19-7013

SUPREME COURT OF THE UNITED STATES

Milwaukee County Case No. 96CF1362

KENNETH M. GRAY,
Petitioner,

-v-

Case No. 18-3481
18-3388
USCA7 18-34388

WARDEN PAUL S. KEMPER,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION IN SUPPORT FOR WRIT OF CERTIORARI

Kenneth M. Gray, *pro se*
#315302
Racine Correctional Institution
Box 900
Sturtevant, WI 53177

Table of Contents

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Petitioner, Kenneth M. Gray, respectfully petitions this Court pursuant to 28 U.S.C. §2101(c); §2254 and {Rule} 2{b}, {c} (d) (2) and 3 to unconditionally discharge his from custody,... by meeting the demanding but not insatiable standard of showing any reasonable fact finder would reach a conclusion other than that reached in the state court...

JURISDICTION STATEMENT

Petitioner, Kenneth M. Gray, is presently unconstitutionally restrained of his personal liberty by Respondents, Warden Paul S, Kemper....of pursuant to the United States Constitution...Article III, V Amendment, VI Amendment; VII Amendment, XII, Amendment XIII Amendment; and XIV Amendment, Article 1, Section 1, 7, 8 of Wisconsin Constitution.

Petitioner seeks a Writ of Certiorari and request to be brought before this Honorable Court or be discharged from the custody of the Respondent(s) for lack of jurisdiction of the Court.

Petitioner further requests that the above named Respondent{s} at Racine Correctional Institution, 2019 Wisconsin Avenue/Box 900, Sturtevant, WI 53177 within 30-days of Notice of this Courts' actions. The Petitioner is allowed to move to strike the return upon his

of Notice of this Courts' actions. The Petitioner is allowed to move to strike the return upon his personal appearance before the Court by traverse. *See* Sec. 802.06(10) Sec. 782.13, and Sec. 782.19 of the Wisconsin Statutes.

For proper venue, Petitioner has filed this application petition of Writ of Certiorari in the Country, District where he is detained.

POSITION ON ORAL ARGUMENT AND PUBLICATION

Oral argument would be welcomed and publication of the decision may be warranted, as the Court sees fit in their ruling.

Bear in mind that Petitioner is in need of assistance of effective counsel to conduct this case before the Court. Petitioner is not wholly experienced in this matter but find that no other avenue to pay the cost for an attorney. *See* Petitioner's Motion for Appointment of Counsel.

ISSUES PRESENTED FOR RELIEF

1} whether the Petitioner was afforded the *effective assistance of post-conviction counsel* pursuant to the 5th, 6th, 8th and 14th Amendment of the United States Constitution Article 1 Sec. 1, 7, 8, and 21(1) of the Wisconsin Constitution; when post-conviction counsel failed to file a 'No-Merit' Report; providing bad advice regarding 'No-Merit' procedures; abandon petitioner direct appeal; resulting in violated Petitioner's 5th, 6th 8th and 14th Amendments of the United States Constitution on direct appeal as of right?

2} whether the Petitioner was afforded *due process* when the detectives made false promises to illicit a confession, during the interrogation his without the present of an allied adult or attorney, pursuant to the 5th and 14th Amendments of the United States Constitution.

3} whether the Petitioner was afforded *equal protection* from *double jeopardy* and *due process* pursuant to the 5th, 6th, 14th, Amendment of the United States Constitution; when the

District Attorney falsified the Petition for Waiver of Jurisdiction of the Petitioner into adult criminal court minus a 'mental maturity analysis'.

4} whether the Petitioner was afforded a *due process and equal protection* when Sentencing Judge relied on inaccurate information when sentencing the Petitioner based on falsified documents; with the Wisconsin Parole Commission's detention the Petitioner passed his mandatory release date, pursuant to 5^{th}, 6^{th} ,8^{th} ,13^{th} 14^{th}, Amendment of the United States Constitution.

STATEMENT OF CRITERIA RELIED UPON FOR RELIEF

Relief is appropriate here because the issues presented raise important, unresolved (or improperly resolved) issues of constitutional law and procedures, the proper resolution of which will have statewide impact. The Court can grant a Writ of Certiorari if a petitioner demonstrates that he is in custody in violation of clearly established federal law 28 U.S.C.S.§ 2101(c).

The Petitioner requests this Court to apply ***Amek bin-Rilla 113 Wis. 2d 514*** to the above case. The Wisconsin Supreme court efforts have not resulted in adoption or rules prescribing procedures those circuit courts should follow in handling prisoner's *pro se* complaints; this Court has set forth some guidelines for considering these complaints. We have long adhered to the view the *pro se* prisoner's complaint, whether offered in petitions or any other form, including letters to judges, must be construed liberally to determine if the complaint states any facts giving rise to a cause of action. *In* State ***ex rel. Terry –v- Traeger, 60 Wis. 2d 490, 497, and 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 prisoner are unlettered and most are indigent; make it difficult for a prisoner to obtain legal assistance or to know and observe jurisdiction and procedural requirements in submitting his grievance 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's petition cases, we look to the facts pleaded, not to the label given the paper filed, to determine whether the party should be granted relief. ***State ex rel. Fulong –v- Waukesha Ct. 47 Wis. 2d 515, 522, 177, N.W. 2d 333 (1970)*** *(petition for a writ of prohibition treated as a petition for writ of Habeas Corpus);* ***Beane-v-City of Sturgeon Bay, 112 Wis. 2d 609, 334 N.W. 2d 235 (1983***) Other courts also construe the claims *pro se* petitioners by the facts alleged rather than by the labels attached to them. *See* ***Long-v-Parker, 390, F 2d 816-19 (3rd Cir. 1968; Streeter-v-Hopper, 618 F 2d 1178, 1181 (5th Cir. 1970).*** *See Doyle, the Court's Responsibility to the Inmate Litigant, and 56 Judicature 406 (1973).*

We re-emphasize today what we have said previously. A court presented with a prisoner's 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. A Federal Court can grant a Writ of Habeas Corpus if a petitioner demonstrates that he is in custody in violation of clearly established federal law 28 U.S.C.S.§ 2254(a).We review the district court's denial of a habeas corpus de novo. ***Resendez-v-Smith, 692 F.3d 626 (7th Cir 2012)."*** In the extraordinary case in which a prisoner asserts a credible showing an actual innocence, he may overcome the time bar, and have his claims considered on the merits." *See* ***Floyd-v-Vannoy, 2018 U.S. APP 8780.***

There are two ways a state inmate might obtain federal habeas corpus relief. First, the Petitioner could prove that the decision of the last state court to review his conviction was contrary to or involved an unreasonable application of clearly establish federal law 28. U.S.C. §2254(d) 1. Alternatively, the petitioner could prove that the state court's decision was based upon unreasonable determination of the facts
28 U.S.C. §2254(d) (2). Ordinarily, a petitioner presents a claim under only one of these grounds. The Petitioner, Gray presents his claim under both grounds.

And, present to this Court; that to overcome the new rule of constitution law, and a substantial showing of his actual innocence in this Petition, just as in ***Floyd-v-Vannoy 2017 U.S. Dist. Lexis 96387***, argues that he was actually innocent of the murder of William Hines, and therefore his untimely petition could proceed under, ***McQuiggin-v-Perkins 560 U.S. 383, 133 S. Ct. 1924, 185 L .Ed. 2d 1019 (2013).*** *See id.* At 1928 ("{A} ctual innocence, if proved serves as a gateway through which a petitioner may pass whether the impediment is a procedural bar... or, as in this case, expiration of the statute of limitations. ("Where a constitutional violation has probably resulted in the conviction of one who is actually innocence, a federal habeas court may grant the writ even in the absence of a showing of cause of the procedural default"). The Supreme Court "rich jurisprudence protecting those that may be wrongfully incarcerated." *See* ***Perkins, 670 F. 3d at 674.***

Since the commencement of this case, the Petitioner always claimed "innocence", however, he has been bombarded with one *Constitutional Violation* after another; and the ascertainment of his entire file. *See* {Exhibit # 1h-1x} (correspondences to Public Defender's Office.) His file was forward to him 19-years after his sentencing!

See {Exhibits #8} Sentencing Transcripts, Pg. 7 Line: 22-25; Pg. 8 1-3

> "THE COURT:...I know that he took the position for some time that in fact he had not been involved and that the police had coerced the confession from him. And that type of posture, in view of the very strong evidence in this case, was very concerning to me.....

The *Floyd Court* considered both old and new evidence – found that Floyd had preponderantly established that no reasonable jury would find him guilty beyond a reasonable doubt... ***Floyd-v-Cain, No 11-2819, 2016 U.S.*** Because the court found that Floyd met the standard necessary to overcome the untimeliness of his habeas corpus the Court remanded his petition to the Magistrate Judge for an evaluation on its merits ***2016 U.S. Dist. Lexis 124660 [WL] at 3.*** Accordingly, the Court granted Floyd's petitioner for habeas corpus relief and ordered the State of Louisiana to either retry Floyd or release within 120-days of the Court's order. ***2017 U.S. Dist. Lexis 69705 [WL] at *16.***

Seven (7) years, after sentencing, the petitioner sought post-conviction relief pursuant to § **809.30 Wis. Stats**. regarding trial counsel failed to object to the District Attorney's breach of 'plea agreement'. Because Post-conviction counsel Randall E. Paulson simply dropped the case; *See* {Exhibits #1a-1z} correspondences), the petitioner sent back-and-forth letters inquiring as to if there were a 'No-Merit' ever filed.

Subsequently, to post-conviction counsel Paulson, who never indicated that he even intended to review the petitioner's file, for ***"any meritorious issues"*** always referred to a meeting with a 15-year boy who just received a 30-year sentence in adult court! The failure of post-conviction counsel to investigate the transcripts of the petitioner's proceedings resulted in the actual and constructive denial of the assistance of counsel in a direct appeal proceeding as of right. This coupled with Post-Conviction Counsel's erroneous explanation of the ***No-Merit*** process, results in the debacle of a constitutionally protected right to the effective assistance of post-conviction counsel on direct appeal.

