

No.

23-898

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SUPREME COURT, U.S.

In the
Supreme Court of the United States

RYAN THORNTON,

Petitioner,

v.

State of Wisconsin,

Respondents.

On Petition for Writ of Certiorari to the
Supreme Court of Wisconsin

PETITION FOR WRIT OF CERTIORARI

Ryan T. Thornton 1/14/2024

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January 14, 2024

QUESTION PRESENTED

When a defendant is harmed from Ineffective Assistance of Council, the burden of proof needed to be raised in order to correct for this harm caused is often immense. Creating an adequate Appendix and legal arguments that clearly conclude that Attorney Justin Singleton was Ineffective Assistance of [Post-Conviction and Appellate] Council required an immense amount of effort from Defendant-Appellant-Petitioner Ryan T. Thornton (denoted as **RYAN** throughout this Petition).

RYAN filed his 5/12/2023 Petition For Review with the Wisconsin Supreme Court, he raised Issues #1-7, without going into the immense detail that he did in his 10/11/2023 Petition For Review. It took a considerable amount of effort to be this (10/11/2023 Petition For Review) complete about fully explaining how Attorney Justin Singleton was Ineffective Assistance of Council, more effort than most people are capable of putting together.

The question presented is:

Did the Wisconsin Supreme Court err by Denying-without-response (App.23) RYAN's 2023AP769 [5/12/2023 Petition For Review] and issuing no response (App.25) to his 2023AP769 [10/11/2023 Petition For Review]?

STATEMENT OF RELATED PROCEEDINGS

This case arises from and is related to the following proceedings in the:

Second District Court of Appeals of the State of Wisconsin

- State of Wisconsin v. Ryan T. Thornton
Case No. 2023XX441
Order Denying RYAN's 2023XX441 4/6/2023
Motion For Reconsideration, issued 4/13/2023
(App.18)

Supreme Court of the State of Wisconsin

- State of Wisconsin v. Ryan T. Thornton
Case No. 2023AP769
Non-Response Order to RYAN's 5/12/2023
Petition For Review, issued 5/17/2023 (App.21)
- State of Wisconsin v. Ryan T. Thornton
Case No. 2023AP769
Order Denying RYAN's 5/12/2023 Petition For
Review, issued 8/17/2023 (App.23)
- State of Wisconsin v. Ryan T. Thornton
Case No. 2023AP769
Non-Response Order to RYAN's 10/11/2023
Petition For Review, issued 10/25/2023 (App.25)

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PETITION FOR WRIT OF CERTIORARI

RYAN is seeking a Writ of Certiorari in reference to the Order (App.23) dated August 17, 2023 by the Wisconsin Supreme Court in case No. 2023AP000769-CR

We think a person's liberty is equally protected, even when the liberty itself is a statutory creation of the State. The touchstone of due process is protection of the individual against arbitrary action of government (*Dent v. West Virginia*)

RYAN believes that his due process protection has been violated via Attorney Singleton's representation, in that he has failed to be effective for RYAN, but instead (apparently) has assisted the state in not having to review RYAN's Direct Appeal of 2019CF397.

OPINIONS BELOW

The Second District Court of Appeals of the State of Wisconsin's:

- Order denying RYAN's 2023XX441 4/6/2023 Motion For Reconsideration, issued 4/13/2023 is unpublished and reproduced at App.18

The Wisconsin Supreme Court's:

- Non-Response Order to RYAN's 5/12/2023 Petition For Review, issued 5/17/2023 is unpublished and reproduced at App.21
- Order Denying RYAN's 5/12/2023 Petition For Review, issued 8/17/2023 is unpublished and reproduced at App.23
- Non-Response Order to RYAN's 10/11/2023 Petition For Review, issued 10/25/2023 is unpublished and reproduced at App.25

JURISDICTION

On 8/17/2023, the Wisconsin Supreme Court issued an Order (App.23) Denying RYAN's 5/12/2023 Petition For Review. This Court has Jurisdiction under 28 U.S.C. §1254(1) and 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

6TH AMENDMENT

constitution.congress.gov/browse/amendment-6/

Amdt6.4.5.1 A Jury Selected from a Representative Cross-Section of the Community

Impartiality is a two-part requirement: the jury must be selected from a pool that represents a fair cross-

section of the community and the jurors must be unbiased.

