21-5494

CASE NO. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

U. S. ex rel. ERIC WILLIAM POIRIER,
Petitioner,

vs.

RANDALL R. HEPP - Warden,
UNITED STATES OF AMERICA,
Respondent(s).

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2254(a).

CIRCUIT COURT: BRANCH I., CHIPPEWA COUNTY, WI.
(Name Of Court That Last Ruled On Merits Of Your Case)

Pro se - Mr. Eric William Poirier #84057
Waupun Correctional Institution
P.O. Box 351
Waupun, Wi. 53963

QUESTION(S) PRESENTED

Should this Court decide what crimes are predicate of Attempted First Degree Intentional Homicide because the Law is not settled yet, nor has this Court ruled on Double Jeopardy as of this date ?

Should Petitioner have been appointed counsel before he was Sanctioned by both the Wisconsin Court Of Appeals, and the U.S. Court Of Appeals (7th Cir. Ill.), and Fined because of his indigency ?

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:

CIRCUIT COURT BRANCH I
CHIPPEWA COUNTY COURT HOUSE
711 North Bridge Street
Chippewa Falls WI 54726

WISCONSIN COURT OF APPEALS
110 East Main Street, Suite 215
Madison, WI 53701-1688

WISCONSIN SUPREME COURT
110 East Main Street, Suite 215
Madison, WI 53701

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
362 U.S. Courthouse
517 East Wisconsin Avenue
Milwaukee, WI 52302

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
219 South Dearborn Street
Chicago, IL 60604

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INDEX TO APPENDICES

Appendixs ___ Will be provided to this Court when Petitioner can get the copies because they are 4-on one page, and the print is too small to read.

TABLE OF AUTHORITIES CITED

FEDERAL STATUTES AND RULES:

PAGE NUMBER

STATE STATUTES AND RULES:

OPINIONS BELOW

The Circuit Court Denied collateral review on May 21, 2021 without an evidentiary hearing. ___ e.g., "Appendix A." After many attempts Pro se.

The Wisconsin Court Of Appeals Denied Appeal, and SANCTIONED ON January 31, 2012. This was done without an evidentiary hearing. e.g., "Appendix B."

The United States District Court, after Reversing and Remand from the Court of Appeals dismissed the habeas corpus. Then the prison toilets over flowed and destroyed all court orders. Then Petitioner on February 1, 2008, and July27, 2010 tried again, and this was denied again on November 23, 2010. e.g. "Appendix C."

The U.S. Court Of Appeals (7th Cir. Ill.) After reversing and remanding Petitioner's case, denied authorization to file a second or successive petition for habeas corpus. e.g., "Appendix D." and SANCTIONED Petitioner $500., and until he pays the fine, he cannot file any further filings.

JURISDICTION

UNITED STATES CONSTITUTION ARTICLE III

Section. 1. The judicial Power of the United States, shall be vested in one supreme court, and such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

28 U.S.C. § 1251 ; 28 U.S.C. § 1257.

(a) The Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more States.

(2) All controversies between the United States and a State.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amend. 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 land or naval forces, or in Militia, when in actual service in time of War or public danger; not 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. Const. Amend. 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.

U.S. Const. Amend. XIV., 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 priviliges 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 any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner, has been diligently pursuing relief for the proper remedy-at-law for the last 17-years now with no relief from the Courts. After a 2-day jury trial that ended on April 22, 2004, he was found guilty of violating 18-Wis. Stats. that occurred at the same time, place, and persons for: (1)- Attempted First Degree Intentional Homicide; Repeater, (No person died in this case), (2)- Felon In Possession Of A Firearm; Repeater (No gun was found to prove Element #1: Actual physical possession, and it's not even known what caliber the alleged gun is), (3)- Take And Drive A Vehicle Without Owner's Consent; Repeater (The jury reduced this charge to a Misdemeanor but the charge is having a recidivism effect that affects the sentence imposed), (4)- Burglary To A Building Or Dwelling; Repeater (Nothing was taken from the Burglary, and the Jury Instruction included the added wording: First Degree Intentional Homicide and delivery of Cocaine or Marijuana are felonies you can consider. Nobody died, no drugs of any kind were found), (5)- Aggravated Battery; Repeater, (Has to be an included crime of Count 1.) and finally, (6)- First Degree Reckless Injury; Repeater (Has to be the same as Count 1., All the evidence adduced was used to convict on the other charges).

Petitioner , was arrested on January 22, 2004, and placed in The Chippewa County Jail. On January 26, 2004, he appeared Video Conference, without counsel, and asked by the Judge. Id. at (1-26-04,Ti.Tr.Pp. 2 line 6-10), " The Court: Are you going to apply for Public Defender ? The Defendant: No. I would request that the court appoint Robert McKinley." e.g. " Appendix ___."

Defendant knew from past that the State Public Defender's do NOT file the appropriate Motions, and waive jurisdictional challenges.

Petitioner's next appearence in Court was on January 27, 2004, and he was represented by First Assistant Public Defender- Susan T. Falch, for an Initial Appearence. The Attorney tells the Court: Id. at (1-27-04,Ti.Tr.Pp. 2 line 509), "Defense attorney Susan M. Meade

is in Sawyer County this afternoon. She asked me to fill in for her." e.g., " Appendix ___." All Trial Transcripts are attached.

Petitioner on February 2, 2004, meets for the first time, another S.P.D. appointed counsel - Susan M. Meade for Preliminary Hearing, and was permitted to read the Information for the first time. The Court found probable cause, and bound him over for trial. Petitioner thought victim was dead. e.g., " Appendix ___."

Petitioner on February 17, 2004, is taken into the Circuit Court for Arraignment, and is handed a New Information that charges 6-counts, and his Attorney enters a plea of not guilty giving the Court jurisdiction. e.g., " Appendix ___."

Petitioner on April 21-22, 2004, had a jury trial, and he was found Guilty on all 6-counts. Petitioner was Sentencedon October 28, 2004, and received 6-independent sentences totaling 60-years. The Sentences were ran Concurrently, and are having a grave collateral consequence upon Petitioner, and the fine on each count was imposed also, and he was Pro se at sentencing.

Petitioner on December 03, 2004, is sent to the Dodge Correctional Correctional Institution located in Waupun WI. After being told he could remain in the Chippewa County Jail until his Pro se - Post-Conviction Motion Hearing so he could talk with his potential witnesses. e.g., " Appendix ___."
Petitioner, is sent to another County Jail, in Juneau, Wi., then is transported to another County Jail in Langlade County in Antigo, WI. Then is brought to the Chippewa County Jail in Chippewa Falls, WI. for Pro se - Postconviction relief hearing on January 28, 2005. That was denied, and he is transported back to Langlade County Jail. Then on April 4, 2005, is transported to the Waupun Correctional Institution.

PETITIONER PRAYS THIS COURT WILL GRANT HIS HABEAS CORPUS BECAUSE HE HAS NO OTHER REMEDY AT LAW.