> "A person convicted in Wisconsin of committing a crime has a constitutionally guaranteed right to appeal his or her conviction to this court." ***Wis. Const. Art 1 Sec. 21(1). State -v- Perry, 136 Wis. 2d 92, 98, 401 N.W. 2d 748 (1997).*** The right to an appeal includes that the appeal be a Meaningful one. ***Id. At 99, 401, Wis. 2d 748***. And, An indigent defendant is constitutionally entitled to The appointment of counsel at public expense for the Purpose of prosecution his or her "one and only appeal... As of right from a criminal conviction." ***Douglas-v-California, 372 U.S. 353, 357-58m 83 S. Ct. 814 9 Led 2d 811 (1963). State ex. rel. –v- Warren, 219, Wis. 2d at 648, 597 N.W. 2d 698.***

In contrast, to the pre-conviction setting, where a defendant does not have a choice whether he or she will be prosecuted. The decision whether to pursue post-conviction relief is entirely the defendants to make. Moreover, after invoking the right of direct appeal, by filing a Notice of Intent to Pursue Post-Conviction Relief. *See* (Exhibit #2a-2b). Post-conviction counsel has a duty that requires that the defendant be aware of the rights discussed in ***State ex. rel. Flores-v-State, 183 Wis. 2d 587, 516 N.W. 2d 362 (1984).***

1} Counsel is to review and evaluate the circuit court

records and transcripts for possibly meritorious grounds for relief.

2} Advise the defendant of the dangers and disadvantages of proceedings *pro se* and,

3} of the possibility that if appointed counsel is permitted to withdraw, successor counsel may not be appointed to represent the defendant (***See Anders-v-California, 386 U.S. 738, 87, S. Ct. 1396 and Wis. Stat. Rule 809.32)***

First, the Petitioner never waived the assistance of post-conviction counsel or to his-said direct appeal. *See {Exhibit #2 Notice of Intent to Pursue Post-Conviction Relief}* and, Exhibit #8-Sent. Trns Pg. 33; 2-9:

THE COURT: ...and errors or mistakes that have been Made in these proceedings. This is your right to appeal. Mr. Bloch, will you make sure the defendant understands his Appeal rights?

MR. BLOCH: Yes.

THE COURT: There is a twenty day deadline for filing any Notice of post-conviction relief for appeal?

MR. BLOCH: Yes.

"And while a defendant may waive his right to the assistance of counsel", ***Adams-v-United States ex. rel. McCain (citation omitted),*** such a waiver must intelligent and competent; and can be accepted only if the defendant, "know[s] what his is doing and his choice is made with eyes open", ***Adams,*** "And {he} should be made aware of the dangers and disadvantages of self-representation before so choosing." In this present case, the Petitioner was a fifteen (15) year-old boy, who is experiencing being incarcerated for the first time in his life, he has never been to High School, let alone any prior experience with law enforcement never waived his right to post-conviction appeal. Petitioner's **Statement of the Case** accurately articulates a factual basis that is supported by the record below:

1} Petitioner never waived his direct appeal rights.

2} Post-Conviction counsel Paulson closed Petitioner's file

without explaining "No-Merit" process.

3} Petitioner's Habeas Corpus petition present arguable merit, this would support either post-conviction or appellate review.

There is no evidence in the record below that the petitioner waived the (1) right to the assistance of post-conviction counsel or (2) his-said direct appeal as of right (3) that his guardian or attorney was present during the interrogation phase of his being arrested and confessed. *See* {Exhibit #5 Affidavit} (4) that the District Attorney IS NOT a licensed PhD therefore can NOT make a valid assessment on the petitioner's mental capacity level; thus with the ability to ascertain the petitioner's stay at a hospital for 'atypical psychosis'. (5) That the Sentencing Judge was not aware of the improper waiver of jurisdiction of the petitioner into adult criminal court, nor did the court EVER entertain the 'whole Delinquency Petition"... *(Exhibit # 9—Guilt Plea}*

Guilty Plea 31.May, 1996 Page 21- 4:6...

THE COURT: Mr. Bloch, I haven't been through the whole delinquency petition here...

And while this Court must find waiver of these constitutionally protected rights, which is "ordinarily an intentional relinquishment or abandonment of a know right or privilege. ***"Jones-v-Burge, 246 F. Supp. 2d 1045, 1053, (E.D. Wis. 2003).*** The substance and accuracy of the erroneous information that the defendant was provided by post-conviction counsel is critical to the determination of wavier and to the question, "was the defendant afforded the effective assistance of post-conviction counsel?" "Where appellate counsel negligently fails to perfect an appeal counsel's failure necessarily constitutes ineffective assistance." *See* ***Fleming-v-Evans, 481, F. 3d 1249, 1259.***

In this case, the record has provided proof that the State used a falsified Petition for Waiver of Jurisdiction and Notice of Hearing, and the Juvenile Court agreeing and granting the Order Waiving Jurisdiction to Criminal Court of the Petitioner *See* (Exhibits #3-4) minus a mental competency hearing is in direct violation of his Constitutional Rights of his *Due Process, Double Jeopardy and Involuntary Servitude Clause and Equal Protection* under the 5th, 6th 8th, 13th; and; 14th Amendment of the United States Constitution, which is in direct violation of Title

II in **US Georgia 546 US 151;** without any objection from trial counsel, and post-conviction counsel simply claims, this is NOT a meritorious issue to pursue.

The law is clear that, just as *due process* and state statutes bar the prosecution of incompetent adults, *e.g.*, ***Dusky-v-United States, 362, U.S. 402(1960); Wis. Stat. §971.13-.14,*** juveniles may not be subjected to delinquency proceedings unless they are competent. *See* **Wis. Stat. §938.30(5)** Yet, while counsel for a criminal defendant is obliged to raise the issue with the Court whenever he or she has reason to doubt the client's competency, ***State-v-Johnson, 133 Wis. 2d 207, 395 N.W. 2d 176 (1986)*** (failure to raise issue of competency with Court when reason to doubt competency exists constitutes ineffective assistance of counsel), this Court has not yet imposed the same obligation upon counsel for juveniles alleged to be delinquent.

In fact, there has been no appellate decision, published or unpublished, in which ***Johnson*** has been applied in the context of juvenile delinquency proceedings. The Petitioner was admitted to Trinity Memorial Hospital *(22.Feburary, 1994)* for Axis I: Atypical Psychosis, for experiencing *'depression and suicidal ideations'; See (Exhibits #5} ("new evidence"))* Petitioner continues to be plagued with ongoing psychological issues, he was admitted to the Wisconsin Resource Center *(9.August, 2006)* and again *(2.July, 2018)* for same psychological issues *See (Exhibits #5 & (#11; PSU Documents).*

The sentencing Judge Franke seemed most perplexed to sentence a 14-year-old boy, without any prior *run-ins* with law enforcement and relied on falsified documents provided by the District Attorney E. Michael McCann; as well as never reviewing the 'whole delinquency petition'*(Exhibit #9-Guilty Plea).* Petitioner has previously filed motions, briefs and other papers on his own behalf, exercising *due diligence, (Exhibits #1a-1z}* and never once has *ANY* Court inquired the true nature of the Petitioner proceedings or innocence, thus far, as to why the Petitioner as *"assumed"* the *pro se* litigant status. The Supreme Court has made clear that a habeas petitioner, even if he was not reasonably diligent, may seek review of procedurally default claims if he can make a credible claim of actual innocence. *See* ***House-v-Bell, 547 U.S. 518, 536-37 (2006)*** (habeas petitioners who have procedurally defaulted their claims may have them heard by showing, without more, a credible claim of actual innocence);

The Petitioner can in no way be held fully responsible for the dismal state of his case; he was a boy of *14-year-old* when he was arrested! Petitioner has no other remedy

available to him but to seek immediate intervention from this Court to obtain adjudication on the merits of his claims and immediate and unconditional discharge from custody. The courts relying heavily on his then trial counsel and delinquency petition along with other bias and inaccurate information. The Petitioner has been trying effortlessly to bring these supercalifragilisticexpialidocious Constitutional Violations before the Court.

Once a litigant assumes the role as his own advocate, with or without formal training or even formability, he has just employed an ineffective advocate. This is where the process breaks down, because the 6th Amendment to the US Constitution, Article 1, and Section of the Wisconsin Constitution guarantees The Petitioner the right to counsel. "The right to counsel is more than the right to nominal representation must be effective. "***State-v-Felton, 329 N.W. 2d 161, 167, (1983).***

Although, the Courts of Appeals' standard conflicts with prior statements of the applicable standards by this Court and the United States Supreme Court, the lower Courts are bound by the Court of Appeals' erroneous interpretation until this Court acts to correct it. As observed by Florida's First District Court of Appeal, when an appeal is an inadequate remedy (or, as in this case unavailable), an appellate court may exercise its discretion and issue a writ of habeas corpus to unconditionally discharge the petitioner from custody. *See* ***Holloway-v-Franklin, 652 So, 2d 1217, 1218 at ft. no. 2 (Fla. 1st DCA 1995).*** The same principle applies in federal courts for state prisoners under the savings clause provisions of ***28 U.S.C. §§ 1651, 2241, and 2242 See also Webster-v-Daniels, 748, F. 3d 1123, 1136 (7th Cir. 2015)*** (habeas corpus available in the Court under the "saving clause" when usual remedy by petition and appeal are inadequate or unavailable). In ***Chow-v-Immigration and Naturalization Service, 113, F. 3d 659, 669 (7th Cir. 1997)*** Petitioner has no other remedy to obtain relief...

For a Federal Court to grant a habeas relief, a state court's decision must not be merely but, so wrong that no reasonable judge could have reached that decision, ***Woods, 135 S. Ct. at 1376***. More specially, to grant relief under § 2254(d)(2), the petitioner must meet the "demanding but not insatiable" standard, ***Miller EL-v-Dretke, 545, U.S. 321, 240, 125 S. t. 2317, 162 L. Ed. 2d 196 (2005),*** of showing any reasonable fact-finder would reach a conclusion [**58] other than that reached in the state court, ***Rice-v-Collins 546, US 333, 341, 126, S. Ct. 969, 163 L. Ed. 2d 824 (2006).***

The falsified Petition for Waiver of Jurisdiction and Notice of Hearing dated 10.January, 1996 at 8:30 a.m. (Exhibit #3) claim presented in ***Section III*** of this Writ of Habeas Corpus provides the Court an opportunity to resolve for Wisconsin the appropriate remedy when, as here the Petitioner WAS NOT fit to be waived under the **Wis. Stat §48.18(5)** now **§938.18(5),** because he did not meet the mandatory criteria for waiver; nor the Sentencing Court haven't reviewed the 'whole delinquency petition'.

