

No. 20-7545

IN THE  
SUPREME COURT OF THE UNITED STATES

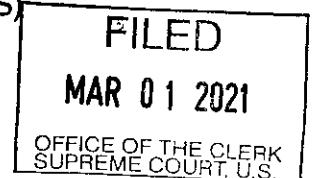
Tyrone Robinson  
(Your Name)

vs.

PETITIONER  
**ORIGINAL**

Christopher Buesgen — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO



U.S. Western District court of Wis. U.S. Appeals Court.  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Tyrone Robinson  
(Your Name)

100 Corrections Drive  
(Address)

Stanley, WI, 54768  
(City, State, Zip Code)

—  
(Phone Number)

**QUESTION(S) PRESENTED**

When a defendant seeks to withdraw a plea after sentencing, does the need to prove a reasonable probability of acquittal or does he or she have to prove a reasonable probability of a different outcome?

Is the state court able to grant an evidentiary hearing for fact finding, recind it, and rule on the case as if the evidentiary hearing still took place?

## **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:

U.S. Appeals court SEVENTh Circuit,  
U.S. WESTERN District court of wis.  
wisconsin court of appeals  
Dane Conuty Circuit court, Hon. STEPHEn E. EHLKE

## **RELATED CASES**

State v Dominic ADDISON, 2018 AP2038  
(defendant held to reasonable probability  
of acquittal Standard)

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CASES	PAGE NUMBER
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Reppin, at 386,	1.
Weary v. Cain, 136 S.Ct. 1002, at 1006, 164 L.Ed.2d 78 (2016)	3.

## STATUTES AND RULES

§ 809.30 (2)(h)

§ 974.06

OTHER Sixth Amendment of the U.S. Constitution  
Fourteenth Amendment Due Process Rights

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 is unpublished.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 B to the petition and is

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 is unpublished.

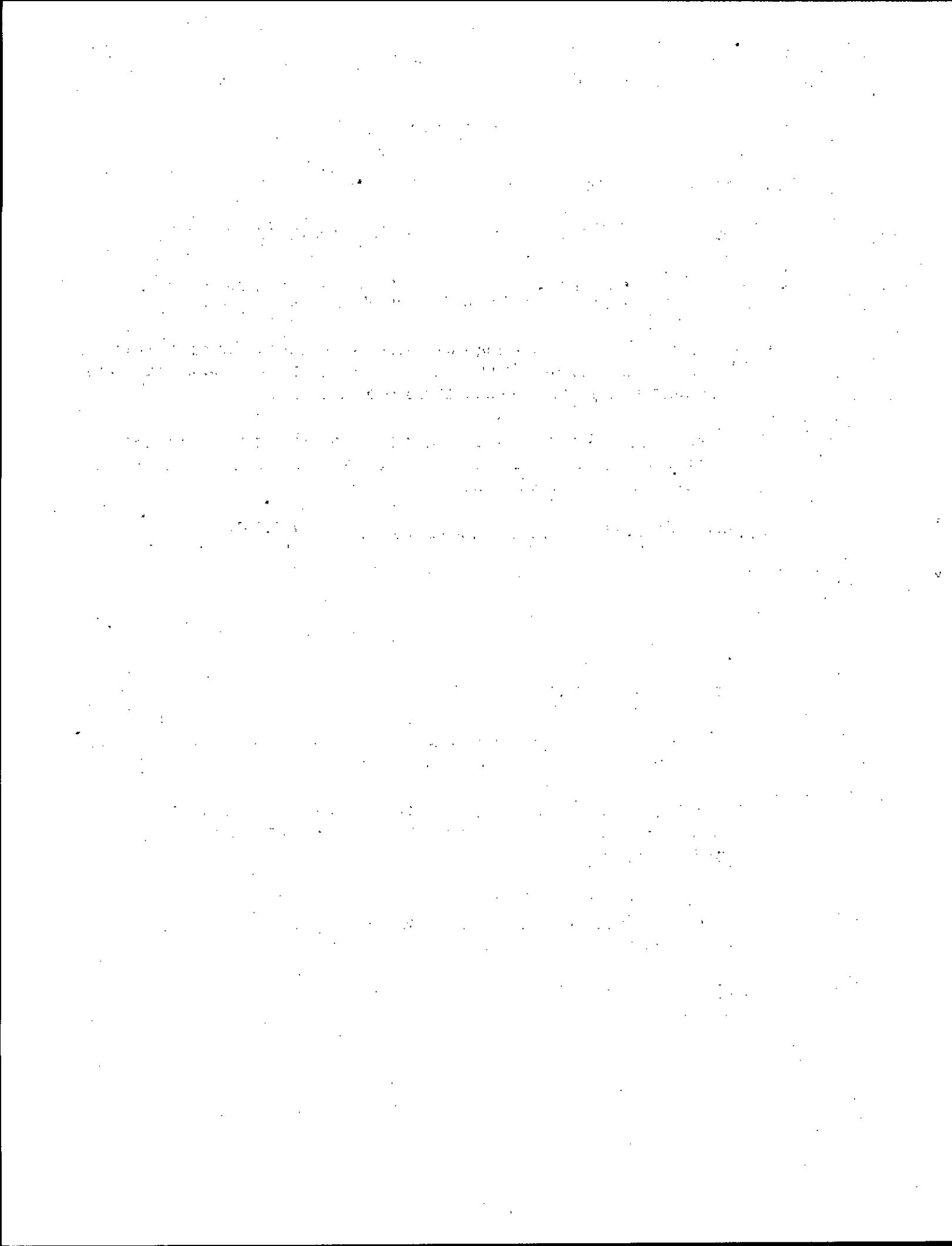
For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C 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 Wisconsin Appellate court court appears at Appendix D to the petition and is