~~SHOULD THIS COURT DECIDE WHAT CRIMES ARE PREDICATE OF~~ ATTEMPTED FIRST DEGREE INTENTIONAL HOMICIDE BECAUSE THE LAW IS NOT SETTLED YET, NOR HAS THIS COURT RULED ON PREDICATE OFFENSES ?

Petitioner claims, the State Of Wisconsin was being bias/ prejudicial when they instructed the jury on April 21, 2004 because Petitioner had been Acquitted 3-times in that County before. The judge in his opening jury instruction stated. " As I indicated before, there are six charges against Mr. Poirier. I'm going to basically, give you the elements of the offense. Later, at the end of the trial, I will give you the complete instruction defining some of the terms, but what you should pay be paying attention to. Count One is attempted first-degree intentional homicide. ... Attempted first-degree intentional homicide, as defined in the State law, is committed by one who, with intent to commit first-degree intentional homicide, does acts toward the commission of that crime which demonstrate unequivocally, under all the circumstances, that he had formed that intent and would have commit the crime except for the intervention of another person or some other extraneous factor. Then the court defines the two elements were present:

1. The first element of attempted first-degree intentional homicide requires that the defendant intended to commit the crime of first-degree intentional homicide.

The crime of first-degree intentional homicide is committed by one who causes the death of another human being.

2. The second element of attempted first-degree intentional homicide requires that the defendant did acts toward the commission of the crime of first-degree intentional homicide which demonstrates unequivocally, under all the circumstances, that the defendant intended to and would have committed the crime of first-degree intentional homicide except for the intervention of another person or some other extraneous factor.

~~Petitioner claims, that WIS JI-CRIMINAL 112A LESSER INCLUDED~~ OFFENSE: ALTERNATIVE STYLE should have been given because the other jury instructions had fill in blanks just as #580 - Attempt.

Attempt the Statutory Definition of the Crime:

The crime of attempted (name intended crime) as defined in § 939.32 and § ____ [1] of the Criminal Code of Wisconsin, is committed by one who, with intent to commit (name intended crime), does acts toward the commission of that crime which demonstrate unequivocally, under all the circumstances, that he or she had formed that intent and would have commit the crime except for the intervention of another person or some other extraneous factor.

Count One:

Petitioner claims, WIS JI-CRIMINAL 1070 ATTEMPTED FIRST DEGREE INTENTIONAL HOMICIDE - §§ 939.32, 940.01(1)(a), is committed by one who, with intent to commit first degree intentional homicide, does acts toward the commission of the crime which demonstrate unequivocally, under all the circumstances, that he or she had formed that intent and would commit the crime except for the intervention of another person or some other extraneous factor.

Elements of the crime that State must prove:

1. Defendant intended to kill (name of victim).

"Intent to kill" means that defendant had the mental purpose to take the life of another human being or was aware that (his) conduct was practically certain to cause the death of another human being.

2. Defendant did acts toward the commission of the crime of (name intended crime) which demonstrate unequivocally, under all of the circumstances, that the defendant intended to kill and would have killed (name of victim) except for the intervention of another person or some extraneous factor.

Meaning of " Unequivocally "

Means that no other inference or conclusion can reasonably and fairly be drawn for the defendant's acts, under the circumstances.

Meaning of " another person "

Means anyone but the defendant and may include the intended victim.

Meaning of " Extraneous Factor "

Is something outside the knowledge of the defendant or outside the defendant's control.

When May Intent Exist ?

While the law requires that the defendant acted with intent to kill, it does not require that intent existed for a particular length of time before the act is committed. The act need not be

brooded over, considered, or reflected upon for a week, a day, and hour, or even for a minute. There need not be any appreaciable time between the formation of the intent and the act. The intent to kill may be formed at any time before the act, including the instance before the act, and must continue to exist at the time of the act.

Deciding About Intent

You cannot look into a person's mind to find intent. Intent to kill must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon intent.

Intent And Motive

Intent should not be confused with motive. While proof of intent is necessary to convict, proof of motive is not.

"Motive" refers to a person's reason for doing something. While motive may be shown as a circumstance to aid in establishing the guilt of the defendant, the State is not required to prove motive on the part of the defendant in order to convict. Evidence of motive does not by itself establish guilt. You should give it the weight you believe it deserves under all the circumstances.

Jury's Decision

If you are satisfied beyond a reasonable doubt that the defendant intended to kill (name of victim) and the defendant's acts demonstrate unequivocally that the defendant intended to kill and would have killed (name of victim) except for the intervention of another personor some other extraneous factor, you should find the defendant guilty of attempted first degree intentional homicide.

If you are not so satisfied, you must find the defendant not guilty.

Petitioner states, " This has to be the controlling count because it carries a 60-year sentence. "

Furthermore count 2, has to be an included crime because § 941.29 Felon In Possession Of A Firearm is included in Count 1, because the Victim testified at Jury Trial. Id. **at (4-21-04, Ti.Tr.Pp. 134 line 5-8),** " Prosecutor's Question. Where was Mr. Poirier at this time ? A: When I backed into the hallway, he was standing in the hallway and at that point I felt something on my head and I looked to my left and he stood there with a revolver and had it right at my head. **(Pp. 135 line 10-13)** Q: The what happened ? A: Exploded - the gun exploded and I went to the boards. I knew right then I was shot. I fell to the ground."

Count Two:

Petitioner claims, WIS JI-CRIMINAL 1343 POSSESSION OF A FIREARM - § 941.29, is committed by a person who possesses a firearm if that person has been convicted of a felony. [1]

Elements of the Crime that the State Must Prove

1. Defendant possessed a firearm.

"Firearm" means a weapon which acts by force of gunpowder.[2] [It is not necessary that the firearm was loaded or capable of being fired.][3]

"Possess" means that the defendant knowingly[4] had actual physical control of the firearm.[5]

2. The defendant had been convicted of a felony before January 16, 2004.

The parties have agreed that the defendant was convicted of a felony before January 16, 2004 and you must accept this as conclusively proven.

Petitioner states, " No gun was found to prove element #1. And since his trial attorney agreed to the sitpulation he was already half guilty of this Count. Plus the fact that another $70.00 Court Cost was added, and because this charge carries less prison time makes it a lesser crime than Count 1. "

Also in the **COMMENT:**

8. ¶2. The fact of felon status may still be revealed; it is the nature of the felony that is not to be disclosed. State v. Nicholson, 160 Wis.2d 803,804, 476 N.E.2d 139 (Ct. App. 1991) care must be taken where a stipulation purports to remove an element from the jury's consideration. A personal jury waiver may be required. See State v. Villarreal, 153 Wis.2d 323, 450 N.W.2d 519 (Ct. App. 1989), discussed in the COMMENT to WIS JI-CRIMINAL 990. Partial jury waivers are discussed in **SM-21 WAIVER OF JURY.**

8. ¶4. Trial courts may wish to inquire whether stipulation has been considered. A defense counsel's failure to consider a stipulation that would have made other crime evidence inadmissible has been found to be ineffective assistance of counsel requiring reversal and retrial. State v. Dekeyser, 221 Wis.2d 435, 585 N.W. 2d 668 (Ct. App. 1998).

