No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

In re CYRUS LINTON BROOKS,

Petitioner,

-vs-

RANDALL R. HEPP,

Respondent.

ON PETITION FOR A WRIT OF MANDAMUS TO
THE SEVENTH CIRCUIT COURT OF APPEALS

PETITION FOR AN EXTRAORDINARY WRIT

Mr. Cyrus Linton Brooks [DOC 356756-A]
Fox Lake Correctional Institution
Post Office Box 200 / F.L.C.I.
Fox Lake; Wisconsin. 53933

QUESTIONS PRESENTED FOR REVIEW

1.] Did The Review Treatment Accorded The Request For The Issuance Of A Certificate Of Appealability By A Circuit Judge, Fail To Satisfy The Appearance Of Justice. In Consideration Of A Thirty-Two(32) Page Request Pleading, Breaking Down Each Individual Issue Question Sought Appellate Review On, Into A Demonstration Of Different Circuit Court(s) Of Appeals And District Court [Judge's] Disputed Conclusion(s) By Petitioner In His Showing That Such Issue(s) Were Debatable By Jurist Of Reason?:

2.] Does An Appellant Have A Procedural Due Process Protection Entitlement To A Fundamental Fair Detailed Decision Address To The Review Application Actuality Regarding Appellants' Issue(s) In Support Of The Request For The Issuance Of A Certificate Of Appealability Consideration Undertaking By The Circuit Court Judge?

LIST OF PARTIES

A list of all parties to the proceeding in the court(s) whose Judgment and Order(s) are the subject of this Petition are as follows:

1.] Petitioner-[Prisoner] Cyrus Linton Brooks [DOC #356756-A].
Fox Lake Correctional Institution
Post Office Box 200 / F.L.C.I.
Fox Lake; Wisconsin. 53933

2.] Mr. Randall R. Hepp, Warden.
Fox Lake Correctional Institution
Post Office Box 200 / Administration.
Fox Lake; Wisconsin. 53933

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APPENDIX-G: State Of Wisconsin, Supreme Court, §809.62 Apellate Rule "Petition For Review" of the Court Of Appeals, District #1, 09/30/2014 Decision. Denied February 10, 2015.

APPENDIX-G/1: Letter Demand From Defendant Cyrus L. Brooks, Dated July 02, 2013 Listing Claim(s) And Issue(s) To Be Litigated During First Appeal Of Right, In Order To Preserve Said Claim(s) And Issue(s) For §2254 Federal Review, Pro Se By Defendant Once Counsel Was No Longer Allowed To Represent This Criminal Action Of Right, Sent To Attorney Sara Roemaat.

APPENDIX-H: Milwaukee Police Department, Supplemental Police Report, Dated 10/29/05, Incident #05-302-0135/ M4372. Regarding Forensic Footprint Evidence Discovery/gathering Documentation By I.D. Tech. Michelle Hoffman, With Included [Exculpatory] Occurrence Witness Statement Of Kathleen Tramell, Regarding Shooting And Individual With Long Gun Commission Thereof, Traverse Of Auto, Leaving Footprint Forensic Evidence, With Photo Of Area Documentation.

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APPENDIX-J: State Of Wisconsin, Milwaukee County Circuit Court, Branch #15, April 18, 2016 Decision And Order Denying Motion For §974.06 Wis. Stats., Collateral Post-Conviction Motion Relief, In The Pro Se Litigation Of State Of Wisconsin v. Cyrus Linton Brooks, Case No. 11-CF-001651, The Honorable J.D. Watts, Presiding Circuit Court Judge, Asserting Wisconsin Limited Review Allowance Of Only "Clearly Stronger" Standard Allowance In Situations Such As This.

APPENDIX-K: State Of Wisconsin, Court Of Appeals, District #1, Collateral Post-Conviction Motion Relief Denial, Appellate Review Litigation, Opinion And Order Filed August 03, 2017 In The Appeal Of Cyrus Linton Brooks v. State Of Wisconsin, Appeal No. 2016AP974. Denying Relief, Stating That Only The "Clearly Stronger" Review Standard Is Permitted Under State Law.

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APPENDIX-M: State Of Wisconsin, Supreme Court, §809.62 Appellate Rule "Petition For Review" Of The Court Of Appeals, District #1., August 03, 2017 Opinion And Order Denying Appeal In Cyrus Linton Brooks v. State Of Wisconsin, Appeal No. 2016AP974, Filed November 13, 2017.

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APPENDIX-O: Milwaukee County Medical Examiner Office, October 30, 2005 "Autopsy Protocol, Executed By K. Alan Stormo M.D., Assistant Medical Examiner, On The Body Of Terry J. Baker [DOB: 05/27/1984].

APPENDIX-P: Milwaukee County Assistant District Attorney, Denis J. Stingl, September 27, 2011 Filed "State's Witness List," In The Criminal Case Prosecution Of State Of Wisconsin v. Cyrus Linton Brooks, Criminal Case No. 2011CF001651, Listing Dr. Brian Peterson, As The Medical Examiner, Citizen Witness To Appear.

APPENDIX-Q: Milwaukee County Assistant District Attorney, Denis J. Stingl, September 27, 2011, "Notice Of Expert Testimony" Witnesses, Listing Milwaukee County Medical Examiner, Dr. Brian Peterson, As The Expert That Will Testify To The Autopsy And The Contents Of The Written Autopsy Protocol, In The Case Prosecution Of State Of Wisconsin v. Cyrus Linton Brooks, Criminal Case No. 2011CF001651, DA Case No. 2011ML005159.

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

In re CYRUS LINTON BROOKS,

Petitioner,

-vs-

RANDALL R. HEPP,

Defendant.

ON PETITION FOR A SUPERVISORY WRIT TO
THE SEVENTH CIRCUIT COURT OF APPEALS

PETITION FOR AN EXTRAORDINARY WRIT

Mr. Cyrus L. Brooks [DOC #356756-A]
Fox Lake Correctional Institution
Post Office Box 200 / F.L.C.I.
Fox Lake; Wisconsin. 53933

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR AN EXTRAORDINARY WRIT

Petitioner respectfully prays that a Extraordinary [Mandamus] Writ issue under this United States Supreme Courts [Supervisory] Powers to review the Order Denying Petitioner-Appellant the Issuance of a Certificate Of Appealability, allowing review of the District Courts, Denial of the Constitutional Claim(s) on their alleged [Merits], even though said Claim(s) had been Denied Review on their Merits During The State Of Wisconsin, Collateral §974.06 Wis. Stats., Post-Conviction Review Venue Exhaustion. Thus requiring the United States Court Of Appeals for the Seventh Circuit, To Re-Consider the Request For The Issuance Of A Certificate Of Appealability, Therefrom, Issuing a Decision On Each of the Individual Issue(s) Raised in the Request, As To How The Court Of Appeals Reached Its Conclusion That No Reasonable Judge Could Dispute The Decision Thereon Reached By The United States District Court Judge For The Eastern District Of Wisconsin (Appendix: A and B-B/10).

OPINIONS BELOW

A.] Case(s) From Federal §2254 Court(s):

The PLRA 28 U.S.C. §2253 ORDER [Denying Issuance of a Certificate Of Appealability], By United States Court Of Appeals For The Seventh Circuit, Chief Judge Diane P. Wood and Circuit Judge Michael S. Kanne (Appendix - A), Dated [December 03, 2019]. Which is Attached hereto as Appendix - A to the Petition and is Unpublished.

The Opinion of the United States District Court for the Eastern District of Wisconsin, the Honorable William C. Griesbach, Chief Judge presiding, Dated [March 11, 2019] appears at Appendix B to this Petition and is unpublished.

The Judgment In A Civil Case of the United States District Court for the Eastern District of Wisconsin, the Honorable William C. Griesbach Chief Judge presiding, Filed [March 11, 2019] appears at Appendix C to this Petition and is unpublished.

JURISDICTION

B.] For Cases From Federal Court(s):

The date on which the United States Court of Appeals for the Seventh Circuit Issued its 28 U.S.C. §2253 Order, Denying the Circuit Judge Level Issuance Of A Certificate Of Appealability was December 03, 2019 (Appendix - A). No petition for rehearing was timely filed in this case.

The Jurisdiction of the United States Supreme Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Article I of the United States Constitution Section #9 "Restrictions On Congress" which Provide:

"The Privilege Of The Writ Of Habeas Corpus Shall Not Be Suspended, Unless When In Cases Of Rebellion Or Invasion The Public Safety May Require It."

This case also involves Amendment V., of the United States Constitution, which provides:

"No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictnent 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 be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Additionally this case involves Amendment XIV of the United States Constitution:

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

STATEMENT OF THE CASE

On April 15, 2011, Petitioner Cyrus L. Brooks was charged with First Degree Reckless Homicide as a Party To A Crime in violation of Wisconsin State Law. The Charge arose out of the homicide of Terry Baker on October 29, 2005. The Victim died from alleged [Four] Bullet Wounds.

