

20-5974
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

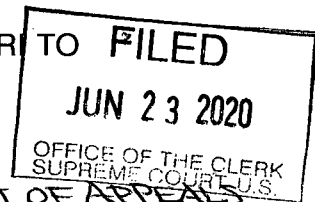
QUORDALIS SANDERS — PETITIONER
(Your Name)

vs.

ORIGINAL

BRIAN FOSTER — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO



SEVENTH CIRCUIT, UNITED STATES COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

QUORDALIS V. SANDERS
(Your Name)

P.O. Box 351
(Address)

Waukon, Wisconsin 53963
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Did the State of Wisconsin vindictively Subject Petitioner back to criminal prosecution for the same offense because he exercised his statutory and constitutional right(s) to a preliminary hearing, jury trial and appeal?

Did the State of Wisconsin violate Petitioner's Fourth Amendment's Right to protection against unreasonable search and seizure when it issued warrant solely upon hearsay information from alleged victim who have had accused him of the same offense for which he was legally found not guilty of by a jury?

Did both trial defense counsel and appellate counsel rendered effective assistance where they both at the pretrial stage and post conviction Relief failure to present and challenge the issue of the multiplicity of the charges in the filing of the criminal information?

Did both the Wisconsin Court of Appeals and Supreme Court misused and abused its discretion under Rule 809.21(2), Wis. Stat., summarily affirming the stalking conviction against the petitioner to have relieved the State of Wisconsin of its burden of proof to prove that the petitioner exposed his children to the alleged victim, as a child, beyond a reasonable doubt?

Does the State court(s) decision(s) conflicts and entered in contrary to federal law(s) established by the U.S. Supreme Court and other federal circuit courts, pursuant to 28 U.S.C. § 2254(d)(1)?

Did the district court abuse its discretion under 28 U.S.C. § 2254(e) by merely accepting the state courts finding where those facts are in dispute?

Does the Seventh Circuit's decision(s) denying bond and the appeal, and petition for Rehearing En Banc without a proper written order addressing the merits of the issues that Petitioner presented therein?

Is the subsequent criminal prosecution for these same offenses upon the petitioner having being released from prison on parole and extended supervision and having also absconded thereupon and extradition back to the State of Wisconsin, accused of failure to provide updated information to Wisconsin Sex Offender Registry, a denial of due process?

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:

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 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 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 _____ 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 _____ 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.

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JURISDICTION

[] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 1/28/2020.

[] 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: Nov 22, 2020, and a copy of the order denying rehearing appears at Appendix B.

[✓] 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 _____.
A copy of that decision appears at Appendix _____.

[] A timely petition for rehearing was thereafter denied 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. § 1257(a).

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

STATUTES AND RULES

28 U.S.C. § 3, 2243 and 2254 (d) (1), (2), and sub (e)

Rule 809.21 (2), Wis. Stat.

OTHER

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U. S. Const, Amend. IV:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated and no warrant shall issue, but upon probable cause, supported by oath or affirmation;

U. S. Const, Amend. V:

No person shall be held to answer for a capital or infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger. nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall any person be compelled in any criminal prosecution to be a witness against himself, nor be deprived of life, liberty, or property without due process of law;

U. S. Const, Amend. VI:

In any criminal prosecution, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be informed and confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of effective counsel for his defence;

U. S. Const, Amend. XIV:

All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States; nor shall any state make or enforce any law which shall abridge the privileges or immunity of its citizens therein; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law;

28 U.S.C. §§ 2243 (8) and 2254 (d) (1), (2), and sub. (e), guarantees a state prisoner federal habeas corpus relief upon his or her state criminal conviction or sentence when the state courts' findings of fact and conclusion of law and decision are clearly contrary to federal laws that has been established by the U. S. Supreme Court; and in the light most favorable to the petitioner the evidence presented to it; and requires both district and appellate circuit courts to accord a presumption of correctness to the state courts' finding when those findings of facts are indisputable making summarily affirming convictions or habeas relief and appeal inappropriate.

