

No. 19-8420

IN THE SUPREME COURT OF THE UNITED STATES

CHARLES WILSON,

Petitioner,

v.

WISCONSIN,

Respondent,

ON PETITION FOR WRIT OF CERTIORARI TO  
THE WISCONSIN COURT OF APPEALS DISTRICT I

PETITION FOR REHEARING

Charles Wilson #249903

Fox Lake Correctional Institution

P.O. Box 200

Fox Lake, WI 53933-0200

Petitioner Pro Se

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SUPREME COURT, U.S.

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## Jurisdiction

The Jurisdiction of this Court is invoked Under 28 U.S.C. § 1254(1)  
This Petition for rehearing is timely filed Pursuant to 28 U.S.C. § 2101(c).

## PETITION FOR REHEARING

Comes Now Petitioner, Charles Wilson, Pro Se, and Prays this Court to  
Grant Rehearing Pursuant to Rule 44, and thereafter Grant him a Writ  
of Certiorari to review the Opinion of the Wisconsin Court of Appeals  
District I, and the Opinion of the Circuit Court. IN Support of Petition  
Mr. Wilson States as follows:

## STATEMENT OF THE CASE

This Court denied Petitioner's Petition for a Writ of Certiorari, Pursuant to  
Supreme Court Rule 44.2 the grounds are other Substantial grounds not  
PREVIOUSLY Presented.

The Circuit Court did not address the Merits of Wilson's Claims and  
the Circuit Courts order is Misleading and does not accurately Show  
how Wilson framed or address his Claims in his Writ Stat. / 974.06  
Motion. APP. B. 4-5 On Page three of the Circuit Courts Order for issue  
(12) "Wilson Wrote in his 974.06 Motion" Failed to do any Pretrial  
Proceedings in Petitioner's Second trial to Challenge each Witness Statement  
outside the Presence of the jury, before each Witness would testify in

front of the jury which is what Petitioner's first trial attorneys did." The Circuit Court wrote in its order "Counsel failed to Challenge Witnesses' Statements during Pretrial Proceedings." For issue (3) Wilson wrote "Failed to Move for a Mistrial When detective Mark Peterson, who was called to impeach MY Mother Dorothy Washington, when he admitted that MY Mother never read or signed the statement that he wrote while in his office after going to MY Mother's house. He wrote words that MY Mother never said that was used to convict me for a crime I did not commit. (TT May 18, 2000 PP. 72-77)" The Circuit Court wrote in its order "Counsel failed to Move for a mistrial during the testimony of Detective Mark Peterson." For issue (3) Wilson wrote "Failed to ask for a Continuance to try and contact detective Billy Ball and detective Victor Wong who was on vacation and not available to impeach state witness Mr. Rockie Carney, who told detective Wong that the suspect had a short-cropped afro hair style, but denied saying that at trial. (TT May 17, 2000 PP. 53 and 61)" (PP. 74-79) (Exhibit 6A)" The Circuit Court wrote in its order "Trial Counsel failed to ask for a continuance for purposes of contacting Detective Billy Ball and Detective Wong, and thus was not able to impeach state's witness Rockie Carney." For issue (4) Wilson wrote "Petitioner's second trial counsel was ineffective for failing to subpoena Mrs. Dorothy Moffett, who pointed out Mr. Rockie Carney as a suspect to police while she was sitting in a police squad car giving a statement, her testimony would have changed the outcome of the verdict, and created reasonable doubt. See Exhibits 1, 2, and 3, 6." The Circuit Court wrote in its order "Trial Counsel failed to subpoena Dorothy Moffett, who pointed out Rockie Carney as a suspect to police." For issue (6) Wilson wrote, Petitioner's second trial counsel was ineffective

For failing to subpoena MS. Elizabeth Clayton, who lived directly across the street from the crime scene, her testimony would have changed the outcome of the verdict and created reasonable doubt. See Exhibit 6 and 7." The Circuit Court wrote in its order. Second trial Counsel failed to subpoena Elizabeth Clayton who lived across the street from the crime scene." For issue (16) Wilson wrote, "failed to impeach my brother with his prior statement in which he told detective Billy Ball that he was not worried about no threats, although he testified that he didn't know about no threats. (TT May 16, 2000 P. 68)." The Circuit Court wrote in its order, "Counsel failed to impeach defendant's brother with a statement he previously gave to Detective Billy Ball." For issue (15) Wilson wrote "Failed to provide the jury with the hotel receipts from the Belmont Inn, which one of the jurors asked to see. The trial court allowed jurors in both trials to submit written questions to the court before each witness finish testifying. These receipts were also introduced as evidence in Petitioner's first trial by defense counsel. (TT January 13, 2000 PP. 115-117) (and P. 204) (TT. May 19, 2000 P. 47 and 89). See Exhibit 8." The Circuit Court wrote in its order, "Counsel failed the jury with hotel receipts from the Belmont Inn." For issue (21) Wilson wrote, "My decision not to testify was not made free and voluntarily. Attorney Goldstein talked me out of testifying after he put up no defense. We went into the small holding cell on the right side in branch 41 (where defendants who are in custody walk past before going to the big holding cell that's to the left) I told Mr. Goldstein that I needed to testify to clear up the lies that were told, and the words that were put in my mouth that I didn't say. (TT May 18, 2000 PP. 185) (TT. May 19, 2000 PP. 61) (TT. May 18, 2000 PP. 183-185)." The Circuit Court wrote in its order, "Counsel talked him out of testifying,

and thus, his decision not to testify was not made freely and voluntarily."