Count Three:

Petitioner claims, § 943.23 OPERATING A MOTOR VEHICLE WITHOUT OWNER'S CONSENT, REPEATER was reduced by the Jury to a Misdemeanor conviction, and included a $50.00 assessment Fee. This was also used to prejudice his case because that was listed on the Information, and that went to the jury room as an exhibit. That stated Petitioner,

was convicted of the same charge in Rusk County. Petitioner, was being punished again for a crime that he had already completed the sentence on. Plus, the fact the jury had to think he was a bad man because he's charged with the crime again here.

Count Four:

Petitioner claims, WIS JI-CRIMINAL 1424 - BURGLARY WITH INTENT TO COMMIT A FELONY [1] - § 943.10(1), Wis. Stats. is committed by one who intentionally enters a building [2] without the consent of the person in lawful possession and with intent to commit a felony therein.

In the **COMMENT**

1. This instruction is drafted for burglary with the "intent to commit a felony." If "intent to steal" is charged, see WIS JI-CRIMINAL 1421. For burglary offenses committed "while armed" or under aggravating circumstances as prohibited by §943.10(2), see WIS JI-CRIMINAL 142A, 1425B, and 1425C.

" Felon in possession of a firearm " in violation of § 941.29 is a crime against persons or property and case be the basis for the intent to commit a felony element of burglary. See State v. Steele, 2001 WI App 34, ¶21, 241 Wis.2d 269, ___N.W.2d ___.

9. Burglary, as defined in § 943.10(1), is punished as a class C felony. The penalty increases to a class B felony if a burglary is is committed under any of the circumstances defined in subsec. (2). The Committee recomends handling these penalty-increasing factors by submitting and additional question after the basic burglary instruction is given. Instructions are provided for three of the four factors inentified in Subsec. (2): while armed (see WIS JI-CRIMINAL 1425A) ; while unarmed, but the person arms himself or herself while in the enclosure (see WIS JI-CRIMINAL 1425B); while in the enclosure, the person uses explosives to open a depository (there is no instruction for this alternative); and, while in the enclosure, the person commits a battery upon a person lawfully therein (see WIS JI-CRIMINAL 1425C).

Petitioner states, " Because in his Jury Instructions in ~~the~~ Elements The State Must Prove contained in element #4:

first degree intentional homicide and delivery of cocaine or marijuana are felonies you can consider made this count analogous to the other Five Counts. The problem with this instruction is that, Nobody died, no drugs of any kind were found, no gun. And, because this charge carries less time makes it a lesser-included offense. The Legislature did not intend multiple punishments to arise all out of the same overt act.

Count Five :

Petitioner claims, WIS JI-CRIMINAL 1225 - AGGRAVATED BATTERY WITH INTENT TO CAUSE GREAT BODILY HARM - § 940.19(5), is committed by one who causes great bodily harm to another by an act done with intent to cause great bodily harm to that person or another.

Elements of the Crime the State Must Prove

1. Defendant caused great bodily harm to (name of victim). "Means defendant's act was a substantial factor in producing the great bodily harm.[1]
"great bodily harm" means serious bodily injury. [2] [Injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or imparment of the function of any bodily member or organ, or other serious bodily injury is great bodily harm.]

2. Defendant intended to cause great bodily harm to [name of person] [another person]. [3]
"Intent to cause great bodily harm" means that the defendant had the mental purpose to cause the great bodily harm to another human being or was aware that (his) conduct was practically certain to cause great bodily harm to another human being.[4]

Deciding About Intent

You cannot look into a persons minde to find intent. Intent must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon intent.[5]

In the **COMMENT**

¶3. **Subsection** (5) of § 940.19 was amended by 2001 Wisconsin Act 109 (effective date: February 1, 2003) to delete intent to cause "substantial bodily harm." The subsection now prohibits causing great bodily harm with intent to cause great bodily harm.

¶4. 1993 Wisconsin Act 441 amended subsection (2m) of

of § 939.66 to provide that a "crime which is a less serious or equally serious type of battery than the one charged" is a lesser included offense. (emphasis added to highlight the 1994 change.) as a class E felony, aggravated battery is the most serious type of battery. Thus, all other types of battery are lesser included offenses.

Petitioner states, " This has to be a lesser-included crime of Count 1 : AFDIH; Repeater also because all the facts were considered to convict on this charge. This Count was also used to enhance his sentence, and included anothe $70.00 assessment Cost. It would be utterely impossible to commit the statutory elements of Counts 1, 2, 4, and 6 without committing this offense, and this count carries less prison time making that a lesser included offense also. "

Count Six :

Petitioner claims, WIS JI-CRIMINAL 1250 - FIRST DEGREE RECKLESS INJURY - § 940.23(1), Wis. Stats., is committed by one who recklessly causes great bodily harm to another human being under circumstances that show utter disregard for human life.

Elements the State Must Prove

1. Defendant caused great bodily harm to (name of victim). "Cause" means defendant's act was a substantial factor in producing great bodily harm.[1]
" Great bodily harm " means serious bodily injury.[2] [Injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ, or other serious bodily injury is great bodily harm.]

2. Defendant caused great bodily harm by criminal reckless conduct.
" Criminal reckless conduct " means[3] * the conduct created a risk of death or great bodily harm to another person; and * the risk of death or great bodily harm was unreasonable and substantial; and * the defendant was aware that his conduct created the unreasonable and substantial rish of death or great bodily harm.[4]

3. The circumstances of the defendant's conduct showed utter disregard [5] for human life.
In determining whether the conduct showed utter disregard for human life, you should consider these factors: what the defendant

was doing; why the defendant was engaging in that conduct; how dangerous the conduct was; how obvious the danger was; whether the conduct showed any regard for life;[6] and, all other facts and circumstances relating to the conduct.

Furthermore in th **COMMENT**
The Committee concluded that no further definition of the phrase "utter disregard" was necessary. The jury should be able to give the phrase a common sense meaning in determining whether the conduct is such that it amounts to aggravated reckless homicide offense.

A phrase with essentially the same meaning is used in the Model Penal Code. Section 2.02(1)(b) provides that criminal homicide constitutes murder when it " is committed recklessly under circumstances manifesting extreme indifference to the value of human life." The Commentary to § 2.02(1)(b) Explains that whether conduct demonstrates " extreme indifference " "is not a question ... that can be further clarified." Attempts to explain the term by reference to common law concepts, say the Commentary, suffer from lack of clarity, and " extreme indifference " is simpler and more direct than other attempts to reformulate the common law. Note to § 939.24(3), 1987 Senate Bill 191.

Petitioner states, " This Count has to be a down grade of the Counts 1, 2, 4, and 5 also because it carries less Prison time, and it would be inpossible for the Jury to acquit on the other charges. Plus the fact a $70.00 assessment charge was included on this charge too.

Petitioner claims, he was convicted of violating 19 Wis. Stats., and received 6 Sentences for the same overt act. This is a violation of his U.S. Const Amends. V., and XIV. Petitioner demands redress.