STATEMENT OF THE CASE

On January 29, 2014, the Petitioner, Quardello V. Sanders, and U.S. Citizen, and Resident of the State of Wisconsin, Racine County, was arrested upon a warrant that was allegedly issued on January 15, 2014, charging him with one count each of exposing genitals to a child and disorderly conduct, in contrary to S. 939.66(1); S. 947.01(1); and S. 948.10(1), Wis. Stat. in reference to case No. 14-110-CF.

Whereas the alleged victim was the same person who had previously accused the petitioner of the same allegation on January 2, 2011, in reference to case No. 11-CF-04, for which I, the petitioner was legally found not guilty of at a jury trial on May 20, 2011, and thus the hearsay information and statements that the same alleged victim made to police alone without any incriminating physical corroborative evidence to show that this crime was probably committed and committed by the petitioner, other than the petitioner's criminal record and the fact that the petitioner was registered as a convicted sex offender for previous sex crimes that I had proven that I was not guilty of an appeal in a court of law were/or is insufficient probable cause to have issued a warrant for I, the petitioner's arrest and thus, in contrary to S. 968.04(1), Wis. Stat., citing State v. Knudson, 51 Wis. 2d 270, 272 (1971) (police required to conduct an independent police investigation to have established the verifiability of hearsay information of purported witnesses); State v. Mann, 123 Wis. 2d 375 (1985) (a complaint may be attacked when there has been an omission of critical material when inclusion is necessary for an impartial judge to determine probable cause)). See also, Giordanello v. U.S., 357 U.S. 480, 485 (1958) (a complaint was fatally defective in merely repeating the statutory language allegedly violated); see e.g., Carter v. McCawley, 438 F.3d 980, 990 (10th Cir. 2006) (no probable cause to arrest based on statement of child when officers did not take measures to corroborate); U.S. v. Glover, 755 F.3d 841, 846-48 (7th Cir. 2014) (no probable cause and magistrate not neutral where complete omission of damaging information about informant's credibility from affidavit undermined deference otherwise given to magistrate's decision))).

Whereupon at the preliminary hearing on 2/06/2014, the district attorney offered and threatened and carried out his threat against I, the petitioner that if I didn't waive the preliminary hearing and accepted the plea offer that he would charge the stalking charge upon the filing of the information, in contrary to this court's prior ruling in Brady v. U.S., 397 U.S. 742, 750 (1970) (state may not induce guilty plea through "actual or threatened physical harm or by mental coercion overbearing the will of the defendant"); see e.g., U.S. v. Safavian, 649 F.3d 688, 692 (D.C. Cir. 2011) (prosecutor is precluded from penalizing defendant for invoking any legal protected right during a criminal prosecution); U.S. v. Pittman, 642 F.3d 583, 586 (7th Cir. 2011) (vindictive prosecution claim arises if prosecutor pursued in retaliation for defendant's exercise of a legal right))).

Wherefore on February 12, 19, 2014, the State filed the criminal information on the preliminary hearing improperly and vindictively charging I, the petitioner with stalking and causing child view sexually explicit conduct as counts 3, 4 therein, in contravention to s. 939.66(1), Wis. Stat. (Lesser-Included-Offense-Statute), and thus, also in direct violation(s) of the Fifth and Fourteenth Amendments of the United States Constitution (U.S. Const. Amendments V, XIV), citing U.S. v. Jaffeian, 649 F.3d at 692; U.S. v. Pittman, 642 F.3d at 586 (quoting Bordenskirchner v. Hayes, 434 U.S. 357, 363 (1978) (to punish a person because he has done what the law plainly allows him to do is a direct violation of the most basic sort))).