Wilson used the Pro Se 974.06 forms that he received from the State Supreme Court Clerk, to draft his own Wis. Stat 974.06 Motion that he filed with the State Circuit Court, which is why he made a list of the issues that happened in his second trial APP. C. 7-13. In the Pro Se forms claims for relief are in a list format, and they also state "the facts in support of the alleged error(s) upon which this Motion is based are as follows." (State facts fully and clearly. Argument, Citations and discussions of authorities shall not be included)." APP. C. 8-9. The State Circuit Court wrongly denied MY Wis. 1974.06 Motion stating in his order It is unknown why the defendant did not file the current Motion at the same time as his Motion to terminate restitution. Because he did not, the Court finds he is barred from doing so now Pursuant to State v. Escalona-Naranjo, 185 Wis 2d 169, 178 (1994). See State v. Gross, 2020 WL 3455887. Gross argues that the Circuit Court should have vacated the restitution order based on Wis Stat 1974.06 Motion. The State argues that he cannot raise the issue in a 1974.06 Motion because the scope of such a Motion "is limited to matters of constitutional or jurisdictional dimension." See State v. Carter, 131 Wis. 2d 69, 81, 839 N.W. 2d 1 (1986) We agree with the State with respect to the alleged statutory violation, the State correctly notes that errors related to a statutory provision are not generally of a dimension. See Carter, 131 Wis 2d at 81-82. The Court of Appeals agreed with the State that Gross cannot challenge restitution in a 1974.06 Motion. The Court of Appeals declined to address this

issue. I'm not sure why the United States Supreme Court denied MY Petition for a Writ of Certiorari, because no opinion was written. But if the State Circuit Court's order was a major reason why I would ask the Court to reconsider its order and grant a Writ of Certiorari because the State Circuit Court's order is misleading and does not accurately show how Wilson framed or addressed his claims in his 1974.06 Motion. And Wilson did show the State Circuit Court how each issue was related to his case, submitted exhibits, Wilson's Affidavit and cited the trial record, all were facts that were proven by the record and documents. APP B. 15-16 Had the Circuit Court ordered a briefing schedule or appoint Wilson Counsel which the Court did when Wilson filed his Pro-Se Motion to modify restitution, Wilson or appointed Counsel would have cited case law for the issues Wilson chose to raise. Wilson did cite case law in his brief to District I Court of Appeals to support the issues he raised, also Wilson did not raise every issue that he raised in his 1974.06 Motion he reduced the issues to the strongest issues. See Rice v. Collins, 546 U.S. 333, 341-42, 126 S. Ct. 969, 1163 L. Ed. 2d 824 (2006). "[W]here the state courts plainly misapprehend or misstate the record in making their findings and the misapprehension goes to a material factual issue that is central to petitioner's claim, that misapprehension can fatally undermine the fact-finding process, rendering the resulting factual finding unreasonable." BYrd, 645 F.3d at 1171-72 Wilson is arguing "Stare Decisis" and asking this Court to adhere to its prior rulings.

Also the issues that Wilson raised in his Petition for a Writ of Certiorari docketed May 12, 2020 as No. 19-8420 were all raised



in his 1974.06 Motion in the State Circuit Court. For is (24) Wilson wrote, "IN his closing argument attorney Goldstein stated 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 loved triangle and I think that is what you are left with at the conclusion of the case. I don't understand why attorney Goldstein would say this, I've maintained my innocence and had an alibi defense for both trials. Attorney Goldstein was 70 yrs old incompetent and should not have been practicing law. (TT. May 19, 2000 PP. 123) (TT. July 19, 2000 PP. 26). (TT. May 19, 2000 P. 99)." The Circuit Court wrote in its order, "Counsel's closing argument was prejudicial." APP B.5.

Wilson wrote Abuse of Discretion! For issue (8) Wilson wrote, "Refused to allow detective Jeffrey Wisch, who took MY statement during interrogations one of eight different detectives, to read MY statement to the jury in MY second trial over MY objection, although he allowed him to read it to the jury in MY first trial. Stating that MY statement being read to the jury in MY second trial would be hearsay. (TT. January 11, 2000 PP. 183-185). (January 12, 2000 PP. 187-224). (TT. May 15, 2000 PP. 153). (TT. May 18, 2000 PP. 183-185)." The Circuit Court in its order, "The next heading is entitled 'Abuse of Discretion' in which he conclusorily lists the points he believes support his assertions without any application of the law to the facts or how it relates to his case. APP B.5. The Circuit Court did not rewrite any of the issues Wilson wrote for 'Abuse of Discretion', 'Prosecutorial Misconduct' and 'Police Misconduct'."

For issue (11) Wilson wrote, "only allowed 27 of the 34 jurors to be questioned during the Voir Dire Process some were African American who I wanted to question and empanel on the jury. The trial court was rushing everything in my second trial unlike the court was in my first trial when I was represented by attorneys Cynthia Lynn and Dawn Rablin. The court was very bias in Petitioner's second trial. (TT. May 15, 2000 PP 12, 36). (TT. May 15, 2000 PP 111-113)." The Circuit Court in its order wrote, "The next heading is entitled 'Abuse of Discretion' in which he conclusorily list the points he believes support his assertions without any application of the law to the facts or how it relates to his case. APP. B. 5 The Circuit Court did not rewrite any of the issues Wilson wrote for 'Abuse of Discretion', 'Prosecutorial Misconduct' and 'Police Misconduct' from Wilson's 1974.06 Motion in which Wilson used the format from the 1974.06 Prose forms to draft his 1974.06 Motion. APP. C. 7-13

