

No. 19-8420

ORIGINAL

Supreme Court, U.S.
FILED

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IN THE

SUPREME COURT OF THE UNITED STATES

Charles Wilson — PETITIONER
(Your Name)

vs.

State of Wisconsin — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Wisconsin Court of Appeals District I
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Charles Wilson
(Your Name)

P.O. Box 200
(Address)

Fox Lake, WI 53933-0200
(City, State, Zip Code)

920-928-6953
(Phone Number)

Question(s) Presented

1. Whether it is UnConstitutional for defense Counsel to admit an accused's Guilt to the jury over the accused's objection? And also admit and accused's Guilt during the Sentencing hearing over the accused's objection?
2. Whether the trial Court abused its discretion When it excluded Seven Jurors from Participating in the Voir dire Process On the Court's Own Motion? And Was trial Counsel ineffective for failing to object?
3. Whether the trial Court abused its discretion When it refuses to allow the detective Who took the accused's Statement to read an accused's Statement to the jury When the accused's Wants the Statement read to the jury? And Whether the accused's Statement is hearsay When the Prosecutor does not Want to use the accused's Statement?
4. Whether the Wisconsin Supreme Court added a third element to Strickland v. Washington, 466 U.S. 687 (1984). In its decisions in State v. Starks, 2013 WI 69, 59-60. And State v. Romero-Georgana, 2014 WI 83, 4, 44-46, 360 Wis. 2d 522, 849 N.W. 2d 668?
5. Whether the Wisconsin Supreme Court's decision in State v. Escalona-Naranjo, 185 Wis. 2d 168, 517 N.W. 2d 157 (1994). Is Contrary to this Court's decision in Martinez v. Ryan, 566 U.S. 1 (2012)?

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

State of Wisconsin v. Charles Wilson, No. 99-CF-5019, Milwaukee County Circuit Court. Judgment entered Mar. 26, 2001.

State of Wisconsin v. Charles Wilson, No. 01-1028-CR, District I Court of Appeals. Judgment entered Jan. 29, 2002.

State of Wisconsin v. Charles Wilson, No. 01-1028-CR, Supreme Court of Wisconsin. Judgment entered Apr. 22, 2002.

Wilson v. Bertrand, No. 03-CV-0287, U.S. District Court for the Eastern District of Wisconsin. Judgment entered Oct. 31, 2005, Nov. 28, 2005, and Dec. 6, 2005.

Wilson v. Pollard, No. 05-4578, U.S. Court of Appeals for the Seventh Circuit. Judgment entered May. 30, 2006.

Wilson v. Pollard, No. 06-6702, United States Supreme Court. Judgment Nov. 6, 2006, and Jan. 8, 2007.

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4-10
REASONS FOR GRANTING THE WRIT	11-23
CONCLUSION.....	24

INDEX TO APPENDICES

APPENDIX A	Decision of State Court of Appeals.
APPENDIX B	Decision of State Trial Court.
APPENDIX C	Decision of State Supreme Court Denying Review.
APPENDIX D	Decision of State Supreme Court Denying Rehearing.
APPENDIX E	Trial Transcript of Attorney Goldstein's closing argument conceding guilt.
APPENDIX F	Trial transcript of Wilson's sentencing hearing attorney Goldstein conceding.
APPENDIX G	Trial Transcript of trial court ruling regarding Wilson's statement
APPENDIX H	Trial transcript of trial court on its own motion excluding seven jurors from participating in the Voir Dire Process.
APPENDIX I	COPY OF State v. Escalona-Naranjo: A Limitation on Criminal Appeals in Wisconsin? 1997 Wisconsin Law Review 207.

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Arizona V. Fulminate, 499 U.S. 279, 310 (1991)	14
Buck V. Davis, 137 S. Ct. 759, 777 (2017)	14
Cassell V. Texas, 339 U.S. 282, 286-87, 70 S. Ct. 629, 631-32, 94 L. Ed. 839 (1950)	17
Cronic, 466 U.S. at 656-657	15
Douglas V. California, 372 U.S. 353 (1963)	20
Evitts V. Lively, 469 U.S. 387 (1985)	20
Faretta V. California, 422 U.S. 806, 834 (1975)	11, 13, 14
Flowers V. Mississippi, 139 S. Ct. 2228 (2019)	17
Gonzalez-Lopez, 548 U.S. at 150	15
Kaley V. United States, 134 S. Ct. 1090, 1102 (2014)	15
Martinez V. Ryan, 566 U.S. 1 (2012)	22, 23
Mason V. Hanks, 97 F.3d 887, 893 (7th Cir. 1996)	20
McCoy V. Louisiana, 138 S. Ct. 1500 (2018)	15
re Murchison, 349 U.S. 133, 75 S. Ct. 623, 99 L. Ed. 942	17
Neder V. United States, 527 U.S. 1, 7 (1999)	14
Peters V. Kiff, 407 U.S. 493, 502-03, 92 S. Ct. 2163, 2168-69, 33 L. Ed. 2d 83 (1972)	16
Rose V. Clark, 478 U.S. 570, 577-578 (1986)	14
Smith V. Robbins, 528 U.S. 259 (2000)	20, 21
State V. Anderson, 230 Wis. 2d 121 (1999)	18
State V. Blunt, 2014 Wisc. App. Lexis 69	22
State V. Chasa, 108 Wis. 2d 392 (1982)	16, 17
State V. Escalona-Naranjo, 185 Wis. 2d 1168, 517 N.W. 2d 157 (1994)	22

