22-7226

IN THE

SUPREME COURT OF THE UNITED STATES

Case No._____

TRAVIS J. GUTTU,

Petitioner,

vs.

CHRISTOPHER BUESGEN,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

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

Travis Guttu #425032

Stanley Correctional Institution

100 Corrections Dr.

Stanley, WI 54768

(715) 644-2960

ORIGINAL

QUESTIONS PRESENTED FOR REVIEW

1. Does a claim of procedural innocence require a petitioner to show his actual innocence with facts outside of the record where no trial took place?

2. Does the Fourteenth Amendment's Due Process Clause prohibit a trial court from participating in issuing plea forms where it is not bound by a sentence recommendation, and if so, does a fundamental miscarriage of justice occur where a trial court issues a plea form and subsequently convicts and sentences a criminal defendant for a related charge not on that form?

3. Does erroneous legal advice from appellate counsel, and deficient access to legal resources, constitute as external impediments which toll AEDPA's 1-year deadline?

4. Was the Defendant denied his Sixth Amendment right to effective assistance of trial counsel where his first trial counsel admitted he did not go over exculpatory medical records, and had no concern about the erroneous plea form, and where his second trial counsel admitted he overlooked meritorious reasons to support a motion to withdraw the Defendant's no contest plea before sentencing?

LIST OF PARTIES AND RELATED CASES

Christopher Buesgen

Warden of Stanley Correctional Institution

100 Corrections Dr.

Stanley, WI 54768

State of Wisconsin

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IN THE

SUPREME COURT OF THE UNITED STATES

Petitioner prays that a writ of certiorari issued to review the judgment below, whereas there will be no other viable avenue of relief left for him to obtain justice.

OPINIONS BELOW

The opinion of the highest federal court adjudication is found at Appendix A.

The opinion of the U.S. District Court for the Western District of Wisconsin appears at Appendix B to the petition, and is found at *Guttu v. Buesgen*, 2022 WL 2966394 (W.D. Wisconsin 2022)

The opinion of the Wisconsin Court of Appeals appears at Appendix C to the petition, and is found at *State v. Guttu*, 345 Wis.2d 398, 824 N.W.2d 928, 2012 WL 5949512

The Wisconsin Supreme Court's decision to deny discretion review is found at *State v. Guttu*, 350 Wis.2d 728, 838 N.W.2d 636 (Table), 2013 WI 87

JURISDICTION

The date on which the United States Court of Appeals for the Seventh Circuit denied a certificate of appealability was on January 24th, 2023. A copy of that decision appears at Appendix A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. AMENDMENT XIV

The right to be "free from the deprivation of liberty...without due process of law...."

U.S. CONST. AMENDMENT VI

The right "to have the Assistance of Counsel for his defense."

WISCONSIN STATUTES

§ 940.19(2)

§ 940.19(5)

§ 940.225(2)(a)

PROCEDURAL HISTORY OF THE CASE

The State of Wisconsin filed multiple criminal complaints against Travis Guttu. The Complaint for Brown county Case No. 2009CF394 was filed March 26th, 2009. (R.1:2) The complaint consisted of a single felony count, substantial Battery. An Amended Criminal Complaint was filed April 6th, 2009. A second felony count of second-degree sexual assault was added. The information was filed May 22nd, 2009, consisting of the same two felony counts as shown in the Amended Complaint. (R.11) On February 17th, 2019, another felony addition of second-degree reckless endangerment was added. (R.42) The three felony counts relate to the alleged actions of Travis Guttu against a single complainant. The second criminal complaint regarding Brown County Case No 2009CF1432 was filed on December 4th, 2009. (CF1432.1) The complaint consisted of a felony bail jumping, and two misdemeanor counts, possession of tetrahydrocannabinols, and possession of drug paraphernalia as party to a crime. Information was filed December 11th, 2009 including the same three counts. (CF1432.6) Also, during the pendency of these proceedings, Travis Guttu was charged with threatening the presiding judge, but the charge was removed upon the entering of his no contest pleas. (R.163:39) On June 30th, 2020, a jury trial proceeding commenced as to the first Brown county Case 09CF394. (R.160) On that same day, during a two hour recess after voir dire, Guttu entered a plea of no contest to what he believed (based on the form), to be a violation of WIS.STAT. § 940.19(2) that carried a maximum of 3.5 years, and a violation of § 940.225(2)(a) in order to avoid the exposure time on the aggravated battery charge of WIS.STAT. § 940.19(5), to avoid the charge of threatening the judge, and to have his other open case resolved. The court accepted the no contest pleas. (R.160:44-65) Guttu's original trial attorney, Attorney Reetz, withdrew, and Guttu was appointed Attorney Debord. (R.99-100) On July 16th, 2010, Guttu moved to withdraw his plea prior to

sentencing asserting his innocence of the violation of WIS.STAT. § 940.225(2)(a). (R.101) The motion was heard on September 10th, 2010 and the court denied his motion. (R.163) The sentencing hearing took place on October 19th, 2010. (R.164) As to case 09CF394, the court sentenced Guttu to a global sentence of twenty years of initial confinement, followed by ten years of extended supervision. (R.164:58) As to case 09CF1432, the court sentenced Guttu to a global sentence of two years and nine months of initial confinement, followed by three years of extended supervision, consecutive to 09CF394. (R.164:58-69). A timely notice of intent to pursue postconviction relief through the State's direct appeal process was filed. (R.115; CF1432.36). Through his attorney Andrew Morgan, Guttu filed consolidated motions for postconviction relief in the trial court on September 29th, 2011. (R.165) The motions for postconviction relief were heard by the same judge, Judge William Atkinson, who both participated in the plea process by providing forms (incorrect forms) to the defense counsel, and who denied the initial plea withdrawal motion prior to sentencing. (R.165:67-69). The court denied the motions. (*Id*). A timely notice of appeal was filed for 09CF394, and 09CF1432. (R.137; CF1432:44). On November 29th, 2012, the Wisconsin Court of Appeals upheld Guttu's judgment of conviction, and the Wisconsin Supreme Court denied discretionary review shortly thereafter. On July 27th, 2022, the U.S. District Court for the Western District of Wisconsin, Judge William M. Conley presiding, denied the Petitioner's habeas on screening without a certificate of appealability. Guttu Petitioned the Federal Court of Appeals for the Seventh Circuit for a certificate of appealability. It was denied on January 24th, 2023, where it reasoned that it had reviewed the record and Guttu made no substantial showing of a denial of a constitutional right. He now petitions this Court for certiorari review within 90 days of that final order.