Lastly, Wilson was charged and wrongfully convicted of First Degree Intentional Homicide, and sentenced to life with the possibility of Parole in 2043. Wilson's first trial ended with a hung jury on January 14, 2000. For his second trial Wilson had a different trial attorney and was found guilty on May 19, 2000. Wilson is innocent and did not commit this crime, and has presented other, credible evidence that likewise cast doubt on his guilt and support his claim of actual innocence. *Schlup v. Delo*, 513 U.S. 298, 327 (1995). Wilson is raising an additional issue in his petition for rehearing in his earlier Petition for Certiorari. Whether he was denied the right to present witnesses in his own defense? Wilson's second trial counsel failed to call two women who would have provided

exculpatory testimony. *Richmond v. Arizona*, 98 S. Ct. 8 (1977). "Applicant raises a second argument in his Petition for rehearing that was not raised either before the Arizona Supreme Court or in his earlier Petition for Certiorari." Wilson did raise this argument before the State Circuit Court, Wisconsin Court of Appeals District I, and the Wisconsin Supreme Court. Wilson is arguing "Stare decisis" and ask this Court to adhere to its Prior rulings which would have proven Wilson's innocence, and debunked the State's theory that Wilson was the shooter. Wilson had an alibi defense in both trials, and MS. Dorothy Moffett pointed out the guys she saw at the crime scene while sitting in a police squad car giving a statement. These individuals were suspects turned into eyewitnesses for the State, who claim that they were at the crime scene purchasing drugs from the victim Mr. Antonio Ivey. When Wilson came from a side street walked up on the front porch and shot the victim when he returned to the door with the drugs. All three eyewitnesses gave a different description of the shooter neither was a description of Wilson or the clothes he wore that day. Neither of these eyewitnesses appeared for Wilson's line-up, and MS. Moffett was not ordered to view photos at the Identification Division, and she was not ordered to view Wilson's live line-up. APP. D. 14-15. MS. Moffett actually saw these three individuals going into the crime scene and come out of the house at 2478 N. 45th and carrying a box that appeared to be white in color and this black male threw the box in the bushes next to the house, then went into the bushes and got the box and this black male then went past through the yards. Terri Madison the mother of Wilson's children told him that \$5,000 was missing from the crime scene, and detective Mark Peterson, APP. G. 20. APP. E. 16-18. These individuals all testified in Wilson's second trial that they did not go into the crime scene, but they

have idea that MS Moffett pointed them out to the Police and that she saw everything they were doing. MS. Moffett's statements prove that Wilson is innocent and the State's eyewitness are the people who committed this crime. Wilson's second trial counsel was ineffective for failing to subpoena MS Elizabeth Clayton, who lived directly across the street from the crime scene and told the police that "she heard shots looked out of her window and saw a black male with dark curly hair wearing a beige shirt sweater or jacket and blue pants walk into the residence, she states this black male called out to some unknown person to come into the house APP. F. 19. MS. Clayton was not ordered to view photos at the Identification Division, and she was not ordered to view Wilson's live line-up. MS. Clayton's testimony also would have cast doubt on Wilson's guilt and supports his claim of actual innocence and also contradicts the State's theory that Mr. Wilson was the shooter and would have impeached the State's eyewitness. MS. Moffett and MS. Clayton were both on Wilson's witness list. See *Schlup v. Delo*, 513 U.S. 298, 327 (1995); *Howe v. Bell*, 126 S. Ct. 2064 (2006). *McQuiggin v. Perkins*, 569 U.S. 383 (2013). The U.S. Supreme Court granted certiorari to resolve a conflict among the circuits on whether 28 U.S.C. 2244(d)(1) could be overcome by a showing of actual innocence. Wilson is arguing "stare decisis" and ask this Court to adhere to its prior rulings. A defendant's right to present witnesses in his own defense is a fundamental element of due process and is protected by the Sixth Amendment. See *Chambers*, 410 U.S. at 302; *Webb*, 409 U.S. at 98; *Washington v. Texas*, 388 U.S. 14, 19 (1967). Wilson was denied that right due to ineffective assistance of counsel. Moreover, Wilson has made a prima facie showing that his conviction these constitutional violations.

### CONCLUSION

For the reasons stated, this Court MUST grant Rehearing of its judgment entered on October 5, 2020, and issue a Writ of Certiorari.

Respectfully Submitted,

CS ~~W~~

Charles Wilson #249903

Fox Lake Correctional Institution

P.O. Box 200

Fox Lake, WI 53933-0200

Petitioner Pro Se

### Certificate of Service

The undersigned hereby certifies that a copy of the foregoing was mailed, postage prepaid this 25th day of October, 2020, and deposited in the institutions mailbox and mailed to Daniel J. O'Brien, Assistant Attorney General, 17 W. Main Street, P.O. Box 7857 Madison, WI 53707-7857

CS ~~W~~

Petitioner

No. 19-8420

In The Supreme Court of The United States

Charles Wilson,

Petitioner,

V.

Wisconsin,

Respondent,

CERTIFICATE OF GOOD FAITH

COMES NOW Petitioner, Charles Wilson, and Makes Certification that his Petition for rehearing is Presented to this Court in good faith Pursuant to Rule 44. Mr. Wilson further States the following:

1. This Court entered its judgment denying Petitioner a Writ of Certiorari on October 5, 2009. Petitioner believes that he Presents this Court With adequate grounds to justify the granting of rehearing in this Case and said Petition is brought in good faith and not for delay. Furthermore, Petitioner believes that based upon the law of this Court and facts of this Case, Wilson is entitled to relief which has been UNJUSTLY denied him.

I declare under the Penalty of Perjury that the foregoing is true and correct.

Executed on this 25th day of October, 2020.

11

CB Wilson

**Supreme Court of the United States  
Office of the Clerk  
Washington, DC 20543-0001**

**Scott S. Harris**  
Clerk of the Court  
(202) 479-3011

October 5, 2020

Mr. Charles Wilson  
Prisoner ID 249903  
P.O. Box 200  
Fox Lake, WI 53933-0200

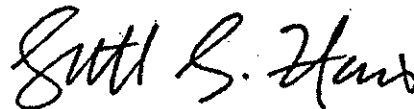
Re: Charles Wilson  
v. Wisconsin  
No. 19-8420

Dear Mr. Wilson:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,



**Scott S. Harris, Clerk**

"Appendix A.1"

STATE OF WISCONSIN

CIRCUIT COURT  
Branch 30

MILWAUKEE COUNTY

---

STATE OF WISCONSIN,

Plaintiff,

vs.