Police interviewed available witnesses such as Michael Henderson who stated that he observed Terry Baker riding his bicycle in the area and heard gunshots coming from the front of a residence. When he looked out the window, he recognized Terry Baker and another individual he knew as Maurice Stokes, and another unknown individual pointing a handgun in the direction of Terry Baker. He then observed both Maurice Stokes and the second individual fire their weapons toward Terry Baker. Additionally, Terry Baker also was armed with a handgun, but he was unaware whether Terry Baker was also firing his handgun back at the Two(2) Individuals.

Milwaukee City Police additionally interviewed Julius Turner, whom at the time of the shooting, declared that he had not witnessed anything. However, Five(5) Years Later, Julius Turner is alleged to

have had a sudden instant recall, in which he stated that he was driving his car in the neighborhood (even though to this day no vehicle has been found that was registered to him in this state), when he heard numerous gunshots. That he then observed Mautice Stokes standing near a Gree Car with bullet holes holding a handgun. Further, he never actually saw Stokes firing the handgun though. He additionally, allegedly observed Cyrus Brooks chasing after Terry Baker with a Long Gun (Rifle), that he then observed Brooks fire a shot at Baker as he flipped over a fence, but that he could not tell whether or not Baker had been hit. That he then walker over to where Terry Baker was laying on the ground bleeding.

Cyrus L. Brooks on April 25, 2011 was brought to Court for a Preliminary Hearing. The Prosecution offered Michael Henderson as its Primary Witness of both Maurice Stokes and Cyrus L. Brooks involvement in the shooting death of Terry Baker on October 29, 2005. Michael Henderson testified that he saw Maurice Stokes chasing Terry Baker on October 29, 2005, that he further heard a shot but did not actually witness it. Henderson additionally testified that Defendant Stokes had a gun and he personally witness Stokes fire the gun towards Terry Baker. However, he explicitly noted that he did not see anyone else firing a gun at that time. Michael Henderson personally confirmed that Terry Baker had been killed, after the gunshot, because he personally saw the body. Additionally, that he did not see anybody else in that yard besides Stokes and Terry Baker's body. To this day, Michael Henderson has never identified Cyrus Brooks as being present during the chase, shooting or aftermath of Terry Bakers' homicide.

After the Testimony of Michael Henderson at the April 25, 2011 Maurice Stokes was bound over for Trial. Brooks' case was continued

over to allow the Prosecution to either secure the presence of Julius Turner (whom had failed to appear at the April 25, 2011 Preliminary Hearing as he had promised he would).

On May 09, 2011 at the continued Preliminary hearing proceeding. Again after Prosecution Witness Julius Turner, and no other individual being able to place Defendant Cyrus Brooks at the shooting ncident involving Terry Baker on October 29, 2005. The Court again granted another continuance to the State Prosecution, after allowing it to present none relevant testimony as to what type of Shell Casing were recovered at the crime scene.

The Preliminary hearing was then continued to June 01, 2011, which at once again the Prosecution alleged "Coopertive" Witness Julius Turner still failed to appear. The Court, based upon a claim by the "Substituting" Assistant District Attorney, whom was filling in for the Assigned Assistant District Attorney to this case prosecution, that he couls secure a Witness willing to place Defendant Brroks at the crime Scene if granted a few hours continuance. Was then Granted a "Continuance" from this A.M., Court proceeding, until later that afternoon, to secure someone that could place Defendant Cyrus Brooks at the crime Scene.

At the 1:30 P.M., hearing continuation proceeding, ADA Grant Hurbner, mysteriously came up with a Jailhouse Informant, that claimed Defendant Brooks had confessed his sins to him (his commission of this homicide), when they happen to be in a holding cell together for a few hours, on some unknown day in the past. The Circuit Court Judge, concluded this Informant Testimony met Wisconsin "Preliminary" Hearing Evidence Level to acquire a Bind-Over for trial, and bound Defendant Cyrus L. Brooks over for trial.

At a Pretrial Conference held on September 20, 2011, Defense

Counsel, informed the Prosecutor, and Trial Court Judge, that the Defense would be that of the Witness for the Prosecution at the Initial April 25, 2011 Preliminary Hearing, Michael Henderson, whom would be testifying to the fact that Defendant Cyrus L. Brooks was not one of the individuals he eye witnessed at the scene of the crime, homicide death of Terry Baker on October 29, 2005.

On October 03, 2011, the State Prosecutor, requested an Adjournment because the Prosecution only witness against Defendant Cyrus L. Brooks, Julius Turner was still failing to appear for the State. The court granted the Brooks case adjournment for One(1) Week.

On October 10, 2011 the Trial began, after the Trial Judge allowed the Prosecutor a Last Minute Motion To Severe the case from the Co-Defendant Maurice Stokes, thereby, eliminating the Prosecution calling of the [Exculpatory] Witness for Co-Defendant Brooks, Michael Henderson (The Prosecutor was aware that Defense Counsel had slipped up in his obligation for securing the appearance of a Defense Witness and not had Michael Henderson served with a Defense Witness Subpoena. Defense Counsel strongly objected to this last minute severance, since it would deprive the defense of an extremely important exculpatory witness, Michael Henderson, because Counsel had not sent out a Defense Witness Subpoena since these Witnesses were already being called by the Prosecution in this joint trial.

Defense Counsel sought at least a One(1) Day adjournment to secure a subpoena Michael Henderson for the Defense, but the Trial Judge was not in the mood to grant such an adjournment for the Defense, but had shown in the past that he had no problem granting the prosecution, adjournment after adjournment (April 25, 2011 to May 09, 2011; May 09, 2011 to June 01, 2011; June 01, 2011 A.M., to June 01, 2011 P.M., and October 03, 2011 to October 10, 2011).

Initially after a 2-Day Trial, the Jury came in Hung. However, after an Allen Charge, where the Judge pointed out over and over the Jurors' duty to reach a verdict in this case, the Jury on October 13, 2011 came back with a Conviction for the First Degree Reckless Homicide Charge, as a Party To A Crime (Appendix - D).

On November 18, 2011 the Court then imposed a Sentence on 30-Years of Initial Confinement under the Truth-In-Sentencing Scheme Operations, with an additional 08-Years of Extended Supervision for a Total Sentence of 38-Years (Wisconsin's Intentional First Degree Homicide Charge carries a Life Sentence, with Extended Supervision Release Allowance after 20-Years of Initial Incarceration), Defendants' Brooks, 1st Degree Reckless Homicide Sentence is 10-Years Greater than the Worst Homicide action under State Law allowance charging scheme.

Defendant Cyrus Brooks, with State Public Defender Office Appointed, 1st Appeal of Right Counsel Assignment, by Sara Romaat, filed a §974.02 Wis. Stats., First Appeal of Right required Post-Conviction Motion, raising Issue(s) not properly raised at Trial and/or during the Post-Conviction but Pre-Sentencing period. Milwaukee County Circuit Court Judge Jeffrey Wagner was assigned to handle this Post-Conviction Review litigation, even though under State Statutory Law, the Trial Judge was required to Review such First Appeal related §974.02 Wis. Stats., Post-Conviction Motion, which was Milwaukee County Circuit Court Judge, Richard J. Sankovitz (Appendix-D/1 and Appendix - E).

In this Post-Conviction Motion of Defendant Brooks First Appeal of Right, Counsel over Defendants Written Objections, Raised only the Issues of: 1.] Defendant Brooks, Speedy Trial Rights were violated, Which the Post-Conviction Court determined under State Law was

(harmless) since the only relief provided under State Statutory Law Speedy Trial provision was for Release on Signature Bonds, a relief that Defendant Brooks was not eligible to receive since defendant Cyrus L. Brooks was already incarcerated for a Parole Violation incident in another case matter (App. E/1); 2.] First Appeal of Right Appointed Attorney, Sara Roemaat, further raised the Issue of Ineffective Assistance of Trial Counsel, regarding Retained Defense Attorney, Patrick Flanagan's failure to have subpoena Michael Henderson, as a Defense Witness at Trial. Which regarding the 1st Appeal of Right, §974.02 Wis. Stats., Post-Conviction Court Judge, denied Defendant any Evidentiary Hearing,.Defense Counsel Testimony gathering opportunity, which is required under Wisconsin State Precedent procedural address of a claim of Ineffective Assistance of Trial Counsel, thus even after concluding; "Evidently, trial counsel thought the State was going to call Michael Henderson at trial, but the State indicated it could prove its case without him (with a grant receipt to sever the Co-Defendant Maurice Stokes from Defendant Brooks prosecution). The Court then held that Brooks did not show that even with such an exculpatory evidence witness testimony a reasonable probability that, but for his counsel's unprofessional errors, the result of his trial would have been different (App. E/4-E/7). Lastly, 1st Appeal of Right Appointed Counsel Sara Roemaat went a head with raising the "Newly Discovered" Evidence Issue provided by Shawnrell Simmions (App. E/3), which consisted of his "Affidavit" Statement "That he was in jail with Julius Turner, who testified against the defendant at his trial. Turner purportly told Simmions that he did not want to testify becaues he did not see who had shot the victim. That he only claimed to have done so, five years after the incident, because he had been paid money to do so by

victim Terry Bakers Family (App. E/2), and then took off back to the State of Texas, hoping to avoid ever having to actually come to court and testify to the lie he had told the police to earn the money. The §974.02 Wis. Stats., Court Post-Conviction Judge without any Evidentiary development opportunity granted in regard to this Newly Discovered Evidence, by rote denied the Post-Conviction Motion Issues related hereto (App. E/3-E/4), on October 04, 2013.