FACTS OF THE CASE

In this case, the Petitioner's trial counsel had put forth a joint motion with the prosecution to enact Wisconsin's rape shield law to prevent the Petitioner from using the discovery of his girlfriend's sexually transmitted disease as a motive for a battery, so he would have a defense against the sexual assault accusation. (R.163:31-32, 40; R.165:17-22) Meanwhile, the Petitioner was also charged with threatening the presiding judge. (R.163:39) But instead of recusing himself, the trial judge continued and provided defense counsel with paperwork relative to a plea bargain, to return to the court. . .paperwork that was erroneous and to which the judge imposed a greater sentence on a related charge not appearing on that form. (165:67-69). The prosecution agreed that the charges for threatening the judge would be modified if the Petitioner plead no contest. (R.163:39) The Petitioner initially accepted the offer, but before he was sentenced, he moved to withdraw his plea. (R.163-164) The judge whom the Petitioner was initially charged with threatening, refused to allow him to withdraw the plea and sentenced him on a related charge that did not appear on the plea form. (R.164:58-59). The sentence on the battery count well exceeded the maximum penalty of the charge which was on the form, and which Guttu had initially entered a no contest plea to. (R.129; R.160). The substantial battery charge carried only a maximum punishment of 3.5 years of initial confinement whereas the aggravated battery charge which the court found him guilty of and sentenced him on carried much more. (R.129:29-31). In postconviction proceedings, the Petitioner's first trial attorney admitted he didn't go over exculpatory evidence or the plea form with him, and indicated that he believed the Petitioner would have went to trial if he had just a little bit more time to think about it. (R.163:12-32) Likewise, the Petitioner's second trial attorney, who moved to withdraw the guilty plea, admitted he overlooked meritorious issues which he should have discussed with the Petitioner, and

included in the motion to withdraw the plea before sentencing. (R.164:4-13; R.164:17-22) Moreover, the Petitioner had testified at the postconviction hearing he was innocent and how the forensics would establish he was not guilty of rape. (R.165:37-38, 42). The postconviction court denied the postconviction motion and found the Petitioner's no contest pleas to be knowing, intelligent, and voluntary, and further concluded he was not denied his Sixth Amendment right to effective assistance of counsel. (R.165: 78-79) Guttu's own appellate indicated there was a conspiracy between the trial court and Guttu's first trial counsel short of explicitly stating so.

"The court claims the court's jury instructions were attached to the plea form, but why would Attorney Reetz attach those jury instructions to the same plea form that contained a misdemeanor battery checklist with Guttu's initials?" (Def.App.Br.24)

Again, the trial court itself admitted it gave Guttu's counsel the paperwork to return to it. (R.165:67-69). Shockingly, the Wisconsin Court of Appeals still affirmed the judgment of the lower court while noting:

" [T]he errors in the form are unfortunate and, especially in combination, unsettling . . . . "

(WICOA - decision, at ¶45)

After the Wisconsin Supreme Court denied the Petitioner's Petition for Review, his appellate attorney, Attorney Morgan, had indicated that there were no further legal avenues of relief available to the Petitioner in response to Guttu's question about what else he could do to challenge his judgment of conviction. (See Habeas Memorandum). Guttu then attempted to contact

the Wisconsin Innocence project for help, sending them his case file. It took over a year for them respond to him, and they informed them they could not help. Guttu believed his attorney was correct about there being no avenue for relief. But in 2022, after finding out from another inmate about federal habeas corpus, the Petitioner immediately filed a petition, but it was 6 years past the AEDPA deadline. He had alleged in a Memorandum included with the Petitioner, inter alia, that multiple circumstances external to him should excuse the Petitioner from the lateness. He also alleged that he is procedurally innocent and a fundamental miscarriage of justice exception should excuse the Petitioner from AEDPA's 1-year deadline given the judge's participation in working without counsel by providing him forms relative to pleading no contest in order to coerce the Petitioner into a deal that didn't really exist, and to which he was found guilty and sentenced on charges not appearing on that form. The district court disagreed about cause and prejudice and stated that the Petitioner had failed to provide new evidence of his actual innocence with his claim of procedural innocence, refusing to draw a distinction between the two. It denied the habeas petition on screening without a certificate of appealability. The Seventh Circuit denied Guttu's petition for a certificate of appealability stating that he made no substantial showing of a denial of a constitutional right.

REASONS FOR GRANTING THE PETITION

I. THE RECORD SUFFICIENTLY ESTABLISHES THAT THE PETITIONER IS PROCEDURALLY INNOCENT WITHOUT THE NEED FOR FACTS OUTSIDE OF THE RECORD TO ESTABLISH HIS ACTUAL INNOCENCE.

This Court should grant certiorari review and clarify the difference between actual innocence and procedural innocence, and what is required of a petitioner to make a showing on the latter where no trial takes place. This is a situation that is likely to occur and the law isn't clear on the issue. Surely it was not the intent of this Court to bar habeas relief to innocent people whom were convicted without a trial. The facts of this case demonstrate that Guttu was denied the "full panoply of protections afforded to criminal defendant by the Constitution." *Coleman v. Hardy*, 628 F.3d 314, 318-319 (7th Cir. 2010) (internal quotations and source omitted). Nevertheless, the U.S. district court for the Western District of Wisconsin declined to draw a distinction between "procedural innocence" and "actual innocence." It required Guttu present facts outside of the record to establish his actual innocence before being allowed to move through the innocence gateway. Likewise, the Seventh Circuit stated there was no substantial showing of a denial of a constitutional right.

Guttu is procedurally innocent and was denied fundamental fairness in state court when he was convicted of charges that he neither plead to, nor was found guilty of by a jury. This is a case where a defendant was compelled "[t]o avoid a massive risk by pleading guilty to a lesser offense...." *Lafler*, 566 U.S. 156, at 185. . . and was not permitted to change his mind before he was sentenced. Nor did Guttu receive the benefits of plea agreement he originally agreed to at sentencing. The plea agreement and its forms were erroneous (R:95). Even the Wisconsin Court of Appeals stated:

" [T]he errors in the form are unfortunate and, especially in combination, unsettling . . . . "

(WICOA - decision, at ¶45)

The benefits of the plea bargain would have limited the exposure time of the sentence Guttu received. (R:165:11-13) The trial court found him guilty on an "aggravated battery" charge to which he received 10 years initial confinement (WIS.STAT. § 940.19(5)) – whereas Guttu had only plead to a "substantial battery" charge that carried a maximum of 3.5 years (WIS.STAT. § 940.19(2)). In that plea, the State had also agreed to cap its recommendation to 8 years of initial confinement by including the associated 2nd degree sexual assault charge (WIS.STAT. § 940.225(2)(a)). Guttu's "[c]ontinued refusal to admit guilt to the sexual assault shows that his concern about not admitting guilt was a fundamental part of his plea." (Reply Brief of Defendant-Appellant, at pg. 11). Guttu's own words in state court affirm his claims of innocence:

09/10/10 -- PLEA WITHDRAWAL HEARING -- BROWN COUNTY CIRCUIT COURT

(Q) PROSECUTOR LASEE: Mr. Reetz testified that throughout this case you've always had a very strong opinion as to your innocence; is that correct?

