***, 763 F. 3d 674, 684 (7th Cir. 2014) (quotation omitted). To be entitled to equitable tolling, a petitioner bears the burden of establishing: "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstances stood in his way and prevented timely filing." *Id.* at 683 -84; ***Holland v. Florida,*** 560 U.S. 631, 649). (2010).

Petitioner Thomas submitted that he should be entitled to equitable tolling, because he was pursuing his rights diligently and the extraordinary circumstances stood in his way and prevented him from timely filing his 28 U.S.C. § 2254 petition was that the

Wisconsin state courts failed to liberally construe his layman's (*pro se*) litigant's pleadings, and he had newly discovered evidence that constituted a manifest injustice.

The district court failed to accept that the Wisconsin state courts by their refusal to liberally construe Petitioner Thomas' layman's (*pro se*) litigant's pleadings, constituted extraordinary circumstances stood in his way and prevented timely filing. (Pet. App. 2a-14a), thus, refuse to issue Petitioner Thomas a certificate of appealability. (Pet. App. 16a-19a).

Petitioner Thomas' submitted the same to the United States Court of Appeals for the Seventh Circuit as he did to the district court, and the Seventh Circuit denied the same. (Pet. App. 1a).

REASONS FOR GRANTING THE PETITION

I. ALL COURTS, STATE AND FEDERAL BELOW DECISIONS CONFLICTS WITH THE DECISIONS OF THE UNITED STATES SUPREME COURT ON COURTS MUST LIBERALLY CONSTRUE *PRO SE* LITIGANTS' PLEADINGS, HOWEVER INARTFULLY PLEADED, AND THOSE PLEADINGS MUST BE HELD TO LESS STRINGENT STANDARD THAN FORMAL PLEADING DRAFTED BY LAWYERS.

By the courts below, state and federal refusing to apply the correct legal standard, laypersons (*pro se*) litigants' pleading, must be liberally construed, however inartfully pleaded, all courts below stand in direct conflict with the Court's decisions on the same. Review by this Court is not only warranted, but is necessary to protect the due process rights of the unlettered under the Fourteenth Amendment, the laypersons (*pro se*) litigants.

1. As this Court unanimously held in ***Haines v. Kerner***, 404 U.S. 519 (1972), *pro se* pleadings, "however inartfully pleaded," must be held to "less stringent standard than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears "beyond doubt that the [litigant] can prove no set of facts in support of his claim which would entitled him to relief." *Id.* at 520-521 (*quoting* ***Conley v. Gibson***, 355 U.S. 41, 45-46 (1957)).

This Court then repeated the same legal standard in ***Estelle v. Gamble***, 429 U.S. 97 (1976), the Court said: "[a] document filed *pro se* is 'to be liberally construed,' ...

however inartfully pleaded, must be held to less stringent standard than formal pleading drafted by lawyers," *Id.* at 106, and in ***Erickson v. Pardus***, 551 U.S. 89, 94 (2007), where it stated: "[a] document filed pro se is 'to be liberally construed,' ... however inartfully pleaded, must be held to less stringent standard than formal pleading drafted by lawyers."

The Supremacy Clause, Article VI, Clause 2 of the United States Constitution requires all courts below to follow the precedent of this Court. ***Freeman v. Lane***, 962 F.2d 1252, 1258 (7th Cir. 1992) ("In passing on federal constitutional questions, the state courts and the lower federal courts have the same responsibility and occupy the same position; there is a parallelism but not paramountcy for both sets of courts are governed by the same reviewing authority of the Supreme Court."); *see also* ***State v. Mechtel***, 176 Wis.2d 87, 94-95 499 N.W.2d 662, 666 (Wis. Sup. Ct. 1993) (same).

In ***Dutil v. Murphy***, 550 F.3d 154 (1st Cit. 2008), the First Circuit liberally construed ***pro se*** state *habeas corpus* petition because petition "explicit in its invocation of due process," "broad enough to encompass a challenge" to a statute, and "sufficiently state[d] the relevant legal theory" upon which plaintiff proceeded. *Id.* at 158-159. In ***Andrade v. Ganzales***, 459 F.3d 538 (5th Cir. 2006), the Fifth Circuit liberally construed ***pro se*** detainee's pleadings as challenge to length of detention. *Id.* at 543. In Earl v. Fabian, 556 F.3d 717 (8th Cir. 2008), the Eighth Circuit liberally construed ***pro se*** petition as introducing issue of equitable tolling despite plaintiff relying on wrong statutory provision. *Id.* at 723.

In ***Wash v. Johnson***, 343 F.3d 685 (5th Cir. 2003), the Fifth Circuit stated that the district court erred in dismissing prisoners' ***pro se*** appeal for failure to sign notice of appeal because should have given them opportunity to amended it. *Id.* at 689.