Petitioner claims, this would be contrary to Well established Federal law as determined by the Supreme Court Of The United States in Ball v. U.S., (U.S. Va. 1985), 470 U.S. 846; Rutledge v U.S., (U.S. Ill.), 116 S.Ct. 1241, 517 U.S. 292. Because the lower courts did not rule on this issue, has resulted in a fundamental miscarriage of justice.

Petitioner claims, when the Circuit Court allowed that all the charges to be brought at one time it considered the wrong standard of law. For support of this claim, he relies for a starting point found at 2002 WI App 243, 258 Wis.2d 148, 653 N.W.2d 300, 2002 Wisc. App. LEXIS 1022, **State v. Peters**, (Emphasis in Part): [*P22] When applying the "some" evidence standard, the trial court must determine whether a reasonable construction of the evidence will support the defendant's theory "viewed in the most favorable light it will 'reasonably admit from the standpoint of the accused.'" **Id.** at P113 (citation omitted). If the evidence supports the defendant's theory and if the evidence viewed most favorably to the defendant would allow a jury to conclude that the State did not disprove the self-defense theory beyond a reasonable doubt, the factual basis for the defense theory has been satisfied and the court should submit the jury instruction. See **id.** at PP5, 115.

[*P23] HN7 The standard for reasonableness is "what a person of ordinary intelligence and prudence would have believed in the position of the defendant under the [**161] circumstances existing at the time of the alleged offense." Wis JI-CRIMINAL 1014 (1994). The reasonableness of "that belief must be determined from the standpoint of the defendant at the time of his acts." **Id.** In applying the reasonableness standard, the court has recognized the relevance of some personal history evidence in the context of homicides in battered spouse situations. **State v. Hampton**, 207 Wis.2d 367,382, 558 N.W.2d 884 (Ct. App. 1996)(citing **State v. Richardson**, 189 Wis.2d 418,426, 525 N.W.2d 378 (Ct. App. 1994)). [3]

Petitioner states, " Because the law is unsettled, this case presents a question of law that should be settled by this Court because it was not harmless error to present all of these charges that resulted in a longer sentence. " For support of this claim, as a starting point the language found at 2011 WI App 63, 333 Wis. 2d 665, 799 N.W.2d 461, 2011 Wisc. App. LEXIS 320, **State v. Jackson**, (Emphasis in Part): [*P10] When the law is unsettled, the failure to raise an issue is objectively reasonable and therefore not

deficient performance. See **State v. Maloney**, 2005 WI 74, ¶23, 281 Wis.2d 595, 698 N.W.2d 583. When case law can be reasonably analized in two different ways, then the law is not settled. **State v. McMahon**, 186 Wis. 2d 68, 84, 519 N.W. 2d 621 (Ct. App. 1994). Here, the State submits that the law as to the elements of recklessly endangering safety while armed was unsettled, and therefore Jackson's trial counsel's performance was not deficient. We agree, but for different reasons than asserted by the State-- as we shall soon discuss.

[*P12] Recklessly endangering safety is a lesser included offense of attempted first-degree intentional homicide **Hawthorne v. State,** 99 Wis.2d 673, 681-82, 299 N.W.2d 866 (1981)(endangering safety by conduct regardless of life is a lesser included offense of attempted first-degree intentional homicide); **State v. Weeks**, 165 Wis. 2d 200, 205-06 & n.5, 477 N.W. 2d 642 (Ct. App. 1991)(the current offense of recklessly endangering safety is analogous to the older endangering safety by conduct regardless of life). However, the parties could point us to no case law definitively stating that the "while armed" penalty enhancer always constitutes an element for the purpose of determining whether something is a lesser included offense. In **State v. Carrington**, 130 Wis. 2d 212, 221-22, 386 N.W.2d 512 (Ct. App. 1986)(**Carrington I**), rev'd on other grounds by **Carrington II**, 134 Wis. 2d at 262, 268-69, we did hold that "while armed" was not only a penalty enhancer, it was also an element of the offense for purposes of the elements only test).

Petitioner states, " Because the jury found him guilty on the Felon In Possession Of A Firearm this charge prejudiced his case because the Jury had to think he was a bad person because of all the charges against him, and he must be guilty of something or other wise he wouldn't be here. " This is in violation of the U.S. Const. Amends. V. and XIV.

Petitioner claims, for a starting point that the Blockburger test is only a starting point to claims of multiple punishments in a single proceeding, he relies on the language found at 409 F.3d 869, 2005 U.S. App. LEXIS 10048, **McCloud v. Deppisch,** (Emphasis in Part): HN8 The state court's use of the Supreme Court's Blockburger test does not give us a toehold into its examination of legislative intent. See 28 U.S.C. § 2254(b)(1)(federal court may grant habeas corpus petition where state court's adjudication of claim "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States"). HN9 Although the Blockburger test has "deep historical roots" in the Supreme Court's double jeopardy precedents, United States v. Dixon, 509 U.S. 688,704, 113 S.Ct. 2849,2860, 125 L.Ed.2d 556 (1993), and both federal and state courts use the test to determine whether two offenses are the "same" for purposes of the double jeopardy analysis, it is not a constitutional test in and of itself. Rather, it is simply a means of evaluating legislative intent. Albernaz v. United States, 450 U.S. 333,340, 101 S.Ct. 1137,1143, 67 L.Ed.2d 275 (1981); [**18] Whalen v. United States, 445 U.S. 684,691, 100 S.Ct. 1432,1437, 63 L.Ed.2d 715 (1980). For the matter, Blockburger only represents the starting point in this inquiry: when application of the Blockburger test reveals that two offenses are essentially the same, a presumption arises that the legislature did not intend for them to be punished cumulatively, see Rutledge, 517 U.S. at 297, 116 S.Ct. at 1245; United States v. McCarter, supra, 406 F.3d 460, 2005 WL 1022993, at *2; Davison, 666 N.W.2d at 13; when the test yields the opposite result, a contrary presumption arises, see Albernaz, 450 U.S. at 340, 101 S.Ct. at 1143; Davison, 666 N.W.2d at 13. Ultimately, either presumption can be overcome with evidence of [*876] legislative intent that Blockburger's "same elements" test does not take into account. See Johnson, 467 U.S. at 499 n.8, 104 S.Ct. at 2541 n.8 ("As should be evident from our decision in Missouri v. Hunter, ... the Blockburger test does not necessarily control the inquire into the intent

of the state legislature.); Hunter, 459 U.S. at 366-69, 103 S.Ct. at 678-79; [**19] Davison, 666 N.W.2d at 13; see also McCarter, 406 F.3d 460, 2005 WL 1022993, at *3 ("legislative history which clearly indicates an intention regarding whether to permit multiple punishments is entitled to weight"). Thus, rather than suggesting that the Wisconsin court was engaging in a constitutional analysis when it employed the Blockburger test, the use of that test simply confirms that the court was assessing legislative intent and deciding a question of state law. True enough, the test is a federally-derived analytical tool, but the fact does not give a federal habeas court the authority to police a state court's evaluation of the state legislature's intent.