Whereas the causing of a child view sexually explicit conduct count, charged as count-3 in the information was the same offense charged as count-1 previously in case No. 11-CF-04, for which I, the petitioner, therein, was found not guilty of by the jury, therein, on May 20, 2014-3-11, but the jury turned around and found I, the petitioner guilty of counts 2, 3 charged in this same criminal information for the same criminal act, in direct violation(s) of both Due Process and Double Jeopardy clauses of the Fifth and Fourteenth Amendments of the United States Constitution, citing Richardson v. United States, 526 U.S. 813, 817 (1999) (the right to a speedy and public trial guaranteed by Sixth Amendment of United States Constitution includes the right to an unanimous verdict with respect to the ultimate issue of guilt or innocence). See also, State v. Durango, 236 Wis. 2d 721 (2000) (in conviction)).

Therefore, the petitioner contended, and contends, herein, that he was and are continued to be subject of prosecutorial and judicial vindictiveness from both the 2011's and 2014's cases and his decision to go to jury trial and where he was able to have established and proven his innocence, where serious child sex offenses, as charged against the petitioner, to have justified the petitioner having had to register as a convicted sex offender for sex offenses that had expired under the Wisconsin Sex Offender Registry Law (s. 301.45 (5) (4) (a), Wis. Stat.) and where I, the petitioner could prove that he was innocent of the sex crimes in reference to case No. 87CF-804, upon having discharged from the sentence imposed, therein, also in relation to probation revocation in case No. 87CF-69, and in retaliation against I, the petitioner for having exercised my constitutional rights to a jury trial and criminal appeal, in contravention to Bordenskirchner v. Hayes, 434 U.S. at 363.

Whereby on May 20, 2014, the petitioner's jury trial began, where the State picked the jury and the trial began on the next day at which time the jury returned a verdict of guilty upon all four charges, charged in the criminal information as requested by the State, in contravention to s. 939.66(1), Wis. Stat., and in direct violation of the Double Jeopardy clause of the Fifth Amendment of the United States Constitution where counts 1, 2, and 3 are lesser-included offenses of the other and as charged in the criminal information and thus, the same for double jeopardy purposes, citing Blackledge v. U.S. 284 U.S. 304 (1932) (establishing "same elements" test to determine whether multiple offenses are actually singular).

Whereupon on July 15, 2014, the trial judge entered judgment, sentencing the Petitioner for concurrent terms of 2-years, in prison upon the felony counts, and 3-years extended supervision, in direct violation of the Double Jeopardy Clause of the United States Constitution, citing *Blackburn v. U.S.*, 284 U.S. 91304 (1931), *U.S. v. Benjamin*, 711 F.3d 371 379 (3d Cir. 2013) (plain error when court sentenced defendant to concurrent terms for 2-felon convictions and only 1 conviction was proper)).

Wherefore upon sentencing, the petitioner requested the right to appeal and appointment of appellate counsel which was granted and on October 14, 2014, the State's Public Defender's office, Appellate Division of Madison, appointed Atty. Timothy L. Blodwin to have filed an appeal in the case to the Wisconsin Appeals Court pursuant to Chapt. 809.30 and S. 974.02(2), Wis. Stat., who filed a No-Merits-Report in the case pursuant to Rule 809.32(2), Wis. Stat., although the petitioner had presented to him the same issues presented herein, to this court and the federal district court and circuit court, therein, which was granted by the State's Appeals court on November 25, 2016=1-2015 (See App. No. 15-2976) (Case No. 14CF-110)).

However, upon being released from prison on parole serving the 3-years extended supervision and the petitioner having absconded thereupon and extradited back to the State of Wisconsin on June 23, 2016, the State of Wisconsin requested the petitioner for the entire 3-years and send me back to prison because I refused to have waived my constitutional right(s) to not have been extradited back to the State of Wisconsin and parole revocation and to have accepted the State's offer for 18-months if I would have waived the revocation hearing, all in violation (s) of my constitutional rights the same way, all over again just because I preserved my constitutional due process rights in these criminal prosecutions, contrary to *Bordenkircher*, 434 U.S. 91363, see also *Morrison v. Brewer*, 408 U.S. 471, 482 (1972) (prisoner has protected liberty interest in remaining free from parole revocation)).