Case No. 99CF005019

CHARLES WILSON,

Defendant.

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**DECISION AND ORDER DENYING MOTION TO VACATE JUDGMENT OF  
CONVICTION AND GRANT A NEW TRIAL; AND ORDER SETTING RESTITUTION  
AT ZERO NUNC PRO TUNC TO DATE OF SENTENCING**

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On October 6, 2017, the defendant filed a *pro se* motion to vacate the judgment of conviction and grant a new trial under section 974.06, Wis. Stats., and also a motion for a refund of funds paid in restitution. The defendant was charged with and convicted of first degree intentional homicide with use of a dangerous weapon. On July 19, 2000, the Hon. John DiMotto sentenced him to life in prison and ordered restitution to be determined. On August 25, 2017, this court ordered restitution to be set at zero. The court will order restitution set at zero *nunc pro tunc* to the date of sentencing for purposes of providing the defendant with an opportunity to seek reimbursement from the Department of Corrections. The issue of reimbursement must be addressed to the Department of Corrections as this court has no authority over the Department to order it to return the funds to the defendant's inmate account.

After sentencing, the defendant by his attorney filed a motion for postconviction relief under section 809.30, Wis. Stats., seeking a new trial on the basis of ineffective assistance of trial counsel. It was denied by Judge DiMotto on March 26, 2001 and followed by a notice of appeal. On January 29, 2002, the Court of Appeals affirmed the judgment of conviction and



postconviction order. On March 10, 2004, the defendant filed a *pro se* motion to correct the judgment of conviction and correct the transcripts. After a series of attempts to obtain other types of relief, the defendant filed a *pro se* motion to stop restitution on December 16, 2016, followed it with an amended motion to vacate or modify restitution on January 26, 2017. After briefing, a hearing was held in which the court set restitution at zero. It is unknown why the defendant did not file the current motion at the same time as his motion to terminate restitution. Because he did not, the court finds he is barred from doing so now pursuant to *State v. Escalona-Naranjo*, 185 Wis.2d 169, 178 (1994): Section 974.06(4), Wis. Stats., requires a defendant to raise all grounds for postconviction relief in his original motion or appeal. Failure to do so precludes a defendant from raising additional issues, including claims of constitutional or jurisdictional violations, in a subsequent motion or appeal where those issues could have been raised previously. *Escalona, supra*. The defendant has filed multiple *pro se* motions, including his motion to vacate restitution. No reason is given why this motion could not have been filed at the same time.

Even if the court were to consider the motion under *State ex rel. Rothering v. McCaughtry*, 205 Wis.2d 675 (Ct. App. 1996), the court would find that the defendant has not alleged a sufficient claim for relief. Under *Rothering*, a defendant may bring a claim under section 974.06, Wis. Stats., before the trial court alleging that postconviction counsel was ineffective. The *Rothering* court indicates that the ineffective assistance of postconviction counsel may be sufficient cause under *State v. Escalona-Naranjo*, 185 Wis.2d 169 (1994), for failing to raise an issue previously. In addition, when arguing that postconviction counsel was ineffective for failing to raise the ineffectiveness of trial counsel, a defendant must demonstrate that the claims he wishes to bring are clearly stronger than the claims postconviction counsel actually brought. *State v. Starks*, 349 Wis. 2d 274 (2013); *reconsideration denied* 357 Wis. 2d 142 (2013).

Here, the defendant asserts that postconviction counsel was ineffective for failing to raise multiple meritorious issues in his original postconviction motion and appeal – 24 of them to be exact. They are set forth in the defendant's motion as follows:

- (1) Second trial counsel failed to object to abuse of discretion by the trial court, prosecutorial misconduct and police misconduct.
- (2) Trial counsel failed to object to the admission of evidence.
- (3) Trial counsel failed to ask for a continuance for purposes of contacting Detective Billy Ball and Detective Wong, and thus was not able to impeach State's witness Rockie Carney.
- (4) Trial counsel failed to subpoena Dorothy Moffett, who pointed out Rockie Carney as a suspect to police.
- (5) Detective Wong was not available to impeach State's witness Eugene Ward who was inside the crime scene with the victim.
- (6) Second trial counsel failed to subpoena Elizabeth Clatton who lived across the street from the crime scene.
- (7) Trial counsel failed to impeach Reginald Templin, the State's firearm witness, and failed to call a defense firearms witness to rebut his testimony.
- (8) Trial counsel failed to tell the jury that Rockie Carney admitted smoking marijuana before he went to purchase drugs from the victim the day he was killed.
- (9) Juror No. 24 was the victim of an armed robbery and should have been struck.
- (10) Prior inconsistent statements should have been presented.
- (11) Counsel failed to object to Jury Instruction 140.
- (12) Counsel failed to challenge witnesses' statements during pretrial proceedings.

- (13) Counsel failed to move for a mistrial during the testimony of Detective Mark Peterson.
- (14) Counsel failed to move to suppress a suggestive in-court identification photo line-up.
- (15) Counsel failed to provide the jury with hotel receipts from the Belmont Inn.
- (16) Counsel failed to impeach defendant's brother with a statement he previously gave to Detective Billy Ball.
- (17) Counsel failed to request any pretrial hearings to challenge the statements made by the State's witnesses outside the presence of the jury.
- (18) Counsel failed to impeach State's witness Trivon Carter with his prior statement.
- (19) Counsel failed to impeach State's witness Sharon Yarbor with her prior statement and first trial testimony.
- (20) Counsel failed to object to State's Exhibit 1 – the diagram of the crime scene.
- (21) Counsel talked him out of testifying, and thus, his decision not to testify was not made freely and voluntarily.
- (22) Counsel failed to explain lesser included offenses to him.
- (23) Counsel was ineffective for showing his booking photo to the jury.
- (24) Counsel's closing argument was prejudicial.