Petitioner states, " The State Laws results in some fundamental unfairness, and does run afoul of the Double Jeopardy Clause. "

Petitioner claims, this Court should consider making a " new rule " if it breaks new ground, imposes a new obligation on the states for multiple sentences out of the same overt acts because the UNITED STATES SUPREME COURT has not been forced to rule on predicated offenses of Blockburger yet. For support of this claim, he relies on a case for a starting point, is the language found at 506 U.S. 461, 113 S.Ct. 892, 122 L.Ed.2d 260, 1993 U.S. LEXIS 1015, **Graham v. Collins**, (Emphasis in Part): II A [***LEdHR2A] LEdHR(2A) Because this case is before us on Graham's petition for a writ of federal habeas corpus, "we must determine, as a threshold matter, whether granting him the relief he seeks would create a 'new rule'" of constitutional law. Penry v. [*467] Lynaugh, supra, at 313; see also Teague v. Lane, 489 U.S. at 301 (plurality opinion). "Under Teague, new rules will not be applied or anounced in cases on collateral review unless they fall into one of two exceptions." Penry, supra, at 313. This restriction on our review applies to capital cases as it does to those not involving the death penalty. 492 U.S. at 314; Stringer v. Black, 503 U.S. 227, 111 L. Ed. 2d 1130 (1992); Sawyer v. Smith, 497 U.S. 227,

111 L. Ed. 2d 193, 110 S.Ct. 2822 (1990); Saffle v. Parks, 494 U.S. 484, 108 L. Ed. 2d 415, 110 S.Ct. 1257, (1990); Butler v. McKellar, 494 U.S. 407, 108 L. Ed. 2d 347, 110 S.Ct. 1212 (1990).

[***LEHR1A] LEdHR(1A) [***LEdHR2A] LEdHR(2A) Having decided that the relief Graham seeks would require announcement of a new rule under Teague, we next consider whether that rule nonetheless would fall within one of the two exceptions recognized in Teague to the "new rule" principle. HN4 The first exception permits the retroactive application of a new rule if the rule places a class of private conduct beyond the power of the State to proscribe, see Teague, 489 U.S. at 311, or addresses 'substantive categorical guarantee accorded by the Constitution,' such as a rule 'prohibiting a certain category of punishment for a class of defendants because of their status or offense.'" Saffle v. Parks, supra, at 494 (quoting Penry, 492 U.S. at 329, 330). Plainly, this exception has no application here because the rule Graham seeks "would neither discriminalize a class of conduct nor prohibit the imposition of capital punishment on a particular class of persons." 494 U.S. at 495.

Petitioner states, " This should apply to him because he did not kill any persson." And

[8478] [***LEdHR1A] LEdHR(1A) [***LEdHR2A] LEdHR(2A) HN5 The second exception permits federal courts on collateral review to announce "' watershed rules of criminal procedure' implicating the fundamental fairness and accuracy of the criminal proceeding." Ibid. Whatever the precise scope of this exception, it is clearly meant to apply only to a small core of rules requiring "observance of 'those procedures that ... are "inplicit in the concept of ordered liberty."'" Teague, supra, at 311 (quoting Mackey v. United States, 401 U.S. 667, 693, 28 L.Ed.2d 404, 91 S.Ct. 1160 (1971)(Harlan J., concurring in judgments in part and dissenting in part)(in turn quoting Palko v. Connecticut, [***277] 302 U.S. 319, 325, 82 L.Ed.2d 288, 58 S.Ct. 149 (1937))); see also

Butler v. McKellar, supra, at 416. As the plurality cautioned in accurate determination of innocence or guilt, we believe it unlikely that many such components of basic due process have yet to emerge." 489 U.S. at 313. We do not believe that denying Graham special jury instructions concerning his mitigating evidence of youth, family background, and positive character traits "seriously dimish[ed] the likelyhood of obtaining an accurate determination" in his sentencing proceeding. See Butler v. McKellar, supra, at 416. Accordingly, we find the second Teague exception to be inapplicable as well.

Petitioner states, " But this is applicable to him because all of his statutes were based of the first charge, and there was no way he could have been found not guilty by the jury without considering the other counts."

Furthermore, Petitioner claims, the jury had to think he was a bad man. For support of this claim he relies on the language as a starting point found at 88 Wis.2d 395, 276 N.W.2d 767 (1979) **Lease Am. Corp. v. Insurance Co. of N. Am.** In this case the danger of unfair prejudice was the jurors would be so influenced by the other acts evidence that they would likely convict the defendant of the other acts evidence showed him to be a bad man (FN19).

Petitioner states, " The jury had no choice but to convict him on all counts because of the way the Court framed the jury instructions. "

Petitioner claims, also, ambiguity can be created by all the counts he was charged with. For support of this claim as a starting point he uses the lanaguage found at 175 Wis.2d 366, 498 N.W.2d 887, 1993 Wisc. App. LEXIS 309, **State v. Chevez**, (Emphasis in Part): **HN2:** Ambiguity may be created by the interaction of separate statutes as well as the interaction of words and structures of a single statute. State v. Kenyon, 85 Wis.2d 36,49, 270 N.W.2d 160,166, (1978). Petitioner states, " That is what happened in the case at hand."

Petitioner claims, the Legislature has yet to act on multiple prosecutions. For a starting point, he relies on the language found at 218 Wis.2d 330, 579 N.W.2d 35, 1998 Wisc. LEXIS 58, State v. Vassos, (Emphasis in Part): P38. As I have indicated, the majority's decision today comports with the current interpretation of the federal and state double jeopardy protections. The Blockburger "same elements" test is simple and easily applied. Yet it is inadequate. The simple formula seems to evade constitutional protections. Moreover, even though the legislature has acknowledged the problems with the "same elements" test in the framework of multiple punishments [***26] cases, its response is incomplete. The legislature has yet to act in relation to multiple prosecutions. This inaction seems directly contrary to the purposes of the multiple protections component of the Double Jeopardy Clause. Petitioner's has had violations of his U.S. Const. Amends. V. and XIV.

Furthermore, the SUPREME COURT OF THE UNITED STATES has not been forced to rule on the predicate offenses of the Blockburger test. For support of this claim, he relies on the language found at 445 U.S. 684, 100 S.Ct. 1432, 63 L.Ed.2d 715, 1998 U.S. LEXIS 15, Whalen v. United States, (Emphasis in Part): [***736] Because this Court has never been forced to apply the Blockburger in the context of the component and predicate offenses, [5] [*711] we have not [**1448] had to decide whether Blockburger should be applied abstractly to the statutes in question or specifically to the indictment as framed in a particular case. Our past decisions seem to have assumed, however, the Blockburger stands or falls on the wording of the statutes alone. Thus, in Blockburger itself the Court stated, " the applicable rule is that where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not." 284 U.S., at 304 (emphasis in part): More recently, we framed the test as whether '" each statute requires proof of an additional fact which the other does not ...'"