Because this Writ of Habeas Corpus presents real and significant questions of Constitutional and Procedural law with potentially statewide impact, and because the lower Court's decisions conflict with controlling law, relief is appropriate.

STATEMENT OF THE CASE

On **December 30, 1995**, the Petitioner was 14-years-old almost 15-yrs. old *{date of birth January 26, 2981}* he was involved in a shooting that resulted in the death of Gerardo Fonseca; he fired only one shot to the victim's head.

On **December 31, 1995** the Petitioner was questioned by two "veterans" detectives James Cesar and Detective Morrow without the present of an allied adult/mother or attorney convincing the Petitioner to confess. *See {*Affidavit- Exhibit #6}.

On **January 2nd 1996** the Petitioner was charged with 1st degree intentional homicide, party to a crime (PTAC) and obstructing and officer.

On **January 10th 1996**, District Attorney E. Michael McCann filed for a Petition for Waiver of Jurisdiction in the Children's Division Case No. 03272073 of Milwaukee County Circuit Court alleging the Petitioner, KENNETH M. GRAY was delinquent on the grounds that he had committed the offenses of 1st deg. Intentional homicide while armed (PTAC) and obstructing an officer. *See (Exhibit #3 -Petition for Waiver of Jurisdiction).*

On **March 6th 1996**, the Honorable Ronald Goldberger of Branch 15; Children's Division, Ordered the Petition for Waiver of Children's Court jurisdiction of Criminal Court of the Petitioner, under ***Wis. Stat. §48.18(5)*** now ***§938.18(5),*** absent a 'mental maturity analysis'. Appointed counsel Brady Bloch did not challenge the waiver petition nor raise a double jeopardy claim; nor did Post-Conviction counsel Paulson investigate this. *See* (Exhibit #4)

On **March 31st 1996**, in a negotiated plea agreement, the Petitioner entered a plea to a reduced charge of 1st deg. Reckless homicide, with the understanding the State to only recommend "prison time", but no specified amount of time.

On **June 28th 1996**, the Petitioner appeared at his Sentencing Hearing, where the State made a sentence recommendation for "substantial period" of prison time. Trial/post-conviction counsel never utter about this blatant breach of plea agreement. No appeal was filed for post-conviction relief; because post-conviction counsel simply dropped the case without filing a 'No-Merit' report. *See* (Exhibits #1h &1x -Letters})

On **July 19th 2003**, the Petitioner filed a pro se motion to vacate his sentence, alleging that the State had breached its plea agreement at Sentencing and trial counsel was ineffective for failing to object with the assistance of a *jailhouse lawyer.*

On **November 4th 2003**, the Circuit Court entered an Order denying the Motion to Vacate the sentence, on grounds that the Petitioner has failed to meet his burden of proof and questioned why the seven (7) year delay. This was in fact the Petitioner, *pro se* first initial appeal under §974.06.

On **November 2004**, the Court of Appeals denied the Petitioner's post-conviction Motion an affirming the Circuit Court's decision.

On **March 5th 2009,** the Petitioner then, filed a Sentence Modification *pro se*, alleging that the Juvenile Court improperly waived him into adult criminal court and the State's Petition was falsified. The Honorable Judge Franke erroneously exercised his sentencing discretion by focusing on the crime and not the character of the petitioner, who was only fourteen (14) years old!

On **March 17th 2009**, the Circuit Court entered an Order denying the Petitioner's Motion for Sentence Modification, on grounds that the Petitioner's claim is not viable for a Modification of his sentence. The Petitioner raised these same issues here, among others, because his post-conviction dropped his case!

On **January 20th 2010,** the Court of Appeals, District 1 Case No. 2009AP977-CR affirmed the Circuit Court decision.

On **February 7th 2010,** the Petitioner, *pro se* filed a Motion for Reconsideration conforming to Wis. Stat.809.24 rearguing the disarray of his case and why he hasn't raised these issues prior: age, and his ineffective counsel{s}.

On **March 1st 2010**, Motion for Reconsideration, *pro se* was denied.

On **March 27th 2010**, the Supreme Court of Wisconsin dismissed Petition for Review as submitted to the Court as 'untimely' on April 13th, 2010.

On **May 5, 2015,** the Public Defender's Office forwarded the Petitioner his entire file; 19-years after he was sentenced. *See {Exhibit #1x}*

On **June 18, 2018,** the Petitioner filed a Petitioner for Writ of Habeas Corpus 28 U.S.C. §2254 by a Person in State Custody— Case No. 18-CV-466-wmc.

On **October 4, 2018**, the Western District of Wisconsin enters the ORDER to Dismiss without Prejudice for failure to obtain the authorization required by 28 U.S.C. §2244(b)(3)(A).

On **November 16, 2018**, the Petitioner filed a Motion for Permission to File a Second or Successive Habeas Corpus for Review – Case No. 18-3481.

On **November 28, 2018**, the U.S. Court of Appeals for the Seventh Circuit denied authorization and dismissed the Petitioner's application.

EVIDENCE

With the limited exceptions set forth in the argument, the statement of the evidence contained in the Court of Appeals decision is adequate for assessment for this Writ of Habeas Corpus for Relief. 1) Restraint of his or her liberty; 2) the restraint imposed was contrary to constitutional protections or a body lacking jurisdiction; and 3) no other adequate remedy at law. ***State-v-Pozo, 258 Wis. 2d 796, 654 N.W. 2d 112 (Wis. App. 2002)***; and ***Chow-v-Immigration and Naturalization Service, 113, F. 3d 659, 669 (7th Cir. 1997).***

SUPPORTING POINTS AND AUTHORITITES AND MEMORANDUM OF LAW

The Fifth Amendment of the United States Constitution mandates:

> "...Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb... nor be deprived of life, liberty, or property without due process of law..."

The Sixth Amendment mandates:

> "In all criminal procedures, the accused shall enjoy the

right to... be informed of the nature and cause of the accusation; to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

The Eighth Amendment mandates:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

The Thirteen Amendment mandates:

" Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction..."

The Fourth teen Amendment mandates:

"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 any person within its jurisdiction the equal protection of the laws."

Article VI ¶2 of the United States Constitution – The Summary Clause of the United States – mandates:

"This Constitution, and the Laws of the United States which shall be made pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the Supreme Law of the land; and the judges in every State shall be bound thereby, and thing in the Constitution or Laws of any State to the contrary notwithstanding."

ARGUMENT
I.

RELIEF IS APPROPRAITE TO CLARIFY POST-CONVICTION COUNSELF INEFFECTIVE FAILED TO FILE A 'NO-MERIT' REPORT

Here, in order to prevail on a claim of ineffective assistance of post-conviction counsel, a defendant must establish that counsel's performance was deficient and this performance prejudices his defense. ***Strickland-v-Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984).*** However, in analyzing a ineffective assistance of post-conviction counsel claim, when it

is alleged that post-conviction counsel has abandon the defendant's direct appeal and provided erroneous information regarding appellate rights, as well as the *No-Merit* process. Results in a constitutional taint of the actual and constructive denial of counsel, which does not requite a showing of prejudice. "[W]henever the ineffective assistance counsel is such as to deprive one totally of the rights to appeal, the prejudice showing is presumed." **Flores, 183 Wis. 2d at 620.** Similarly, the complete denial of the assistance of counsel, whether at trial or on appeal, is legally presumed to result in prejudice to the defendant. *See* ***Penson-v-Ohio, 488 U.S. 75, 88 (1988).***

Building upon the assumption that a fifteen (15) year-old boy was unable to understand the complexities of the proceedings to consult meaningfully with defense counsel are prerequisites to a constitutionally fair trial. *See* ***Dusky-v-United States, 362 U.S. 402-3 (196); Pate-v-Robinson, 383 U.S. 375, 385 (1966); State ex rel. Matalik-v-Schubert, 57 Wis. 2d 315, 204 N.W. 2d 13, 16 91973).*** In Wisconsin, therefore, "[n]o person who lacks substantial mental capacity to understand the proceedings or assist in his or her won defense may be tried, convicted or sentenced for the commission of an offense as long as the incapacity endures." **Wis. Stat. 971.13(1);** *See* also ***State-v-Garfoot, 207 Wis. 2d 214, 221, 558 N.W. 2d 626 (1997).*** As noted previously, "where defense counsel has a reason to doubt the competency of his client to stand trial, he must raise the issue with the trial court." ***State-v-Johnson, 133 Wis. 2d 207, 220, 395 N.W. 2d 176 (1986).*** The failure to do so satisfies both prongs of the analysis for ineffective assistance of counsel under ***Strickland-v-Washington, 466 U.S. 668 (1984). Johnson, 133 Wis. 2d at 220, 223.*** The Court of Appeals conclusion also conflicts with law and understanding of a fourteen (14) year-old with an ineffective counsel trial counsel and post-conviction counsel[s] Paulson failed to mention the mental capacity of the Petitioner. *See* {Exhibit #5}; with the Court still refusing to grant a hearing to clarify the claims of a *pro se* litigant.

Could reasonable minds arrive at the same conclusion when viewing the facts in the instant case? Had post-conviction counsel Paulson investigated the files and transcripts would have seen these issues that are being presented; that were not known at the time or was overlooked by all the parties, basing the waiver petition and sentencing on erroneous factors.