*(Defendant's motion at pp. 6-11).*

Following the above, the motion presents the defendant's arguments in support of his claims. He first discusses prosecutorial misconduct and sets forth numbered points, all either conclusory or without specific support in the law or in fact. The next heading is entitled "Abuse of Discretion" in which he conclusorily lists the points he believes support his assertions without any application of the law to the facts or how it relates to his case. The third heading is "Police

Misconduct,” and again, he presents factual assertions from his perspective that are not tied to any meaningful discussion of the law or how it relates to his case. None of the 24 allegations of ineffective assistance are developed to any extent. They are merely conclusory assertions that fail to set forth a viable claim for relief. In addition, the defendant has not shown that the issues presented in his motion are clearly stronger than those raised in the postconviction motion that was filed by postconviction counsel on March 9, 2001. *See State v. Romero-Georgana*, 347 Wis. 2d 549 (2014). The court finds they are not, and their utter insufficiency requires the court to deny the motion. Therefore, even if the court were to find that his current motion is not barred by *Escalona*, *supra*, the motion does not pass muster in articulating a valid claim for relief.

If the defendant fails to allege sufficient facts in his motion to raise a question of fact, or presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief, the trial court may in the exercise of its legal discretion deny the motion without a hearing.

*Nelson v. State*, 54 Wis.2d 489, 497-498 (1972).

**THEREFORE, IT IS HEREBY ORDERED** that the defendant’s motion to vacate the judgment of conviction and award a new trial is **DENIED**.

**IT IS FURTHER ORDERED** that the defendant’s motion for a refund in restitution payments is **DENIED**.

**IT IS FURTHER ORDERED** that the court’s prior order setting restitution at zero shall be *nunc pro tunc* to the date of sentencing in this case.

Electronically signed by Honorable Jeffrey A. Conen

Circuit Court Judge/Circuit Court Commissioner/Register in Probate

Circuit Court Judge

Title (Print or Type Name if not eSigned)

10/16/2017

Date

State of Wisconsin,  
Plaintiff,

Motion for Postconviction Relief  
Pursuant to sec. 974.06, Stats.

v.

Case No. \_\_\_\_\_

\_\_\_\_\_  
Defendant.

The defendant respectfully shows to the court the following:

1. My name is: \_\_\_\_\_
2. I am now:
  - (a) On Parole Present address: \_\_\_\_\_
  - (b) On Probation Present address: \_\_\_\_\_
  - (c) Confined in: \_\_\_\_\_
3. Name and location of court which imposed sentence and name of the judge.  
\_\_\_\_\_  
\_\_\_\_\_
4. The case number and the offense:
  - (a) \_\_\_\_\_
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
5. I was sentenced on \_\_\_\_\_, \_\_\_\_\_, to a total term of \_\_\_\_\_,  
commencing on \_\_\_\_\_, \_\_\_\_\_, following a  
\_\_\_\_ Trial by jury  
\_\_\_\_ Trial by judge without a jury  
\_\_\_\_ Plea of guilty  
\_\_\_\_ Plea of no contest

6. I claim relief because my conviction(s) resulted from: (State ALL claimed grounds for relief under sec. 974.06, Stats.)
- (a) \_\_\_\_\_ The introduction of evidence obtained pursuant to an unlawful arrest.
  - (b) \_\_\_\_\_ The introduction of evidence obtained by an unconstitutional search and seizure.
  - (c) \_\_\_\_\_ The introduction of a coerced confession into evidence.
  - (d) \_\_\_\_\_ The introduction into evidence of a statement obtained in the absence of counsel at a time when representation is constitutionally required.
  - (e) \_\_\_\_\_ The infringement of my privilege against self-incrimination under either federal or state law.
  - (f) \_\_\_\_\_ The denial of my constitutional right to representation by competent counsel.
  - (g) \_\_\_\_\_ The unconstitutional suppression of evidence by the state.
  - (h) \_\_\_\_\_ The use by the state of testimony known to it to be perjured.
  - (i) \_\_\_\_\_ By being twice placed in jeopardy.
  - (j) \_\_\_\_\_ The abridgement of a right guaranteed by the constitution or laws of this state or by the constitution or laws of the United States, including a right that was not recognized as existing at the time of the trial if the constitution requires retrospective application of that right.
  - (k) \_\_\_\_\_ The court was without jurisdiction to impose the sentence.
  - (l) \_\_\_\_\_ Other

7. The facts in support of the alleged error(s) upon which this motion is based are as follows: (State facts fully and clearly. Argument, citations and discussions of authorities shall not be included.)

(a) I know the following facts to be true of my own personal knowledge:

[illegible]

(b) The following facts were made known to be by means other than my own personal knowledge.  
(Explain how and by whom you are informed.)

[illegible]

8. Supporting exhibits:

(a) In support of this motion I have attached as exhibits:

\_\_\_\_\_ Affidavits Exhibit(s) No. \_\_\_\_\_

\_\_\_\_\_ Records Exhibit(s) No. \_\_\_\_\_

\_\_\_\_\_ Other supporting evidence Exhibit(s) No. \_\_\_\_\_

(b) I have not attached any affidavits or other supporting evidence because:

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9. I have taken the following action(s) to secure relief from my conviction(s) or sentence(s):

(a) Direct appeal

(If "yes," name the court to which  
petition was taken, date, and result.)

\_\_\_\_\_ Yes \_\_\_\_\_ No

(If "no," state why not.)

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(b) Previous proceedings in the courts of Wisconsin

(If "yes," name the type of proceedings, the court in which  
petition was filed, date, and result, including all appeals.)

\_\_\_\_\_ Yes \_\_\_\_\_ No

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(c) Habeas Corpus petitions in federal courts

(If "yes," name the district in which petition was filed,  
date, and result, including all appeals.)