TABLE OF AUTHORITIES (CITED)

CASES

PAGE NUMBER

State V. Eugenio, 219 Wis. 2d 391, 410, 579 N.W. 2d 642, 651 (1998) 19

State V. Fisher, 2018 Wis. App. Lexis 533 22

State V. Fortier, 2006 WI App 11 22

State V. Kletzien, 2011 WI App 22 (2011) 22

State V. Romero-Georgiana, 2014 WI 83, 4, 44-46, 360 Wis. 2d 522,

849 N.W. 2d 668 21, 22

State V. Rhoads, 2005 WI App 222 22

State V. Sharp, 180 Wis. 2d 640, 655, 511 N.W. 2d 316, 323 (Ct. App. 1993) 19

State V. Starks, 2013 WI 69, 59-60, 349 Wis. 2d 274, 833 N.W. 2d 146

2014 WI 91, 357 Wis. 2d 142, 849 N.W. 2d 724, 2014 WI 109, 358 Wis. 2d 307,

852 N.W. 2d 746, cert denied, 135 S.Ct. 1548 (2015) 20, 21

Strickland V. Washington, 466 U.S. 668, 687 (1984) 20, 21, 23

Trevino V. Thaler, 569 U.S. 413 (2013) 23

United States V. Walker, 652 F. 2d 708, 713 (7th Cir. 1981) 19

Vasquez V. Hillery, 474 U.S. 254, 263 (1986) 15

Walker V. Martin, 562 U.S. 307, 131 S.Ct. 1120 (2011) 23

Walker V. Pollard, No. 18-C-0147, 2019 WI 4219429 (Eastern District

of Wisconsin Sept. 4, 2019) 21

Weaver V. Massachusetts, 137 S.Ct. 1899, 1908 (2017) 11

STATUTES AND RULES

6th Amendment 2, 11, 12, 15, 23

U.S. CA. Amend 14, § 1 14

Wisconsin Constitution Article I, § 21 20

STATUTES AND RULES

PAGE NUMBER

Fed. R. Crim. P. 52(a)

14

908.01 Sub (4)

6, 18

Wisconsin Statute 974.06

10, 19, 22

OTHER

1 Kenneth S. Brown Et AL, McCormick on evidence

56

19

John William Strong 4th ed, 1992

19

(V)

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Milwaukee County Circuit Trial court appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was Feb. 11, 2020.
A copy of that decision appears at Appendix C.

☒ A timely petition for rehearing was thereafter denied on the following date: February 26, 2020, and a copy of the order denying rehearing appears at Appendix D.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the U.S. Constitution Provides in Part:

IN all Criminal Prosecutions, the accused Shall enjoy the right...
to have the assistance of Counsel for his defense.

The Fourteenth Amendment to the U.S. Constitution Provides in relevant Part:

[N]or Shall any State deprive any Person of life, liberty, or
Property, Without due Process of law.

STATEMENT OF THE CASE

Mr. Wilson Was convicted of the Murder of Antonio Ivery, Who Was the live-in-boyfriend of Mr. Wilson's ex-girlfriend and the Mother of his Children. There Were three eyewitnesses Who Were at the Crime Scene Purchasing drugs from the Victim, and the Victim's friend Who Was inside the Crime Scene all identified Mr. Wilson as the Shooter. From the time he Was arrested Until Present, Wilson has Consistently Maintained his innocence of the offense. He Maintains that he Was at a friend's house at the time of the Killing and believes the eyewitnesses Killed the Victim When a drug deal Went Wrong.

During the Voir dire Process the trial Court on its own Motion excluded Seven Jurors Some Who Were African American, from Participating in the Voir dire Process, and Wilson's trial attorney did not object.

The trial Court also over Wilson's objection Suppressed his Statement in the Second trial and refused to allow the detective Who took Wilson's Statement to the jury, because the Prosecutor did not Want to Use Wilson's Statement in the Second trial.

In his closing argument attorney Bernard Goldstein Conceded Wilson's Guilt over Wilson's objection Who Pleaded not guilty and had an alibi defense. And Continued too, Conced Wilson's Guilt two Months later during the Sentencing hearing. On Collateral review Wilson's Claims Were Procedurally barred because his Post-conviction Appellate Counsel failed to raise these issues in Wilson's First Appeal.