Defendant timely sought First Appeal of Right review litigation before the Wisconsin State Court of Appeals, District #1. Which after Briefing by the interested parties, on September 30, 2014 ruled: 1.] Brooks' constitutional right to a speedy trial was not violated. The threshold factor is the length of the delay from charging to trial. The length of delay must be deemed "presumptively prejudiciald" before it is necessary to inquire into any other factors. Here, the trial began less than seven months after the complaint was filed. A delay of seven months is not presumptively prejudicial; 2.] Brooks' second affidavit in support of his claim of newly discovered evidence came from Shawnrell Simmons, who was in the Milwaukee County Jail with Turner. He averred that Turner told him he did not want to testify because he "didn't even see his friend being murdered," but that he accepted cash from someone to testify against two men. Turner allegedly told Simmons he took the money and went back to Texas (App. F/2. ¶6 and F/4. ¶10); 3.] Finally, the Court of Appeals, District #1, found in its September 30, 2014 Decision that, "Brooks contends his trial counsel was ineffective for failing to subpoena Michael Henderson. Henderson was on the State's witness list and Brook's trial counsel believed he could rely on the State's subpoena to produce Henderson for trial." The State then was allowed to employ testimony during the Post-Conviction process from Defendant Brooks Co-Defendant

Maurice Stokes [Separate] Jury Trial, at which Michael Henderson testified "He saw another person with "Reece," referring to Maurice Stokes. The other person was caramel-skinned with braids. Based upon this testimony that was never submitted to adversarial testing by a Defense presentation of Defendant Brooks behalf, the Court of Appeals concluded: "Henderson's testimony at Stokes' trial regarding the caramel-skinned man with braided hair whose face was partially obscured would not have excluded Brooks as the second shooter. Because Brooks' motion provided no basis for believing that, had his counsel subpoenaed Henderson, the result of the trial would have been different, the court properly rejected Brooks' claim of Ineffective assistance of trial counsel" (App. F/5).

Defendant Cyrus L. Brooks on October 24, 2014, timely filed a Wisconsin Statute, Section §808.10 Jurisdictional, Appellate Rule §809.62(1) Petition For Review of the State Court Of Appeals, September 30, 2014 Decision before the Wisconsin State Supreme Court, in which he raised the Issue(s) of: 1.] In his brief-in-chief in the court of appeals, defendant-appellant Cyrus Brooks alleged that his speedy trial rights were violated and the balancing test taken as a whole demonstrated that fact; 2.] Brooks presented two affidavits from individuals which constituted Newly discovered evidence, and asserted that the evidence fulfilled the four part test and had the jury heard the newly discovered evidence, it would have had reasonable doubt as to Brooks' guilt; and 3.] Brooks argued that he received ineffective assistance of counsel because his trial attorney failed to subpoena a witness that had originally testified at the preliminary hearing that he did not see anybody besides Maurice Stokes firing a gun during the shooting. The witness did not testify at

Brooks' trial; instead, the court read his preliminary hearing testimony to the jury (Even though said Preliminary hearing testimony was never subject to meaningful cross examination by the defense).

On February 10, 2015 the Wisconsin State Supreme Court during this First Appeal of Right exhaustion litigation regarding these Three(3) Claim(s) raised by State Public Defender Office appointed Counsel, Sara Roemaat. Declined to exercise its Appellate Rule §809.62(1) Discretionary Review authority over these Court of Appeals, District #1, Relief Denied Issue(s) Address (Appendix - G).

Defendant Cyrus L. Brooks, then pro se, sought Wisconsin Statute, Section §974.06 Wis. Stats., Collateral Post-Conviction Motion review, of the Claim(s) and Issue(s) thereof, that Appointed First Appeal of Right Counsel, Sara Roemaat, had refused to litigate, in disregard to Defendants' [Explicit] Instruction/demand that she do so, in order that said Issue(s) were not forfeited for his eventual Federal 28 U.S.C. §2254 Petition For Writ Of Habeas Corpus litigation, once Appointed Counsel was no longer providing Legal Assistance to this Indigent Defendant, at the conclusion of the First Appeal of Right review exhaustion (App. G); E.g. (App. G/1-G/5).

In this §974.06 Wis. Stats., Collateral Post-Conviction Motion filing, Defendant submitted an Ineffective Assistance of Trial Counsel Claim, raising the specific Issue(s) of: A.] Trial Counsel should Have Objected To The Prosecution Engagement Of A Ringer Medical Examiner To Submit The Autopsy Report and Cause Of Death Medical Conclusion of another [Former] Medical Examiner, that had worked at the Examiner's Office Years Before the Ringer Examiner Was Hired To Work For The County, And Which Submitted No Independent Findings Other Than The Report of the Non-Appearing [Former] Medical Examiner which was

never demonstrated to be unavailable to testify himself at the trial proceeding of Defendant; B.] Trial Counsel Patrick Flanagan, Failure To Investigate The Footprint [Forensic] Evidence that was known to have been left by the Shooter of Victim Terry Baker, which Would Have Demonstrated [Forensically] That Defendant Brooks' was not the individual whom made these [Proper Shoe Size Wearing] Footprints, in the hood and fender of the automobile that the shooter ran across in existing the backyard where the shooting took place and at next to a shell casing was also found (Appendix - H-H/2), deprived Defendant of Supporting Exculpatory Evidence in Support of the Impeachment Evidence provided by Shawnrell Simmions, regarding the State Star Witness Julius Turner having been paid by the Victim Terry Baker's Family to identify Cyrus Brooks as having been involved in the shooting death of Terry Baker, since the Footprints demonstrate that Cyrus L. Brooks could not have left them, they are way too big; and C.] Trial Counsel failed to Appeal his [Brought] Preliminary Hearing [Informant] Testimony, once it was discovered that the Acting [Instead] Assistant District Attorney, Grant Huebner had purchased said Informant Testimony to secure Defendant Cyrus L. Brooks Bind Over for Trial on June 01, 2011, 1:30 P.M., Preliminary Hearing proceeding testimony, and with=held information regard that [Deal] from both the Court and Defense (Appendix - I), that he documented Seven(7) Days Later.

The Milwaukee County Circuit Court upon its receipt of this §974.06 Wis. Stats., Collateral Post-Conviction Motion, raising its Sixth Amendment Claim(s), and related Issue(s) thereof on April 08, 2016. It was assigned before the Honorable J.D. Watts, Milwaukee County Circuit Court Judge, Branch #15 (Appendix - J-j/5). On April 14, 2016, without allowance of any Evidentiary Development and Sup-

porting Facts submission Evidentiary hearing opportunity. Further, even though Pro Se [Prisoner] Petitioner explicitly raised as his [Cause] demonstration, the showing that Defendant Brooks has Ordered his First Appeal of Right Counsel, Sara Roemaat, to raise these issues during the First Appeal of Right litigation undertaking, so that such would be preserved for Defendants eventual pro se 28 U.S.C. §2254 Petition For Writ Of Habeas Corpus relief litigation submission, citing such cases as; Jones v. Barnes, 463 U.S. 745, 755, 103 S.Ct. 3308, 3315 (1983)(Justice BLACKMUN, concurring in the judgment)("The attorney, by refusing to carry out his client's expressed wishes, cannot forever foreclose review of nonfrivolous constitutional claims. ... "the remedy, of course, is a writ of habeas corpus. Thus, while the Court does not reach the question, ante, at 3314 n.7, I state my view that counsel's failure to raise on appeal nonfrivolous constitutional claims upon which his client has insisted must constitute "cause and prejudice" for any resulting procedure default"")/(App. J/1).