Whereas the petitioner served the discharge date upon the 3-years extended supervision on April 9, 2019, but because I, the petitioner was improperly and maliciously criminally charged under the Sex Offender Registration Law upon being extradited back to the State of Wisconsin, alleging that I, the petitioner was required to have provided updated information to the Sex Offender Registry upon having absconded on parole, in reference to Case Nos. 16-CR-294 & 466, which are now currently pending before the Wisconsin Court of Appeals, Dist. II, 95 App. Nos. 19-1951 and 19-1952 CRM.

Whereby the Wisconsin Appeals court summer- (1) affirmed the stalking conviction against the petitioner on August 30, 2017 upon the process of a second No-Merits-Report being filed on June 7, 2017, 93 App. No. 17-616 CM, which was also affirmed by the State's Supreme court on 2/13/2018, in conformity to Rule 809.21(2)(b) and Rule 809.32(2)(b), (3), Wis. Stat., citing *Wolski v. Wilson*, 174 Wis. 2d 533 (Ct. App. 1993) (a party's affidavit that contradicted that same party's earlier deposition raised issue of fact, making summary judgment inappropriate)).

Wherefore both the district court and circuit court's decision on appeal for federal habeas corpus relief are in contrary to 28 U.S.C. § 2254(c)(1), citing *Miller E. v. Cockrell*, 537 U.S. 322, 341 (2005)).

REASONS FOR GRANTING THE PETITION

This Court should grant certiorari review, therein, where both the state and federal court failed to properly address the merits of the Petitioner's Fourth Amendment's claim raised, herein, in contrary to *Stone v. Powell*, 428 U.S. 465, 481-82 (1976); see e.g., *Lawhorn v. Allen*, 519 F.3d 1272, 1288 (11th Cir. 2008) (review of 4th Amendment claim not barred when "ignored" by state appellate court because did not receive full and fair consideration)).

Whereas upon the Petitioner having presented the issue during both the pretrial stages and on post conviction Relief, for bond pending trial and appeal, both the trial and appellate court denied relief requested and failed to issue a written order properly addressing the issue and upon presenting it to the federal district court for relief on habeas corpus relief, the district court improperly addressed the issue in its final order, by stating "if I, the petitioner would have received a ruling upon the claim by the state appellate court I would be denied in the district court" pursuant to *Stone v. Powell*, 428 U.S. at 481, which is totally unfair and clearly contrary to federal laws that has been established by this Court and other federal circuit courts dealing with the same issue, citing *Stone*, 428 U.S. at 482; *Lawhorn v. Allen*, 519 F.3d at 1288. See also (online criminal file for case NO. 18CV-628NJ Final order Entered on March 30, 2019)).

Moreover, the district court also improperly ruled that the issue of the multiplicity of charges and criminal information were procedurally barred because I, the petitioner did not present the issue on appeal to the Wisconsin Appeals court, although I, the petitioner claimed ineffective assistance of appellate counsel for having failure to have done so, in contrary to *Murray v. Carrier*, 477 U.S. 478, 496 (1986), where this court created an exception to the procedurally barred rule. Also, the district court merely accepted the trial court's ruling upon the petitioner's ineffective assistance claim, and the appellate state's court's improper decision to have affirmed the conviction(s) against I, the petitioner, summarily, when the appellate court acknowledged within its final order that I, the petitioner had disputed the stalking conviction against him with contradictory facts from the alleged victim and state's witness testimony at the trial, thereby, also disputing the state's theory presented to the jury, but affirmed the convictions based on a theory not presented to the jury and on substantiated police references Reports from prior incidents on November 19, 2013 and December 1, 2013, in contrary to the state's supreme court's ruling in *State v. Wolff*, 207 Wis.2d 152 (1997) and *State v. Sverum*, 330 Wis.2d 398, 410 (4th App. 1998) (there must be proof that the actor's action caused fear not that the course of conduct caused fear)) (*Wolff*, 207 Wis.2d at 152 (a conviction cannot be affirmed on the basis of a theory not presented to the jury... once the reviewing court determines that the evidence is legally insufficient to support the theory presented to the jury the only just remedy is to direct the case back to the trial court for retrial...))). (citing *Chicwell v. Reus*, 445 U.S. 222, 236 (1980); *Down v. U.S.*, 442 U.S. 100, 106 (1976); *Reus v. U.S.*, 404 U.S. 808, 814 (1971) which was also improperly accepted by the federal circuit court on appeal, in contrary to 28 U.S.C. § 2254 (e)(1), citing *Miller E. v. Cockrell*, 537 U.S. at 341.