Statement of The Case

Wilson filed Prose, for Collateral review Pursuant to Wisconsin Statute 1974.06. Relief Was denied in the trial Court and on appeal APP A-B. The Wisconsin Supreme Court denied review in State V. Charles Wilson, 2018 AP-95. APP C-D. During the Voir dire Process the trial Court on its own Motion excluded Seven jurors Some Who Were African American, from Participating in the Voir dire Process, and Wilson's trial attorney did not object. The Court: Now I Want You to Know there are Seven of You Who are Seated behind the lawyer's tables. Right now You are extra jurors, because the jury is going to be Selected from the 27 People in the Chairs facing the SouthWall. To Save time, the Seven of You Seated behind the lawyer's tables, You don't have to raise Your hand and respond to any of MY questions or the lawyer's questions. But Please Pay attention to them, because if during this Process I excuse one of the first 27, I'll Send that Person back to the jury ASSEMBLY and I'M going to Call upon Juror No. 28 to Come forward and fill in that Chair, and then We'll bring You up to Speed. Now for the Seven of You Seated behind the lawyer, You May be thinking to Yourself, Why Was I even here? We didn't get a Chance to Say even One Word in this Courtroom. APP H. 30. Also the trial Court over Wilson's objection Suppressed Wilson's Statement in his Second trial, and refused to allow the Detective Who took Wilson's Statement to read it to the jury in the Second trial, because the Prosecutor in the Second trial did not Want to Use Wilson's Statement. Wilson's Second trial Was tried by a different Prosecutor and defense attorney. Mr. Goldstein. Let-- Me Make a record here of What I have discussed Yesterday and today. The defendant's Statement as Given to the Police Was not Made a Part of the State's Case.

Statement of The Case

The Court: Right.

Mr. Goldstein: AS it Was in the first trial. I have therefore told the defendant that that Statement is not Part of the record and that it Cannot go into the record on behalf of the defendant unless he testifies.

The Court: That is true. And the reason for that is. The reason why the State, if they have a Statement from a defendant, Can Put, for example, a Police officer on the stand and testify about what the Statement is, is because You are a Party Opponent to the State, and under rules of evidence, Your Statement is not hearsay such that the State Can Put it in. However, You Can't Call an officer to testify as to what You said because You are not an opponent to Yourself. So under the rules of evidence, the State Can Put in a Statement attributable to a defendant by a Police officer, but a defendant Cannot. So in other words, if You Want Your Statement to be before the jury, the only Way You Can do it is if You testify. IN this case, the State has Chosen not to Put in Your Statement so it's not before the jury right now, and You Can't Call a Police officer to do that under 908.01 Sub (4) because Your Statement through a Police officer from Your Perspective is hearsay. So... APP. G. 24. Wilson did not testify because attorney Goldstein Coerced and Pressured him into not testifying, after tell the Court that Wilson Would be testifying. APP. G. 24. IN his closing argument attorney Bernard Goldstein Conceded Wilson's guilt over Wilson's objection, Who Plead not guilty and had an alibi defense.

Mr. Goldstein: Your Honor, Madam District Attorney, ladies and gentlemen of the jury. This is a situation in which I believe at the beginning of this trial. I told You that the only relationship that it Might

Statement of The Case

have to television-type homicide cases is the so-called love triangle, and I think that is what you are left with at the conclusion of the case.

MS. LOEBEL: The other thing was the love triangle that Mr. Goldstein conceded in this case. Mr. Goldstein told you that this was a love triangle. I'll adopt that. And that's true. That's what this is about. The prosecutor conceded that Attorney Goldstein, did in fact concede Wilson's guilt. APP E. 14. And two months later during Wilson's sentencing hearing Attorney Goldstein continued to concede Wilson's guilt.

MR. GOLDSTEIN: Yes, Your Honor. With regard to this matter, sentencing is very difficult in this type of case because the defendant of course continues to maintain his innocence. Now, it's difficult when you're representing a defendant to avoid any sermonizing, but I think in this case that there are some things that would best serve both the defendant, would best serve the Ivey family, and it would certainly serve Miss Thompson to know about in terms of this whole matter. When I first contacted Miss Loebel with regard to this case, she had just transferred to the homicide division, I think shortly before that. And I remember one of her very first statements was that this is another one of those cases where a principal actor in the case is really not partly to the crime, and under our system goes unpunished. This is about the third or fourth case that I've had in the last two years as homicides, or attempted homicides, where an underlying individual's conduct substantially contributed to what ultimately turns out to be a terrible if not the most terrible crime. The defendant, I think the discovery indicates, as some of the witnesses, was angry at Mr. Ivey for selling