The Seventh Circuit Court of Appeals, over the years has continuously acknowledged a showing of [Cause] in such situations of Counsel's failure to raise claims which they had been ordered to raise by the Defendant during the First Appeal of Right representation undertaking; Howard v. Gramley, 225 F.3d 784, 791 (7th Cir. 2000)("Howard's attorney chose to appeal only one issue in spite of the fact that Howard himself had called counsel's attention to the other points, the record supported an appeal on those points, and Howard was not asking for an inordinate number of issues. We therefore have no cause to disagree with the district court's conclusion that Howard has shown defective performance on the part of appellate counsel"); Mason v. Hanks, 97 F.3d 887, 893 (7th Cir. 1996)("State

Appellate Attorney's failure to raise preserved hearsay issue constituted ineffective assistance of Appellate Counsel, mandating federal habeas relief"); Freeman v. Lane, 962 F.2d 1252, 1259 (7th Cir. 1992)("We do not believe that counsel's performance can be justified simply because the issue to be preserved may not be vindicated until later stages of the appellate process. Even if counsel will not--or need not--accompany the defendant on his entire appellate journey, he may not strip the client of his only viable argument before leaving the scene"). And finally concluding with the citation of United States ex rel. Barnard v. Lane, 819 F. 2d 798, 805 (7th Cir. 1987)("The magistrate found, however, and we agree, that failing to raise the issue amounted to ineffective assistance of appellate counsel. This failure prevented Barnard from obtaining a review on the claim in appellate court, a review which, if unfavorable, could have been followed by a second review in the Supreme Court of Illinois. As we have demonstrated, trial counsel denied Barnard his Sixth Amendment right to effective assistance of counsel by failing to advance Barnard's only defense. And Appellate Counsel was equally ineffective in failing to raise the issue for appellate review").

The Milwaukee County Circuit Court, Branch #15, the Honorable J.D. Watt, on April 18, 2016 concluded, that "Both sec. 974.06(4), Wis. Stats, and Escalona [State v. Escalona-Naranjo, 185 Wis.2d 169 (1994)] require a defendant to raise all issues in his or her original postconviction motion or appeal. 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)" / (App. J; J/1-J/5).

Defendant Cyrus L. Brooks, pro se, timely sought Appellate review of the Circuit Courts, refusal to address the [Cause] and [Prejudice] Demonstration, based on Federal Procedural submission law requirements that was submitted in the §974.06 Wis. Stats., Collateral Post-Conviction Motion Pleading filed here. After Full Briefing on this Issue(s), with a finely detailed showing of what the failed to raise Claim(s) and Issue(s) thereof, properly argued had the frima facie potential to be developed into by competent counsel (Appendix - K). The Court of Appeals, District #1 on August 03, 2017, Issued its Decision, wherein it declared: "Brooks contends that he need not demonstrate that his current issues are "clearly stronger" than the issues his postconviction counsdl pursued in order to demonstrate that his postconviction counsel was ineffective. He argues that the "clearly stronger" test is not the only means of establishing ineffective assistance of counsel. In support, Brooks cites federal case law setting forth the standard for overcoming the procedural bar to obtain review in a federal habeas corpus action. See, e.g., Freeman v. Lane, 962 F.2d 1252 (7th Cir. 1992)(petitioner not barred from raising claims in federal habeas corpus action despite failing to raise claims in earlier state appeal; petitioner's direct appeal counsel was ineffective by failing to raise issue in direct state appeal that warranted relief in federal court). We are not persuaded. Our supreme court stated in Romero-Georgana that the "clearly stronger" standard applies to claims of ineffective assistance of postconviction counsel following a direct postconviction motion. See Romero-Georgana, 260 Wis.2d 522, ¶46 (" The 'clearly stronger' standard is appropriate when postconviction counsel raised other issues before the circuit court, thereby mak-

ing it possible to compare the arguments now proposed against the arguments previously made"). Then concluded with, "Nothing in the federal cases that Brooks cites provides a different standard for a Wis. Stat. §974.06 motion following an earlier direct postconviction motion" / (Appendix - K/3-K/4).

Based upon this "Clearly Stronger" Stardard of Review [Only] allowance, Defendants' Federal [Cause] and [Prejudice] Demonstration was out and out disregarded by the Court of Appeals, in its "Procedural Default" review address of "Limited" consideration design undertaking (App. K/4-K/7); Carter v. Douma, 796 F.3d 726, 734 (7th Cir. 2015)("That more limited review is not a decision on the merits that allows us to consider the claim on federal habeas review. See Kaczmarek, 627 F.3d at 592; Gray v. Hardy, 598 F.3d 324, 329 (7th. Cir. 2010); cf. Malone v. Walls, 538 F.3d 744, 756-57 (7th cir. 2008)(when state court makes clear that it is resolving a federal issue despite procedural problems, federal courts can consider merits). The state court that Carter was before concluded he was not entitled to relief under any of these more limited forms of relief"). Here, the Wisconsin State Court of Appeals, District #1, concluded: "Because Brooks has not demonstrated that the claims in his Wis. Stat. §974.06 motion were clearly stronger than the issues raised in his first postconviction motion, Brooks has not shown that his postconviction counsel was ineffective. Moreover, the facts set forth in Brooks' motion do not establish that Brooks is entitled to relief. Accordingly, the circuit court properly denied Brooks' motion without a hearing" / (App. K/7).

Defendant Cyrus L. Brooks, pro se, in this §974.06 Wis. Stats., Collateral Post-Conviction motion Claim and Issue(s) thereof litiga-

tion timely sought §808.10 Wis. Stats., Jurisdictional Review to the Wisconsin State Supreme Court of the Court of Appeals, District #1, August 03, 2017 Filed Decision (App. K), via a §809.62(1) Appellate Rule, Petition For Review. On November 13, 2017 the Wisconsin State Supreme Court, declined to exercise its §809.62(1) Appellate Rule, Discretionary Review authority over the §974.06 Wisconsin Statutory, Collateral Post-Conviction Motion "Federal Constitutional" Contained Issue(s) submission. Herein, arguing that the State's "Operation" of the [Clearly Stronger] Test, as the only review Standard open under Wisconsin State Law Precedent, regarding First Appeal/Postconviction Counsel of Rights, failure to raise "Demanded" Issue(s) of the Defendant (App. G/1-G/5), of **State v. Romero-Georgana**, 2014 WI 83, 360 Wis.2d 522, 849 N.W.2d 668 (Wis. 2014) current application, was contrary to Federal Law as established by the United States Supreme Court, regarding the [Cause and Prejudice] review allowance design; **Murray v. Carrier**, 477 U.S. 478, 492, 106 S.Ct. 2639, 2647 (1986)("For the reasons already given, we hold that counsel's failure to raise a particular claim on appeal is to be scrutinized under the cause and prejudice standard when that failure is treated as a procedural default by the state courts"). Espically in situations such as this, were [Exculpatory] Forensic Evidence was never presented to the State Courts during the Trial and/or First Appeal Of Right procedural undertaking(s) of Counsel Representation exhaustion engagement (Appendix - L).

Boumediene v. Bush, 553 U.S. 723, 785, 128 S.Ct. 2229, 2270 (2008)("Court must have the authority to admit and consider relevant exculpatory evidence that was not introduced during the earlier proceeding"). That indeed, this [Clearly Stronger] than only review al-

lowance, was an unreasonable operation of the United States Supreme Courts' long noted concern of such First Appeal Counsel Representation undertakings, depriving Defendants' of fundamentally fair review undertaking(s) of their Conviction(s) and Sentencing situations; **Jones v. Barnes**, 463 U.S. 745, ____, 103 S.Ct. 3308, 3319, 77 L.Ed.2d 987 (1983)("I annot accept the notion that lawyers are one of the punishments a person receives merely for being accused of a crime. Clients, if they wish, are capable of making informed judgments about which issues to appeal, and when they exercise that prerogative their choice should be respected").

Conclusing with the material point, that it has long been established that First Appeal undertakings, must be treated Equally, between the Rich and the Indigent Defendant(s), as so noted by the United States Supreme Court time and time again, with one of the latest assertions thereof noted in **Coleman v. Thompson**, 501 U.S. 722, 773, 111 S.Ct. 2546 (1991)("Thus Court has made clear that the Fourteenth Amendment obligates a State "'to assure the indigent defendant an adequate opporunity to present his claims fairly in the context of the State's appellate process,'" Pennsylvania v. Finley, 481 U.S. 551, 556, 107 S.Ct. 1990, 1994, 95 L.Ed.2d 539 (1986), quoting Ross v. Moffit, 417 U.S. 600, 616, 94 S.Ct. 1437, 1447, 41 L.Ed.2d 341 (1974)").

The Wisconsin State Supreme Court on November 13, 2017 decline to exercise its §809.62(1) Discrestionary Review authority to address these submitted important Federal Constitutional concerns raised by the current allowed operation of its "Clearly Stronger" review Standard application upon all raised Not Raised During First Appeal/Post-Conviction Representation situations (Appendix - M). Thus, demonstrating Pro Se Petitioner [Prisoner], Submission of this "Federal"

Question before the State "Collateral" Post-Conviction Court review as mandated by Federal Clearly established case law precedent here on; **Lee v. Davis**, 328 F.3d 896, 901 (7th Cir. 2003)("There is one preliminary puzzle we must examine before we proceed. The Supreme Court's decision in Edwards v. Carpenter, 529 U.S. 446, 120 S.Ct. 1587, 146 L.Ed.2d 518 (2000), established that the assertion of ineffective assistance as a cause to excuse a procedural default in a §2254 petition is, itself, a constitutional claim that must have been raised before the state court or be procedurally defaulted. Id. at 453, 120 S.Ct. 1587").