> 1} Counsel is to review and evaluate the circuit court records and his client's files/transcripts for possible meritorious grounds

for relief

2} advise the Petitioner of the dangers and disadvantages of proceeding pro se and;

3} of the possibility that if appointed counsel is permitted to withdraw, successor counsel may not be appointed to represent the Petitioner *See **Anders-v-California, 386 U.S. 738, 87 S. Ct. 1396 and Wis. Stat. Rule 809.32**.*

The Petitioner will be able to demonstrate as an offer of proof on cross examination during an evidentiary hearing the post-conviction counsel Randall E. Paulson never investigated the Petitioner's case and that post-conviction counsel gave erroneous information regarding 'No-Merit' process, and closed Petitioner's file without legal justification, moreover for all intents and purposes, abandon the Petitioner violating Petitioner's constitutional right to a direct appeal of his conviction. Based upon diligent correspondences {Exhibits #1h-1x} with Public Defender's Office inquiring about any update; with entire file finally being sent the Petitioner 19-years after his sentencing.

A claim of ineffective assistance of counsel brought under the 6th and 14th Amendment of the U.S. Constitution must meet the test articulated in ***Strickland-v-Washington 104 S. Ct. 2064,*** and followed by this Court in ***State-v-Pitch 124 Wis. 2d 628, 369 N.W. 2d 711 and State-v-Johnson 126 Wis. 2d 8, 374 N.W. 2d 637***. Under ***Strickland***, the defendant must show that post-conviction counsel's deficient performances prejudice the sentencing proceedings. ***Johnson-v-Champion, 288 F. 3d 1215, 1229-30 (10th Cir. 2002). (citing Evitts-v-Lucey, 469 U.S. 387, 397, 105 S. Ct. 830, 831 L. Ed 2d 821 (1985) see also Baker-v-Kaiser, 929, F. 2d 1494, 1499 n.3 (10th Cir. 1991)*** (noting that if it is the client's wish to appeal, counsel must perfect an appeal).

In this case, the Petitioner has written to his post-conviction counsel a numerous of times *(due diligence)* (Exhibits #1h-1i) and various law schools, even State Representatives, *See* (Exhibits #1a-1z) ***Rolan-v-Vanghn, 445 F. 3d 671, 681 (3rd Cir. 2006).*** State court's findings an ineffective assistance of counsel claim reviewed *de novo* as mixed question of law and fact. *See **Jenkin-v-Nelson, 157 F.3d 485, 491 (7th Cir. 1998), Higgins-v-Renico, 470 F. 3d 624, 630 (6th Cir. 2006). In State ex rel Kyles-v-Pollard 2014 WI 38*** (quoting ***State ex rel. Rothering-v-McCaughtry, 205 Wis. 2d 675, 556 N.W. 2d 136 (Ct. App. 1996)*** the Court

concluded that 'a claim of ineffective assistance of post-conviction counsel should be raised in the trial court either by a petitioner for habeas corpus or motion under §974.06 stat.' *Id.* at 681) ***Rothering*** acknowledged that ("the appropriate forum is that one which is able to link the remedy closely to the scope of Constitutional violation") ***205 Wis. 2d at 680. In State-v-Knight, 168 Wis. 2d 509, states*** federal court therefore conclude "that a motion to the trial court for post-conviction relief is not suitable for a defendant's claims of ineffective assistance of appellate counsel" ***Feldman-v-Henman, 815 F. 2d 1318, 1321 (9th Cir. 1987)*** also the Court concluded "that to bring a claim of ineffective assistance of appellate counsel, a defendant should petition the appellate court that heard the appeal for a writ of habeas corpus." Trial/Post-Conviction counselors' oversight, errors and omissions were in fact prejudice to their young client, as their behavior let to a criminal prosecution contrary to prohibition by the 5th and 14th U.S. Constitution Amendment which has let to loss of liberty for a 14-year-old boy. By law, Rules of Professional Conduct for Attorneys, Chapter 20 Wis. Stats. States clearly in part what one can expect from one's lawyer:

Preamble: A Lawyer's Responsibilities

> A lawyer is a representative of clients... As a Representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirement of honest dealing with others... in all professional functions a lawyer should be competent, prompt and diligent.

In essence, from the onset, the Petitioner was entitled to have effective assistance, i.e. a reasonably competent attorney whose advice is within the range of competency demanded of attorneys in criminal cases. There is no excuse or sound reasoning to exemplify trial/post-conviction counsel{s}"deficient" knowledge of a plain sight violation of the Petitioner's right to due process, which includes violation of *Fifth and Fourthteen Amendment of the United States Constitution.* We can assert that both trial/post-conviction counsel{s} "deficient" knowledge of apparent violations can *only* be viewed as "prejudicial" because of the following:

"A lawyer shall provide competent representation to
a client. Competent representation requires the
legal knowledge, skill, thoroughness and
preparation reasonably necessary for representation
See, SCR 20:1.1 competence; a lawyer shall act with
Reasonable diligence and promptness in
Representing a client."

Trial/post-conviction counsel{s} representation of the Petitioner was ripe with flaws that any competent lawyer would have addressed, being on the side of the client. The facts are that there is no evidence other than the Sentence Transcripts, which is a "cold" record and reflects no light on the claim within. *In **Kent-v-United States, supra, page 562***, "we do hold that the hearing must measure up to the essentials of due process and fair treatment..." the Petitioner was denied such benefit by the Juvenile Court without a full hearing.. "which the Court has disposed of the juvenile rights *Article II Section 18 and the 14th Amendment of the Constitution of the United States*. In his decision-making, the Juvenile/Adult Criminal Judge did not simply deal with a specific factual incident in the accused life, nor consider the juvenile's past, his future, his mind, and his acts and then balance these factors against the safety, needs and demands of society. Further besides judging the 'whole man' as opposed to the act with wide as to limited discretion, the juvenile judge may perform his task in comparatively informal proceedings." ***Kent, supra at 562, 86 S. Ct. 1045***. Once again, a completely viable issue and trial/post-conviction counsel{s} was objectively unreasonably, for any reasonable counsel, understanding A.B.A. Defense Function Standard 5.1(a) which states:

"5.1 advising the defendant "(a)fter informing him-
Self fully on the facts and the law, the lawyer should
Advise the accused with complete candor concerning
All aspects of the case, including his candid estimate
Of the probable outcome."

Would have thoroughly established the course of action to taken in the instant case, as counsel{s} was appointed at the onset of the case, which might have contributed to counsel{s} lackadaisical attitude towards this case; where he should have been well informed. Although merely holding oneself out to be a lawyer is fully informed on the law pertinent to a case, we expressly adopt sec. 5.1(a), *supra*... certainly, a prudent lawyer, skilled in the criminal law, would be certain to be informed. Even though Sec. §974.06 was designed to supplant

habeas corpus to legislature has expressly recognized in the statute the Sec. §974.06; may on occasion prove "inadequate or ineffective to test the legality" as a defendant detention in such circumstances, a petitioner for a writ of habeas corpus may still be appropriate. ***In Harries-v-Bell, 417 F. 3d 631, 638,*** the Sixth Circuit Court states a defendant is mentally incompetent to stand trial if he lacks a sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and a rational as well factual understanding of the proceedings against him. Counsel's constitutional duty to investigate a defendant's background in preparation for the sentencing phase of a capital trial is well established and notwithstanding the deference the Strickland test requires, neither the United States Court of Appeals for the Sixth Circuit nor the United States Supreme Court to deem deficient counsel's failure to fulfill this obligation. The sole source of mitigating factors cannot properly be that information which the defendant may volunteer; counsel must make some effort at independent investigation in order to make a reasoned, informed decision as their utility. ***Carter-v-Bell, 218 F. 3d 581, 596-97 (6th Cir. 2001).*** *(*concluding, the defense counsel's failure to investigate the defendant's family, social, or psychological background "constitutes representation at a level below an objective standard of reasonableness.") In this case, both trial/post-conviction counsel[s] simply allow the Petitioner's ship to sail with the winds of injustice.

II.

RELIEF IS APPROPRAITE TO CLARIFY THE DETECTIVES FALSE PROMISES TO ILLICT A CONFESSION

Relief is appropriate on the grounds that post-conviction counsel failed to investigate how the Petitioner was able to be convicted by the Summons and Petition for Determinations of Status – Alleged Juvenile, by his own confession; which was coerced.

On **January.2, 1996,** the State of Wisconsin filed "Summons and Petition for Determinations of Status – Alleged Juvenile" *{See Exhibit #7};* in said 'Petition' contains a detailed account of the alleged crime.

The Petitioner alleges that when he was arrested December.30, 1995; he was taken to the Milwaukee Police Department and handcuffed to a concrete table-slab, and questioned about the events that happened at the address of 2560 South 6th Street, Milwaukee County . He asked

Detectives Caesar or Detective Morrow to call his mother, but was told if he said he was "involved"; the she would be contacted, and he would be able to 'go home'. She never was contacted on her son's whereabouts *See* {Exhibit #6 Affidavit}

In determining whether a defendant's will was overcome on a particle case, the United States Supreme Court has assessed the totality of all surrounding circumstances — both the character of the accused and the interrogation the voluntariness of the confession and the juvenile must be evaluated with special care. Relevant factors including the length of interrogation; its location; its continuity; the defendant's maturity; education; physical condition; and mental health. Coercive police activity is a necessary to the finding that a confession is not "voluntary" within the meaning of the Fifth and Fourteenth Amendment United States Constitution.
A confession is not "involuntary" merely because of the actions of the police caused the person to confess. And the suspect's deficient mental condition, standing alone, will not sustain a finding of involuntariness. Whether a statement was voluntary is a question of law. Although, the voluntariness of a confession is an issue of law, the facts underlining that determination are issues of facts to which 28 U.S.C. § 2254(e) 1 presumption of correctness applies...the Court has **Granted** Dassey's Writ of Habeas Corpus, in his claims of 'false promises during interrogation, Dassey being sixteen (16) years old.

The Petitioner was a tender age fourteen (14) years old, during his interrogation without the benefit of other allied adult or attorney. *See* {Exhibit #6 Affidavit} With the Sentencing Court acknowledging that the Petitioner DID claim to be coerced... by two 'veteran' detectives, still nothing has been done. Yet, the proceedings CONTINUED!

{See Exhibit # 8-Sentencing Trns.} Sentencing 31.June, 1996, Page 7:22-25, Page 8; 1-3,

> "THE COURT:...I know that he took the position for some time that in fact he had not been involved and that the police had coerced the confession from him. And that type of posture, in view of the very strong evidence in this case, was very concerning to me.....