Statement of The Case

drugs in the Presence of his Children. I don't think, however, that that was the Primary anger. Although, I think that was Primary anger. Although, I think it is a Commendable anxiety on Mr. Wilson's Part. I think the Greater anxiety on the Part of Mr. Wilson was that relation between Mr. Tvery and Miss Thompson. She was, I believe at the time, 34. This Young Man was about 19 Years of age. I am merely stating these facts because I think everybody, including the defendant, has to be aware of the culture going on around this circumstance that that led to the shooting. I also think that a certain amount of the blame, which is probably not the best term, but at least a certain amount of responsibility here goes to Mr. Wilson's family. I think it is obvious from the discovery that perhaps his mother and perhaps his sister, and I'm sure if they have thought back over it, would have contacted the house of correction to terminate the huber privileges of Mr. Wilson. Given what apparently was his state of mind during the week or at least the five days preceding this entire matter. And that may have avoided Mr. Wilson's being out on the street as a huber prisoner. Mr. Tvery exacerbated that situation as well by selling drugs out of the house, and further exacerbated that situation because I think it was apparent from discovery information that on the very Saturday preceding this matter when Mr. Tvery was telling Mr. Wilson that he was not selling drugs out of the house, a person came to the door and a transaction occurred right at that time. And while not in the presence of Mr. Wilson's children, one of the children was in the home at that time. Now I've already said, does any of that justify a killing? And the answer clearly is no. It's no, it's no and it's no. But these things contributed to it.

Statement of The Case

Human beings become Victims of emotions. And I believe that Mr. Wilson in this case became a Victim of emotions. Emotions Make Victims of Crimes. Murders are the total Uncontrolled emotions. Of hate, anger, jealousy, greed, Sex. Sometimes religion, other Wild ideas. But it is rather obvious here that there were two emotions at that Moment Working on Mr. Wilson. One Was the environment Which he Perceived the Children to be in, namely a drug Culture. And I'm not naive to believe the More Compelling emotion had to do With the Sexual emotion between Mr. Ivey and Miss Thompson. This Court Probably More than Myself, I'm Probably More than Miss Laebel, has lived through and heard about or Was involved in Murders Committed by a Judge, Murders Committed by lawyers, by Police officers, deputy Sheriffs, businessmen, doctors, nurses, School teachers, Professors, Scientists, all the Way down to the least educated and all the Way up to the Most educated. Underlying, there are always emotions. This Kind of Conduct has occurred in both the least functioning families and Probably in the best functioning families. My Work With Mr. Wilson involving the Second trial indicates that this defendant fits that Profile, a Profile of terrible driving anger over What Was occurring. APP. F. 17. To Sum UP Attorney Goldstein's Sentencing testimony. Mr. Wilson is Guilty. Miss Terri Thompson (the mother of his Children) Should have been Charged With Party to a Crime, because She Was in a relationship With the Victim, and allowed him to see drugs out of the house around their Children. And Mr. Wilson's family is responsible for Mr. Ivey's death.

Statement of The Case

Lastly The Wisconsin Court of Appeals affirmed the trial Court's ruling that Mr. Wilson's Claims Were Procedurally barred, because his PostConviction/ Appellate attorney did not raise these Claims in Wilson's first Appeal. And because Wilson did not raise these issues When he filed a Motion to Modify restitution, and because Wilson failed to Show that the new issues he raised in his Pro Se Wisconsin Statute 974.06 Motion Were "Clearly Stronger" than the issues his Post-Conviction/ Appellate attorney raised in Wilson's first Appeal, Who Was appointed by the State Public Defender's office to represent Wilson. APP. A. 1. APP. B. 7. APP. I. 36.

REASONS FOR GRANTING THE PETITION

I. The Constitutional right at the heart of this case is one so central to our justice system that it rarely requires explication: a criminal defendant's right to decide whether to admit guilt or instead to pursue acquittal and require the prosecution to prove his commission of the offense beyond a reasonable doubt. That choice is the defendant's entitlement, without which none of the procedural protections the Constitution guarantees the defendant in a criminal prosecution has genuine meaning. A trial in which the defendant is deprived of the core right is no trial at all. Under the Sixth Amendment "the right to defend is personal." *Faretta v. California*, 422 U.S. 806, 834 (1975). It is the accused's life and liberty, not the lawyers, at stake. And it is the accused's defense the lawyer merely assists the accused in making it. This Court has repeatedly recognized "the fundamental legal principle that a defendant must be allowed to make his own choices about the proper way to protect his own liberty." *Weaver v. Massachusetts*, 137 S. Ct. 1899, 1908 (2017). It is the defendant's right to make certain basic decisions that shape his defense, including whether to defend himself or obtain counsel, including whether to defend himself or to obtain counsel, whether to go to trial or enter a plea and whether to testify or stand on his right to remain silent. The defendant is likewise entitled to decide whether he will admit guilt in the hope of securing a lesser sentence or seek acquittal - as is his right - and require the prosecution to prove his guilt. The defendant does not waive that core entitlement by accepting the "assistance of counsel for his defense" U.S. Const. amend VI. Here, where Wilson expressly