(A) DEFENDANT GUTTU: Correct.

(R:163:42)

Guttu was sentenced consecutively to a total initial confinement of 20 years, and 12 years and 6 months extended supervision:

WIS.STAT. § 940.19(5) - 10 years initial, 2 years and 6 months extended supervision

WIS.STAT. § 940.225(2)(a) -10 years initial, 10 years extended supervision

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Guttu was entitled to a hearing to develop this claim in support of his claim of actual innocence. "[T]o qualify for the actual innocence exception, the petitioner need not conclusively demonstrate his innocence." *Taylor v. Powell*, 7 4th 920 (10th Cir. 2021), at 927. A claim of actual innocence is by no means as great of a standard as legal insufficiency, and the standard for procedural innocence gateway is even a lower threshold than a claim of actual innocence. *Coleman v. Hardy*, 628 F.3d 314 (7th Cir. 2010). "[T]his means that his constitutional claim is based not on his innocence, but rather on his contention that the ineffectiveness of his counsel denied him the full panoply of protections afforded to criminal defendant by the Constitution." *Id.*, at 318-319 (internal quotations and source omitted). Since none of Guttu's factual bases were put before a fact-finder at a trial or an evidentiary hearing, all evidence could be considered 'new.' *See Jones v. Calloway*, 842 F.3d 454 (7th Cir. 2016), at 461 ("New evidence" in this context does not mean "newly discovered evidence"; it just means evidence that was not presented at trial.""). A court may consider information not presented to a jury, or normally inadmissible. . .even the length of delay in asserting innocence or bringing the late habeas petition is a factor to be considered by the courts in reaching its conclusion. *Gladney v. Pollard*, 799 F.3d 889 (7th Cir. 2015), at 898.

No reasonable person would believe that a person who engaged in consensual sexual relations, and had soon afterward become aware that his girlfriend had an active herpes outbreak, would then out of his repulsive rage, strike his girlfriend, only to engage in sexual intercourse again. A reasonable person would conclude that if the herpes was so repulsive to the defendant that it caused a violent outburst, then the defendant would not have engaged in sexual intercourse with his partner again given the very obvious reason that he was trying to avoid contracting herpes. Guttu pointed out the exact way he planned to establish his evidence at the hearing.

12/02/11 -- POSTCONVICTION HEARING -- BROWN COUNTY CIRCUIT COURT

(Q) ATTORNEY MORGAN: Why did you want further testing?

(A) DEFENDANT GUTTU: ...."They won't have my DNA on them."... I get a letter from the lab none of my DNA was on the sweatpants...there is a way to separate sexual contact that occurred on her bed and whatever happened to her on her floor by her bedroom door. They are not two acts of the same. They are different times and different parts of the room. They do not have anything to do with each other whatsoever, and we can establish that with the evidence if it would have been pursued.

(R:164:37-38)

Guttu's repeated claims of innocence are conceded by the State, (R:163:42) and Guttu's choice to plead because of haste and confusion is conceded by trial counsel. (R:163:23-24). He has made a sufficient showing of "[a] reasonable possibility that the outcome of the plea process would have been different with competent advice." *See Lafler*, 556 U.S. 156, at 1380.

Guttu was convicted of a greater offense than what he agreed to on the plea form and this is clear showing of "a denial of fundamental fairness" *Murray v. Carrier*, 477 U.S. 478, 106 S.Ct. 2639, 91 L.Ed.2d 397 (1986), at 493-494 (internal quotations omitted). This denial, coupled with Guttu's "procedural innocence" claim and his attorney's lack of advocacy was enough to make it through the innocence gateway. Guttu's trial attorney prevented him from using, as part of his defense, the fact that he had observed the complainant with a herpes outbreak, so as to persuade a jury that any reasonable person would be deterred from any type of sexual contact after an observation, and that the rape allegation against him was false. (R:165:22). This is sufficient to "cast considerable doubt on his guilt—doubt sufficient to satisfy *Schulp's* gateway standard for obtaining federal review. . . ." *House v. Bell*, 547 U.S 518, 126 S.Ct. 2064, 165 L.Ed.2d 1 (2006), at 2068. This Court should grant certiorari and announce that a claim of procedural innocence, where no trial takes place, does not require a showing of actual innocence with facts outside of the record if the record clearly establishes a claim of innocence.

II. THE TRIAL JUDGE'S FAILURE TO RECUSE HIMSELF, AND HIS PARTICIPATION IN ISSUING ERRONEOUS PLEA PAPERWORK SO AS TO CONVICT AND SENTENCE THE PETITIONER FOR A RELATED CRIME WHICH HE DID NOT PLEAD GUILTY TO, WAS A MISCARRIAGE OF JUSTICE.

Certiorari review is necessary for this Court to establish whether or not a fundamental miscarriage of justice occurs where a trial court and counsel conspire together to compel a criminal defendant to plead guilty just as Justice Stevens' concurring opinion in *Bousley v. United States* had articulated. 523 U.S. 614, 118 S.Ct. 1604, 140 L.Ed.2d 828, at 1613 (1998). This Court should announce that a denial of a fundamentally fair procedure meets the miscarriage of justice exception to AEDPA's 1-year deadline.

The "principal functions of habeas corpus [is] to assure that no man has been incarcerated under a procedure which creates an impermissibly large risk that the innocent will be convicted." *Teague v. Lane*, 489 U.S. 288, 109 S. Ct. 1060, 103 L.Ed.2d 334 (1989), at FN3 (quote source omitted). "[A]dherence to the cause and prejudice test in the conjunctive, will not prevent federal habeas courts from ensuring the fundamental fairness that is the central concern of the writ of habeas corpus." *Murray v. Carrier*, 477 U.S. 478, 106 S.Ct. 2639, 91 L.Ed.2d 397 (1986), at 2650. This Court had made an implicit holding that there is no bar to habeas relief if the process that had convicted a petitioner was manifestly unjust. *Id.* at 2650; *See also Panetti v. Quarterman*, 551 U.S. 930, 127 S.Ct. 2842, 168 L.Ed.2d 662 (2007). "Ignorance, incomprehension, coercion, terror, inducements, subtle or blatant threats might be a perfect cover-up of unconstitutionality." *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709 (1969), at 243.