Defendant Cyrus L. Brooks, timely sought 28 U.S.C. §2254 Petition For A Writ Of Habeas Courpus relief from the Federal District Court in application of the One(1) Year Statute Of Limitation running set forth in 28 U.S.C. §2244(d)(1)(A). This Timeliness of the §2254 Petition, from the November 13, 2017 Decision of the Wisconsin State Supreme Court decision on Collateral Post-Conviction Motion litigation (App. M), was acknowledged by the State Attorney General Petition [Answer] Pleading filing on February 28, 2018, wherein it was conceded: "Respondent concedes that Brooks' habeas corpus petition was timely filed in this Court within the one-year limitations period specified by 28 U.S.C. §2244(d)(1)(A) / (Appendix: N-N/1).

Defendant as Ground Seven(7) of the §2254 Petition, as acknowledged by the State Attorney General, raised the Issue of: "Respondent denies that Brooks is entitled to relief on his claim that his postconviction counsel was ineffective for failing to raise claims "As Instructed To Do So By Defendant." (Dkt. 1:23). According to Brooks, the standard is not "clearly stronger," but "cause and prejudice." (Dkt. 1:23) / (App. N/2-N/3).

After the Answer Filing by the Respondent, the Court permitted

briefing on the Ground(s) of the §2254 Petition submission (App. B/3-B/5) A. Right To Confrontation; (App. B/5-B/6) B. Ineffective Assistance Of Counsel [1. Trial Counsel: B/6-B/8]; [2. Appellate Counse: B/8-B/9] and (App. B/9-B/10) C. Evidentiary Hearing. At Page #30 of the Brief-In-Support of the §2254 Petition, Pro Se Petitioner Brooks, further argued that: "The Grounds/Issues Listed In The §2254 Petition On Pages #9/D-9/L, Regarding Pro Se Litigants Request For An Evidentiary Hearing And Documentation Of The Exhaustion Of "Cause And Prejudice" Issue Before The State Courts §974.06 Motion Litigation Are Factually And Legal Case Law Supported Actuality In The Petition For Writ Of Habeas Corpus thereon. Further Pointing out, that the "Cause And Prejudice" of the §974.06 Motion Litigation, Is a Matter here od De Novo review, of the State Courts refusal to actually address.

The United States District Court Judge, for the Eastern District Of Wisconsin, Northern Division, the Honorable William C. Griesbach, on March 11, 2019, Only addressed the alleged "Merits" of the Right To Confrontation Ground, Ineffective Assistance Of Counsel, Trial and Appellate, which were clearly submitted to this District Court [Only] in their Prima Facie Possibility demonstration, because Petitioner had never been permitted a fundamentally fair opportunity to establish their evidentiary support before the State Court(s) via Evidentiary Hearing adversarial litigation thereof; **United States v. Nixon**, 413 U.S. 683, 709, 94 S.Ct. 3090, 3108 (1974)("The development need of all relevant facts in the adversary system is both fundamental and comprehensive. The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. The very integrity of the judicial system

and public confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence").

Relevant case law precedent, clearly acknowledges, "Where a petitioner makes out a prima facie case under Strickland, a State Court's summary denial of Ineffective Assistance of Counsel Claim without an evidentiary hearing amounts to an unreasonable determination of the facts;" Nunes v. Mueller, 350 F.3d 2045, 1054 (9th Cir. 2003). I.e., Hurles v. Ryan, 706 F.3d 1021, 1038-1040 (9th Cir. 2013)("State's purported determination of the facts without a fair opportunity for petitioner to present evidence violates AEDPA"). A point of relevant fact the United States Supreme Court itself has noted; District Attorney's Office v. Osborne, 557 U.S. 52, 70-72, ___ S.Ct. ___, ___ (2009)("Due Process affords a habeas corpus petitioner the right to a fair opportunity in State Court to discover and present potentially exculpatory evidence that was not contained in the record on direct appeal")/(App. H-H/2); I.e., (App. L-L/1).

E.g., Boumediene v. Bush, 553 U.S. 723, 785, 128 S.Ct. 2229, 2270 (2008)("Habeas Corpus is a collateral process that exists to cut-trough all forms and go to the very tissue of the structure. It comes in from the outside, not in subordination to the proceedings, and although every form may have been preserved opens the inquiry whether they have been more than an empty shell"). The State Court Review actuality here, represents all that is seriously wrong with the Judicial System treatment of the Indigent in this Country, No Chance to actually be heard on the merits of one's contentions, to which under the "Fundamental Fairness" guarantee of this Nation's Judicial process. For Words are Nothing, without acts in demonstration of the treatment receipt alleged thereby; Townsend v. Sain, 372 U.S.

293, 316, 83 S.Ct. 745 (1963)("Even if all the facts relevant to an accused's Constitutional rights were presented in a State Court hearing, a Federal District Court is compelled to grant an evidentiary hearing in habeas corpus proceedings instituted by a State prisoner where the factfinding procedure employed in the State Court was not adequate for reaching reasonable correct results").

The relevant treatment involved here, demonstrates that the Post-Conviction Courts' in the State of Wisconsin, are willing to go so far, as to out and out impeach the Only Witness Testimony placing the Defendant at the Crime Scene, to be able to claim the after conviction proven exculpatory [Forensic] Footprint Evidence irrelevant, by claiming, even though the Footprints are not defendants, as the State points out, the evidence at trial was that there were two men with guns Brooks and Stokes, chasing Baker before he was killed. Thus, evidence that the footprints did not belong to Brooks would not have been exculpatory (App. K-/6). Yet, the States' Star Witness testified at Trial, that it was Brooks that he personally witness shot the Victim [Terry Baker], then witness Brooks run through the yard, after Terry lay on the ground from the received Gun Shot from Brooks carried long gun. Thus, if it was not Brooks that the States' Star Witness [Julius Turner] actually witness run through this yard, as the Resident also testified to in collaboration, that She only Witness One(1) Individual traverse her Backyard immediately after hearing the gun shot (App. H-H/1 & H/2). Then his identification of Defendant Cyrus L. Brooks as that individual was Flat Wrong, for he explicitly testified that Maurice Stokes, was still over by the Green Auto with the Gun Shot Holes in it (App. J/4: "However, even if he could show that the footprints did not match his feet, it would not necessarily be exculpatory because there is not a rea-

sonable proability that the outcome of the trial would have been any different given the compelling testimony of the witnesses, especially Julius Turner." In the not to distant past, they called this type of Fact-finding Justice, a Lynching; Murray v. Carrier, 477 U.S. 478, 501, 106 S.Ct. 2639, 2652 ("In Hensley v. Municipal Court, 411 U.S. 345, 349-350, 93 S.Ct. 1571, 1573-1574, 36 L.Ed.2d 294 (1973), the Court similarly emphasized this approach, stating: "Our recent decisions have reasoned from the premise that habeas corpus is not 'a static, narrow, formalistic remedy,' Jones v. Cunningham, [371 U.S. 236,] 243 [83 S.Ct. 373, 377, 9 L.Ed.2d 285][(1963)], but one which must retain the 'ability to cut through barriers of form and procedural mazes.' Harris v. Nelson, 394 U.S. 286, 291, 89 S.Ct. 1082, 1086, 22 L.Ed.2d 281 (1969). See Frank v. Mangum, 237 U.S. 309, 346, 35 S.Ct. 582, 594, 59 L.Ed. 969 (1915)(Holmes, J., dissenting). 'The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected'. Harris v. Nelson, supra, 394 U.S., at 291, 89 S.Ct., at 1086").

As has long been declared the fundamental promised of Article I., Section #9 Habeas Corpus design; Id., at 501 n.8: "See also Strickland v. Washington, 466 U.S. 668, 697, 104 S.Ct. 2052, 2069, 80 L.Ed. 2d 674 (1084)("fundamental fairness is the central concern of the writ of habeas corpus"). Although a constitutional claim that may establish innocence is clearly the most compelling case for habeas review, it is by no means the only type of constitutional claim that implicates "fundamental fairness" and that compels review regardless of possible procedural defaults. See Rose v. Lundy, 455 U.S. 509, 543-544, 102 S.Ct. 1198, 1216-1217, 71 L.Ed.2d 279 (1982)(STEVENS, J., dissenting)". Is not this just such a case situation, fact finding developed out of the

Thus, the District Courts "Finding of Fact" based upon the State Courts' hypothesis of what may have, could have, been the facts of the crime commission, cannot be permitted to become the §2254 Review of the Indigent Class (App. B/8-B/9)/(App. H-H/1).