Moreover, the federal circuit court failure to have issued a final order, denying the motion and petition for computation of time limit to have filed for Rehearing En Banc, upon the circuit court's final order initially entered on January 28, 2020, upon having issued the mandate on appeal on May 22, 2020, closing the case on appeal, in contravention to *Comm. Bd. of Pardon v. Dumschat*, 452 U.S. 458, 463 (1981) (quoting fundamental fairness with the full and fair hearing requirements), see also *Dist. Att'y's Office v. Osborne*, 129 S. Ct. 2308, 2319 (2009) (proposing that where there are material facts in dispute that cannot be resolved on the record alone, a process that fails to make relevant findings of fact will not be full and fair))).

Thus, this court should find that the federal circuit court's order entered on April 8, 2020, granting the petitioner's motion and petition for computation of time to file Rehearing En Banc, therein, as the proper final order in the case, upon the issuance of mandate, upon appeal and closing of the case on May 22, 2020, herein. See *Evans v. V. Tykles*, 246 Wis.2d 1 (WI App. 2001) (if the constitution or statutes require proof before the circuit court can enter a particular judgment or order, the court cannot enter the judgment or order without the appropriate showing).

Whereas although state courts does has jurisdiction over federal courts, however, in federal habeas corpus petitions for state prisoners, therein, state courts common case laws are applicable to the merits of the case when addressed by the federal court. See *Williams v. Taylor*, 529 U.S. 362, 410 (2000). See also *Greene v. Fischer*, 132 S. Ct. 38, 44-45 (2001); *Morris v. Gillis*, 142 F.3d 664, 666 (3d Cir. 1998) (presumption of correctness arises because state court findings regarding the correctness of counsel's legal advice to petitioner not supported by record); *Winston v. Pearson*, 683 F.3d 489, 506 (4th Cir. 2012) (presumption of correctness impossible where state court failed to adjudicate claim on merits "by refusing to facilitate production of new material evidence))).

WHEREFORE, the Petitioner respectfully ask that this court issue a writ of certiorari to bring up for review therein for the determination of the issues and questions presented to the state courts for appeal and for federal habeas corpus relief and appeal in the district court and federal circuit court that both the state and federal court has entered a decision that conflicts with this court's prior rulings and other state and federal courts in dealing with the same issue where the evidence of the case are overwhelmingly in favor of the Petitioner, herein, petitioner also requests temporary released on bond pending certiorari review, therein, where the state's Attorney exceeded its jurisdiction and authority, acting outside its capacity and within an Administrative capacity upon the extradition and revocation of Petitioner's extended supervision for murder abducting, thereupon, criminally charging the Petitioner under the sex offender Registration Law, for allegedly and falsely failure to have provided updated information to the Wisconsin Sex offender Registry upon having absconded on parole and extended supervision, in Contrary to S. 301.45(2) (b-d), Wis. Stat, citing State v. Dinkins 330 Wis. 2d 591, 598 (WI App. 2010) (when a prisoner is released from prison on parole he is released to the custody of the department of corrections who enters the prisoner's personal information into the sex offender Registry) (quoting S. 301.45(2) (a), Wis. Stat.) (see also S. 304.06(3), (3m), Wis. Stat.))).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Guandelobis Sanchez

Date: 6/21/2020