Brown v. Ohio, supra, at 166, quoting Morey v. Commonwealth, 108 Mass. 433,434 (1871)(emphasis added). See also Iannelli v. United States, 420 U.S., at 785, n.17 ([T] court's application of the [Blockburger] test focuses on the statutory elements of the offense"); M. Friedland, Double Jeopardy 212-213 (1969)(noting the two possible interpretations and point out that "the word 'provision' is specifically [***737] used in the test " as stated in Blockburger). Moreover, because the Blockburger test is simply an attempt to determine legislature intent, it seems more natural to apply it to the language drafted by legislature than to the wording of a particular indictment.

Secondly, the Court asserts that "to the extent that ... the matter is not [**1449] entirely free of doubt, the doubt must be resolved [*713] in favor of lenity." Ante, at 694. This asseration I would suggest, forms the real foundation of the Court's decision. Finding no indication of the legislative history whether Congress intended cumulative punishments, and applying Blockburger with insolubly ambiguous results, the Court simply resolves its doubts favor of the petitioner and concludes that the rape committed by the petitioner must merge into his conviction for the felony murder. In doing so, the court neglects the one source that should have been the starting point for the entire [***738] analysis: the lower court's construction of the relevent statutes.

Petitioner states, " This is an exceptional case because he was charged with violating 19-Wis. Stats. all arising out of the same overt act, and received cumulative sentences." This is in violation of his U.S. Const. Amends. V. and XIV. Petitioner demands redress.

Petitioner claims, the Prosecutor, Roy Gay was so vindictive towards the Petitioner, he even charged first degree intentional homicide. e.g., " Appendix E . "

Petitioner claims, the Court Of Appeals can review de novo the Circuit Court's harmless-error standard on whether the omission of having 6-charges prejudiced him. For support of this argument, as a starting point, he relies on 975 F.3d 989, United States v. Qazi, (Emphasis in Part): II. The Du Bo rule [2] If a defendant challenges an indictment before trial and, on de novo appellate review, we may determine the indictment omitted an essential element, Du Bo requires automatic dismissal regardless of whether the omission prejudiced the defendant. 186 F.3d at 1179. Although Du Bo's automatice-dismissal rule conflicts with the harmless-error standard adopted by several other circuits, it remains the law in this circuit. See United States v. Omer, 429 F.3d 835 (9th Cir. 2005) (Graber, J., dissenting from denial of rehearing en banc). [1] Indeed, following this rule, we have dismissed an indictment and reversed the district court even when the missing element was proven beyond a reasonable doubt at trial. See, e.g., United States v. Carbajal, 42 F. App'x 954, 956 (9th Cir. 2002)(Silverman, J., concurring).

[3] [4] Whether an indictment challenge triggers Du Bo's de novo

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1. The supreme Court granted certiorari in United States v. Pesendiz-Ponce, 549 U.S. 102, 127 S.Ct. 782, 166 L.Ed.2d 591 (2007), to resolve this split but decided the case on other grounds. In dissent, Justice Scalia noted that he would have to agree with the Ninth Circuit and held that an indictment lacking an essential element is structual error. See id. at 116-117, 127 S.Ct. 782 (Scalia, J., dissenting). The circuits that disagree with our view have held that Neder v. United States, 527 U.S. 1, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999); Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); and United States v. Cotton, 535 U.S. 625, 122 S.Ct. 1781, 152 L.Ed.2d 860 (2002), undermind the rationale for automatic dismissal. See, e.g., United States v. Robinson, 367 F.3d 278, 283-86 (5th Cir. 2004). We have limited Du Bo's reach after Cotton. See, United States v. Salazar-Lopez, 506 F.3d 748, 752 (9th Cir. 2007). For example, we apply harmless-error review when an indictment omitts an Apprendi-element even when it was timely challenged. See id.; see also United States v. Kaplan, 836 F.3d 1199, 1216 (9th Cir. 2016).

2. Although the Supreme Court has described our duty regarding pro se pleadings as "settled law," it has not clearly articulated its purpose. See generally Rory K. Schneider, Illiberal Construction of Pro Se Pleadings, 159 U. Pa. L. Rev. 585, 604 (2011). But whatever its purpose, it has deep roots. See, e.g., Bretz v. Kelman, 773 F.2d 1062, 1027 n.1 (9th Cir. 1985)(en banc)(affording pro se litigants "the benefit of any doubt").

review depends, in large part, on timing. See United States v. Salazar-Lopez, 506 F.3d 748, 752-53 (9th Cir. 2007)(noting we "continue [] to apply ... Du Bo to dismiss indictments in the face of timely challenges" (emphasis added)); United States v. Rodriguez, 390 F.3d 949, 958 (9th Cir. 2004)(explaining that de novo review when the defendant had unsuccessfully filed a pre-trial motion to dismiss the indictment); United States v. Leos-Maldonado, 302 F.3d 1061, 1064 (9th Cir. 2002)(same); United States v. Omer, 395 F.3d 1087, 1088 (9th Cir. 2005)(per curiam)(same). Pre-trial indictment challenges are reviewed de novo and post-trial challenges are reviewed for plain error. See, e.g., Salazar-Lopez, 506 F.3d at 753; Rodriguez, 360 F.3d at 958; Leos-Maldonado, 302 F.3d at 1064; Omer, 395 F.3d at 1088.

[5] Beyond timing, our cases do not explain what constitutes a "proper challenge" under Du Bo. No doubt, some specificity is required to facilitate our review. United States v. Santiago, 466 F.3d 801, 803 (9th Cir. 2006). Here, the question of specificity is informed by the requirement that we construe pro se pleadings liberally.

III Duty to construe pro se pleadings liberally

[6] It is an entrenched principle that pro se filings "'however inartfully pleaded' *993 are held 'to less stringent standards than formal pleadingsdrafted by lawyers.' "Hughes v. Rowe, 449 U.S. 5, 9, 101 S.Ct. 173, 66 L.Ed.2d 163 (1980)(per curiam)(quoting Haines v. Kerner, 404 U.S. 519, 520, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972)); Hamilton v. United States, 67 F.3d 761, 764 (9th Cir. 1995). We are specifically directed to "construe pro se pleadings liberally."[2] Hamilton, 67 F.3d at 764. This duty applies equally to pro se motions and with special force to filings from pro se inmates. See. e.g., Thomas v. Ponder, 611 F.3d 1144, 1150 (9th Cir. 2010); Zichko v. Idaho, 247 F.3d 1015, 1020 (9th Cir. 2001).
In Zichko, we explained what liberal construction demands in a situation like Qazi's. There, we considered a pro se habeas petition

where the defendant made a broad ineffective-assistance-of-counsel argument to the district court and then specified on appeal that his counsel was ineffective because counsel failed to file an appeal. 247 F.3d at 1020-21. The Government argued we could not consider Zichko's more focused appellate argument because he did not raise it before the district court. Id. at 1020. We agree that Zichko did not "specifically identify" the failure-to-appeal theory in the district court, but, citing our duty to construe pro se motions liberally, we held that the general statements in his motion to the district court sufficed to raise the issue. Id. at 1020-21. We explained: "The district court could have looked at the entire petition to see if the ineffective assistance of counsel claim had any merit; had it done so, the court would have found the allegation that [counsel] failed to appeal." Id. at 1021.