See ***Dassey 2016 WL4257386, 201 F. Supp. 3d 963, 2016 US Dist. Lexis 106971 (E.D. Wis. Aug 12, 2016)*** rendered confession involuntary under the **Fifth and Fourteen Amendment.** The court of appeals failed to consider the highly significant fact that not only was an allied adult

present with Dassey during the interrogation, but the investigators deliberately exploited the absence of such an adult. Given the false assurance of leniency that the investigators made repeatedly throughout the interrogation, when considered alongside Dassey's young age, significant intellectual deficient, lack of any unrelated experience with law enforcement, as well as other factors, Dassey's confession is clearly involuntary. The court of appeal's decision to the contrary was unreasonable. The Petitioner hasn't had the privilege to a Court fact-finding his claims, when in fact, the court has acknowledged that his *claim. See {Exhibit #8- Sent. Trns}.* Yet, trial counsel did not object, nor post-conviction counsel filed for redress.

The Petitioner has recently left Trinity Memorial Hospital for 'Atypical Psychosis" *(22.Feburary, 1994)* (See Exhibits # 5); with ongoing mental health issues, *See* (Exhibits #11-PSU Documents) hasn't had any prior experience with law enforcement or authorities in all his life; this interrogation is his first with the 'experienced' Detectives James Cesar and Detective Morrow. *In **Jerrell C.J (2005) Wis. 105;***

> "failure to promptly notify parents and the reasons therefore may be a factor in determining whether a juvenile's confession was coerced or voluntary if the police fail to call parents for the purpose of depriving the juvenile of the opportunity to receive advice and counsel that would be strong evidence that coercive tactics were used to elicit the incriminating statements that his parent nor counsel wasn't' present at the interrogation."

*Under **Wis. Stat.§ 48.19(2) and Stats.§ 48.20(3)*** the essence of these statutes is that the parents or guardian of a juvenile who has been arrested or taken into custody must be notified as soon as possible and repeated attempts shall be made until the juvenile is delivered to an intake worker, who is to interview the juvenile. No such actions were spared at the Petitioner's expense! He was put to the screaming and demanding yells of 'veteran' detectives until the Petitioner told them what he thought they wanted to hear. After he was told that he would able to see his mother, and possibly *"go home"*... "Summons and Petition for Determinations of Status – Alleged Juvenile" *See {Exhibit #7}.* When applying this test to a juvenile interrogation, especially one with a deficient mental health, the Court noted that "the Supreme Court in the past has spoken of the need to exercise 'special caution' when assessing the voluntariness of a juvenile's confession, particularly when there is prolonged or repeated questioning or when the

interrogation occurs in the absence of a parent, lawyer, or other friendly adult," ***Hardaway-v-Young, 302 F.3d 757, 762 (7th Cir. 2002) citing in Re Gault, 387, US 1, 45, 18 L. Ed. 2d 527, 87, S. Ct. 1428 (1967); Gallegos-v-Colorado, 370, US 49, 53-55, 8 L. Ed 2d 325, 82 S. Ct. 1209(1962); Haley-v-Ohio, 332 US 596, 599-601, 92 L. Ed 224, 68 S. Ct. 302 (1948). J.B.D.-v-North Carolina, 564 US 261,269, 131, S .Ct. 2394, 180 L. Ed. 2d 310 (2011).*** The Petitioner was never afforded an allied adult to be presented... *See* {Exhibit #6 Affidavit}

The United States Supreme Court has long recognized that a false promise is powerful force in overcoming a person's free will. Consequently, a false promise of lenience is an example of forbidden interrogation tactics, for it would impede a suspect in making an informed choice as to whether he was better off confessing or clamming up. *See* ***(Dassey-v-Dittmann 201 F. Supp. 3d 963 Habeas Corpus GRANTED).*** "Youth remains a critical factor for consideration in determining of the voluntariness of a confession and younger the child, more carefully the courts will securitize police questions tactics is excessive coercion and intimidation or simple immaturity that would not affect an adult has tainted the juvenile confession." *Id.*

In Juveniles, the evaluation of the totality of circumstances includes the evaluation of the juvenile's age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given to him; the nature of his *Fifth Amendments* rights and the consequences of waiving those rights. ***Fare-v-Michael C. US 707,725, 99 S. Ct. 2560, 61 L. Ed. 2d 197, (1979); See also Murdock-v-Dorethy, 846 F. 3d 203, 209 (7th Cir. 2017).*** At no time did the State Appellate Court *evaluate* any of those factors, let alone post-conviction counsel. The Petitioner has not had the luxury of having ANY Court to simply glance at the totality of circumstances in this case. The police may not extract a confession in exchange for a false promise to set the defendant free; given the right circumstances a false promise of leniency may be sufficient to overcome a person's ability to make a rational decision about the course open to him. In this case, it HAPPENED!

The United States Supreme Court has long held that certain interrogation techniques either in isolation or an applied to the unique characteristics of a particular suspect are so offensive to a civilized system of justice that they must be condemned under the Due Process Clause of the fourteen Amendment."***Mincey-vArizona, 437 US S.Ct.2408, 57 L.Ed. 2d 290***

(1978); Hayes-v-Washington, 3737 United States 503, 83 S.Ct 1336, 10 L. Ed 2d 513 (1963) Chambers-v-Florida, 309, United States 227, 235-238, 60 S. Ct. 472, 84 L.Ed. 716 (1940).

This includes the sorts of means that are revolting to the sense of justice, such as beatings and other forms of physical and psychological torture. But the Constitution prohibits far more than barbaric and torturous conduct. Indeed, more subtle police pressures such false promises of leniency may render a confession involuntary. If the confession is a product of deceptive interrogation tactics that have overcome the defendant's free will, the confession is involuntary. ***United States –v-Villalpando, 588 F. 3d 1124, 1128 (7th Cir. 2009). Id. (quoting U.S.-v-Dillon, 150 F. 3d 754, 757 (7th Cir. 1998)*** *See* ***Dassey-v-Dittmann 201 F. Supp. 3d 963*** habeas corpus ***granted***. However, it is easier to overbear the will of a juvenile of a parent or attorney, in marginal cases – when it appears the officer or agent has attempted to take advantage of the suspect's youth or mental shortcomings – lack of parental or legal advice could tip the balance against admission. The Petitioner was simply on his own in the interrogation room, as noted by the Sentencing Judge.

See (Exhibit #8-Sent. Trns-- Pg. 8 1-3)

> *THE COURT:...* " and that the police had coerced the confession from him."...

The United States Supreme Court has long held that involuntary statements are not admissible. The Petitioner isn't making some "flimsy" claim after so many years, but requests this Court to GRANT this petition so the Constitutional Violations from the beginning can be addressed and his innocence declared. Stemming from the falsified waiver Petition of Jurisdiction, asserting the Petitioner *'is not'* mentally ill when his has in fact been hospitalized a year before his arrest for similar mental health issues. *See* {Exhibits #5} in case ***ex rel. Garrett-v-Geatz, 2015 U.S. Dist. Lexis 7337,*** accordingly the Court GRANTED the motion in part and appointed counsel to represent petitioner (Id. At 1, 5) The Court concluded that further factual development was needed regarding whether petitioner might be entitled to equitable tolling of the deadline (Id. At 3-5).

III.

RELIEF IS APPRORIATE TO CLARIFY THE DISTRICT ATTORNEY 'S FALISIFED PETITION OF WAVIER AND THE IMPROPER WAIVER INTO ADULT CRIMINAL COURT

Relief is appropriate on the grounds that District Attorney E. Michael McCann falsified the Petitioner for Waiver of Jurisdiction *{Exhibit #3};* and post-conviction counsel failed to contest that his client was fourteen (14) years-old and being considered to be tried as an adult! And, it's a 5th & 13th Amendments *double jeopardy* and *involuntary servitude clause* Sec. 1; claim is at stake; the Juvenile Court lost its jurisdiction when it 'ordered the Petitioner into adult criminal court absent a mental capacity hearing ***Wis. Stat.* § 48.18(5)** now **§ 938.18(5).** Relief is necessary to clarify both the application legal standards and the applicable remedy for such a constitutional violation.

On **January.2, 1996,** the State of Wisconsin filed "Summons and Petition for Determinations of Status – Alleged Juvenile" *See {Exhibit #7};* in said Petition contains a detailed account of the alleged crime.

On **January.10, 1996,** the State of Wisconsin filed "Petition for Waiver of Jurisdiction and Notice of Hearing" *See {Exhibit #3}.* This Petition addresses the suitability of juvenile justice of waiver into adult criminal court.

On **March.4, 1996,** the Juvenile Court under the Honorable Judge Goldberger filed "Order Waiver Jurisdiction to Criminal Court" *See {Exhibit #4}* citing that "[t]estimony and other evidence having been presented to the Court at the hearing; and the Court finds: ¶ #4 consideration of the evidence presented..."

Cut and dry, the record reflects the Petitioner was never afforded a proper waiver hearing *per* Wis. Statute. ***In Re Pak 15 Wis. 2d 687,*** it was **Ordered Reversed** and **Caused Remanded**... waiver of juvenile jurisdiction is a "critically important" decision which can occur only after a hearing at which the court determine that the criteria for waiver have been made. The Hearing of January.10, 1996; *See {Exhibit #3-Petition for Waiver of Jurisdiction}* was based on inaccurate information, that District Attorney E. Michael McCann conjured up. Under ***Brady-v-Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963)...*** 'suppression by the

prosecution of evidence favorable to an a accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. Prosecutors must disclose material, favorable evidence even if no request is made by the defense, and the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the governments' behalf in this case, including the police. To prevail on his *Brady* claim, a defendant must show that: (1) the prosecution suppressed evidence; (2) the evidence was favorable to the defense; and (3) the evidence was material to his guilt or punishment. *See* ***Badelle-v-Correll, 452 F. 3d 648, 566 (7th Cir. 2006); Gilliam-v-Sec'y for Dep't of Corr., 480 F. 3d 1027, 1032 (11th Cir. 2007);*** and ***Lopez-v-Mass, 480 F. 3d 591, 594 (1st Cir. 2007).***

First, the Petitioner asserts the District Attorney E. Michael McCann falsified the Petitioner for Waiver of Jurisdiction and withheld evidence favorable to the accused that the Petitioner, a juvenile (Under the Age of 17); by improperly applying the waiver statute requirements in **Wis. Stat. § 48.18(5)** now **§ 938.18(5),** that the court shall base its decision whether to waive jurisdiction on the following criteria is mandatory. Without evidence on all the statutory criteria, the Court CANNOT make the required findings, however, in this case IT DID! If the Court waives jurisdiction without evidence of all the criteria, **AN APPEALS COURT MUST REVERSE AND REMAND.** And, failed to meet its burden on the waiver criteria enumerated in **Sec. § 48.18** now §**938.18** the Appeal Court agreed and there **REVERSE AND REMAND**... "that age at the time of the offense determines the Juvenile Court's authority to waive its exclusive jurisdiction. The jurisdiction of the Juvenile Court is determined by the individual's age at the time charged, not the individual's age at the time of the alleged offense." Clearly, that has not happened in this case.