Reasons For Granting The Petition

and insistently informed his Counsel that he was innocent. Counsel was not entitled to overrule that decision and tell the jury Wilson was guilty, and continued to tell the court during Wilson's sentencing hear that Wilson was guilty. In his closing argument, Goldstein told the jury. Your Honor, Madam District Attorney, ladies and gentleman of the jury. This is a situation in which I believe at the beginning of this trial I told you that the only relationship that it might have to television-type homicide case is the so-called love triangle, and I think that is what you are left with at the conclusion of the case. And the District Attorney Miss Loebel confirmed that Goldstein conceded Wilson's guilt. Telling the jury in her rebuttal closing argument. The other thing was the love triangle that Mr. Goldstein conceded in this case. Mr. Goldstein told that this was a love triangle. I'll adopt that. And that's true. That's what is about. APP. E. 14. And Goldstein continued to concede Wilson's guilt two months during the sentencing hearing. Telling the court that Mr. Wilson was guilty, Miss Terri Thompson (the mother of his children) should have been charged with party to a crime, because she was in a relationship with the victim, and allowed him to sell drugs out of the house around Mr. Wilson's children. And Mr. Wilson's family is responsible for Mr. Ivey's death. APP. F. 17. What happened here violated Wilson's Constitutional right to make the most fundamental choices regarding whether, and how to defend his life and liberty. See *United States v. Cronin* 466 U.S. 648 (1984). By admitting guilt over his client's express objection, Counsel "Failed] to subject the Prosecution's case to meaningful adversarial testing." Id. at 659. And Counsel also eviscerated many of Wilson's other Constitutional rights that inhere in a criminal trial. When Counsel

Reasons For Granting The Petition

When Counsel affirmed Wilson's guilt, it rendered his right Self-incrimination meaningless. Wilson had an alibi defense and Maintained his innocence and Continues too Maintain his innocence. Rather than defend his Client, Counsel effectively acted as a Prosecutor. This Court Should grant the Petition.

A. Counsel May not Override A Client's Decision Whether or not to Admit Guilt.

The Constitution does not Permit What happen here a trial in Which, over the defendant's Vehement objection and assertion of innocence for defense Counsel to tell the jury that his Client Was Guilty and Continue to admit guilt during the Sentencing hearing. The accused alone has the right to Choose whether to admit guilt or to defend against the Charges. Where, as here, the defendant has Clearly and Expressly Chosen not to admit guilt, but to hold the Prosecution, to its burden to Prove its Case beyond a reasonable doubt, defense Counsel May not Override that decision.

1. The Sixth Amendment Guarantees the accused in a Criminal Proceeding the right to have "the Assistance of Counsel for his defense" U.S. Const. amend VI (Emphasis added). It "does not Provide Merely that a defense Shall be Made for the accused; it Grants to the accused Personally the right to Make his defense." *Faretta v. California*, 422 U.S. 806, 819 (1975) (Emphasis added). "The right to defend is Given directly to the accused: for it is he Who Suffers the Consequences if the defense fails."

Reasons For Granting The Petition

Id at 819-820 (Footnote omitted).

B. Goldstein's Admission of Wilson's Guilt Over Wilson's Objection Requires a New Trial.

When a lawyer admits his client's guilt and relieves the prosecution of its burden of proof over the client's expressed objection, the defendant suffers a structural error—that is "so intrinsically harmful as to require automatic reversal (i.e. 'affect substantial rights') without regard [to its] effect on the outcome." *Neder v. United States*, 527 U.S. 1, 7 (1999) quoting (Fed. R. Crim. P. 52 (a)). That is because the "Constitutional deprivation" is not "simply an error in the trial process," but "affect[s] the framework within which the trial proceeds." *Arizona v. Fulminante*, 499 U.S. 279, 310 (1991). Quoting *Rose v. Clark*, 478 U.S. 570, 577-578 (1986). Counsel's unauthorized admission deprives the defendant of his right to choose whether to admit guilt or defend against the charges, strips the trial of its adversary character, interposes adverse counsel between an unwilling defendant and his right to defend himself, and undermines the jury's findings by effectively relieving them of the obligation to find guilt beyond a reasonable doubt. The error is therefore structural and "require[s] reversal without regard to the evidence in the particular case." *Rose*, 478 U.S. at 577. Accordingly, Wilson is entitled to a new trial without regard to whether the error was harmful. *Buck v. Davis*, 137 S.Ct. 759, 777 (2017). But when "a defendant's own lawyer" concedes the defendant's guilt, it is in the nature of an admission against interest, more likely to be taken at face value." *Id.* That error necessarily infects the jury's deliberations

Reasons For Granting The Petition

and taints its findings. See *Kaley v. United States*, 134 S.Ct. 1090, 1102 (2014) (error is structural where it "Prevades the entire trial") See *id.* at 1107 (Roberts C.J. dissenting) (similar). The error is structural because "the effect of the violation cannot be ascertained." *Vasquez v. Hillery*, 474 U.S. 254, 263 (1986). And as with choice of counsel, an attorney committed to admitting guilt "will pursue different strategies with regard to investigation and discovery, development of the theory of defense, selection of the jury, presentation of witnesses, and style of witness examination and jury argument." *Gonzalez-Lopez*, 548 U.S. at 150. It is impossible to know "what different choices" counsel actually defending the charges would have made or "to quantify the impact of those choices on the outcome of the proceedings." *Id.* Goldstein thus conducted himself more as a prosecutor than as Wilson's advocate. The result was not merely a "breakdown in the adversarial process," *Cronic*, 466 U.S. at 662, but the "evils-eration of each of those particular guarantee[s] of fairness" the Constitution deems essential to a fair trial, *Gonzalez-Lopez*, 548 U.S. at 146. Which this Court affirmed in *McCoy v. Louisiana*, 138 S.Ct. 1500 (2018). This Court held that McCoy's constitutional rights were violated because the Sixth Amendment guarantees a criminal defendant the right to choose the objective of his defense which includes the decision to maintain innocence or admit guilt thus, a structural error of the type present in McCoy's case requires that he be "accorded a new trial without any need to first show prejudice." As a result of Goldstein's conduct Wilson's trial thus "lost its character as a confrontation between adversaries." *Cronic*, 466 U.S. at 656-657. And the circumstances were so "likely to prejudice [Wilson] that the cost of litigating their effect... is unjustified." *Id.* at