Guttu's conviction was obtained through a fraudulent plea agreement of which the presiding judge had participated. The fundamental guarantee of due process surely includes a process free from judges conspiring with a defendant's counsel to "induce him to plead guilty to a crime he did not commit. . . ." *Bousley v. United States*, 523 U.S. 614, 118 S.Ct. 1604, 140 L.Ed.2d 828, at 1613 (1998) (JUSTICE STEVENS, concurring); *See also Lafler*, 566 U.S. 156, at 1388. The record reads:

> COURT: ...And I could see the writing on the wall from this defendant. I knew it was coming. The defendant was trying to stall further. He knew that the case was going to happen. He knew the jurors were going to find him guilty, and he was using whatever effort he could to try to stall the case . . .Knowing that, I wanted to make sure this plea was airtight plea, so I took out the SM-32, the standard -- the gold standard plea form. I was also aware that Mr. Reetz didn't have the jury instructions, and my practice is that when I take a plea in a felony case like this, a sexual assault case, I want the jury instruction attached to the plea questionnaire form. So, if you notice, next to the plea questionnaire are, in fact, the jury instructions. And they are not the jury instructions that are provided by defense counsel or by the State. . . it's my recollection that I provided these for one of my staff to give to Mr. Reetz . . . in fact, he did, handed the back to me with his plea questionnaire form and they were reviewed with him.

(12/02/11 Postconviction hearing, R:165:67-68)

If the Judge gave Reetz certain forms to use, then Reetz is ineffective for using different forms which prejudiced Guttu. Then, the Judge is in error once the plea forms were turned back in to him and neither the Judge, nor the district attorney, had any problem with the plea form stating substantial battery 3-and-a-half-year max as the charge being plead to on the wavier. The judge admitted he received the forms back once they were complete. So, if this wasn't some ploy to get Mr. Guttu to plead out all while knowing the Judge was going to sentence Guttu to a more serious crime, why didn't the Judge or the state speak up and point out what they now claim to be a mistake once they received the plea wavier forms back?

The record clearly illustrates the judge and counsel conspired together to convict Guttu of aggravated charges. *See Bousley v. United States*, supra at 1613. As demonstrated above, Guttu was prejudiced because counsel's failures resulted "[i]n a conviction on more serious charges [and] the imposition of a more severe sentence." *Lafler,* supra, 168. Guttu's state-conviction is plain error, and habeas relief is appropriate because the error "seriously affect[s] the fairness, integrity of the public reputation of judicial proceedings." *See U.S. v. Olano*, 507 U.S. 725, 113 S.Ct. 1770, 123 L.Ed.2d 508 (1993), at 736 (citations omitted). Here, the judge whom Guttu was initially charged with threatening, had provided counsel with this plea paperwork and forms, and found Guttu guilty of charges that were not on the form, and sentenced him to a lengthy prison term as demonstrated above.

Guttu was prejudiced because counsel's failures resulted "[i]n a conviction on more serious charges [and] the imposition of a more severe sentence." *Lafler*, supra at 168. Guttu's state-

conviction is plain error, and habeas relief is appropriate because the error "seriously affect[s] the fairness, integrity of the public reputation of judicial proceedings." *See U.S. v. Olano*, 507 U.S. 725, 113 S.Ct. 1770, 123 L.Ed.2d 508 (1993), at 736 (citations omitted). Here, the judge whom Guttu was initially charged with threatening, had provided counsel with this plea paperwork and forms, and found Guttu guilty of charges that were not on the form, and sentenced him to a lengthy prison term.

"[E]xceptions and exemptions are no less part of Congress's work than its rules and standards–and all are worthy of a court's respect." *BP P.L.C. v. Mayor and City Council of Baltimore*, -----U.S.----,141 S.Ct. 1532, 1539, 209 L.Ed.2d 631 (2021). The principles of fundamental fairness are central to the Fourteenth Amendment. *See Murray v. Carrier*, supra, at 2650. This Court should conclude that Guttu's case falls within the "exceptions and exemptions" of AEDPA and procedural defaults as he was denied all of the safeguards of the Constitution – amounting to a manifest injustice warranting habeas relief. *See Carrier*, 477 U.S. 478, at 496, 106 S.Ct. 2639, at 2650; See also Footnote 3.

The U.S. district court erred in failing to address the constitutional question of whether Guttu was denied a fundamentally fair procedure, and it unreasonably applied the procedural innocence test which is intrinsic to the question of fundamental fairness. In *Bousley v. United States*, 523 U.S. 614, 118 S.Ct. 1604, 140 L.Ed.2d 828 (1998), the Court began its analysis by first addressing whether a plea was knowingly, voluntarily, and intelligently made. *Id.*, at 619. It acknowledged that its review of the cited cases "involv[ing] a criminal defendant who pleaded guilty after being correctly informed as to the essential nature of the charge against him." And Justice Stevens pointed out in his separately written opinion, "if the court and counsel knowingly conspired to deceive [the petitioner] in order to induce him to plead guilty to a crime he did not

commit" those circumstances "inherently result[s] in a complete miscarriage of justice and present[s] exceptional circumstances that justify collateral relief. . . ." *Id.*, at 1613 (citing *Davis v. United States*, 417 U.S. 333, 346-347, 41 L.Ed.2d 109 (1974)). That is exactly what happened in Guttu's case, and such a miscarriage of justice excuses AEDPA's 1-year time-bar. At minimum, Guttu should be entitled to a hearing to show his procedural innocence.

It is an undisputed fact that Guttu was convicted using a fabricated plea agreement form, yet the Wisconsin Court of Appeals chalked it up to be nothing more than "unfortunate and. . . unsettling . . . . " (WICOA - decision, at ¶45). This is objectively unreasonable, and the false form that was used to convict Guttu had obliterated his fundamental due process rights to have a fair procedure. *Teague v. Lane*, 489 U.S. 288. What's more "unsettling" is that Guttu had asserted his innocence since before he was sentenced-attempting to withdraw his plea prior to. A fact courts are free to consider in procedural innocence claims. *See Jones v. Calloway*, 842 F.3d 454 (7th Cir. 2016). It is an undisputed fact that Guttu was charged with threatening the presiding judge, and despite the dismissal of the charges, the trial judge failed to recuse himself. (R.163:39). It is an undisputed fact that Guttu's own trial attorney sabotaged his trial defense by agreeing to the States' motion to prevent Guttu from making mention that the night of the allegations, Guttu had discovered the complainant's herpetic condition and became embroiled, deterring him from sexual relations. (R:163:31-40; R:165:22) Trial counsel was also mainly culpable for convincing Guttu to sign the fabricated plea document, but the court was also involved, admitting on the record that it had participated in giving the trial attorney a form to use for the plea. (R:165:22). *See Bousley v. United States*, 523 U.S. 614, at 1613. "Ignorance, incomprehension, coercion, terror, inducements, subtle or blatant threats might be a perfect cover-up of unconstitutionality." *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709 (1969), at 243.