In ***Crewe v. Colvin***, 2014 U.S. Dist. Lexis 15105 (E.D. Vir. 2014), the court stated that "[a]though Plaintiff styled this filing as 'Notice of Appeal,' '[a] document filed pro se is to be liberally construed.' ***Erickson v. Pardus***, 551 U.S. 89, 94 ... In her 'Notice of Appeal,' Plaintiff states that she 'keeps getting denied [her] benefits' and that she 'wish[es] to have this overturned,' because she is 'entitled to benefits.' The Court,

therefore, will treat plaintiff's 'Notice of Appeal' as a motion for summary judgment." 2014 U.S. Dist. LEXIS 15105, *2;

The Wisconsin Supreme Court held that laypersons (*pro se*) litigants' pleadings should be liberally construed. ***Amek Bin-Rilla v. Isreal***, 113 Wis.2d 514, 335 N.W.2d 384 (Wis. 1983). The Wisconsin Supreme Court stated in ***Amek Bin-Rilla v. Isreal***, that "Amek bin-Rilla had filed [a] *'pro se'* petition for a writ of habeas corpus in this court." *Id.* at 516 n.2, 335 N.W.2d at 386 n.2. The court then stated that Amek bin-Rilla's "petition, like many pro se petitions, is difficult to understand," however, "[w]hen read with other documents in the record, the petition appears to allege four violations of constitutional rights...." 113 Wis.2d at 517-518, 335 N.W.2d at 386. Next, the Wisconsin Supreme Court stated:

> "We have long adhered to the view that pro se prisoner complaints, whether offered in petition or any other form, including letters to judges, must be construed liberally to determine if the complaint states any fact giving rise to a cause of action. In *State ex rel. Terry v. Traeger*, 60 Wis.2d 490, 497, 211 N.W.2d 4 (1973), we explained the necessity for construing pro se complaints liberally to do substantial justice:
>
> > "We recognize that the confinement of the prisoner and the necessary reasonable regulations of the prison, in addition to the fact that many prisoners are unlettered and most are indigent, make it difficult for a prisoner to obtain legal assistance or to know and observe jurisdictional and procedural requirements in submitting his grievances to a court. Accordingly, we must follow a liberal policy in judging the sufficiency of pro se complaints filed by unlettered and indigent prisoners."
>
> In ordinary civil cases, as in *pro se* prisoner petition cases, we look to the facts pleaded, not to the label given the papers filed, to determine whether the party should be granted relief. *State ex rel. Furlong v. Waukesha City Ct.*, 47 Wis. 2d 515, 522, 177 N.W. 2d 333 (1970). (Petition for writ of prohibition treated as a petition for writ of habeas corpus); *See Beane v. City of Sturgeon Bay,* 112 Wis. 2d 609, 334 N.W. 2d 235 (1983).
>
> We re – emphasize today what we have said previously, a court presented with a prisoner pro se document seeking relief must look to the facts stated in the document to determine whether the petitioner may be entitled to any relief if the facts alleged are proved. Neither a trial nor an appellate court should deny a prisoner's pleading based on its label rather than on its allegations. **If necessary the court should re-label the prisoner's pleading and proceed from there.**
>
> Liberally construing the petition presented in the case, we determine that the petitioner asserts facts which, if proved, might entitle him to relief. Petitioner claims that the prison authorities have taken legal papers, denying him his right of access to the courts. We have recognized that a prisoner's Constitutional right of access to the courts, tempered by reasonable regulations ... remains in violate". *See State ex rel. Terry v. Treager*, 60, Wis.

2d 490, 496, 211 N.W. 2d 4 (1973); *see also* ***State ex rel. Thomas v. State,*** 55 Wis. 2d 343, 352, 357, 198 N.W. 2d675 (1972).

> Accordingly, we conclude that regardless of whether the petitioner incorrectly labeled his paper as a petition for writ of habeas corpus, this petition seeking return of legal papers states claim for which relief may be granted.

Amek Bin-Rilla, 113 Wis.2d at 521-523, 335 N.W.2d at 388-389.

Here, the Wisconsin state courts failed to follow and liberally construed Petitioner Thomas' *pro se* pleadings, where it acknowledged that he had been denied relief by written order in the state circuit court and thereafter within the time to file a notice of appeal he filed documents in that court, its stated:

> It looked up the "[e]lectronic docket entries for Thomas circuit court case, Milwaukee County Circuit Court case No. 2009CF3972, indicate that he filed a motion for post conviction relief pursuant to Wis. Stat.§ 974.06 on November 18, 2014, and that the circuit court denied the motion on November 21, 2014.
>
> **It therefore may be that Thomas is attempting to commence an appeal.**
>
> **IT IS ORDERED**, that this court shall take no action on Thomas's motion for postconviction relief.