The Petitioner met his burden showing that the State DID NOT consider the criteria enumerated in **Sec. § 48.18** now **938.18**; and post-conviction counsels Paulson simply dropped the case, **NEVER** investigating the transcripts. The trial Court ERRONEOUSLY VIEWED THE LAW, with trial/post-conviction counsel[s] failing to pay attention... under ***State-v-Hutnik (1968), and Cook-v-Cook (1997)*** "for failure to determine if the Defendant was 'mentally ill' under the statute", as cited above. *See* {Exhibits #5 Hospital Records} requiring the decision to waive him into adult criminal court to be **REVERSED** on its face.

The Petitioner was waived WITHOUT all statutory criteria being followed. The Petitioner emphatically state the law as the Wisconsin Legislation cites it in: Wis. Stat. **Sec. § 48.18** now §**938.18(1)(a)3** permits waiver into criminal court if the juvenile is alleged to have violated any state criminal law on or after the juvenile's 15th birthday. The language of the statue is unambiguous; it requires that the act constituting the violation of the criminal law be committed on or after the juvenile's 15th birthday. The pertinent part of **Wis. Stat. § 938.18(1) (a)** reads as follows:

> **§938.18 Jurisdiction for criminal proceedings for Juvenile 14 or older wavier hearing. (1)(a);** Subject To §938.183, a juvenile or district attorney may apply To the Court to waive its jurisdiction under this Chapter in any of the following situations:
>
> 1) if the juvenile is alleged to have violated §§§940.03, 940.06, 940.225(1) or (2) §940.305, §§§ 940.31, 943.10(2), 943.32(2) or §961.41(1) on or after the Juvenile's 14th birthday.
>
> 2) if the juvenile is alleged to have committed, on or after the juvenile's 14th birthday, a violation, at the request of or for the benefit of a criminal gang, as defined in §939.22(9), that would constitutes a felony under chs. 939 to 948 or 961 if committed by an adult.
>
> 3) if the juvenile is alleged to have violated any state Criminal law on or after the juvenile's 15th birthday.

The Petitioner's charges §940.02(1) First Degree Reckless Homicide ARE NOT among the enumerated acts cited above **Sec. § 48.18** now §**938.18** DOES NOT APPLY because the Petitioners was only **FOURTEEN (14) years old** at the time of the alleged offense. District Attorney E. Michael McCann boldly falsified the waiver petitioner *See* (Exhibit #3-Petition for Waiver of Jurisdiction) with trial/post-conviction counsel[s] oversight and the Juvenile Court's blatantly violation of the Petitioner's *due process, and equal protection* under the color o laws subjecting him to *double jeopardy. In* ***Jason K., a person Under the Age of 18 (2001) WI APP 58***. Jason asserts that because he was under fifteen (15) years old when he allegedly committed criminal acts, the State cannot seek waiver of the juvenile courts' jurisdiction. Secondly, he challenges the decision of the juvenile court to waive its jurisdiction. The Appeal court agree and

REVERSE, because the determined that it is Jason's age at the time he allegedly committed criminal acts that controls whether the State can seek his waiver to criminal court; so does the Petitioner. This is a **DIRECT** violation of his *Fifth and Fourteenth Amendment* United States Constitution, to Title II in **US-v-Georgia 546 US 151**, plus there is new factor that entitles his to resentencing, Fourteenth Amendment Due Process Clause "required any fact that increases the penalty for a state crime beyond the prescribed maximum – other than the fact of a prior conviction – had to be submitted to a jury and proved beyond a reasonable doubt"... ***In Apprendi-v-New Jersey 530 US 466***. The Juvenile Court subjected the Petitioner to an increased penalty by waiving him into adult criminal court, as well as placing him at Fifth Amendment Double Jeopardy Clause.

The interpretation or application of a statute is a question of law, which an Appellate Court reviews *de novo*. ***State-v-Hughes 218 Wis. 2d 538, 543, 582 N.W, 2d 49 (Ct. App. 1998).*** When an Appellate Court interprets a statute the Court goals is to ascertain the intent of the legislature and give effect to the intent of the legislature. If the language of the statute is unambiguous in its meaning, the Appellate Court goes no further. ***State ex rel. Frederick-v-McCaughtry, 173 Wis. 2d 222, 225, 496 N.W. 2d 177 (Ct. App. 1992).*** We first look to the language of the statute itself. **Wis. Stat. § 938.18(1) (a) 3;** "permits waiver into criminal court if the juvenile is alleged to have any state criminal law on or after the juvenile's 15th birthday." The language of the statute is unambiguous; it requires that the act constituting the violation of the criminal law be committed on or after the juvenile's 15th birthday. *In* ***Jason K. 2001 WI App 58,*** the Court concluded that the juvenile court was not competent to consider the Waiver Petition because **Jason** was under the age of fifteen years old when he committed the alleged criminal acts. The Petitioner was *FOURTEEN (14) years-old just as well.* Although, the Court of Appeals denied his Motion which conflicts with the Court standards with prior statements of their own rulings.

The Juvenile Court committed to waiving the Petitioner without the weight accorded each criterion is discretionary with the trial court *in* ***Re G.B.K., 126Wis. 2d 253, 376, N.W. 2d 385, 389 (Ct. App 1985)*** each of the factors enumerated in **Wis. Stat § 48.18(5).** Had the lower Courts or trial/post-conviction counsel[s] took consideration and exercised their discretion as written in the statute, they would have found there no reason for wavier into adult criminal court of the

Petitioner. And the Juvenile Court gave undue weight to the seriousness of the offense, using it as the sole determinant without considering whether the waiver would serve the child's best interest. **See *G.L.Y. (a person Under the Age of 18) 154 Wis. 2d 870; 455 N.W. 769 (1990),*** it was **ORDERED** and **CAUSE REMANDED.** Either because it was not known at the time or was overlooked by all the parties.

Secondly, the waiver was improper because District Attorney WAS NOT qualified to make an assessment on the Petitioner's mental health. He is NOT a licensed PhD, in which he asserts in the Petition dated 10.January, 1996: The determination at the Petition for Waiver of Jurisdiction and Notice of Hearing dated Jaunary.10, 1996. *See* (Exhibit #3{"Facts": #2-5 Pet. for Waiver of Jurisdiction) that a ruling regarding his person being "mentally ill" needed to be made statutory prior to the waiver into adult criminal court. The facts upon which t his petition for waiver is based include the following:

#2 Respondent juvenile is not mentally ill;
#3 Respondent juvenile is not developmentally disabled;
#5 Respondent juvenile is physically and mentally mature;

The District Attorney not only mentioned the Petitioner's mental health, in his petition once, but THRICE! who has been admitted to Trinity Memorial Hospital for 'Atypical Psychosis" *(22.Feburary, 1994) See* (Exhibits # 5); with ongoing mental health issues, *See* (Exhibits #11- PSU Documents) A whole year prior... which was known to the prosecutor, but not presented at trial; although, he was aware of this evidence favorable to the juvenile/ Respondent during the waiver proceedings with the Adult Criminal Court's acknowledgment based on the falsified Petition for Waiver of Jurisdiction that 'probable cause' was used to bond the Juvenile Petitioner over.

See {Exhibit #10- Initial Appearance} Page 2; 18-21...

> THE COURT: I've read the criminal complaint as well
> As the 'petition for waiver of jurisdiction' and the other
> Attached documents, and I do find probable cause for
> That charge.

Under *Brady's* final prong, the Petitioner, Gray must show that all of the withheld evidence is collectively material. [E]vidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." ***Cobb, 682 F 3d at 377 (quoting United States-v-Bagley, 473, U.S. 667, 682, 105 S. Ct. 3375, 87, L. Ed. 2d 481 (1985).*** In determining materially, exculpatory evidence must be "considered collectively, not item by item." ***Kyles, 514, U.S. at 434.*** The Supreme Court has further explained that "[t]hat question is not whether the defendant would more likely than not have received a different verdict with the [undisclosed] evidence, but whether in its absence he received a fair trial, understood as a trial resulting worthy of confidence." *Id.* at ***434; see also Wearry-v-Cain, 136 S. Ct. 1002, 1006, 194 L. Ed 2d 78 (2016)*** ("Evidence qualifies as material when there is 'any reasonable likelihood' it could have 'affected the judgment of the jury'" (quoting ***Giglio-v-United States, 405 U.S 150, 154, 92 S. Ct. 763, 31 L. Ed 2d 104 (1972).*** Determining materially under *Brady* is a mixed question of law and fact. ***Cobb, 682 F. 3d at 377.*** The Petitioner was not afforded a 'mental maturity analyses *per statute*, which would have yielded all proceedings differently. No court could consciously waive a child! With mental deficient into an adult criminal court, for further and harsher punishment. In this case, the only evidence used was obtained through a coerced confession, by the child of fourteen (14) years old. Whether exculpatory evidence is material depends largely on its value in relation to the strength of the government's case for guilt. *See* ***United States-v-Sipe, 388, F.3d 471, 478, (5th Cir. 2004)*** ("The materiality of Brady's material depends almost entirely on the value of the evidence relative to the other evidence mustered by the state.")