The district court unreasonably claimed that Guttu did not "argue in any detail the factual record in support of his actual innocence of the crimes of conviction" (Order, page 6). The factual record here is flooded with Guttu's assertions of innocence, and contrary to the district court's contentions, Guttu had quoted a substantial portion of the record regarding it supports his innocence. A court is absolutely permitted to consider this as relative to the meeting the threshold for the gateway. *See Jones v. Calloway*, 842 F.3d 454 (7th Cir. 2016). It 'shocks the conscience' that the district court would ignore a petitioner's decade-long screams of innocence where no trial took place. Even the prosecutor had acknowledged Guttu's struggle to withdraw his plea.

(Q) PROSECUTOR LASEE: Mr. Reetz testified that throughout this case you've always had a very strong opinion as to your innocence; is that correct?

(A) DEFENDANT GUTTU: Correct.

(R:163:42)

In addition to the constitutional violations that prevented Guttu from a meaningful defense regarding the motive for a battery and defense against a sexual assault, his Habeas Memorandum quoted portions of the transcripts which highlight the facts supporting his innocence.

(Q) ATTORNEY MORGAN: Why did you want further testing?

(A) DEFENDANT GUTTU: ...."They won't have my DNA on them."... I get a letter from the lab none of my DNA was on the sweatpants...there is a way to separate sexual contact that occurred on her bed and whatever happened to her on her floor by her bedroom door. They are not two acts of the same. They are different times and different parts of the room. They do not have anything to do with each other whatsoever, and we can establish that with the evidence if it would have been pursued.

(R:163:37-38)

The Wisconsin Court of Appeals decision in its entirety, was objectively unreasonable. It relied on a part of "[j]udicial proceeding that never took place," *See Roe v. Flores-Ortega*, 528 U.S. 470, at 471, and burdened Guttu with a "reasonable interpretation of the court's [nonexistent] prejudice determination." (COA -decision, at ¶29). It engaged in its own credibility determinations and fact-finding stating, "[G]uttu's affidavit on the topic suggests a credibility problem on its face. Specifically, Guttu averred that, at the prison meeting here he first learned of Chapter 980, not one of the fourteen to seventeen inmates that were present had ever heard of civil commitment under Chapter 980, and that the inmates all "gasped" when informed of it...Guttu's highly unlikely account might not undermine his ability to demonstrate prejudice. However, considered in combination with the other factors we list, it supports the circuit court's conclusion that Guttu failed to show prejudice...Guttu's claim that he lacked awareness of Chapter 980... was an unlikely one....(COA decision, at ¶33; ¶29). Nothing in the record indicates that trial court engaged in a rational reasoning process that weighed Guttu's credibility with regards to the specific facts at the prison meeting alleged in the affidavit. It is clear that the state appellate court weighed the credibility of Guttu on its own through Guttu's affidavit – by making statements such "credibility problem on its face," "highly unlikely account," "...was an unlikely one." (*Id.*, at ¶33), and did so contrary to its own laws. *See Hatleberg v. Norwest Bank Wisconsin*, 283 Wis.2d 234, 700 N.W.2d 15 (2005) (appellate courts are "not qualified to make findings of fact" ¶30). "[T]he procedures by which the facts of the case are determined assume an importance fully as great as he validity of the substantive rule of law to be applied" *Wingo v. Wedding*, 418 U.S. 461, 94 S.Ct. 2842, 41 L.Ed.2d 879 (1974), at 2850. The state-appellate court effectively made a summary decision "[o]n

the basis of affidavits [and doing so] was an unreasonable application of federal law" *See Blackmon v. Williams*, 823 F.3d 1088 (7th Cir. 2016), at 1107. Moreover, this claim was to be reviewed as a matter of law under the rubic of ineffective assistance counsel pursuant to *Strickland* where Guttu's counsel admitted his failure to discuss this issue as well as his oversight of the erroneous plea form. (R:165:4).

In addition to the above, it failed to identify the correct legal standard for plea withdrawals and instead, reasoned that Guttu didn't show "[a] reasonable probability that, but for Attorney Debord's failure...Guttu would have been permitted to withdraw his plea to the sexual assault charge." (*Id.*, at ¶27). This statement demonstrates the Wisconsin Court of Appeals entirely deviated from clearly established law. Whether a plea of no contest/guilty may be legally withdrawn is a question of law that isn't owed deference to the arbitrary power of a trial court. The correct legal standard goes to the choice of the defendant -- that is whether "[t]here is a reasonable probability...[the defendant] would not have pleaded guilty and would have insisted on going to trial." *See Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct.36 (1985), at 62; *See also Lee v. U.S.*, 137 S.Ct 1958, 198 L.Ed.2d 476 (2017), at 1965.

There is no dispute from Guttu's first counsel that Guttu would have gone to trial, and any state court decision to the contrary would is an unreasonable determination of the facts.

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(Q) ATTORNEY DEBORD: Would it have been better to have more time to discuss this decision [to plead]?

(A) ATTORNEY REETZ: Well yes...I think if there had been more time, he WOULDN'T HAVE taken the deal. How is that? And that's the truth. I hate when people say "this is the truth," but that's especially true.

(R:163:23-24) (emphasis added)

The state-appellate court could see that Guttu signed an erroneous agreement but still concluded Guttu understood he was pleading to a greater offense. (COA - decision, at ¶45). But "[a] plea is not intelligent unless a defendant first receives real notice of the nature of the charge against him." *Bousley v. U.S.*, 523 U.S. 614, 118 S.Ct. 1604, 140 L.Ed.2d 828 (1998), at 1607 (citations omitted). A plea is also invalid if the defendant was not told about, or misinformed of, the elements of the offense. *Ibid.*

Guttu wasn't read the elements of the actual charge he was convicted of, only the elements of a closely related charge. (R:42; R:160:56-60) This was argued as a matter of law by appellate counsel, but was deferred to as factual findings by the state-court. (Defendant-Appellant's Brief. pg. 18-19). This Court was confronted with a similar situation in *McCarthy v. U.S.*, where the petitioner believed he was only acknowledging that he owed money to the government, but because specific elements of the offense he was pleading to were not explained to him, his plea was not "knowingly and intelligent" - especially because the lesser included offenses were closely related. 394 U.S. 459, 89 S.Ct. 1166, 22 L.Ed.2d 418 (1969), at 471. Likewise, in Guttu's case, he believed he was only acknowledging that he understood that the complaint against him was amended. The elements of the offense that the trial court intended to find him guilty of, were not read to him. Guttu had before him a plea agreement that indicated he was pleading to a lesser offense of substantial battery. In sharp conflict with this Court's logic in *McCarthy*, the Wisconsin Court of Appeals found that because Guttu understood the amended information in the complaint,

he must have understood the related charge he was pleading to, regardless of the erroneous plea form in front of him. (WICOA - decision ¶45).

This reasoning is incongruous with *McCarthy*, and the Seventh Circuit had previously maintained this Court's holding that "[u]nless the defendant understands the elements of the crime he is admitting, his plea cannot be said to have been knowingly and voluntarily entered." *U.S. v. Bradley*, 381 F.3d 641 (7th Cir. 2004), at 647 (quote source omitted). Accordingly, this Court should conclude that the Wisconsin Court of Appeals' decision was objectively unreasonable and Guttu's plea was entered in violation of his Fourteenth Amendment right to due process.