\_\_\_\_\_ Yes \_\_\_\_\_ No

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(d) Other legal proceedings

(If "yes," give complete details: type of action, court in  
which filed, date, and result, including all appeals.)

\_\_\_\_\_ Yes \_\_\_\_\_ No

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10. Has any ground set forth in (6) been previously presented to this or any other court, state or federal, in any petition, motion or application which you have filed?

\_\_\_\_\_ Yes \_\_\_\_\_ No

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11. If you answered "yes" to (10), identify:

(a) Which grounds have been previously presented:

(1) \_\_\_\_\_

(2) \_\_\_\_\_

(3) \_\_\_\_\_

(b) The proceedings in which each ground was raised:

(1) \_\_\_\_\_

(2) \_\_\_\_\_

(3) \_\_\_\_\_

12. If any ground set forth in (6) has not previously been presented to any court, state or federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_

13. Following my arrest, I was represented by the following lawyers:

(a) At time of my plea to the charge in trial court. \_\_\_\_\_ Yes \_\_\_\_\_ No

Name of attorney \_\_\_\_\_

(b) At trial. \_\_\_\_\_ Yes \_\_\_\_\_ No

Name of attorney \_\_\_\_\_

(c) At sentencing. \_\_\_\_\_ Yes \_\_\_\_\_ No

Name of attorney \_\_\_\_\_

(d) On appeal, if any, from the judgment of conviction or the imposition of sentence.

\_\_\_\_\_ Yes \_\_\_\_\_ No

Name of attorney \_\_\_\_\_

(e) In the preparation, presentation or consideration of petitions, motions and applications with respect to this conviction. \_\_\_\_\_ Yes \_\_\_\_\_ No

Name of attorney \_\_\_\_\_

14. (a) \_\_\_\_\_ I do not have a lawyer and I am without financial resources or otherwise unable to employ an attorney.
- (1) \_\_\_\_\_ I request the court to refer me to the state public defender for an indigency determination and appointment of counsel under ch. 977, Wisconsin Statutes.
- (2) \_\_\_\_\_ I do not want a lawyer to represent me.
- (b) \_\_\_\_\_ I am represented by a lawyer. (Give name and address of your lawyer.)
- \_\_\_\_\_
- \_\_\_\_\_

I understand a false statement or answer to any question in this motion will subject me to penalties for perjury. I affirm the grounds claimed herein for relief are ALL the grounds which exist.

Because of the foregoing reasons, the relief that I desire is:

- (a) \_\_\_\_\_ Release from custody and discharge.
- (b) \_\_\_\_\_ A new trial.
- (c) \_\_\_\_\_ Correction of sentence.
- (d) \_\_\_\_\_ Other relief (specify): \_\_\_\_\_
- \_\_\_\_\_

WHEREFORE, the defendant moves the court for said relief.

\_\_\_\_\_  
Signature of Defendant

STATE OF WISCONSIN                    )  
COUNTY OF \_\_\_\_\_            )

\_\_\_\_\_, being first sworn under oath, states that he/she has subscribed his/her name to the foregoing motion and further states that the information therein is true and correct to the best of his/her knowledge and belief.

\_\_\_\_\_  
Signature of Defendant

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public, County of \_\_\_\_\_, State of Wisconsin.  
My commission expires: \_\_\_\_\_

State of Wisconsin,  
Plaintiff,

**ORDER**

v.

Case No. \_\_\_\_\_

\_\_\_\_\_  
Defendant.

Upon consideration of the annexed motion:

IT IS ORDERED:

1. \_\_\_\_\_ Motion is returned to defendant for additional information as follows:
2. \_\_\_\_\_ The State of Wisconsin shall file a written response to the motion within \_\_\_\_\_ days of the date of this order.
3. \_\_\_\_\_ A hearing shall be had on said motion on \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.
4. \_\_\_\_\_ The movant is referred to the state public defender for an indigency determination and appointment of counsel under ch. 977, Wisconsin Statutes.
5. \_\_\_\_\_ The clerk of this court is ordered to:
  - (a) Serve a copy of this motion and this order upon the district attorney of \_\_\_\_\_ county.
  - (b) Send a copy of this motion and this order to \_\_\_\_\_, counsel for the petitioner.
  - (c) Send a copy of this order to the defendant.
6. \_\_\_\_\_ Other

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Judge

APP. C. 13

|  |       |                           |   |
|--|-------|---------------------------|---|
| PO-15B SUPPLEMENTARY REPORT<br>MILWAUKEE POLICE DEPARTMENT |       | Date of Report<br>9/28/99 | Incident/Accident #<br>99-2713099/M3634 |
| INCIDENT   |       | Date of Incident/Accident | Rep. Code #                             |
| HOMICIDE   |       | 9/28/99                   |   |
| VICTIM   |       | LOCATION OF INCIDENT      | DIST                                    |
| IVERY, Antonio J.  |       | 2478 N. 45th St.          | 3                                       |
| JUVENILE Last Name   | First | Middle                    | Date of Birth                           |

| QUANT  | TYPE OF PROPERTY | DESCRIPTION | SERIAL # | CODE # | VALUE |
|--|------------------|-------------|----------|--------|-------|
| This report being dictated by <u>Detective Victor WONG</u> , assigned to Squad 113 Days. |                  |             |          |        |       |

On Tuesday, September 28, 1999 at 1:50 P.M., Squad 113, Detective Victor WONG, was dispatched to investigate the shooting at 2478 N. 45th St. Upon my arrival, I, Detective WONG, interviewed the following witness.

At 2:28 P.M., I interviewed Dorothy (nmn) MOFFETT-F/B, dob-4/25/62 at 2443 N. 45th St., phone #449-1174. She is employed as a maintenance worker at the Wisconsin State Fair.