Reasons For Granting The Petition

1658. Indeed, it is difficult to imagine a more prejudicial course for Counsel to take. This Court should grant the Petition.

II. During the Voir dire Process the trial Court, on its own Motion excluded Seven jurors, some who were African American from participating in the Voir dire Process, and Wilson's trial attorney did not object to the Court. Now I want you to know there are seven of you who are seated behind the lawyers' tables. Right now you are extra jurors, because the jury is going to be selected from the 27 people in the chairs facing the South Wall. To save time, the seven of you seated behind the lawyers' tables, you don't have to raise your hand and respond to any of my questions or the lawyers' questions. But please pay attention to them, because if during this process I excuse one of the first 27, I'll send that person back to the jury assembly and I'm going to call upon Juror No. 28 to come forward and fill in that chair, and then we'll bring you up to speed. Now for the seven of you seated behind the lawyers, you may be thinking to yourself why was I even here? We didn't get a chance to say even one word in this courtroom. APP. H. 30. The Wisconsin Supreme Court ruled in *State v. Chosa*, 108 Wis. 2d 392 (1982) that the trial judges purposeful and intentional, although well-meant, exclusion of Native Americans as potential jurors as a class from service without proper examination and individual determination of cause violated equal protection and requires a new trial. U.S. CA. Amend 14, § 1. This Court in *Peters v. Kiff*, 407 U.S. 493, 502-03, 92 S.Ct. 2163, 2168-69, 33 L. Ed. 2d 83 (1972). "Moreover if there is no showing of actual bias in the tribunal, this Court has held that due process is denied by circumstances that create the likelihood or the appearance of bias." This rule, too, was well established long before the right

Reasons For Granting The Petition

to jury trial was made applicable in state trials, and does not depend on it. As this Court said in *re Murchison*, [349 U.S. 133, 75 S.Ct. 1623, 99 L. Ed. 942] *Supra*, "[f]airness of course requires an absence of actual bias in the trial cases. But our system of law has always endeavored to prevent the probability of unfairness": 349 U.S. at 136. See also *Cassell v. Texas*, 339 U.S. 282, 286-87, 70 S.Ct. 1629, 1631-32, 94 L. Ed. 839 (1950). The issue is not whether the jury panel was representative of a fair cross-section of the community, but rather whether the deliberate removal of a class or group by the trial court for "cause" without examination of individuals in the group deprived the defendant of a substantial right. We conclude it did. Quoting *State v. Chasa*. See also *Flowers v. Mississippi*, 139 S.Ct. 2228 (2019). This Court should grant the petition.

III. The trial court over Wilson's objection suppressed Wilson's statement in his second trial, and refused to allow the detective who took Wilson's statement to read Wilson's statement to the jury, because the prosecutor didn't want to use Wilson's statement in the second trial. Which was tried by a different prosecutor and defense attorney. The detective who took Wilson's statement was allowed to read Wilson's statement to the jury in the trial, because the prosecutor wanted it into evidence, the first trial resulted with a hung jury. The law of the case was the same for both trials.

Mr. Goldstein: let -- me make a record here of what I have discussed yesterday and today. The defendant's statement as given to the police was not made a part of the state's case.

The Court: Right

Mr. Goldstein: As it was in the first trial. I have therefore told the defendant that that statement is not a part of the record and that it cannot go into the

Reasons For Granting The Petition

record on behalf of the defendant unless he testifies.