"[T]he principles of comity and finality...must yield to the imperative of correcting a fundamentally unjust incarceration." *See Engle v. Isaac*, 456 U.S. 107, 102 S.Ct. 1558, 71 L.Ed.2d 783 (1982), at 135 (internal quotations omitted). What happened in Guttu's case leaves him at no fault. "[T]here can be no room for doubt that such a circumstance 'inherently results in a complete miscarriage of justice' and present[s] exception circumstances that justify collateral relief... ." *Bousley*, 523 U.S. 614, at 1613 (Justice STEVENS.) For the "principal functions of habeas corpus [is] to assure that no man has been incarcerated under a procedure which creates an impermissibly large risk that the innocent will be convicted." *Teague v. Lane*, 489 U.S. 288, 109 S. Ct. 1060, 103 L.Ed.2d 334, FN3 (1989) (quote source omitted). This Court should conclude that Guttu's repeated claims of innocence and the fundamentally unfair process that convicted him, meets the fundamental miscarriage of justice exception to AEDPA.

III. APPELATE COUNSEL'S ERRONEOUS ADVICE THAT PETITIONER HAD NO OTHER LEGAL AVENUES FOR RELIEF, IN CONJUNCTION WITH OTHER IMPEDIMENTS, SHOULD CONSTITUTE AS CAUSE TO EXCUSE PETITIONER'S FAILURE TO FILE HIS HABEAS PETITION WITHIN AEDPA'S 1 YEAR DEADLINE.

Certiorari review is necessary so that this Court can clarify if a criminal defendant's effective assistance of counsel remains during the final conversation with his client after the highest state court denies discretionary review.

A procedural default will not bar a federal habeas corpus court from hearing a substantial claim of ineffective assistance of trial counsel if the petitioner's initial-review appellate counsel was ineffective. *See Brown v. Brown*, 847 F.3d 502 (7th Cir. 2017), at 509 (*citing Martinez v. Ryan*, 566 U.S. 1, 132 S.Ct. 1309, 182 L.Ed.2d 727 (2012)). Guttu can meet the "traditional requirements of reliance to his detriment of [his attorney's] misrepresentation." *Powell v. Davis*, 415 F.3d 722 (7th Cir. 2005), at 728. His circumstances do not involve a situation where he was provided with counsel during habeas proceedings and counsel failed to abide by the 1-year deadline. *See Lawrence v. Florida*, 549 U.S. 327, 127 S.Ct. 1079, 166 L.Ed.2d 924 (2007). In *Lawrence*, counsel was not "external to the defense." Whereas here, Guttu's lawyer was withdrawing from representation, and abandoning the attorney-client relationship, and giving him final, but erroneous legal advice. *See Thomas v. Attorney General, Florida*, 795 F.3d 1286, 1291-92 (11th Cir. 2015) ("The relevant inquiry today is not whether an attorney's mistake or oversight was egregious. Instead, the question is whether the attorney, through her conduct, effectively abandoned the client.") For equitable tolling is appropriate even where "it would have technically been possible for a prisoner to file a petition," so long as the prisoner "would have likely been unable to do so." *Grant v. Swarthout*, 862 F.3d 914, 918 (9th Cir. 2017); *See also Parkus v. Delo*, 33 F.3d 933 (8th Cir. 1994) (Unintentional, but untrue representations about the existence of

records, established cause for not raising a meritorious claim in earlier pleadings where that claim depended on searching for those records)

Guttu made a factual allegation that after the Wisconsin Supreme Court denied discretionary review, his appellate attorney's advice created an unlikelihood that Guttu would have filed a timely petition. The district court was supposed to accept this allegation as true. In a signed federal declaration, Guttu stated that his "postconviction counsel had informed him that there was no further steps that could be taken to challenge his conviction" (HAB.MEM). . . this was counsel's response to Guttu's inquiry about what other means of challenging his judgment of conviction were available to him. The district court committed clear error when it interpreted Guttu's statement to mean "he could not be expected to know that he still had ways of challenging his convictions" (Order Denying Petition, page 3). It incorrectly stated that Guttu was arguing "[l]ack of familiarity with the law" and that lack of of familiarity should excuse him from AEDPA's 1-year deadline. (*Id.*3-5). Guttu properly alleged an 'external impediment' as opposed to an 'internal impediment' (lack of knowledge of the law). (*Id.*4). Guttu had also provided augmenting reasons to the 'external impediment' that served to be antagonistic to his ability to timely file. *See Socha v. Boughton*, 763 F.3d 674, 684-87 (7th Cir. 2014) (the court weighed the totality of the circumstances to support a finding that petitioner was entitled to equitable tolling). Namely, the deficient law library and total denial of law library during the covid19 pandemic. Even after Guttu's postconviction counsel had informed him that there were no further steps that could be taken to challenge his conviction, Guttu still contacted the Wisconsin Innocence Project. After waiting over a year, they finally responded and informed Guttu that no help could be offered and nothing could be done. Both a lawyer and a legal institution told Guttu he had no avenue for relief. This erroneous information cannot logically result in an expectation that Guttu would have quickly stumbled upon habeas corpus relief, or any

exceptions to AEDPA's 1-year deadline. Even if Guttu had attempted to disregard advice from expertly trained members of the legal profession, and searched aimlessly, the institution he is housed at has extremely limited library access and would make finding the narrow exception to AEDPA an insurmountable task. Stanley Correctional Institution only provides 45min increments of time 3 times a week. *See Williams v. Leeke*, 584 F.2d 1136 (4th Cir. 1978) ("[w]e believe that meaningful legal research on most legal problems cannot be done in forty-five minute intervals., at 1340) (cited by *Johnson-El v. Schoemehl*, 878 F.2d 1043, 1053 (8th Cir. 1989); *See also Gluth v. Kangas*, 951 F.2d. 1504 (9th Cir. 1991). Moreover, the COVID-19 pandemic prevented virtually all access to the already unreasonable law time, and remained adverse to Guttu for over a year and a half. Inmates were locked in their cells for months. Even when let out, certain parts of the institution still remained closed. Guttu has only been able to prepare and submit this late petition because of the happen-chance meeting of another inmate who possessed legal knowledge that contradicted the advice he received from counsel and the Wisconsin Innocence Project. That inmate offered to help Guttu prepare this memorandum and the petition. These circumstances, weighed in their totality, should constitute as cause for the delay in filing this petition for a writ of habeas corpus within AEDPA's 1-year deadline.