SHOULD PETITIONER HAVE BEEN APPOINTED COUNSEL BEFORE HE WAS SANCTIONED BY BOTH THE WISCONSIN COURT OF APPEALS AND THE UNITED STATES COURT OF APPEALS (7th Cir. Ill.) ?

Petitioner, asked for appointment of counsel, after his Pro Se-Postconviction Hearing on January 28, 2005. e.g., " Appendix ___." And did write the State Public Defender's Office on January 30, 2005. e.g. " Appendix I ." This is a violation of Petitioner's 6th Amend right. Petitioner was forced to proceed on Direct Appeal Pro se, and he is indigent. The State Of Wisconsin is using the Procedural Bar against Petitioner, and he has no other remedy at law available to seek relief from an illegal sentence.

Petitioner claims, the Circuit Court Judge, should have known that he could not impose more than one sentence for the Crime. For support of this argument, as a starting point, he relies on the language found at 85 U.S. 163, 21 L. Ed. 872, 1873 U.S. LEXIS 1301, 18 Wall. 163, Ex parte Lange (Emphasis in Part); [*170] In the case of Crenshaw v. The State of Tennessee, [8±] it was held by the Supreme Court of that State that the common-law principle went still further, namely, that an indictment, conviction, and punishment in a case of felony not capital was a bar to a a prosecution for all other felonies not capital committed before such conviction, judgment, and execution.

If a civil case, says Drake, J., in State v. Cooper, [9±] the law abhors a multiplicity of suits, it is yet more watchful in criminal cases that the crown shall not oppress the subject, or the [***14] government the citizen, by prosecutions.

These salutary principles of common law have, to some extent, been mebodied in the constitutions of the several States and of the United States. HN3± By Article VII of the amendments to the latter instrument it is declared that no fact once tried by a jury shall shall be otherwise re-examined in any court of the United States than according to the rules of the common law; and by Article V, that no person shall for the same offense be twice put in jeopardy of life or limb ... nor be deprived of life, liberty, or property without due process of law.

It is not necessary in this case to insist that other cases besides involving life or limb are positively covered by the language of this amendment; or that when a party has had a fair trial before a competent court and jury, and has been convicted, that any excess of punishment deprives him of liberty or property without due course of law. On the other hand it would seem to be equally difficult to maintain, after what we have said of the inflexiable rules of the common law against a person being twice punished for the same

offense, that such second [***15] punishment as it pronounced in this case is not a violation of that provision of the Constitution.

It is very clearly the spirit of the instrument to prevent a second punishment under judicial proceedings for the same crime, so far as the common law gave that protection.

In the case of The Commonwealth v. Olds, [10±] one of the [*171] best common law judges that ever sat on the bench of the Court of Appeals of Kentucky [11±] remarked, "that every person acqainted with the history of the governments must know that state trials have been employed as a formidable engine in the hands of a dominant administration .... To prevent this mischief the ancient common law, as well as Magna Charta itself, provided that one acquittal or conviction should satisfy the law; or, in other words, that the accused should always have the right secured to him of availing himself of the pleas of autrefois acquit and autrefois convict. To perpetuate this wise rule, so favorable and necessary to the liberty of the citzen in a government like ours, so frequently subject to changes in popular feeling and sentiment, was the design into our Constitution the clause in question."

[***16] In the case of Cooper v. The State, [12±] in the Supreme Court of New Jersey, the prisoner had been indicted, tried, and convicted for arson. While still in custody under this proceeding he was arraigned on an indictment for the murder of two persons who were in the house when it was burned. To this he pleaded the former conviction in bar, and the Supreme Court held it a good plea. It is to be observed that the punishment for arson could not technically extend either to life or limb; but the Supreme Court founded its argument on the provision of the constitution of New Jersey, which embodies the precise language of the Federal Constitution. After referring to the common law maxim the court says: "The constitution of New Jersey declares this important principle in this form: 'Nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb.' Our courts

of justice would have recognized and acted upon it as one of the most valuable principles of the common law without any constitutional provision. But the farmers of our Constitution have thought it worthy of especial notice. And all who are conversant with courts of justice must be satisfied that [***17] this great principle [*172] forms one of the strong bulwarks of liberty .... Upon this principle are founded the pleas of autrefois acquit and autrefois convict."

Defendant states, "This proves he should not have been convicted of the other 5-Counts because the other Counts carry less time in Prison."

Petitioner claims, on August 23, 2004, that was to be sentencing, but was converted into a Status Conference, in which he appeared Pro se. Id. at (8-23-04,Ti.Tr.Pp. 3 & 4), "The Court: What is that ? The Defendant: Life plus 165, roughly. The Court: I think that's not quite what it says, but I have to find the information. Here we go. Well, the original Information alleges first-degree intentional homicide. This is only an attempt, so the penalty would not be life. It would be something less than that.

Ms. Anderson (Prosecutor): Your Honor, in an Amended Information we charged attempted first-degree

intentional homicide with a repeater. The Court: What's the potential penalty ? I don't have the penalties memorized anymore.

Ms. Anderson: Without the repeater, it's 60 years and it enhances for not more than six years with the prior conviction being for a felony. The Court: You are looking, on Count 1, Mr. Poirier, at about 66 years potential incarceration, and on the possession of a firearm ten more years.

Ms. Anderson: With an enhancement of four years for the felony prior. (The Prosecutor is taking about the Rusk County OMVWOC that is not a crime of violence.)

The Court: That's 14 years. On the vehicle theft you are looking at six years with a two year penalty-- excuse me, six-years penalty enhancement, 12 years. And for the burglary you are looking at 12 and a half years plus six years. So you're looking -- also

the aggravated battery, which would be 15 years plus the penalty enhancement. So you are looking at about 100 years or more which would, in effect, if I were to give you the maximum penalty, would be a life sentence. Do you understand that ?

The Defendant: Yes. The Court: You've been through various criminal trial on occasion and sentencing hearings in the past.

Petitioner states, " His defense counsel was allowed to withdraw from the case without being present, and this is a total violation of his U.S. Const. Amend. XIV. This is another Federal law.violation."

Petitioner claims, even at Pro se - Sentencing on October 28, 2004, the Judge even said, " The Court: Frankly, if I recall, there were at least two trials before me in which you were acquitted, and I don't know all the facts in your life that led to those acquittals, but the evidence in both cases were, actually, quite strong in my opinion. In this case, however, your testimony did not save you. You have not shown any remorse or any repentance for the crime you have committed. You continue to claim you're innocent, that you were a victim, not the perpetrator, but it's my belief that your testimony at trial borders on rediculous." e.g., " Appendix ___."

Petitioner states, " Because the Judge sat on the last 2-jury trials, he enhanced the penalty even further because the Habitual Offender Statute § 939.62 Wis. Stats. the Judge made sure Petitioner received the Maximum sentence, plus 5-other sentences that are having a grave collateral effect upon him."

