

Supreme Court, U.S.  
FILED

JUN 30 2021

OFFICE OF THE CLERK

No. 21-5247

IN THE  
SUPREME COURT OF THE UNITED STATES

WALLACE HAMMERLE — PETITIONER  
(Your Name)

vs.  
WARDEN DYLYN RADTKE  
GREEN BAY CORRECTIONAL — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

WALLACE HAMMERLE #182685

(Your Name)

REDGRANITE CORRECTIONAL  
P.O. BOX 925

(Address)

REDGRANITE, WI. 54970

(City, State, Zip Code)

(Phone Number)

**ORIGINAL**

## QUESTION(S) PRESENTED

1. why did the Eastern District Court and Seventh Circuit Court overlook and deny my appeal on DNA testing that I have a Constitutional right to, to prove my innocence and possibly convict the real culprit of this case?
2. Why did the Eastern District and Seventh Circuit court just blow over all the Ineffective Assistance of Counsel issues I have on Trial Counsel as well as Appellate Counsel violating my Constitutional rights?
3. Why am I being denied my Constitutional right to a fair and impartial judge, jury, and place of trial, when I requested to my Trial Attorney for a complete change of venue way before trial, the case was very prejudicial in my area and a lot of corrupt impartial state, law officials and attorneys are involved with the corruption with my case as well as a lot of organized crime in my area?
4. Why is my Constitutional rights being violated on my grounds that I am an innocent man in regards to the charges I am doing time for right now?

## **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:

1. WISCONSIN ATTORNEY GENERAL JOSHUA KAUL  
2. Green Bay Correctional Warden Dylon Radtke

## **RELATED CASES**

- 1) State v. Hammerle (Wood County Case No. 2001CF000144)
- 2) State v. Hammerle 2004 WI. App. 88  
272 Wis. 2d 854, 679 N.W. 2d 926, 2004 WI. App. Lexis 206
- 3) State v. Hammerle (WI. Court of App. case NO. 2003  
AP000594-CR)
- 4) Hammerle v. Warden Dylon Radtke  
Eastern District Court of App. WI. Case No. 19-cv-1773
- 5) Hammerle v. Warden Dylon Radtke  
United States Court of App. for the Seventh Circuit  
Case No. 20-3302

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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 No. 20-3302; 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 case No. 19-CV-1773; 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 03-0594-CR State v. Hammerle; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the Wisconsin Court of App. District IV court appears at Appendix D to the petition and is

reported at 03-0594-CR State v. Hammerle; 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 February 3rd, 2021.

No petition for rehearing was timely filed in my case.

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

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

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

For cases from **state courts**:

The date on which the highest state court decided my case was August 2nd, 2004. A copy of that decision appears at Appendix D.

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).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

United Constitution Article III Sect. 2. Jurisdiction; original and Appellate: Criminal Trials, Venue, Jury.

The Judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, between a state and citizen of another state, between citizens of different states, between citizens of the same state claiming lands under grant of different states, and between a state or the citizen thereof, and foreign states; citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have Appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make.

The trial of crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

### **U.S. CONSTITUTIONAL AMENDMENTS**

I. Congress shall make no law respecting and establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

V. No person shall be held to answer for a capital or otherwise 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 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.

U.S CONSTITUTIONAL AMENDMENTS cont.

VI. In all criminal prosecutions, 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 confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

VIII. Excessive bail shall not be required, nor fines imposed, nor cruel and unusual punishment inflicted.

XIII. sect. 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

XIV. sect. 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 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 it's jurisdiction the equal protection of the laws..

The U.S. Supreme Court has jurisdiction under 28 U.S.C. § 1254 to review the court of appeals by Writ of Certiorari.

STATE STATUES

946.64 Communicating with jurors outside of defense presence.

971.20(2) Substitution Judge.

971.22(1) Move case to differant place of trial.

971.225 Jury from another county.

OTHER LEGAL WRITEUPS etc.

Congressional Research Service: The use of DNA by the Criminal Justice system and the Federal Role: Background, current law, and grants. Updated January 29th, 2021(R41800)  
<http://crsreport.congress.gov.>(R41800)

16 Harv. J.L. Pol'y 818 (1993) (Actual Innocense)  
The focus is on the present, not the prior trial, this issue is of substantive due process analysis.

## STATEMENT OF THE CASE

This is a Writ of Certiorari on an adverse decision of the Eastern District Court of Wisconsin and the Seventh Circuit Court of Appeals.

On January 31, 2002, Wallace Hammerle was found guilty of First Degree Wreckless Homicide involving the death of D.L.K.

On March 11, 2002, he was sentenced to 60 years with 40 years initial confinement and 20 years of extended supervision.