MOFFETT stated that she just moved back into Milwaukee a couple of months ago and she is living with her sister, Brenda MOFFETT-F/B, 35 yoa, whose training as a LPN at St. Luke's Hospital. MOFFETT stated that she was home today and heard the sound of four gunshots and it sounded like it was coming from a northerly direction on 45th St. on the east side of the street. MOFFETT stated that she went out on the front porch and looked in a northerly direction and saw four black males, 18 to 23, who were standing in front of the house at 2478 N. 45th St. and they got into a gray 4 dr. automobile, which was parked on the east side of the street that was a couple of houses to the south. The automobile then went southbound and that these same black males about several minutes later came back up the street and one of the black males held up his right hand like it was a gun and said that it went like this and went boom, boom.

MOFFETT further stated that after she heard the gunshots, she saw a black male, 18 to 23 yoa, 5'5", thin build, running from the east side of 45th St. to the west side of 45th St. and this black male ran through the yards. MOFFETT further stated that she saw another black male, 18 to 23 yoa, come out of the house at 2478 N. 45th St. and was carrying a box that appeared to be white in color

"APPENDIX D.14"

ME 8634500

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SUPPLEMENT REPORT  
RE: HOMICIDE-99-2713099/M3634  
PAGE 2

and this black male threw the box in the bushes next to the house, then went into the bushes and got the box and this black male then went eastbound through the yards.

MOFFETT said that she didn't call the police because she heard a shooting before and didn't know what to think. MOFFETT said that she knew that something happened when the police and fire department came to the residence.

MOFFETT was not ordered to view photos at the Identification Division.

MOFFETT was somewhat reluctant to give more specific details regarding her observations and Squad 125, Detective John WESLEY, reinterviewed MOFFETT regarding her observations.

Report per Detective Victor WONG,  
VW:jaj 9/29/99

| REPORTING OFFICER | PAYROLL # | LOC. CODE | SUPERVISOR SIGNATURE |
|-------------------|-----------|-----------|----------------------|
| DET. VICTOR WONG  | 48647     | 91        |                      |

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3634 / SEC

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ORIG

|                             |                  |                           |                       |
|-----------------------------|------------------|---------------------------|-----------------------|
| PO-15B SUPPLEMENTARY REPORT |                  | Date of Report            | Incident/Accident #   |
| MILWAUKEE POLICE DEPARTMENT |                  | 9/28/99                   | 99-271-3099/M3634     |
| INCIDENT                    |                  | Date of Incident/Accident | Rep. Code #           |
| HOMICIDE                    |                  | 9/28/99                   |                       |
| VICTIM                      |                  | LOCATION OF INCIDENT      | DIST                  |
| IVERY, ANTONIO J.           |                  | 2478 N. 45TH ST.          | 03                    |
| JUVENILE Last Name          | First            | Middle                    | Date of Birth         |
| QUANT                       | TYPE OF PROPERTY | DESCRIPTION               | SERIAL # CODE # VALUE |

This report is dictated by Det. John WESLEY, CIB, Day Shift.

On Tuesday, 9/28/99, I, Det. John WESLEY, assigned to Squad 125-Days, was dispatched at 2:54PM to a shooting at 2478 N. 45th St.

Upon my arrival, I was advised by Lt. of Det. Paul STUHMER to interview a possible witness to this particular investigation. On this date this investigator did interview Ms. Dorothy MOFFETT, B/F, 37 yoa, DOB: 4/25/62, who lives at 2443 N. 45th St., (449-0421). It should be noted this particular interview took place in Squad 125. Miss MOFFETT stated she had just moved back to Milwaukee, June 26, 1999 from Golden Valley, Minnesota, and she is currently living with her sister, Brenda MOFFETT at the above address of 2443 N. 45th St. She states she believed at about 1:20PM she was watching her favorite soap opera when she heard what she thought were four shots on the outside. She states she went out to the porch area at which time she observed a B/M, maybe 18 to 23 yoa, 5'8" to 5'10", thin build, she was not sure of the clothing. This individual was standing in the middle of the street on N. 45th St., and he was running from the area of where the shooting occurred, which would be from the east side of N. 45th St. to the westside through the yards. She further stated that she then observed a neighbor who was directly to the south of her residence, a B/F, who also came out on her porch at which time the neighbor said to her, "Did you hear that to?" at which time Miss MOFFETT stated "Yeah, I did hear the shots." Miss MOFFETT further states at that time she went back into her residence. She stated that she was on the phone talking to a couple individuals and she was inside of her residence at least 5 to 10 minutes when she came back on the outside on her porch. She states at that particular time she observed at least 4

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SUPPLEMENT REPORT

RE: HOMICIDE/IVERY, A./99-271-3099/M3634

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to 5 Black/Males. She states she observed a gray, four door, vehicle, she states it was mid size, she did not know the brand name and was parked on the south side of the street on N. 45th St. She states she observed a B/M, 18 to 21 yoa, with black pants, 5'6", get out on the passenger side of said vehicle and walked toward the house where the incident occurred. She states she observed this male walk back and forth from that area to this car, at least twice and after the second time this individual got back inside of said vehicle. Miss MOFFETT then states that the driver of this vehicle also got out of the vehicle and walked back toward the house where this occurred. She states she observed this driver also come back and get in the driver's side of said vehicle. Miss MOFFETT states a third individual who she did not see get out of said vehicle, a B/M, 20 to 22 yoa, 5'9" to 5'10", which he described as a stocky built B/M, wearing a leather coat which she states was tan and maroon with some sort of design in the back of said coat come from the area of the house and get in the back seat of this particular gray vehicle at which time these three individuals drove off. Miss MOFFETT then stated that she didn't know which individual this came from but she heard someone say something like "Which way did that nigger go." Miss MOFFETT stated about 15 minutes later he observed the same three Black/Males and a four B/M walking back on N. 45th St. at which time she was trying to advise a Milwaukee Police Officer in regards to their presence. It should be noted from this particular description that Miss MOFFETT gave of a stocky B/M, this individual was eventually located in the area and was interviewed by Det. Victor WONG and he will file a supplement in regard to that statement.