Petitioner has even challenged the Habitual Offender Statute § 939.62(1)(c) in his §781.01 Extraordinary Remedy that was denied on May 21, 2021, and Motion For Reconsideration. e.g., " Appendix F ." Because the prison has been on lock-down since March 18, 2020, the COVID-19 pandemic it has been impossible to get any law research done. But a friend of mine gave myself a Prison Legal News, and the law has changed on what crimes are "violent" felonies. I would call your attention to the U.S. Court Of Appeals For The

Eighth Circuit, held that after defendant's ACCA enhancement was struck his sentence must be vacated because the court lacked jurisdiction to impose more supervision than allowed by statute.

Travis Ryan Raymond was convicted on possession with intent to distribute methamphetamine under U.S.C. § 841(a)(1) and (b)(1)(c) and being a felon in possession of a firearm under 18 U.S.C. § 922(g)(1) in 2014. The district court also determined that five of his Minnesota state priors constituted violent felonies, which triggered a 15-year mandatory minimum under § 924(e). The court sentenced him to two prison terms, one for each count, to be served concurrently and imposed a five-year term of supervision (also the minimum under the ACCA).

Raymond's sentence was upheld on appeal, four months before the Supreme Court issued a decision in **Johnson v. United States**, 135 S.Ct. 2551 (2015). Because Johnson struck down the ACCA provision that classified three of his priors as violent felonies, Raymond filed a timely motion under 28 U.S.C. § 2255. The district court agreed that the ACCA statutory minimum no longer applied but denied relief because "his 15-year sentence still fell within the sentencing range recommended .... on the drug count."

Petitioner claims, he has also filed in the Federal District Court also, and this was before the Johnson decision. And, he was denied." Because he was Sanctioned, he cannot get any relief, and PETITIONER PRAYS THIS COURT WILL GRANT HIM RELIEF.

With the assistance of the Public Defenders Office, Raymond filed a motion under Rule 60(b)(6) of the Federal Rules of Civil Procedure, seeking reconsideration of his §2255 petition. This was denied on the same grounds as his §2255 motion. Raymond was granted a certificate of appealability from the district court, and the Eighth Circuit reversed.

" An error of law may be remedied under § 2255 only when it constitutes a fundamental defect which inherently results in a

miscarriage of justice." United States v. Addonizio, 442 U.S. 178 (1979). When denying his petition, the district court relied on Sun Bear v. United States, 644 F.3d 700 (8th Cir. 2011), which stated, "if the same sentencing court could have imposed, then a defendant is not entitled to habeas relief."

The Court determined that Sun Bear was distinuishable because Cravens v. United States, 894 F.3d 891 (8th Cir. 2018), the ACCA's residual clause caused sentences to be issued which were "imposed in violation of the Constitution."

Using the proper standard, i.e., Sun Bear instead of Cravens, is a legal error that amounts to an abuse of discretion under City of Dulth v. Fond du Lac Band of Superior Chippewa, 702 F.3d 1147 (8th Cir. 2013).

The only catch Raymond was that, in light of Quarles v. United States, 139 S. Ct. 1872 (2019), his prior for third-degree burglary may again qualify as an ACCA predicate, so the Court remanded Raymond's ACCA Challenge in light of Quarles.

Accordingly, the Court vacated the denial of Raymond's 60(b)(6) motion because the appropriate legal standard for assessing his ACCA claim. See Raymond v. United States, 933 F.3d 988 (8th Cir. 2019). Furthermore:

The Seventh Circuit reverses convictions under 18 U.S.C. § 924(c); Holdings Under Offenses DO NOT QUALIFY as "CRIMES OF VIOLENCE."

The U.S. Court Of Appeals For The Seventh Circuit reversed convictions of prisoners who have been found guilty of using and discharging firearms during a crime of violence in violation of 18 U.S.C. § 924(c). In doing so, the Court held that the underlying offense of Kidnapping, making a ransom demand, and being a felon in possession of a firearm, violations of 18 U.S.C. §§ 1201, 875(a), and 922(g)(1), respectively, do not qualify categorically as crimes of violence under § 924(c).

Lindani Mzembe, Ivan Brazer, and Derek Fields attacked a man as he approached his car, which was parked in front of his house. They beat him with their pistols and demanded money. Accidentally,

shooting him in the arm in the process. They used duck tape to bind, blindfold, and gaghim; ~~tossed him into a car;~~ drove him to Beazier's house. They continued to pistol-whip him and demand money.

All three men were indicted for kidnapping, demanding a ransom, being felony in possession of a firearm, and possession of a firearm in furtherance of a crime of violence.

Mzembe and Fields were convicted of all three charges while Brazier was convicted only of the kidnapping and ransom charges. Brazier, Mzembe, and Fields received total sentences of 444, 528, and 656 months, respectively. The later two included mandatory 120-month consecutive sentence for the possessing a firearm in furtherance of a crime of violence.

The men did not appeal the underlying conviction for kidnapping, demanding a ransom, or being a felon in possession of a firearm but raised sentencing issues and challenges to the men's § 924(c) convictions.

The Seventh Circuit noted that, under § 924(c), an underlying offense qualified as a "crime of violence" if it "has an element of the use, attempted use, or threatening use of physical force against the person or property of another," § 924(c)(3)(A), or "by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense." § 924(c)(3)(B).

However, in United States v. Davis, 139 S. Ct. 2319 (2019), the Supreme Court held that the residual clause's definition of "crime of violence" in § 924(c)(3)(B) is unconstitutional vage. Therefore, the Supreme Court held that the § 924(c) convictions could only be upheld if the underlying offense required violence against a person or property as an element of the offense. In other words, if there was any method by which the crime could be committed without using violence, the convictions had to be reversed, regardless of the actual facts of the underlying crimes.

The Seventh Circuit had previously held that kidnapping and

demanding a ransom do not categorically qualify as crimes of violence under § 924(c). United States v. Jenkins, 849 F.3d 390 (7th Cir. 2017). Because the conviction could have had an effect on the sentences for the other charges, the Court upheld Brazier's sentence and reversed all of the other sentences of Mzembe and Fields, and remanding their cases for resentencing. See United States v. Brazier.

Petitioner claims, because the lower courts will not address the issues he has raised in his writs, this has resulted in a fundamental miscarriage of Justice. The Prosecutor will not even provide him with a copy of the Judgments Of Convictions. e.g., " Appendix G ." And told Petitioner that the Prison could provide him with one, and the prison could not.

REASON FOR GRANTING THE WRIT

The lower courts have ruled "contrary" to well established Federal law as determined by the United States Supreme Court. The U.S. Supreme Court has not ruled on what the predicated offenses are of Attempted First Degree Intentional Homicide are, and this will have a great impact on Wisconsin, and clarify the law on how many charges can arise out of the same overt act. Plus, how many times the Repeater Statute can apply to the same sentence.

PETITIONER PRAYS THIS COURT WILL GRANT RELIEF BECAUSE NO OTHER COURT WILL HEAR HIS CLAIMS.

CONCLUSION

Petitioner has been enacted with a fundamental miscarriage of justice because the law is not settled yet, and no other court