On Februaury 11, 2003, Mr. Hammerle's post conviction motion's were denied by Judge Zappen.

The Court of Appeals affirmed the conviction on March 4, 2004.

On August 2, 2004, the Supreme Court of Wisconsin denied Mr. Hammerle's Petition for Review.

On October 21, 2021, the United State's District Court for the Eastern District of Wisconsin dismissed Mr. Hammerle's Petition of Habeas Corpus, denied his appealability, and dismissed his case.

On February 3, 2021, Mr. Hammerle's certificate of appealability was denied by the United State's Court of Appeal's for the Seventh Circuit and appeal ground's were not even responded to.

The lower state court nor the appellate and it's State Supreme Court thru both Ineffective Trial Counsel up to defendant's Appellate counsel both refused and denied Hammerle his Constitutional right under D.N.A. in order to prove Hammerle's protected right to prove that Hammerle did not do that crime yet alone to prove yet another person committed that offence thru D.N.A. evidence.

The Trial and Appellate counsel yet further denied Hammerle the questioning of the state's witnesses whom helped destroy finger print's and other latent D.N.A. evidence of the apartment where D.L.K. mother lived.

The property was owned by a member of the Wisconsin Rapid's Police Department whom was city police officer Robert Webster, yet both him and Detective Wesener also denied Hammerle his constitutional right to secure such evidence from D.L.K. mother's rental property and yet allowed a member of her police force to destroy such crucial evidence that could have shown finger print's and other latent D.N.A. evidence.

The state was possibly told of those event's and covered up such crucial set of fact's.

#### STATEMENT OF THE CASE cont.

Hammerle and his attorney Danan Duncan were first told at his trial that the door frame and bedroom in question had been painted since this case started, thus covering up/ destroying any and all finger print's and latent D.N.A. evidence brought to defense attention first during his trial, thus leading Hammerle to believe thing's said to his trial counsel was leaked to the state ahead of time thus leading to the coverup.

Trial Attorney Dana Duncan nor an investigator nor our pathologist ever visited the crime scene to do any investigating themselves's, trial Attorney Duncan just went off the state's version of investigating.

Trial Attorney Duncan also went off state's number of conviction's for the state's witnesses and had he of done his own investigating would have found out the State's "Star" witness a jailhouse informant had more like 200 conviction's in Wisconsin, Illinois, and Arizona alone and not only the 8 conviction's the state provided defense with.

The Trial counsel, Attorney Duncan and also Appellate counsel Attorney Jame's Connell denied Hammerle his constitutional right to a fair and impartial trial, jury and place of trial by not asking for a complete change of venue, yet other evidence of Inefffective counsel.

As for both the lower court Federal court's in Wisconsin, the Eastern District of Wisconsin up to the Seventh Circuit court of appeal's for reason's set above.

Hammerle has continually asked to be appointed pro-bono counsel and due to him being indigent and ignorant to the law's and the way's of the court's.

Hammerle was denied D.N.A. evidence thru other D.N.A. and finger prints found in either photo's taken by the state or evidence collected by state's pathologist/ medical examiner and their testimony at trial; with other hidden fact's in the state's file's and trial counsel's file being held under confidential evidence and fact's.

State violated Hammerle's right to counsel by placing prison informant on Hammerle to solicit information and when that failed informant or his gang buddies broke into Hammerle's locker when Hammerle was at Recreation to copy down any case information they could and add things to the matter's possibly supplied by the state or law inforcement.

## REASONS FOR GRANTING THE PETITION

### I.

THE QUESTION PRESENTED IS ONE OF  
EXTRAORDINARY NATIONAL IMPORTANCE THAT  
THE LOWER COURT'S WILL NOT FURTHER ANALYZE.

This court has repeatedly recognized the importance to the public at large of resolving question's of D.N.A. testing and the constitutional right to a defendant to prove his innocence when claiming "Actual Innocence" claim's.

Such as but not limited to case's like Herrara 506 U.S. at 399 (Purpose of the system is to convict the guilty and free the innocent).

Forbidding the incarceration of the innocent, U.S. Constitution, 14th Amendment violation of due process, Elizondo 947 S.W. 2d at 204.

Substantive Due Process claims of actual innocence at 16- Harv. J.L. and Pol'y 818 (1993)

The use of D.N.A. by the criminal justice system and the Federal Role: Background, current law, and grants. Updated January 29, 2021. (R41800), <http://crsreport.congress.gov>. (R41800).

Motion's for post conviction D.N.A. testing of certain evidence, Wis. Statue 974.07.

Preservation of certain D.N.A. evidence, Wis. Statue 978.08.

Right of a defendant to have D.N.A. tested independantly or if indigent by the state or government, State v. Hudson 2004 Wis. App. 99, State v. Denny 878 N.W. 2d 679 (2016), 2106 Wis. App. 27.