It should also be noted that Miss MOFFETT stated that she did not identify the individual she had seen earlier that was standing in the street and ran through said yards.

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SUPPLEMENT REPORT  
RE: HOMICIDE/IVERY, A./99-271-3099/M3634  
PAGE 3

REPORT DICTATED BY DET. JOHN H. WESLEY

JHW:ln 9/29/99

REPORTING OFFICER

*Det. John H. Wesley*  
DET. JOHN H. WESLEY

PAYROLL #

44788

LOC. CODE

91

SUPERVISOR SIGNATURE

*Lt. G. F. Cnewenter 9/29.*

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11/18/99

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092899

99 271 3099

INCIDENT  
INFORMATION

INCIDENT

HOMICIDE

DATE OF INCIDENT / ACCIDENT

092899

VICTIM

VICTIM ANTONIO J.

LOCATION OF INCIDENT / ACCIDENT

2478 N. 45th St.

DIST.#

3

JUVENILE LAST NAME

FIRST

MIDDLE

DATE OF BIRTH

☐ DETAINED

☐ ORDERED TO MCCC

☐ OTHER

QUANTITY

TYPE OF PROPERTY

DESCRIPTION

SERIAL #

CODE #

VALUE

2503 N. 45th St. = Statement of Brenda J. BRICE B/F 051349 of said address #445-0187. She states she came home around 1-1:30pm and went straight to the bathroom. States she heard 3 shots, a pause, then heard 7 more shots. States they sounded real close.

She states she looked out her window and observed 3 B/m's walking W/B on W. Wright from N. 45th St. She doesn't know where they were coming from - they were just walking and looking back over their shoulders.

She describes these subjects as: #1) B/m 17-18 YOA, 506-509 150lbs, thin build, LSW: a blk nylon jacket w/a white or grey plaid shirt #2) B/m 17-18 LSW: blk leather jkt and #3) B/m 17-18 LSW: blk leather jkt.

2501 N. 45th St. = No answer at the door

2473 N. 45th St. = Statement of Elizabeth M. CLAYTON B/F 051265 of said address # none. States that about 12:45pm, not sure of time, heard 2 shots, then a pause, then 1 more shot. States the sound of shots are common. She states she looked outside and saw a B/m, 505-508, dark curly hair and wearing a beige shirt/sweater or jacket and blue pants walk into the residence at 2478 N. 45th St. She states this B/m called out to some unknown person to come into the house.

REPORTING OFFICER

PAYROLL #

LOC CODE

SUPERVISORS SIGNATURE

P.O. JAVIER CORNEJO

51411

31

State of Wisconsin

Circuit Court

Milwaukee County

**State of Wisconsin**

Petitioner-Plaintiff

Vs.

Case No. 1999CF5019

**Charles Wilson**

Respondent-Defendant

Affidavit of Terri Madison

Pursuant to 28 U.S.C.1746

I, Terri Madison, pursuant to 28 U.S.C.1746 under penalty of perjury, do hereby attest that:

1. I make this affidavit on my own personal knowledge, willfully, voluntarily and will so testify in court.
2. I have a different last name due to marriage. Thompson was my last name when Charles Wilson was convicted for this case.
3. I dated the victim for a short period of time.
4. Charles Wilson and I have two daughters together. He and I lived together for over nine years.
5. The victim did live with me and my children for a short period of time.
6. The victim was upset with Charles Wilson. Some clothes were missing, which the victim accused Charles Wilson of taking. The victim did threaten to kill Charles Wilson, and also asked me to show him where Charles Wilson's mother lived so that he could go there and kill Charles Wilson. I refused to show him where Charles Wilson's mother lived.

"APPENDIX G, 20"

7. Charles Wilson's sister, Sandra Wilson, was at my house when the victim made threats to kill her brother, Charles Wilson, and when the victim's friend came over to my house to give him a gun.
8. I did tell detective, Mark Peterson, that the victim did sell drugs, owned several guns and \$5,000, belonging to the victim, was missing from the crime scene. Charles Wilson told me that he did not see the missing money part in my statement to detective Peterson.
9. I did tell the first detective that I talked to that I had not seen Charles Wilson the day this crime happened because I was scared. But, when I talked to detective, Mark Peterson, I told him I was not truthful with the first detective I talked to.
10. Charles Wilson did not personally know the victim or his family, nor did he know Eugene Ward who has a child with the victim's sister.
11. Charles Wilson has maintained a job and supported his children and never sold drugs

Print: Terry M. Madigan  
Signature: Terry M. Madigan  
Date: 2-2-2018

25 Oct 2020

Charles Wilson #249903

Fox Lake Correctional Institution

P.O. Box 200

Fox Lake, WI 53933-0200

Supreme Court of the United States

Office of the Clerk

1 First Street N.E.


Washington, DC 20543-0001

Re: Wilson v. Wisconsin, No. 19-8420

Dear Clerk of Court:

Enclosed please find a copy of my Petition for Rehearing. I did not receive my copies from the institution's library until Saturday, October 24, 2020 which were mailed to me via institution mail on Friday, October 23, 2020. I could not staple the petition because the library is closed on weekends, and the stapler on the housing unit is too small.

Sincerely,

  
Charles Wilson

cc. Daniel J. O'Brien

Assistant Attorney General

RECEIVED

NOV - 4 2020

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

# CERTIFICATE OF COMPLIANCE

No. 19-8420

Charles Wilson,

Petitioner,

v.

Wisconsin,

Respondent,

As required by Supreme Court Rule 33.1(h), I certify that the Petition for a rehearing contains 2628 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 25, 2020

CS W