reported at Wisconsin Appellate court; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.



## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 6-19-2018.

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: 9-11-2019, and a copy of the order denying rehearing appears at Appendix YES.

An extension of time to file the petition for a writ of certiorari was granted to and including 1-14-2021 (date) on 3-14-2021 (date) in Application No. A 589. EXTENDED TO 150 days

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 6-25-19. A copy of that decision appears at Appendix C.

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

An extension of time to file the petition for a writ of certiorari was granted to and including 3-19-2020 (date) on 3-13-2021 (date) in Application No. A 589.

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

**CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Sixth Amendment of U.S. Constitution

Fourteenth Amendment Due Process Rights.

§ 974.06

§ 809, 30(2)(h)

## STATEMENT OF THE CASE

On March 1, 2010 the defendant-Petitioner, Tyrone Robinson appeared before the Honorable Stephen Ehlke, Presiding over branch 15 of the Dane County Court house, and ENTERED PLEAS of NO CONTEST to one count SECOND DEGREE SEXUAL assault of a child, WHILE BEING OVER MEDICATED with toxic LEVEL of Depakote, high LEVEL of Lithim EVER day from Jan, to Jun,

On May 7, 2010, Robinson, again appeared before Hon, STEPHEN EHLKE and the for JuRy pick, that turned into a PLEA brgain and went into a SENTENCING WHERE Robinson got a bifurcated SENTENCE of 17 years initial confinement and 13 years EXTENDED SUPERVISION, In connection with the FALSE imprisonment count, the imposed a bifurcated SENTENCE of 2 years initial confinement and 2 years EXTENDED SUPERVISION-concurrent to count 1. Robinson, by appointed COUNSEL, Att. Mark A. Schoenfeldt, then brought a "banger" hearing, WHERE Robinson broached that hearing with issues that his ATTORNEY'S would not bring up. THE court would not and did not rule on the COMPETENCY or any other issues Robinson raised. (This happen FEB, 12, 2012.) § 809.30(2)(h) it was also denied FEB, 16, 2012.

A direct appeal followed and was denied NOV, 27, 2013 (SEE, App. D) unpublished on 6-25-2014. WI'S. SUPREME Court denied, 10-13-2015, Robinson filed PRO SE WI'S. STAT. § 974.06 motion in the Circuit Court, about the issues that WHERE broached at "Banger" hearing, Hearing was granted 10-29-2015. Robinson filed motion to COMPELL former COUNSEL'S PRESENCE at hearing, 12-2-15, Robinsons 974.06 motion was denied, BECAUSE state court wrongfully concluded Robinson NEVER COMPELLED COUNSEL'S to court, 1-19-16 Robinson filed writ of habeas corpus in U.S. FEDERAL District court of Wisconsin, THE Judge held Robinson to a reasonable probability of acquittal standard and made a factual error related to the DNA. Robinson said he was unaware of absence of SEXUAL DNA before he ENTERED the PLEA, the court noted COUNSEL was aware at SENTENCING. This DOES NOT negate Robinson's unawareness

before entering the plea, (see, pg. 8-9), also (APP. D)  
U.S. Court of Appeals ~~SEVENTH~~ circuit denied REVIEW.