The Supreme Court shall have original jurisdiction in all cases affecting ambassadors, other public ministeries and counsel's, and those in which a state shall be a party, the Supreme Court shall have Appellate jurisdiction, both as to law and fact's, with such exception's, and under such regulation's as the congress shall make U.S. Constitution Article III sect. 2 Jurisdiction: original and Appelate: Criminal trial's, Venue, Jury.

Mr. Hammerle's constitutional right's were violated regarding his Habeas Corpus ground's and question's presented within this Writ of Certiorari: I, V, VI, VIII, XIII, XIV.

As well as the U.S. Supreme Court has jurisdiction under 28 U.S.C. § 1254(1) to review the court of appeal's by Writ of Certiorari.

REASON'S FOR GRANTING PETITION cont.

II.

THE FEDERAL COURT OF APPEALS HAVE OUTRIGHT DENIED MR. HAMMERLE'S CONSTITUTIONAL RIGHT'S CLAIM'S TO INEFFECTIVE ASSISTANCE OF COUNSEL WHICH THIS COURT AND THE U.S. CONSTITUTION SAY'S HE HAS HAS A RIGHT TO.

The Eastern District Court of Wisconsin and the Seventh Circuit of Wisconsin didn't even rule on any of Mr. Hammerle's many Ineffective Assistance claim's on both Trial counsel as well as Appellate counsel which Mr. Hammerle has a right to Affective counsel not counsel that weren't familiar with the law's and fact's of the case. U.S. v. Button, 575 F. Supp. 1320 (1983).

Trial counsel nor an investigator for defense never visited the crime scene to do any investigation's, the Trial Attorney Dana Duncan just went off the state's sopposite investigation's, Wade v. Armontrout 798 F. 2d. 304 (1986). Berry v. Gramley 74 F. Supp. 2d. 808 (1999), U.S. v. Matos, 905 F. 2d 30 (1990), Cuyler v. Sullivan, 446 U.S. 335 (1980).

Trial counsel never requested D.N.A. testing of Mr. Hammerle Dawn Kuehl, baby D.L.K., babies clothing, door frame and bedroom wall, I said Dawn stumbled and fell into while under the influence of drug's and alcohol on said day of this incident.

Officer Robert Webster that owned Dawn's rental property also responded to the emergency call to this residence, he painted the door frame and wall's of this bedroom shortly after this incident which didn't need painting as Dawn and Mr. Hammerle had just painted all the ceiling's and wall's in every room of this house shortly before this incident, so he destroyed and covered up D.N.A. evidence.

Had Mr. Hammerle's Trial Attorney or an investigator investigated the crime scene and ordered D.N.A. testing any finger prints and latent D.N.A. would have been covered up/ destroyed.

If Mr. Hammerle's Trial Attorney or even the state had requested D.N.A. testing Mr. Hammerle could have been cleared of this case and the real culprit could have been convicted of this crime.

Appellate counsel Jame's Connell could of filed Ineffective Assistance of Counsel on Trial Counsel Mr. Duncan for these reason's, also D.N.A. could have been yet ordered. Wis. Stats. 974.07, Motion for D.N.A. testing of certain evidence. 978.08. Preservation of certain evidence, Congressional Research Service: The use of D.N.A. by the criminal justice system and the Federal Role: Background, current law, and grant's Updated January 29, 2021 (R41800), [http://crsreport.congress.gov. \(R41800\).](http://crsreport.congress.gov. (R41800).)

REASON'S FOR GRANTING THE PETITION cont.

16-Harv. J.L. and Pol'y 818 (1993) (Actual Innocence), the focus is on the present, not the prior trial, this issue is of substantive due process analysis.

Trial counsel never requested a complete change of venue with this case as it was very prejudicial in that community, not only general public but also by state official's, law official's and other big shot's, such as but not limited to Attorneys, it was election year so a lot of promotion's and election's going on this year, this case was ripe for all kind's of benefit's for the big shot's. Wis. Stats., 971.20(2) substitution of Judge, 971.22(1) move case to different place of trial, 971.225 jury from another county.

Trial Attorney not properly investigating jailhouse informant and his criminal record, just went off state saying he had only 8-conviction's, but had attorney investigated or had investigator do it, he would have found out the smorgasboard of 200-conviction's this informant had between Wisconsin, Illinois, and Arizona, also who knows where else he's had problem's with the law and what not all in his life.

Attorney not objecting to use of stun belt on defendant at trial totally visible on his side to the juror's, this was very prejudicial to a fair and impartial trial.