IV. THE PETITIONER WAS DENIED HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL.

Where counsel fails to act in the role of an advocate, and blatantly sabotages his clients defense, prejudice is to be presumed. *See Buck v. Davis*, 137 S.Ct. 759, 197 L.Ed.2d 1 (2017), at Pp.776-777; *See also United States v. Cronic*, 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984). An attorney who goes against his client's choice to acknowledge guilt or innocence to

particular charges violates the client's objective and is an error of structural dimension. *See* *McCoy v. Lousiana*, 138 S.Ct. 1500, 200 L.Ed.2d 821 (2018).

A. The Petitioner's first trial counsel, Attorney Reetz, was ineffective under any legal standard where he violated his objective, and persuaded him to sign a fraudulent plea agreement.

Guttu wanted to review the medical records so he could prove the battery allegation was a result of his observation that his girlfriend (the complainant) had an active herpes breakout – his observation occurring after he and his girlfriend had already engaged in consensual intercourse. Guttu desired to use these facts, which threw him into a fit of fear and rage, to establish his innocence to the sexual assault charge. Against Guttu's objective, his trial counsel, Attorney Reetz, concealed the discovery from him, prevented him from using the defense by agreeing to a pretrial suppression motion on the herpes, and tricked him into signing a fraudulent plea. The portions of the transcript below establish that it happened as stated:

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(Q) ATTORNEY DEBORD: What about the actual charges that Mr. Guttu was expected to plead to?

(A) ATTORNEY REETZ: There was some discussion on that. I wasn't -- I did not consider that a priority...So, eight years was my focus, and I don't recall being that concerned about number of counts, what he was pleading to, anything like that.

(R:163:12)

...

(Q)ATTORNEY DEBORD: All right. And was there further discussion of that on June 30th?

(A)ATTORNEY REETZ: There may have been. I mean, I think we can cut to the chase on this. I never provided him the medical records from the victim.

(Q)ATTORNEY DEBORD: Okay why not?

(A) ATTORNEY REETZ:...with what was contained in the records, and I thought it was probably -- likely, very possibly injurious. It will be used wrong and be injurious both to Travis and the victim.

(R:163:31-32)

...

(Q) ATTORNEY DEBORD: My question to you is did you bring up that issue again on June 30th?

(A) DEFENDANT GUTTU: I asked him about the herpes. He said, we'll get to that...

(R:163:40)

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(R:165:22)

(Q) ATTORNEY MORGAN: Were you here when I asked Mr. Debord about the plea form?

(A) ATTORNEY REETZ: Yes.

(Q) ATTORNEY MORGAN: I'll show you exhibit 8 also. Now, is it true that you are the one that actually wrote the form?

(A) ATTORNEY REETZ Yes.

(Q) ATTORNEY MORGAN: Okay. And do you have an explanation as to why you wrote "substantial battery" in the middle part of the form with three and a half years as the maximum term?

(A) ATTORNEY REETZ: Other than a mistake, no.

(Q) ATTORNEY MORGAN: And the attachment to the plea has the misdemeanor battery checklist. Is that a mistake also?

(A) ATTORNEY REETZ: Yes.

(Q) ATTORNEY MORGAN: And you did submit the form to the Court as part of the plea hearing, correct?

(A) ATTORNEY REETZ: Yes.

..

(Q) ATTORNEY MORGAN: There was also an issue of Ms. Taylor and a herpes condition correct?

(A) ATTORNEY REETZ: There was. There was a rape shield issue.

(Q) ATTORNEY MORGAN: Okay. And you made an agreement with the State at about the time after jury selection not to pursue that argument; is that right?

(A) ATTORNEY REETZ: Again, I read that. I don't recall it specifically, but I read it, and I know there was discussion of it, and I suspect there was an agreement, yeah.

(Q) ATTORNEY MORGAN: And what was the reason for your agreement?

(A) ATTORNEY REETZ: My recollection is that -- my recollection is the agreement was it would not come into evidence, and the reason was it potentially could provide motive, motive for a battery. That's the best of my recollection.

(R:165:17-22)

"[T]he Constitution guarantees criminal defendants a 'meaningful opportunity to present a complete defense" *Holmes v. South Carolina*, 547 U.S. 319, 126 S.Ct. 1727, 164 L.Ed.2d 503 (2006), at 319 (quote source omitted). [T]he rape shield law must yield if it would deprive a defendant of his constitutional rights...." *Dunlap v. Hepp*, 436 F3d 739 (7th Cir. 2006), at 745. "[S]uch laws cannot be invoked to prevent a defendant from introducing evidence that a prosecution witness had a motive to fabricate" *Stephens v. Miller*, 13 F.3d 998 (7th Cir. 1994), at 1013 (CUDAHY, Circuit Judge, dissenting.) The rape shield statute would not bar Guttu's ability to present these details to demonstrate he did not commit a sexual assault.

Guttu was willing to concede guilt to a lesser battery offense in order to prove this. Attorney Reetz however prevented Guttu from reviewing discovery so Reetz could make a deal with prosecutors that would prevent Guttu from a trial defense. (R:165:22). "[W]hen damaging evidence is introduced by a defendant's own lawyer, it is in the nature of an admission against interest, more likely to be taken at face value." *Buck v. Davis*, 137 S.Ct. 759, at Pp.776-777.

Moreover, a claim of guilt or innocence is not the province of counsel, it goes to the objective of the defendant. *See McCoy v. Louisiana*, 138 S.Ct. 1500, 200 L.Ed.2d 821 (2018). When counsel violates a defendant's objective, it is a structural error that requires automatic reversal. *Id.* Attorney Morgan put Guttu's first trial counsel's (attorney Reetz) advocacy in question (Defendant-Appellant Br. pg. 22-25; *See also R:165:70-71*) Guttu also stated in his response to the no-merit petition for review, "[t]hat Attorney Reetz was ineffective...." "[w]hy had Reetz used the form he used[?] clearly he was ineffective." (PFR.No merit Resp. pg 6, 12). Guttu's entire trial objective was to show motive for the battery to be acquitted of the sexual assault. Attorney Reetz steered the ship the other direction and stopped the possibility of Guttu's objective from being available as a defense by the mutually agreed upon pretrial motions to suppress. *See McCoy*, 138 S.Ct. 1500. He acquiesced to the entering of the erroneous plea form, a form which the court had stated it gave counsel, but to which counsel stated he had filed with the court. This Court should conclude that Guttu was denied both his Six Amendment right to effective assistance of trial counsel, and his Fourteenth Amendment right to fundamental fairness to which AEDPA has no application.

B. The Petitioner's second trial counsel, Attorney Debord, was ineffective when he failed to include meritorious issues in a motion to withdraw the Petitioner's no contest plea because of oversight.