Further, this same "Sham" address by the Federal District Court is present regarding the Prosecution use of a [Ringer] alleged Expert Witness, to employ for submission of the Records of the Victim Terry Baker's Cause Of Death, Autopsy Records at Trial. The True Facts that have yet to be actually developed in a Court, via Evidentiary Hearing adversarial testing litigation. Document that the Milwaukee County Assistant Medical Examiner that actually executed the [Forensic] Autopsy on the Victim Terry Baker [DOB: 05/27/1984] on October 30, 2005 (Appendix - O), was Assistant Medical Examiner K. Alan Stormo, M.D., with Amanda Arndt as his Forensic Pathology Assistant (App. O). That on September 27, 2011 Assistant District Attorney Denis J. Stingl filed a State's Witness List, where he listed Dr. Brian Peterson and Mark Simonson as the Individuals that would be testifying the the Prosecution about the Assistant Medical Examiner, K. Alan Stormo, M.D., Autopsy Report execution, and Forensic Pathology Assistance provided therewith (Appendix - P). Which ADA Denis J. Stingl additionally filed an Notice Of Expert Testimony on, again setting down the Milwaukee County Medical Examiner, Dr. Brian Peterson, as the individual whom will testify to the autopsy and the contents of the written autopsy protocol (Appendix - Q). With State Crime Laboratory-Milwaukee Analyst Mark Simonson, as the Analyst who will testify to the findings in the crime lab pertaining to the above case (App. Q).

However, at the Trial, a different individual was called to the Stand for the Prosecution, an Individual whom had been trained in

Poland, indeed, whom had received their Medical Education in Poland, as well. It was additionally determined during this "Ringer" Medical Expert, Direct Examination, that she was not even employed with the Milwaukee County Medical Examiner Office during October 2005, at the time of the Autopsy of Victim Terry Baker, thus, had no personal knowledge of its Autopsy Procedures Operations during the time of the Autopsy on Victim Terry Baker by the Medical Examiner Assistant K. Alan Stormo, M.D.. This point of material fact was the only issue raised by Defense Counsel, Patrick Flanagan, during his One(1) Page Cross-Examination of this "Ringer" Medical Examiner Assistant allowed to Testify for the Prosecution, even though never identified as a Prosecution Witness (App. P), or as an Expert Medical Examiner Witness (App. Q).

The Testimony of Dr. Wieslawa Tlomak, additionally documented that "No" independent, Forensic Testing, Autopsy Examination Protocol was personally executed by this individual, and that Dr. Tlomak's sole source of information, was from the Autopsy Report and Mental Impression Conclusion(s), that Medical Examiner Assistant K. Alan Stormo, M.D., had created, thus, based on her review thereof, was testifying to her "Independent" conclusion to the correctness of his findings of the cause of death. I.e., to the Truth of his Reports Forensic Generated Evidence Finding. The Circuit Court, therefrom, permitted the Autopsy Report records created by Medical Assistant K. Alan Stormo, M.D., then to be entered into evidence, via the testimony of this "Ringer" Medical Examiner Assistant "Expert" alleged "Independent" Findings, of which No Medical Records were generated.

Petitioner, before the Federal District Court, argued that this

[Sophistical] "Ringer" Witness undertaking, in order to submit the Autopsy Report material of the non-testifying Medical Examiner Office, Assistant to the Jury, was "Contrary" to the clearly established Federal Law as declared by the United States Supreme Court, regarding a Defendants' Sixth Amendment "Confrontation" Clause protections reach regarding "Forensic Expert Witnesses," Testimony underlying generation actuality; Williams v. Illinois, ___ U.S. ___, ___, 132 S.Ct. 2221, 2233 (2012)("In Bullcoming, we held that another scientific report could not be used as substantive evidence against the defendant unless the analyst who prepared and certified the report was subject to confrontation. ... Instead of calling the analyst who signed and certified the forensic report, the prosecution called another analyst who had not performed or observed the actual analysis, but was only familiar with the general testing procedures of the laboratory. The Court declined to accept this surrogate testimony, despite the fact that the testifying analyst was a "knowledgeable representative of the Laboratory" who could "explain the lab's processess and details of the report." ... The Court stated simply: "The accused's right is to be confronted with the analyst who made the certification." Id. at ___, 131 S.Ct. 2705, 180 L.Ed.2d 610, 616").

Yet here, United States District Court Judge William C. Griesbach, in his March 11, 2019 (App. B). Somehow came to the Legal conclusion, of "In this case, Dr. K. Alan Stormo conducted an autopsy of Baker's body on October 30, 2005. Dr. Stormo retired prior to trial, and the prosecution called Dr. Wieslawa Tlomak to testify about Baker's cause of death at Brooks' trial. She testified that it was her opinion, to a reasonable degree pf medical certainty, that Baker's cause of death was gunshot wounds to his chest. Brooks

asserts that his confrontation rights were violated because he could not confront the medical examiner who performed the autopsy (App. B/3-B/4). The District Court Judge then goes on to assert in justification for this disregard of a Defendants' Sixth Amendment Confrontation right entitlement, that "While Brooks relies on Bullcoming to support his position that the prosecution was required to call the analyst who created the autopsy report as a witness, the testifying medical examiner here was more than a "surrogate" witness. As the Wisconsin Court of Appeals explained, the testifying medical examiner testified that she was a forensic pathologist for the Milwaukee County Medical Examiner's Office and had performed approximately 1,300 autopsies. She stated that she actively reviewed Baker's file, including the autopsy report and photographs, and reached her own independent opinions regarding Baker's cause of death" (App. B/4-B/5).

If this is so, then where is her "Independent" Opinion generated Report Findings? Why was it necessary for the Autopsy Records of the Non-Testifying Medical Examiner Assistant, K. Alan Stormo to be the Entered into evidence Autopsy Records for the Jury to base their Findings regarding the Cause of Death from? District Court Judge William C. Griesbach, concluded with "I therefore cannot say that the Wisconsin Court of Appeals unreasonably applied clearly established federal law in concluding that Brooks was not denied hir right to confrontation (App. B/5). Yet, the United States Supreme Court holdings in such cases as Melendez-Biaz v. Massachusetts, 557 U.S. 305, 318-319, 129 S.Ct. 2527 (2009), hold to the "contrary;" ["The U.S. Constitution guarantees one way to challenge or verify the results of a forensic test; confrontation. The United States Supreme Court does not have license to suspend

the Conforntation Clause when a preferable trial strategy is available"]. As the Court when speaking further hereon, pointed out, Judge Griesbach appears to disagree; "In short, under our decision in Crawford the analysts' affidavits were testimonial statements, and the analysts were "witnesses" for purposes of the Sixth Amendment. Absent a showing that the analysts were unavailable to testify and that petitioner had a prior opportunity to cross-examine them, petitioner was entitled to "be confronted with" the analysts at trial. Crawford, supra, at 54, 124 S.Ct. 1354, 158 L.Ed.2d 177"..

Thus, here for the District Court Judge, to issue a pre-emptive strike against Petitioner Request for the Issuance of a Certificate of Appealability, against this conclusion of the District Court (App. B/10), where at he held: "A certificate of appealability will be denied. I do not believe that reasonable jurists would believe that Brooks has made a substantial showing of the denial of a constitutional right". Renders this §2254 Petition litigation review, nothing more than meaningless poetry, especially, when the Courts mind is made-up even before the Petitioner even submits a Request for the Issuance of a Certificate Of Appealability on the Claim; DelVecchio v. Illinois Dept. Of Corrections, 8 F.3d 509, 514-515 (7th Cir. 1993)("The Supreme Court has repeatedly answered this very question by noting that the appearance of justice is as important as the reality of justice, or at least important enough that its absence violates due process"). I.e., Buck v. Davis, ___ U.S. ___, ___, 137 S.Ct. 759, 774 (2017)(""[A] claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail." Miller-El, 537 U.S., at 338, 123 S.Ct. 1029, 154 L.Ed.2d 931. The statute sets forth a two-step process: an initial determination

whether a claim is reasonably debatable, and then--if it is--an appeal in the normal course. We do not mean to specify what procedures may be appropriate in every case. But whatever procedures are employed at the COA stage should be consonant with the limited nature of the inquiry"). What we have here, is almost identical to the Fifth Circuit, Decision included "Certificate" Denial language, that failed to represent an independent review of the COA Review Standard actuality; "The court below phrased its determination in proper terms--that jurists of reason would not debate that Buck should be denied relief, 623 Fed.Appx., at 674--but it reached that conclusion only after essentially deciding the case on the merits." Id. 137 S.Ct., at 773. However, as is clearly established, the Receipt of the Certificate Of Appealability, is based on the Standard of whether or not a reasonable jurist could find the dispute debatable; Roberts v. Dretke, 356 F.3d 632, 637 (5th Cir. 2004) ("Roberts can make such a showing if he demonstrates that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Slack v. McDaniels, 529 U.S. 473, 484, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000). "The question is the debatability of the underlying constitutional claim, not the resolution of that debate." Miller-El, 537 U.S. at 342. To obtain a COA on any aspect of his ineffective assistance claim which the district court found to be procedurally barred, Roberts must show not only that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, but also that jurists of reason would find it debatable whether the district court was correct in its procedural rulings as to those claims. Slack, 529 U.S. at 484")/(App. B/10). Where is the full and fair opportunity for the Request for that Certificate Of Appeal-

ability, via setting forth the relevant "Debatable" position of the Petitioner, if the District Court has already Made-Up its Mind to attempt to prevent meaningful appellate review litigation on the alleged "Merit" conclusion(s) of the District Court Judge; **DelVecchio v. Illinois Dept. Of Corrections**, 8 F.3d 509, 514 (7th Cir. 1993)("Suggestions of judicial impropriety always receive our highest attention because they undermine respect for law").