Accordingly, when there is "considerable forensic and other physical evidence **[#34]** linking petitioner to the crime," a ***Brady*** claim is likely to fail. *See* ***Strickler-v-Greene, 527 U.S. 263, 293, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999).*** Conversely, if "the verdict is already of questionable validity, additional evidence of relatively minor importance might be sufficient to create a reasonable doubt." ***Wearry, 136 S. Ct. at 1007*** (quoting ***Agurs,* 427 U.S. at 113).** The Court therefore begins its materiality analysis by considering the prosecution's case against Floyd for the murder of Hines. As explained more fully in the Court's ***McQuiggen*** order, the State's case against the Petitioner has evidentiary holes. No physical evidence linked the Petitioner, Gray to the crime, no murder weapon, only drug addicts that owed the Petitioner money. Instead, the State's case against the Petitioner rested entirely on the Petitioner's coerced

confession – without the presence of an allied adult or attorney! *See* {Exhibit # 6-Affidavit} if all of the evidence presented here could have disclosed, would the Petitioner, Gray received a fair trial, a different verdict??? Viewed through the lens of the nature of the State's evidence, the Petitioner has shown more than the required "any reasonable likelihood" that his Brady material could have "affected the judgment" of the trial judge. ***Wearry, 136 S.Ct. at 1006 (quoting Giglio, 405 U.S. at 154).*** Two (2) decades prior, ***the U.S. Supreme Court had ruled the Breed-v-Jones 421, U.S. 519, 95 S. Ct. 1779, 44 L. Ed. 2d 346 (1975),*** "that the Double Jeopardy Clause barred the prosecution of a juvenile as an adult for conduct that has already resulted in juvenile court adjudication.". The purpose of the constitution protection against *double jeopardy* have been articulated frequently. *In* ***Serfass-v-United States, 420 US, 377, 387, 43 L. Ed. 2d 265, 95, S. Ct. 1055 (1975).*** The court said: The constitutional prohibition against 'double jeopardy was design to protect an individual from being subjected to the hazard of trial and possible conviction more than once for an alleged offense... the underlying idea one that is deeply ingrain in at least the Anglo-American system of Jurisprudence is that the State with all its resources and power should not be allowed to repeated attempts to convict an individual for an alleged offense. Thereby subjecting him to live in a continual state of anxiety and insecurity as well as enhancing the possibility that even though innocent he may be found guilty."

"Jeopardy attaches when the court begins to hear evidence. The "hearing of Evidence does not require the oral testimony of a witness." ***Goodin-v-Stoots, 856 F. Supp 1504.*** This being the most fatal of flaws leave questions only post-conviction counsel Randall E. Paulson and District Attorney E. Michael McCann himself could only answer... minor factual errors do not merit habeas relief; unless a petitioner can show that the state court's decision was based on the factual error... in this case it has, Greatly! The Petitioner was put in jeopardy at the juvenile adjudicatory hearing, whose object was to determine whether he had commuted acts that violated a criminal law and whose potential consequences included both the stigma inherent in that determination and the deprivation of liberty for many years began to hear evidence. ***Breed-v-Jones, 42 U.S. 519, 528-531 (1975).***

The Petitioner's trialed in criminal court for the same offense as that for which he had been tried in the juvenile Court, violated the polices of the 5th Amendment and 14th Amendment- "*protects the criminal defendant from successive prosecution for the same offense after acquittal*

and conviction, as well as from multiple punishment for the same offense" Double Jeopardy Clause- *"provides no person shall be subject for the same to be twice be in jeopardy for life or limb..."* even if the Petitioner "never faced the risk of more than on punishment," since the *Clause* "is written in terms of potential or risk of trial and conviction, not punishment," ***Price-v-Georgia, 398 U.S. 323,329.*** The Petitioner was subjected to the burden of twice trials for the same offense; he was twice put to the task of marshaling his resources against those of the State, twice subjected to the "heavy personal strain" that such as experience represents". ***Breed at 532-33.***

IV.

RLIEF IS APPRORIATE TO CLARIFY THE HARSHNESS OF JUDGE FRANKE'S SENTENCE BASED ON INACCUARTE INFORMATION

Relief is appropriate to determine the true validity that the Honorable Judge Franke relied on 'false information' while not wholly viewing the record in the Sentencing of the Petitioner. *{A 14-year-old boy}.* Surely, the Courts, the State, trial/post-conviction counsel[s] could not expect an intellectually deficient defendant to fully comprehend the intricacies and magnitude of the law and criminal procedures, which have been questioned throughout the proceedings. Yet, counsel NEVER once halted or objected to do due diligence of his client's history. And, post-conviction counsel simply dropped the case! This poses the idea that and assumption is axiomatic in the sense that the Petitioner needs the Court to determine on the merits, that his 5^{th}, 6^{th}, 8^{th}, 13^{th} and 14^{th} United States Constitutional Amendment is at stake. Starting, from the **Fifth Amendment Double Jeopardy Clause** of the improper waiver into adult criminal court. With trial counsel not objecting to his client being expose to a harsher penalty; and ordering a 'mental maturity analysis' under **Wis. Stat.§ 48.18(5)** now **938.18(5).**

Secondly, ***State-v-Spears, 227 Wis. 2d 495, 596 N.W. 2d 24;*** teaches us, "a criminal defendant has a *due process* right to be sentenced only on materially accurate information". Hence again, once the sentencing court comes outside the scope of the legislative intent by using extrinsic interpretive aids to an unambiguous statute such as in the case at bar, as a consequence, arbitrarily *"flips"*. During the Sentencing Hearing 31.June, 1996, Honorable John A. Franke, noted the following in arriving at his sentence determination:

Sentencing Transcripts Pg. 23 Line 23-Pg.24; Lines: 1-3 & 14-17;

> THE COURT: It seems inconsistent with what clearly is some level of immaturity because while he was capable of doing this, I don't know that he was fully capable of appreciating the consequences of what he was doing...

Sentencing Transcripts Page 24 Lines: 14-20;

> THE COURT: And then with respect to this crime when frightened, he was capable of pulling that gun out and using it when there was absolutely no justification. Putting aside the lack of justification for the drug dealing and carrying of the weapon, there was no justification for pulling the trigger...

As previously noted above, the court sentenced the Petitioner for an indeterminate period not to exceed (30) thirty years in Wisconsin Prison System. The Court arrived at its determination of the sentenced based in part of factors deemed to be aggravating, when in fact they should have been considered mitigating. Petitioner asserts that amount to cruel and unusual punishment by keeping his in prison for no reason. *See* ***Robinson-v-California, 370 U.S. 660 (1962)*** "Even one day in prison would be a cruel and unusual punishment of [a person not engaged in criminal activity]"; *cf* ***Rohl-v-State, 90 Wis. 2d 18, 43 {Wis. App. 1979}*** "We do not feel that even one day is reasonable amount of time to hold a defendant in prison unlawfully".

The Petitioner, in this case has been in prison for twenty-three (23) years since he was fourteen (14) years old, and STILL being kept PASSED his PMR{ Presumptive Mandatory Release} date {19.July, 2016}; violating his Thirteenth United States Constitutional Amendment, *Involuntary Servitude Clause*... This Wisconsin State has made a substantial showing that it intends to impose everyday of 30-years {life} on the Petitioner through its parole system under Wisconsin Statute 302.11(1g) by holding the Petitioner past his Presumption Mandatory Release for draconian reasons. Consider and referenced Wisconsin parole policy as the Court believed it to be at that time concerning prison treatment and rehabilitation. The sentencing judge voiced the court's expectation about how that policy and overcrowding would impact Mr. Mr. Gray's eventual release and return to the community. The Court made these remarks, illustrative of the Court's expectation, in determining the length of the Mr. Gray's sentence. Since that time, Wisconsin parole policy has changed, shifting the focus for parole

release away from acceptance of treatment and rehabilitation, toward lengthier and more punitive sentences. In the present case, Kenneth M. Gray has not been granted parole despite his clear acceptance and completion of treatment would case Mr. Gray to be released to the community on supervision. This constitutes a new factor warranting, at least a sentence modification.

At the time of Mr. Gray's sentencing, the Truth-in-Sentencing (TIS) and Truth-in-Sentencing II (TIS-II) acts were not yet enacted as Wisconsin State Law; the Court sentenced Mr. Gray, a juvenile of 15-years-old under the indeterminate (pre-TIS) Wisconsin sentencing scheme, Under pre-TIS sentencing law in Wisconsin, Mr. Gray would be eligible for release from prison on parole after serving two-thirds of his sentence. Wis. Stat. §§304.06(1) (b), 302.11. Generally, a Wisconsin inmate sentenced pre-TIS would expected to complete rehabilitative programing in prison in order to be release after reaching parole eligibility. Prior to TIS and TIS-II in Wisconsin, litigants, attorneys, and courts in criminal cases typically practiced a type of "short-hand math" when prison sentences were imposed to predict the parole eligibility and maximum discharge dates on an indeterminate prison sentence recommended or imposed. Lawyers formed their recommendations and judges imposed their sentences after engaging that short-hand math, working time. If an inmate completed treatment and programming and served good time in prison, he could expect to discharge on or shortly after reaching parole eligibility, or 25% of the prison sentence. Lawyers and judges knew and expected this: that service of so-called "good time" would result in discharge at parole eligibility. In Mr. Gray's case, as quoted above, the sentencing judge directly stated his expectation that if Mr. Gray accepted treatment and due to the overcrowding, Wisconsin sentencing law and parole policy would in fact result in his release from prison after he reached his parole eligibility date.