Trial Attorney never requested an evidentiary hearing on informant's statement and testimony at preliminary hearing to properly impeach him before trial which is only to test the plausibility at preliminary hearing, also evidentiary hearing on D.N.A. testing should have been ordered before trial to help with case, trial and to potentially clear defendant and convict the real culprit of this crime.

Trial counsel not investigating Ms. Kuehl's extensive drug and alcohol history and problem's she's had in the past because of it.

Trial counsel could have requested the court to order Dodge Correctional to turn over the barrick's video footage to show informant or fellow gang member friend's of his breaking into defendant's bed locker to get to the little case information defendant had, so informant could build on it and get this case blamed on defendant, possibly planted by the state to illegally solicit or steal case information from defendant which amount's to violation of denial of counsel present to illegally solicit evidence.

Federal Habeas can excuse procedural default of unjust incarceration. Dugger v. Adams 489 U.S. at 401, 411.

REASON'S FOR GRANTING THE PETITION cont.

Trial counsel not impeaching Fawn Hick's, Mildred Brown, and Susan Belisle on accusation's they made that defendant supposidly said that defendant claim's he didn't that were very prejudicial, and why didn't Ms. Kuehl ever testify defendant said these thing's when these people said she was present during these so called event's.

Trial counsel allowing DA- Wolf to lie/mislead the court's and juror's at defendant's trial when he said defendant confronted informant's brother Charles Estep at Fox Lake Correctional saying he'd defend himself if charles or any of his gang friend's came at defendant, this statement was never said to charles, but to inform defendant's unit Sargent when he told him what happened with his case and informant's brother just arrived at the institution so they had a record of thing's in case there was any problems.

Trial counsel not objecting to his limit on use of evidence at trial.

Trial counsel not opening up on informant when he didn't state how many conviction's he had, only said he had like retail theft and writing bad checks, making him look like a petty criminal, when really he had like 200- convictions in Wisconsin, Illinois, and Arizona and who knows where else he may yet have other convictions. Thee attorney let him slide on his misleading answer to the question so he mislead the court's and juror's.

Trial counsel not objecting to his limit by the court on his closing argument when there was a wide open clause for this.

Appellate counsel for not filing ineffective Assistance of counsel claim's on trial counsel for all the claim's of Ineffective Assistance defendant had on trial counsel listed on the last uptoen pages as well as other claims defendant gave him as follows:

Appellate counsel not filing as a ground; defendant and trial attorney's absence when juror's came back into court during deliberation's to ask further question's on thing's said, also to see if they could get some evidence exhibit's, it was critical part of defendant's trial.

Appellate counsel not filing on ground judge allowed very prejudicial statement's that shouldn't have been allowed, judge said was to show "motive" but motive isn't even an element of Reckless Homicide.

Also judge allowed evidence of defendant absconding probation/parole just to show "motive" again, which shouldn't have been allowed, was to muddy things up for defendant was all.

REASON'S FOR GRANTING THE PETITION cont.

Appellate counsel not raising appeal claim of Ineffective Assistance of Trial Counsel for raising D.N.A. testing issue or having an evidentiary hearing on the issue.

All these Trial counsel and Appellate counsel Ineffective claims are constitutional right violation's.

Siverson v. O'Leary: 764 F. 2d 1208 (7th cir. 1980) Absence from court during deliberations, amounts to denial of counsel.

Wis. Stats. 946.64, communicating with jurors out of presence of defense.

U.S. Ex. Rel. Gibson v Mc Ginnis, 773 F. Supp. 126 (1991), jailhouse informant placed in cell, 6th amendment violation, denial of counsel.

U.S. v Bishawi: 186 F. Supp. 2d 889 (2002). Ex parte communicating by judge and DA to jury out of presence of defense.

Strickland v Washington 466 U.S. 668 (1984), Ineffective Assistance of counsel, Jones v Wood 114 F. 3d 1002 (9th cir. 1997).

U.S. Constitution Article III sect. 2: Jurisdiction: original and Appellate, criminal trials, venue, jury.

U.S. Constitution Amendments I, V, VI, VIII, XIII, XIV.

The U.S. Supreme Court has jurisdiction under 28 U.S.C. §1254(1) to review the Court of Appeals by Writ of Certiorari.

CONCLUSION

For the reason's set forth here in, Mr. Hammerle request's the court grant appealability and rule on his constitutional right to both Effective Assistance of counsel and D.N.A. evidence and a right to a fair and impartial trial.

Respectfully Submitted,

Wallace Hammerle  
\_\_\_\_\_  
Wallace Hammerle 182685

Date: 6-29-2021

State of Wisconsin  
County of Waushara  
Subscribed and sworn to before me this  
29th day of June 2021  
Elizabeth Mills  
Elizabeth Mills, Notary Public  
EXPIRATION DATE 2-1-2025