During plea negotiations defendants are "entitled to the effective assistance of competent counsel." *See Lafler*, 566 U.S. 156, at 1384 (quote source omitted). A defendant who wishes to withdraw his plea after he is sentenced, "[m]ust demonstrate a reasonable probability that the outcome of the plea process would have been different with competent advice." *See Anderson v. United States*, 981 F.3d 565 (7th Cir. 2020) (quote source omitted). The below portions of the

transcript illustrate that ineffective assistance of trial counsel prevented the mistakes of the plea document and the ignorance of 980 from being addressed at the original plea withdrawal hearing.

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(Q) ATTORNEY MORGAN: ...Do you dispute in any way Mr. Guttu's argument that you did not advise him of Chapter 980?

(A) ATTORNEY DEBORD: I have no basis to dispute that.

(R:165:4)

(Q) ATTORNEY MORGAN: I'm going to show you what's been -- well, it's Exhibit 8 a part of this motion packet. It's a plea questionnaire form with an attachment. And you represented earlier too that you reviewed that prior to the withdraw hearing and you didn't see any problem with it That's what you said today, correct?

(A) ATTORNEY DEBORD: That is correct.

(Q) ATTORNEY MORGAN: If you look at the first page under the maximum term section, is it not indeed showing aggravated battery with a three-and-a-half-year incarceration?

(A) ATTORNEY DEBORD: I note that it says "substantial battery" and then three years six months. While at the top of that document on the first page under the charge statute it says "aggravated battery with intent," I also note that the maximum penalties are actually written under the elements section with an arrow indicating that they should be moved to the penalty section.

(Q) ATTORNEY MORGAN: Okay. But three and a half years is not correct; is that true?

(A) ATTORNEY DEBORD: That, as I recall -- well, it depends. Is it the substantial battery or the aggravated battery?

(Q) ATTORNEY MORGAN: Okay. But why would there be substantial battery on the form if that wasn't the plea?

(A) ATTORNEY DEBORD: Because I missed it.

(R:165:11-13)

Even if Guttu was held to the higher standard of the "manifest injustice" test Wisconsin courts use, he would only have to demonstrate that there are "[s]erious questions affecting the fundamental integrity of the plea" *See State v. Dillard*, 358 Wis.2d 543, 859 N.W.2d 44 (2014), at

¶¶36, 83. The record clearly demonstrates that he did so. It therefore makes no sense that the Wisconsin Court of Appeals would conclude Guttu could not meet the lower standard. (COA - decision, at ¶¶ 18, 45); *See also State v. Myers*, 199 Wis. 2d 391, 544 N.W.2d 609 (Ct. App. 1996))

Guttu's undisputed claim that he lacked knowledge of the 980 is cause alone to withdraw the plea. (R:165:4) However, the manifest injustice issue is the fraudulent plea Guttu signed. (R:95) It is solid proof, beyond any reasonable doubt, that Guttu did not knowingly, voluntarily, or intelligently enter into the plea agreement. This plea document is physical evidence, to which no contravening testimony could ever outweigh, proving he believed he was pleading to a lesser offense than that of which he was ultimately convicted and sentenced on. There is absolutely nothing testimonial in the record that supports Guttu's counsel advised him of what he was pleading to. (R:163:12) Limited discussion, lack of concern for number of counts or what Guttu was even pleading to, is not "competent advice." *See Anderson*, 981 F.3d 565 (7th Cir. 2020). "[I]t is not plausible that [trial counsel] Attorney Reetz would have gone over each of the elements for felony battery with Guttu, and/or used the jury instructions for same [misdemeanor], while at the same time Attorney Reetz had handed the court the error-filled 09CF394 plea form at the start of the plea hearing." (Defendant-Appellant's Reply Brief. pg.13)

The state appellate court denied relief and misapplied federal law governing plea withdrawals. When determining whether a plea was knowingly, voluntarily, or intelligently made, the question is not whether there is a reasonable probability "that, but for Attorney Debord's failure...Guttu would have been permitted to withdraw his plea to the sexual assault charge." (COA - decision, at ¶27). The question goes to the choice of the defendant – whether "[t]here is a reasonable probability...[the defendant] would not have pleaded no contest and would have insisted on going to trial." *See Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct.36 (1985), at 62.; *See also Lee v.*

U.S., 137 S.Ct 1958, 198 L.Ed.2d 476 (2017), at 1965. It is undisputed that Guttu wanted withdraw his plea and go to trial.

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(Q) ATTORNEY MORGAN: That leads to my next question. You indicate that you knew something was wrong after the plea hearing and you wanted to withdraw it; is that correct?

(A) DEFENDANT GUTTU: Correct...after the plea hearing something was just wrong with all of it. I didn't --

(Q) ATTORNEY MORGAN: What did you think was --

(A) DEFENDANT GUTTU: Well, the sexual assault is wrong. There is nothing -- and I'll say it right now, there is nothing indicative to sexual assault. I did not sexually assault her at all. That is not what happened....

(Q) ATTORNEY MORGAN:...Why do you want to withdraw your plea?

(A) DEFENDANT GUTTU: I want to go to trial on the battery because it wasn't the right thing to do was to enter a plea for the sexual assault...

(R:165:36)

The law has never and still does not require a defendant prove an acquittal at a trial (or retrial) to demonstrate prejudice. *See U.S. v Bagley*, 473 U.S. 667, 105 S.Ct. 3375 (1985), at 3382-3383; *Kyles v. Whitley*, 514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995), at 434; *Wearry v. Cain*, 136 S.Ct.1002, 194 L.Ed.2d 78 (2016), at 1006;

In their decision denying Guttu his request to withdraw his plea, the Wisconsin Court of Appeals stated:

" [T]he errors in the form are unfortunate and, especially in combination, unsettling...."

(COA - decision, at ¶45)

The Wisconsin Court of Appeals justified their decision to deny Guttu's plea withdrawal by reasoning that because Guttu understood the amended criminal complaint (R:42), he must have understood the charge he was pleading to. Just because expertly trained members of the legal profession understand that the plea colloquy goes to the plea agreement, does not mean Guttu, who had a fraudulent plea agreement in front of him, understood the colloquy was not in reference to the amended complaint, but the charges to which he would be pleaded no contest to. (R:95; R:129:31) Even a perfect colloquy does not purge the taint of a fraudulent plea agreement, and as noted above, the colloquy was deficient – missing the elements of the offense. *See Bousley v. U.S.*, 523 U.S. 614. Guttu's conviction meets the "[m]anifest injustice exception to the law of the case doctrine...." *See Dobbs v. Zant*, 506 U.S. 357, 113 S.Ct. 835, 122 L.Ed.2d 103 (1993), at 836. This Court should conclude Guttu's conviction is invalid based on the denial of his Sixth Amendment right to effective assistance of counsel, and denial of his Fourteenth Amendment right to a fundamentally fair procedure.

CONCLUSION

For the above stated reasons, this Court should grant certiorari review, and provide relief to the Petitioner.

Respectfully submitted on March 28, 2023

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