The Petitioner was 15-years-old at the time of his sentencing, he is now 38-years-old. His PMR presumption mandatory release date is/was 19.July, 2016!! He began parole commission reviews in 2003, when he reached 25% completion mark, and he received 10 deferrals!! He has completed ALL treatment and programs; as well as been accepted to two Universities! Still that's not good enough for release! *See* {Exhibit #12a-12b}. Because, the Wisconsin Parole Commission already had its mind made up prior the Hearings of 5.May and 23.June, 2016; to keep the Petitioner past his Release date. No therapeutic or vocational training remains for Mr. Gray to complete to achieve parole, yet he has not been released. June.23, 2016 marks 13-years

since Mr. Gray reached parole eligibility, 22-years of his 30-year sentence, he was given at the tender age of 15-years-old! Wisconsin parole policy has significantly changed in the time since Mr. Gray was sentenced, resulting in comparatively fewer pre-TIS and TIS-II inmates being released on parole currently than prior to 8-years ago. This change has been noted in various reports documenting the far fewer pre-TIS inmates being released to parole[1]. More significantly, it also shows at Mr. Gray's PMR Hearing 23.June, 2016 that the Department of Corrections and the Parole Commission have decided that treatment no longer provides an inmate with the key to his release that judges presumed it did when sentencing pre-TIS defendants. Mr. Gray has in fact accepted and completed treatment and then some as noted in the Parole Commissioner's comments, yet all he has accomplished just isn't enough! He is being kept in prison – despite accepting and completing treatment – despite being confined as he was 14-years-old, now 38-years-old, because parole policy has indeed changed. Both demonstrably and significantly in this case, current policy differs from the policy backdrop that the sentencing judge relied upon when sentencing Mr. Gray. This Court has inherent authority to modify a sentence, a conviction when an appellant demonstrates a constitutional violation, a new factor. Mr. Gay has been petitioning ALL of the Courts about this very issue; by him being a layman, and illiterate in law his Motions have been interrupted as statute dictates.

The United States Supreme Court has established that children are constitutionally different from adults for propose of sentencing. *See* ***Roper-Simmons, 543, U.S. 551, 125 S. Ct. 1183 (2005)*** and ***Graham-v-Florida, 130 S. Ct. 211 (2010).*** The Court further held, because juveniles have diminished culpability and greater prospects for reform, the Court explained, "they are less deserving of the most severe punishment." ***Graham*** the court relied on three (3) significant gaps between juveniles and adults. First, children have a "lack of maturity and underdeveloped sense of responsibility," leading to recklessness, impulsivity, and heedless risk-taking. ***Roper, 543 U.S. at 569, 125 S. Ct. 1183.***

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[1]*See, e.g.,* Dee J. Hall, Paroles plummet under Governor Scott Walker, Wisconsin State Journal, Mar.2, 2014 ("New numbers show only a small percentage of inmates are paroled each month, a proportion that dropped sharply soon after Walker, a Republican, took office in January 2011. Under Walker, 6 percent of parole requests were granted in 2013 and 5.3 percent in 2012. That compares to 14.5 percent in 2009 and 13 percent in 2010, the final year of the administration of Democrat Gov. Jim Doyle.").

Second, children "are more vulnerable... to negative influence and outside pressures," including from their family and peers; they limited "control over their own environment" and lack the ability to extricate themselves from horrific, crime-producing settings." *Ibid.* And thirdly, a child's character is not "well formed" as an adults; his traits are "less fixed" and his actions less likely to be 'evidence of irretrievable depravity." ***Id at 570. 125 S. Ct. 1183...***

See {Exhibit # 9} Guilty Plea 31.May, 1996 Page 6 Line: 18-22;

> MS. KRAFT: ...Detective Morrow and Detective Cesar that there was substantial influence by people outside of the defendant's family who were affecting his behavior in negative ways...

Sentencing Transcripts 28.June, 1996 Page23 8-9 {Exhibit 8}

> THE COURT:... strange sort of maturity....

*In **Miller-v-Alabama, 2012 U.S. Lexis 4873 132 S. Ct. 2455 (June 25 2012),*** the Supreme Court extended *Graham's* reasoning (but not categorical ban) to homicide cases, and, in so doing made it clear that *Graham's* "flat ban" on life without parole sentences for juveniles in non-homicide cases applies to their sentencing equations regardless of intent in the crimes commission. The *Miller Court* also observed the "none of what *{Graham}* said about children, about their distinctive (and transitory) mental traits and environmental vulnerabilities, is crime-specific. Those features, said the Court, are evident in the same way, and to the same degree, when... a botched robbery turns into a killing.

A continuing emphasis the *Roper, Graham,* and *Miller* has been the unique character of the juvenile offender. The Court determined in *Miller* that while there was no categorical ban on life without parole for juveniles convicted or homicides, there was a need for the sentencing court to consider the juvenile's unique character traits and how they mitigate a lengthier sentence; here the Petitioner was sentenced 23-years ago! When he was the tender age of fifteen (15) years-old. The sentencing court did in fact consider the Petitioner's youth. However, the court determined that the Petitioner could not benefit from the assertion he was influenced by the crowd he hung with. The court determined that the Petitioner *"manifested a level of maturity by possessing a gun and shooting the victim without any rhyme or reason,"* thus, whether than view these factors as mitigating a lengthy sentence, the court viewed them as aggravating factors, warranting a lengthier sentence. While it is true the sentencing court did not have the benefit of

the results of the many studies done on the juvenile brain now available, this does not take away from the fact that such is a new factor as established by *Rosado.*

*In **State-v-Martin 110 Wis. 2d 326, 302 N.W. 2d 58 (1981).*** "The Court REVERSED and REMANDED for RESENTENCING because such a mechanistic approach to sentencing was not the exercise of sentencing discretion. The must therefore be VACATED... the trial judge's preconceived policy was impermissibly tailored to fit only the crime and the not defendant (who was a 14year old boy!) at the time of his offense, at least in part closed to individual mitigating factors. *See **Williams-v-New York 337 US 241 (1949); US-v-Foss, 501 F 2d. 522 (1st Cir. (1974),*** and in ***State-v-Lipke, 143, Wis. 2d 904; 423 N.W. 2d 884 (1988).***

At {Exhibit #8} Sentencing 28.June, 1996 Pg. 7, 16-18:

> THE COURT: I do not think that anything other than incarceration in the state prison system is appropriate in this case...

Pg. 8, 19-25, Pg. 9 1-2;

> THE COURT: And I think that the bottom line is that he has To be punished. He has to be punished for a period in the state Prison system and it has to substantial period. I do not know What number to recommend for a boy who was fourteen when He committed this crime, who has committed a...

Pg. 25, 3-5:

> THE COURT: He's in the adult court where it's too late to ask For credit from the judge because you haven't fathered any children yet.

The Petitioner has shown beyond reasonable doubt that the lower Courts have relied on false and inaccurate information or simply not reviewing at all! ***State-v-Tiepelman, 2006 WI 66, P2 291 Wis. 2d 179, 717 N.W. 2d 1.*** "If the defendant meets his or her burden of showing that the sentencing court actually relied on inaccurate information the burden shifts to the State to establish that the error was harmless." ***State-v-Norton, 2001 WI APP 245, 248 Wis. 2d 152,*** "inaccurate information, provided by a probation agent and relied on by the trial court frustrated the purpose of the sentence." Honorable John A. Franke was privy to the petitioner's

background, yet he did not view the whole record, in its entirely, perpetuating this 'miscarriage of justice'...
See (Exhibit # 9) Guilty Plea 31.May, 1996 Page 21 4:6...

> THE COURT: Mr. Bloch, I haven't been through the whole delinquency petition here...

See Guilty Plea 31.May, 1996 Page 21; 10-12:

> MS. KRAFT: The state will stipulate to the contents of the Juvenile petition as a factual basis?

See (Exhibit #10) Initial Appearance 12.March, 1996 Page 2; 20:

> THE COURT: ... I've read the criminal complaint as well as The 'petition for waiver of jurisdiction' and the other attached documents, And I do find probable cause for that charge.

"A defendant has a right to be sentenced on accurate information, *Norton, Id.* Erroneous or inaccurate information used at sentencing may constitute a "new factor" if it was highly relevant to the imposed sentence and was relied upon by the trial court. With no objection from trial counsel or post-conviction counsel. The Petitioner establishes the deficient performance prong of **Strickland,** *Id.* In so much that "[c]ounsel has a duty to bring to bear such skill and adversarial testing process." ***Powell-v-Alabama, 287 U.S. at 68-69, 53 S.*** Ct. ***at 63-64.***

As outlined above, the Petitioner has established a type of extraordinary circumstances that would warrant equitable tolling and that he has been examined before his arrest and diagnosed with *'Atypical Psychosis'* as a thirteen (13) year-old. Counsel[s]; trial and post-conviction simply allowed him to be exposed to a harsher sentence, with post-conviction counsel, just dropping the case. Petitioner has made a strong showing on the merits that his claims are supercalifragilisticexpialidocious enough and based on a plethora of Constitutional Violations. Petitioner has demonstrated his claims are clearly cognizable, nowhere near "flimsy" Petitioner Gray, has done this, *pro se* without the privilege of his post-conviction counsel.

CONCLUSION

This argument presents a mix question of law and fact. Both trial/post-conviction counsel[s] failures to object or in the alternative seek post-conviction relief. The Petitioner

establishes without the effective assistance of counsel to seek post-conviction relief, the accused, a layman, a juvenile (a person Under Age of 18) whom is unable to realize that he has not been represented competently, is fundamentally denied the most comprehensive and essential right the accused person has. Because without inquiry, "the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have" In supplementary terminology, "the right to counsel is the right to the effective assistance of counsel." ***Evitts-v-Lucey, 469 U.S. 387, 105 S. Ct. 830.*** Moreover, the failure to object or simply peruse one's clients records at this critical stage of the proceedings results in a substantial prejudice

GOOD FAITH

This Petition is filed in good faith and not for any improper purpose, delay, or design, and premised upon his belief that he is entitled to redress.

RELIEF SOUGHT

WHEREFORE, the Petitioner PRAYS that this Court issues its Writ of Certiorari commanding the Respondent to **UNCONDITIONALLY DISCHARGE** him from his continued unconstitutional detention immediately.

OATH AND CERTIFICATE OF SERVICE

I, KENNETH M. GRAY, DO HEREBY SWEAR ON THE PENALTY OF PERJURY that the facts stated herein are true and correct and that I have served a true and exact copy of this Petition with 14,903 words upon the above-named by first-class prepaid U.S. Mail on this 29th day of September, 2019. 28 U.S.C. § 1746.

Dated this 29th day of September, 2019

RESPECTFULLY SUBMITTED,

Kenneth M. Gray, pro se
#315302
Racine Correctional Inst.
Box 900
Sturtevant, WI 53177