The factual record here documents, that Pro Se [Prisoner] Petitioner, Cyrus L. Brooks, timely Requested the Issuance of a Certificate Of Appealability from the Seventh Circuit Court of Appeals, Circuit Judge, that in the Thirty-Five(35) Page Request Pleadings, Petitioner-Appellant, at Pages #5-9, submitted his Request for a COA to Ground One of the §2254 Petition Issue of: "Defendant was denied his Sixth Amendment "Confrontation" Rights To Face His Criminal Act "Homicide" Accuser, Milwaukee County Medical Examiner Assistant, Dr. K. Alan Stormo, Regarding his to a Medical Certainty Findings Entered Into Evidence At Trial, That The Death Of Terry J. Baker was the direct result of a 30-30 Rifle Shot." As well at Pages #9-19 Request Pleading Sought COA to Ground Two of the §2254 Petition: "Defendant was denied his Sixth Amendment right to effective assistance of Privately Retained Defense Counsel at Trial, via the Failure of Attorney Patrick Flanagan to have the only possible Exculpatory Forensic Evidence, Independently tested in order to show that it could not have been Defendant Brooks whom the Only Eye-Witness, Julius Turner for the Prosecution, positively identified fired the shot from the long gun that caused the Death of Victim Terry Baker, then witness Defendant Brooks exit the crime scene via the path that the Foot-Prints and Shell Casings were recovered from (App. H-H/1 & H/2).

Further, at Pages #19-26 of the Request For The Issuance of a Certificate Of Appealability filed to the Seventh Circuit Court of Appeals, Circuit Judges, as Ground Three, Petitioner submitted the debatable Issue of: "Defendant was denied Effective Assistance of First Appeal of Right, Post-Conviction §974.02 Wis. Stats., and §809.30 Appeal Of Right Litigation Counsel Assistance, by State Public Defender Office appointed Attorney Sara Roemaat's "Amateurish" submission of the Newly Discovered "Impeachment Evidence" of State Julius Turner's admission to Shawnrell Simmions, that he had been paid by the victim Terry Baker's Family to identify defendant Cyrus L. Brooks as the individual that had caused the death of Terry Baker, after the Police could not make a case against anyone Five Years after Terry Baker's death". Additionally, as Ground Four of the Request For The Issuance Of A Certificate Of Appealability, at Pages #26-31, "Defendant argued was debatable, that he was denied his Sixth Amendment Right of Effective Assistance of Trial Counsel, via Attorney Patrick Flanagan's failure to "Subpoena [Exculpatory] Witness Michael Henderson," to testify for the Defense at Trial. But instead relied on the Prosecutor to subpoena him for his [Inculpatory] testimony against the Co-Defendant Maurice Stokes. Which the Prosecutor did not do, but instead secured a day of trial severance of the trial(s) of Defendant Brooks and Co-Defendant Maurice Stokes.

Finally, Petitioner Cyrus L. Brooks, sought the Issuance of a Certificate Of Appealability, on Ground Six of the §2254 Petition at Pages #31-34, where at, it was argued debatable whether or not; "Defendant was denied a Fundamentally Fair Opportunity at the Circuit Court level of the Milwaukee County Circuit Court, during First Appeal of Right, §974.02 Wis. Stats., Post-Conviction Motion Issues

litigation supporting Evidentiary development sought opportunity, regarding Grounds #3 and #4 of the §2254 Petition Submission. As well denied the same full and fair supporting evidentiary development in regard to Grounds #1 and #2 of the Pro Se §974.06 Wis. Stats., Collateral Post-Conviction Motion Issue(s) Submission. Thus, the State Court Position that Only the "Stronger Than" Teview Standard Is allowed under State Law, "Sufficient Reason" Showing requirement, that Federal Law "Cause and Prejudice" Allowed Standard greater "Cause" allowance is not applicable to Defendants' in the State of Wisconsin. Renders Wisconsin Collateral Review "Pretextual" in its application to such raised Federal Constitutional litigation exhaustion undertakings.

The United States Court of Appeals, for the Seventh Circuit on November 25, 2019 Submitted the Request For A Certificate Of Appealability Issuance From A Circuit Judge to the Circuit Judges of Diane P. Wood, Chief Judge and Michael S. Kanne, Circuit Judge. On the 3rd of December, 2019 they issued a One(1) Page, One(1) Paragraph, Post-Card Order; holding: "Cyrus Brooks has filed a notice of appeal from the denial of his petition under 28 U.S.C. §2254 and an application for a certificate of appealability. We have reviewed the final order of the district court and the record on appeal. We find no substantial showing of the denial of a constitutional right. See 28 U.S.C. §2253(c)(2). Accordingly, the request for a certificate of appealability is DENIED" (App. A).

This Post-Card" One(1) Paragraph "Rote" Assertion of Review by the Seventh Circuit Court of Appeals, Chief Judge and Circuit Judge undertaking, fails to Satisfy The Appearance of Justice. How did the Two(2) Named Circuit Judges (App. A), reach the conclusion that the detailed and Case Law Supported "Debatability" of the Pro

Se Issue(s) that a Certificate Of Appealability was sought on, were not debatable? That despite the Case Law of Federal Judge(s), Demonstrating the [Debatability] operative actuality of Judge William C. Griesbach's Decision asserted conclustion, that no reasonable jurist could find against his conclusion of no such debatability, included in his March 11, 2019 Decision (App. B/10). How did the Seventh Circuit Court Of Appeals, Chief Judge Diane P. Wood, and Circuit Judge Michael S. Kane, Find to the contrary? **Joint Anti-Fascist Refugee Committee v. McGrath**, 341 U.S. 123, 171-172, 71 S.Ct. 624, 95 L.Ed. 817 (1951)("Franfurter, J., Concurring")(Validity and moral authority of a conclusion largely depend on the modes by which it was reached). I.e., **Hill v. Mississippi State Employment Service**, 918 F.2d 1233, 1241 (5th Cir. 1990)("We must be sure that the courts dubious explanatory language does not generate a later, ill-conceived concurrence with fallacy")/(App. A).

BASIS FOR FEDERAL JURISDICTION

This case raises a question regarding the fundamentally fair application of 28 U.S.C. §2253(c)(1) and (2) operation(s) by the Court Of Appeals, that appear possibly violative of the Due Process Clause of the Fifth and Fourteenth Amendment(s) to the United States Constitution. The District Court had jurisdiction under the general federal question jurisdiction conferred by 28 U.S.C. §1331.

REASON[S] FOR GRANTING EXTRAORDINARY WRIT

If the [District] Court denies a Certificate Of Appealability, the Parties may not appeal the denial but may seek a Certificate Of [Appealability] from the Court Of Appeals under Federal Rule of Appellate Procedure, Rule 22; **Black v. Davis**, 2018 U.S. App. LEXIS 25200*6 (5th Cir. Sept. 05, 2018). This review undertaking, is many things to many individual judge(s) it appears. Thus, this United

States Supreme Court has in several review undertaking(s) attempted to establish a reasonable procedural operation for protection of minimum Procedural Due Process inquiry needs, establishing the fundamental operation of 28 U.S.C. §2253(c)(1) to hold; "We reiterate what we have said before: "A 'Court Of Appeals should limit its examination [at the COA stage] to a threshold inquiry into the underlying merit of [the] claims,' and ask 'only if the District Court's decision was debatable.' Miller-El, 537 U.S., at 327, 348, 123 S.Ct. 1029, 154 L.Ed.2d 931""; Buck v. Davis, ___ U.S. ___, ___, 137 S.Ct. 759, 774 (2017). Then going on to qualify that undertaking by noting; "We do not mean to specify what procedures may be appropriate in every case. But whatever procedures are employed at the COA stage should be consonant with the limited nature of the inquiry." Id.

The Federal Courts over the last 25-Years since the Antiterrorism and Effective Death Penalty Act (AEDPA) passage, have pointed out, that In order to obtain a Certificate Of Appealability, the petitioner must make a "substantial showing of the denial of a Constitutional right." 28 U.S.C. §2253(c)(2). However, the Courts have made clear, the petitioner need not show that he should have prevail on the merits, Lambright v. Stewart, 220 F.3d 1022, 1025 (9th Cir. 2000)(en banc)("...(O)bviously the petitioner need not show that he should prevail on the merits. He has already failed in that endeavor"). Rather, the petitioner is merely required to make the "modest" showing, that 'reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong;' Slack v. McDaniel, 529 U.S. 473, 484, 120 S.Ct. 1595 (2000). Indeed, as explained by the Ninth Circuit in Jennings v. Woodford, 290 F.3d 1006 (9th Cir. 2002), the substantial showing standard required for a Certificate Of Appealability is [relatively] low. Id.