(Pet. App. 22a-23a). Once Petitioner Thomas was denied relief in the state circuit court by written order and he proceeded in the Wisconsin Court of Appeals when he filed documents, the Wisconsin Court of Appeals indicated that he want to appeal, it stated "therefore may be that Thomas is attempting to commence an appeal." *Id.* The Wisconsin Court of Appeals' decisions states that it did not and does not have to follow the rule implemented by this Court that "[a] document filed *pro se* is 'to be liberally construed,' ... however inartfully pleaded, must be held to less stringent standard than formal pleading drafted by lawyers." ***Erickson v. Pardus***, 551 U.S. 89, 94 (2007).

The ***pro se*** litigants unlettered in the law now face an impossible task of getting their claims heard without their pleadings being liberally construed by a court, however inartfully pleaded. This Court intervention is necessary to protect the ***pro se*** litigants' due process and equal protect rights to access to the court.

2. Before a habeas petitioner may take an appeal he or she must obtain a Certificate of Appealability ("COA"). 28 U.S.C. § 2253(c). ***Miller –El v. Cockrell***, 537 U.S. 322, 335-336 (2003). A certificate of appealability issues if the petitioner make a

"substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c) (2). A "substantial showing" means that "jurists of reason could disagree with the district court's resolution of [the] constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." ***Miller-El***, 537 U.S. at 327; *accord* ***Slack v. McDaniel***, 529 U.S. 473, 484 (2000).

The COA determination is not a second assessment of the merits. ***Miller-El***, 537 U.S. at 327, 336. Instead, the determination involves a threshold inquiry into the debatability of the district court's decision. *Id.* at 336. The petitioner need not demonstrate that the appeal will succeed. *Id.* at 337. A claim may be debatable even through every jurist, after full consideration of the merits of the case, would decide against the petitioner. *Id.* at 338. "The question is the debatability of the underlying constitutional claim, not the resolution of the debate." ***Miller-El***, 537 U.S. at 342.

"[J]urists of reason could disagree with the district court's resolution of [the] constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." ***Miller-El***, 537 U.S. at 327. "[R]easonable jurists would find the district court's assessment of the constitutional claims [was] ... wrong," ***Slack***, 529 U.S. at 484, (emphasis supplied in brackets), or even "debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner" *Id.*

This Court should issue a COA to Petitioner Thomas's claims so that he may appeal. In this case, Petitioner Thomas filed a petition for a writ of habeas corpus in the district court, seeking release of his state court conviction on the basis his Interstate Detainer Agreement – Speedy Trial rights under Sixth and Fourteenth Amendments were violated, when the state failed to honor them. (Pet. App. 16a-19a). Petitioner Thomas is entitled to the same remedies in a federal habeas corpus action as existed for him in the state courts of Wisconsin. ***Lefkowitz v. Newsome***, 420 U.S. 283, 284-293 (1975); *see also* ***Jones v. State of Wisconsin***, 562 F.2d 440, 441-446 (7th Cir. 1977).

In this Case, Petitioner Thomas was denied habeas corpus relief not because his constitutional claims do not have merit, because the courts below, district court and Seventh Circuit stated his petition for a writ of habeas corpus (28 U.S.C. § 2254) was

untimely filed. (Pet. App. 11a-13a). Both courts below denied Petitioner Thomas a COA (28 U.S.C. § 2253(c)(2), although he demonstrated a showing that he was entitled to equitable tolling, because he had been pursuing his rights diligently, and that extraordinary circumstances, the Wisconsin state courts filed to liberally construe his documents filed *pro se*, which' stood in his way and prevented timely filing of his petition for a writ of habeas corpus to the federal district court. ***Holland,*** *supra,* 560 U.S. at 649.

This Court has said that a petition for a writ of habeas corpus, "[i]ts root principle is that in a civilized society, government must always be accountable to the judiciary for a man's imprisonment: If the imprisonment cannot be shown to confirm with the fundamental requirement of law, the individual is entitled to his immediate release." ***Fay v. Noia***, 372 U.S. 391, 402 (1963).

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated at Oshkosh, Wisconsin, this 18th day of March 2019.

Respectfully submitted,

Ervin Thomas
Layman (*Pro Se*) Litigant

Oshkosh Correctional Institution
Post Office Box 3310
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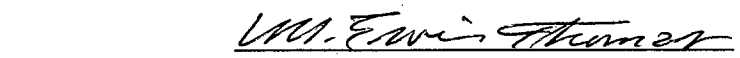
VERIFICATION

Pursuant to 28 U.S.C. § 1746, I, Ervin Thomas declare under penalty of perjury that the foregoing is true and correct. Executed on this 18th day of March, 2019.



Ervin Thomas – Declarant
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