The Court: That is true. And the reason for that is this. The reason why the State, if they have a statement from a defendant, can put, for example a police officer on the stand and testify about what the statement is, is because you are a party opponent to the State, and under the rules of evidence, your statement is not hearsay such that the State can put it in. However, you can't call an officer to testify as to what you said because you are not an opponent to yourself. So under the rules of evidence, the State can put in a statement attributable to a defendant by a police officer, but a defendant cannot. So in other words, if you want your statement to come in before the jury, the only way you can do it is if you testify. In this case the State has chosen not to put your statement in so it's not before the jury right now, and you can't call a police officer to do that under 908.01 Sub (4) because your statement through a police officer from your perspective is hearsay. So... APP. 6. 24. Wilson did not testify in his first trial that was tried by different attorneys, because Wilson chose not to testify. However, Wilson did not testify in his second trial, because Goldstein coerced Wilson into not testifying, although Goldstein told the trial court that Mr. Wilson would be testifying. See *State v. Anderson*, 230 Wis. 2d 121, (1999), (was decided before Wilson's second jury trial which started May 15, 2000.) The Court of Appeals generally remands cases to the trial court when the court did exercise its discretion based on a misunderstanding of the law. The Court of Appeals must set aside the verdict if there is a reasonable possibility that a complained-of error contributed to the conviction. The burden of establishing harmless error is on the State, as the beneficiary of the error. The issue on appeal is whether the trial properly exercised its discretion in

Reasons For Granting The Petition

Precluding Anderson from Presenting any additional Portion of Detective Bier's report of Anderson's Statement. We Conclude the trial Court did not Properly exercise its discretion because the Underlined Portion of the report is necessary Under the doctrine of Completeness and Was therefore admissible Whether or not Anderson Chose to testify. The Purpose of the rule of Completeness and the Method for applying it Was recently explained in *State v. Eugenio*, 219 Wis. 2d 391, 410, 579 N.W. 2d 642, 651 (1998), decided Shortly after the trial in this Case. The rule Was designed to Make the Presentation of evidence fair and effective in order to ascertain the truth. "The Critical Consideration is Whether the Part of the Statement offered into evidence Created an unfair and Misleading Impression Without the remaining Statement." *Id.* at 411, 579 N.W. 2d at 651. See 1 Kenneth S. Brown ET AL., *McCormick on Evidence* § 56 (John William Strong ed., 4th ed. 1992). *State v. Sharp*, 180 Wis. 2d 640, 655, 511 N.W. 2d 316, 323 (Ct. App. 1993) ("Under the rule of Completeness, otherwise inadmissible evidence Will be admissible"). *United States v. Walker*, 652 F.2d 708, 713 (7th Cir. 1981) - the Court Concluded that the trial Court erroneously exercised its discretion in excluding Portions of the defendant's testimony at his first trial that Were relevant to the issues and explanatory of the excerpts read by the State. This Court Should Grant the Petition.

IV. The Wisconsin Court of Appeals affirmed the trial Court's ruling that Wilson's Claims Were Procedurally barred, because Wilson's Post-Conviction, Appellate attorney did not raise these issues in Wilson's first Post-Conviction and appeal, and because Wilson failed to Show that the issues he raised in his Prose Wisconsin Statute 974.06 Motion Were "Clearly Stronger" than the

Reasons For Granting The Petition

issues Wilson's Post-Conviction, Appellate attorney raised in Wilson's first Post-Conviction and appeal. APP. A. 1., APP. B. 7., APP. I. 36.

A. APPLICABLE legal Standards and Factual background

In Wisconsin a Criminal defendant is Constitutionally entitled both to a direct appeal from his Conviction or Sentence, Wis. Const. art. I, § 21, and to the effective assistance of Counsel on his first appeal as of right in the State Courts, *Douglas V. California*, 372 U.S. 353 (1963); *Evitts V. Lucey*, 469 U.S. 387 (1985). The test for ineffectiveness is two-Pronged, first, Counsel's Performance must have been deficient; and second, the deficiency must have prejudiced the defense. See, e.g., *Strickland V. Washington*, 466 U.S. 668, 687 (1984). The same Standard has been applied, with appropriate Modifications, to assess the Constitutional effectiveness of Post-Conviction or Appellate Counsel. *Smith V. Robbins*, 528 U.S. 259 (2000) as explained by the Seventh Circuit: "[W]hen appellate Counsel omits (without legitimate Strategic Purpose) 'a Significant and obvious issue,' We will deem his Performance deficient... and when that omitted issue 'may have resulted in a reversal of the Conviction, or an order for a new trial,' We will deem the lack of effective assistance Prejudicial.

Mason V. Hanks, 97 F.3d 887, 893 (7th Cir. 1996) (State appellate attorneys failure to raise Preserved hearsay issue constituted ineffective assistance of appellate Counsel, Mandating Federal habeas relief). The Wisconsin Supreme Court, however has suggested a different and more restrictive Standard for assessing the effectiveness of Post-Conviction or Appellate Counsel. See *State V. Starks*, 2013 WI 69, 59-60, 349 Wis. 2d 274, 833 N.W.2d 146,