The Ninth Circuit Court of Appeals, in Jennings, 290 F.3d at [1011], citing Slack, supra. Held, a COA must issue if any of the following apply: (1) the issues are debatable among reasonable jurists; (2) another court could resolve the issues differently; or (3) the questions raised are adequate enough to encourage the petitioner to proceed further. Finally, it was pointed out, that "The court must resolve doubts about the propriety of a Certificate of Appealability in the petitioner's favor. Jennings, supra, citing Lambright, supra, at 1025. Here, the Seventh Circuit Court of Appeals, Chief Judge Diane P. Wood and Circuit Judge Michael S. Kanne "Rote" Review decision, wholly fails to meet this fundamental entitlement; Schact v. Wis. D.O.C., 175 F.3d 497, 502 (7th Cir. 1999) ("One of the most basic guarantees of fair procedure is an unbiased decisionmaker. E.g., Goldberg v. Kelly, 397 U.S. 254, 271, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970); Wong Yang Sung v. McGrath, 339 U.S. 33, 50, 70 S.Ct. 445, 94 L.Ed. 616 (1950). This does not necessarily mean a decisionmaker who knows nothing of the facts. ... But it does imply honesty in the process. Cf. Withrow v. Larkin, 421 U.S. 35, 47, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975)"). Where is that honesty in the process undertaken here (App. A)?

The Importance of the Question raised here, addresses the very underpinning(s) of Procedure Due Process. It has long been acknowledged in law, that it is "Incumbent upon the court to form its independent judgment after a review of the record and pleadings and to support its decision by written opinion. Indeed, This intrinsic value in the concept of due process is of great importance, in light of the fact that "At stake here is not just the much-acclaimed appearance of justice but, from a perspective that treats process as intrinsically significant, the very essence of justice;" L. Tribe,

American Constitutional Law 503 (1978).

Thus, the One(1) Paragraph Rote Conclusion issued here, in address to a detailed Thirty-Five(35) Page Request For the Issuance of A Certificate Of Appealability from the Circuit Judges, in address to the District Courts, Pre-emptive Denial of The Issuance Of a Certificate Of Appealability, contained in its Decision Denying §2254 Petition Relief Review actuality on the Merits once developed via Evidentiary Hearing procedural litigation allowance, that had been denied the Pro Se [Prisoner] Litigant at the State Courts Collateral Post-Conviction Level Review litigation, does not meet this entitled, Fundamental Fair Procedural Review actuality; **Finney v. Mabry**, 455 F.Supp. 756, 776-777 (E.D. Ark. 1978)("The contention that the rote recitation of shorthand phrases may sufficiently meet these important interests of constitutional magnitude is plainly erroneous"). As the Finney Court went on to point out, I believe is fitting to this current similar practice regarding Denial(s) of Certificate Of Appealabilities, via such Shorthand phrases employment; where the District Court asserted: "Although the Supreme Court has recently tended to emphasize only the utilitarian value of using certain procedures (the insuring of the accuracy of a governmental decision or action), nevertheless there remains a profound value in the concept of due process that is an expression of the very rule of law, the intrinsic value in the Appearance of Justice." Id. 455 F. Supp. at 777.

The importance of this concern, was additionall expressed by the Federal District Court in another highly charged case review situation in **United States v. Clary**, 846 F.Supp. 768, 782 n.43 (E. D. Mo. 1994)("Unconscious prejudice presents an additional problem in that it is not subject to self-correction within the political

process ... when the discriminator is not aware of his prejudice and is convinced that he already walks in the path of righteousness, neither reason nor moral persuasion is likely to succeed, the process defect is all the more intractable, and scrutiny becomes imperative"), rev'd on other grounds, ___ F.3d ___ (8th Cir. 1995)/ (App. B/10 and App. A).

As this United States Supreme Court pointed out in **Caperton v. A.T. Massey Coal Company, Inc.**, "The judge inquires into reasons that seem to be leading to a particular result. Precedent and stare decisis and the text and purpose of the law and the Constitution; logic and scholarship and experience and common sense; fairness and disinterest and neutrality are among the factors at work. Id. 556 U.S. 868, 883, 129 S.Ct. 2252, 2263 (2009)." This actuality is without question, missing in the rote review undertaken here by both the District Court on March 11, 2019 (App. B/10), as well the Court Of Appeals on December 03, 2019 (App. A).

REASON[S] FOR THE EXTRAORDINARY WRIT REMEDY

This Petition For An Extraordinary Writ [Supervisory] Overview addrss, pursuant to this Court's authority under 28 U.S.C. §1651(a), presents to this United States Supreme Court, a prime example of just what the [Safety-Value] of being able to Request A Certificate Of Appealability from the Court Of Appeals, Circuit Judge(s), was not meant to evolve into; **United States v. Jannotti**, 673 F.2d 578, 615, 616 (3rd Cir. 1982)("I reject this process, whether one calls it Begriffsjurisprudenz, mechanical jurisprudence, or slot machine justice. I believe that the proper test of a legal rule is the extent to which it contributes to the establishment and preservation of a social environment in which "the quality of human life can be spirited, improving and unimpaired;" and that law must be judg-

ed by the results it achieves, not by the niceties of its inherent structure. "It must be valued by the extent to which it meets its end, not by the beauty of its logical processes or the strictures with which its rules proceed from the dogmas it takes for its foundation. Pound, Mechanical Jurisprudence, 8 Colum L. Rev. 605 (1908)").

Without the availability of authority to Appeal a District Courts, Denial of Issuance of a Certificate Of Appealability; **Black v. Davis**, 2018 U.S. App. LEXIS 25200*6 (5th Cir. Sept. 05, 2018). But is limited to seeking the Issuance of a Certificate Of Appealability from the Circuit Judge(s) of the Court Of Appeals itself. Leaves only such Extraordinary Writ Relief pursuit availability for address of procedural due process shortcomings in that last level of Request allowance under 28 U.S.C. §2253(c)(1) and (2) procedural exhaustion; **Roberts v. Dretke**, 356 F.3d 632, 637 (5th Cir. 2004)("Before Roberts can appeal the district court's adverse judgment, he must first obtain a COA. 28 U.S.C. §2253(c)(1); see Miller-El v. Cockrell, 537 U.S. 322, 336, 123 S.Ct. 1029, 154 L.Ed. 2d 931 (2003)(explaining that a COA is a "jurisdictional prerequisite" without which "federal courts of appeals lack jurisdiction to rule on the merits of appeals from habeas petitioners").

Since here, the Court Of Appeals, Chief Judge Diane P. Woods, and Circuit Judge Michael S. Kanne (App. A), acknowledge that their review was primarily of the District Courts Decision (App. B-B/10), and the Record on appeal, which was the barest of the bare, since the District Court had never sent up the Case File/Docket Record of the §2254 Petition Litigation before the District Court, it would be all but impossible, for these Circuit Judge's to conclude the Thirty-Five(35) Page Request For The Issuance Of A Certificate Of Appeal-

ability, failed to submit a substantial showing of the denial of a Constitutional Right; Richardson v. Superintendent Coal Twp. SCI., 2018 U.S. App. LEXIS 27892*23 (3rd Cir. 2018)("In other words, he must show that "the claim has some merit," as required for a certificate of appealability. Id. A claim has merit so long as "reasonable jurists could debate" its merits, or it "deserve[s] encouragement to proceed further." Preston, 2018 U.S. App. LEXIS 25151, 2018 WL 4212055m at *8 (quoting Miller-El v. Cockrell, 537 U.S. 322, 336, 123 S.Ct. 1029, 154 L.Ed.2d 931 (2003))"). How was that actuality reached here (App. B/10) and (App. A); United States v. Jannotti, 673 F.2d 578, 614-615 (3rd Cir. 1982)("A free society can exist only to the extent that those charged with enforcing the law respect it themselves. "There is no more cruel tyranny than that which is exercised under cover of the law, and with the colors of justice"").

CONCLUSION

For the foregoing reason, Extraordinary Writ should be Granted in this Denial Of The Issuance Of A Certificate Of Appealability Situation. Requiring the Seventh Circuit Court Of Appeals, Chief Judge Diane P. Wood, and Circuit Judge Michael S. Kanne, to address each Ground Raised in the Request For The Issuance Of A Certificate Of Appealability from the Circuit Judge, in their Individual substantial showing presentation, and provide a Decisional address of the Court's individualized Findings Under Color of Law; Schenck v. United States, 249 U.S. 47, 52, 39 S.Ct. 247, 249, 63 L.Ed.2470 (1919)("The character of every act depends upon the circumstances in which it is done").

Dated this 1st day of March, 2020. Fox Lake; Wisconsin.

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