## REASONS for GRANTING THE PETITION

REVIEW by this court is necessary in order to clarify how to withdraw a PLEA after SENTENCING.

This court must determine what the appropriate standard is when a defendant SEEKS to withdraw a PLEA after SENTENCING. Does the NEED to prove a "reasonable probability of acquittal" or does he or she have to prove a reasonable probability of a different outcome?

The Wisconsin courts plus Wis. Federal District court held Robinson to an "actual innocence" standard for the "manifest injustice" test, and relied on a judicial proceeding that NEVER took place. The U.S. Supreme Court has "REJECTED a standard that would require the defendant to demonstrate, "[a trial] probably would have resulted in acquittal".

Bagley, 473 U.S. 667, at 3382-3383, 105 S.Ct. 3375 (1985) (citations omitted).

The U.S. Supreme Court has also affirmed its rejection of a court's reliance on, "judicial proceedings that NEVER took place". LEE, 137 S.Ct. 1958, at 1965, 198 L.Ed. 2d 476, 85 U.S.L.W. 4412 (2017). The Wisconsin courts and Federal District court decisions are in conflict with the precedent of U.S. Supreme Court opinions in LaFler v. Cooper, 566 U.S. 156, 132 S.Ct. 1376, 182 L.Ed. 2d 398 (2012). Some of the language used in State v. McCallum, 208 Wis. 2d 463, 561 N.W. 2d 707 (1997) is called into doubt by the more recent holding in LEE, *Supra*.

When a court REVIEWS a case for a "manifest injustice" [THE TEST... is not whether the defendant is guilty but

whether he was fairly convicted" REPPIN, SUPRA, at 386. The latter court also recognized the fairness and reliability in the "full scope of the Sixth Amendment... not of the trial, but for the processes that preceded it," 566 U.S. at 1381 (emphasis added); the application of the Strickland analysis, which the court in latter applied, was also the same in HILL, SUPRA; the question being, whether "there is a reasonable probability... [the defendant] would not have pleaded guilty and would have insisted on going to trial," id. at 62.

The Wisconsin courts deviated away from decades of precedent case law in deciding Robinson's case. Robinson was held to an 'actual innocence' standard without even having an evidentiary hearing for the fact finding. SEE, (App. E, scheduled machine hearing that didn't take place, document description, 56, page 2, 57, page 1, 58, page 2, 59, page 1, 62, page 4).

A court is not allowed to rely on, "judicial proceedings, that never took place," LEE, SUPRA, at 1965 (citations omitted). The Wisconsin Courts erred in its application of the law to the facts before it. The Western Federal District court of Wisconsin erred in the same way. District Judge M. Conley, said "Robinson identifies in the reports would not likely have led to an acquittal at trial" SEE, (opinion and order from 6-19-18, page 11, also App. B).

U.S. SUPREME court in BagLEY, "REJECTED a Standard that would require the defendant to demonstrate that, [trial] probably have resulted in acquittal" 473 U.S. 667, at 3382-3383, 105 S.Ct. 3375 (1985) (citations omitted and emphasis is added.)

In RECENT years, the U.S. SUPREME court affirmed the holding in BagLEY, Stating a defendant "NEED not show that he "more likely than not" would have been acquitted.

The "more likely than not" (reasonable probability of acquittal) standard is still REJECTED by U.S. SUPREME court. SEE, Wearry v. Cain, 136 S.Ct. 1002, at 1006, 164 L.Ed. 2d 78 (2016) (citations omitted) ("defendant] NEED not show that he "more likely than not" would have been acquitted....")

Had Robinson trial Atty, JENSEN's performance had not been deficient then Robinson could and would have went to trial as he has stated in EVERY motion entered in the courts. Hill, 474 U.S. 52 at 62.

The Wisconsin courts erred in its application of the law to the facts before it.

There are many criminal appeals taken in Wisconsin from convictions obtained through PLEA bargains.

The correct application to withdrawal of a PLEA after SENTENCING standard will certainly be called into question again, and clarification from this court will have a nation wide impact.

**CONCLUSION**

Based on this petition, Robinson contends that he has made a substantial showing of a denial of his constitutional rights of Sixth and Fourteenth Amendments, INEFFECTIVE ASSISTANCE OF COUNSEL, Robinson should have a fair trial and EFFECTIVE COUNSEL.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Tyrone Robinson # 499959

Date: 2-25-21