Reasons For Granting The Petition

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Reasons For Granting The Petition

reconsideration denied, 2014 WI 91, 357 Wis. 2d 142, 849 N.W. 2d 724, and reconsideration denied, 2014 WI 109, 358 Wis. 2d 307, 852 N.W. 2d 746, Cert. Denied, 135 S.Ct. 1548 (2015). In *Starks*, the Court held that Satisfying the Deficient Performance/Resulting Standard of *Strickland*, *Supra* is no longer sufficient for assessing claims of ineffective Post-Conviction or appellate counsel. Rather, the Court limited such ineffectiveness solely to cases in which prior counsel failed to raise one or more issues that were "clearly stronger" than the issues counsel chose to raise. 2013 WI 69, 56-60. See *State v. Romero-Georgana*, 2014 WI 83, 4, 44-46, 360 Wis. 2d 522, 849 N.W. 2d 1668. The federal district court has held that the Wisconsin Supreme Court's decisions in *Starks* and *Romero-Georgana*, limiting ineffectiveness to cases in which the issues counsel missed are "clearly stronger" than those counsel raised conflicts with the standards for ineffectiveness mandated by *Strickland* and *Smith*. See *Walker v. Pollard*, No. 18-C-0147, 2019 WL 4219429 (Eastern District of Wisconsin Sept. 4, 2019). "Immediately we see the problem here: In *Starks*, the Wisconsin Supreme Court added a third element to the *Strickland* test for claims of ineffective assistance of counsel involving appellate counsel's failure to raise an argument. But of course, *Strickland* clearly established that a claim of ineffective assistance of counsel has only two elements: deficient performance and prejudice. See *Strickland*, 466 U.S. at 1687. Moreover, the Supreme Court of the United States clearly established that *Strickland*'s two-pronged standard governs all claims of ineffective assistance of appellate counsel. See *Smith v. Robbins*, 528 U.S. 259, 285-86, 120 S.Ct. 746, 145 L.Ed. 2d 756 (2000). Thus the Wisconsin Supreme Court's decision to add a third element to *Strickland* for claims involving appellate counsel's failure to raise and issue was contrary to clearly established Supreme Court law."

Reasons For Granting The Petition

B. Also in Wisconsin Section 974.06 of the Wisconsin Statutes is the Main Method For Challenging a Conviction after the time for a direct appeal has expired or the direct appeal Process has been Completed. However, in *State v. Escalona-Naranjo*, 185 Wis.2d 168, 517 N.W.2d 157 (1994). The Wisconsin Supreme Court held that a defendant Waives an issue not raised in his or her direct appeal unless the defendant establishes a Sufficient reason for not Previously raising the issue: Ineffective assistance of Post-conviction/ Appellate Counsel, Newly discovered evidence, DNA etc... That decision Marked a Substantial Change from Precedent Which required a defendant to establish a Sufficient reason ONLY When bringing a Second or third 974.06 Motion, not When bringing the first 974.06 Motion. APP. T. 36 Which Was the Case in Wilson's first 974.06 Motion. Wilson's raised ineffective assistance of Counsel for failing to raise the issues in this Petition, in Wilson's first appeal. Majority of the Prisoners Who file their first Wisconsin Statute 974.06 Motion, generally file those and raise ineffective assistance of Counsel for failing to raise the new issues Presented in the 974.06 Motion. And the trial Court and Wisconsin Court of Appeals almost, always deny the Motion as Procedurally barred. And to Make Matters Worse if the 974.06 Motion is not Procedurally barred and heard on the Merits a Prisoner now has to Prove that the new issues are "ClearN Stronger" than the issue raised in his or her first appeal Pursuant to *Starks*. See argument above. The Wisconsin Court System has been applying this Standard Since the *Escalona-Naranjo* ruling in 1994. For 25 Years, Which is Contrary to this Courts ruling in *Martinez V. Ryan*, 566 U.S. 1 2012. See *State v. Fisher*, 2018 Wis. App. Lexis 533. *Fisher* Was allowed to file two Wis. Stat. 974.06 Motions. *State v. Fortier*, 2006 WI App. U. *State v. Reynolds*, 2005 WI App. 222. *State v. Blunt*, 2014 WISC. App. Lexis 69. *State v. Kletzien*, 2011 WI App. 22 (2011).

Reasons For Granting The Petition

Martinez V. Ryan, 566 U.S. 1 (2012). "When a State requires a Prisoner to raise an ineffective-assistance-of-trial claim in a collateral proceeding, a Prisoner may establish cause for a default of an ineffective-assistance claim in two circumstances: The second is where appointed counsel in the initial review collateral proceeding, where the claim should have been raised, was ineffective under the standards of Strickland. U.S.C.A. Const. Amend. 6 to overcome procedural default arising when an ineffective-assistance-of-trial counsel claim is not raised in first state collateral review proceeding due to collateral proceeding counsel's errors or the absence of an attorney, a Prisoner must demonstrate that the underlying ineffectiveness claim is a "substantial" one, which is to say that the Prisoner must demonstrate that the claim has some merit." The following year, this Court modified the fourth prong by applying the Martinez framework to any state where "by reason of its design an operation, [state procedure] make it highly unlikely in a typical case that a defendant will have a meaningful opportunity to raise a claim of ineffective assistance of trial counsel on direct appeal." Trevino V. Thaler, 569 U.S. 413 (2013). See also Walker V. Martin, 562 U.S. 307 131 S. Ct. 1120 (2011). APP-I-36. Wilson did have appointed counsel in his first state collateral review and his new claims does have merit. This Court should grant the petition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

CA [Signature]

Date: 19 APR 2020