In order to establish a prima facie violation of the fair-cross-section requirement, the defendant must show (1) that the group alleged to be excluded is a 'distinctive' group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process.

Amdt6.4.5.2 Jury Free from Bias

the Supreme Court has interpreted the Sixth Amendment to require assurance that the jurors chosen are unbiased

Amdt6.5.4 Right to Compulsory Process

The Sixth Amendment guarantees a criminal defendant the right "to have compulsory process for obtaining witnesses in his favor."

Amdt6.6.5.1 Overview of the Right to Effective Assistance of Counsel

In *McMann v. Richardson*, the Court held that the right to counsel is the right to the effective assistance of counsel. This right to effective assistance may be implicated in at least three ways:

First, a court's action may interfere with counsel's effectiveness if the court restricts a defense counsel in exercising his or her representational duties and prerogatives attendant to the adversarial system of justice of the United States.

....

Third, defense counsel may deprive a defendant of effective assistance by failing to provide competent representation that is adequate to ensure a fair trial, or, more broadly, a just outcome. The right to effective assistance may be implicated as early as the process for appointment of counsel.

Amdt6.6.5.4 Deprivation of Effective Assistance of Counsel by Defense Counsel

Further, the Sixth Amendment's right to effective assistance applies to counsel regardless of whether counsel is appointed or privately retained or whether the government in any way brought about the defective representation. As the Court has explained, "[t]he vital guarantee of the Sixth Amendment would stand for little if the often uninformed decision to

retain a particular lawyer could reduce or forfeit the defendant's entitlement to constitutional protection."

The seminal test for adequate representation stems from the Court's 1984 opinion *Strickland v. Washington*. There are two components to the Strickland test:

- (1) deficient representation and
- (2) resulting prejudice to the defense so serious as to bring the outcome of the proceeding into question.

Amdt6.6.5.5 Deficient Representation Under Strickland

The gauge of deficient representation is an objective standard of reasonableness "under prevailing professional norms" that takes into account "all the circumstances" and evaluates conduct "from counsel's perspective at the time."

14TH AMENDMENT

constitution.congress.gov/browse/amendment-14/

Amdt14.S1.5.1 Overview of Procedural Due Process

The Due Process Clause of the Fourteenth Amendment provides that no state shall "deprive any

person of life, liberty, or property, without due process of law.”

When a protected interest is at stake, due process generally requires that the procedures by which laws are applied must be evenhanded, so that individuals are not subjected to the arbitrary exercise of government power.

The Court has held that the appropriate framework for due process analysis of criminal procedures is a narrow inquiry into whether a procedure is offensive to the concept of fundamental fairness.

Amdt14.S1.5.5.1 Overview of Procedural Due Process in Criminal Cases the Court has held that the Due Process Clause prohibits government practices and policies that violate precepts of fundamental fairness, even if they do not violate specific guarantees of the Bill of Rights

In assessing whether a challenged criminal procedure denies a person procedural due process, the Court generally considers whether the practice violates a fundamental principle of liberty and justice which inheres in the very idea of a free

government and is the inalienable right of a citizen of such government. The Court has also held that, as applied to a criminal trial, denial of due process is the failure to observe that fundamental fairness essential to the very concept of justice, and that to find a denial of due process the Court must find that the absence of that fairness fatally infected the trial; the acts complained of must be of such quality as necessarily prevents a fair trial.

Amdt14.S1.5.5.2 Impartial Judge and Jury

procedural due process requires criminal cases to be overseen by an unbiased judge and decided by an impartial jury

STATEMENT OF THE CASE

The State of Wisconsin seems to have been attempting to reject Jurisdiction of this Appeal, resulting from Misrepresentation by Attorney Justin Singleton.

After years of false promises, lies, and excuses, on 1/9/2023 Attorney Singleton first communicated he cannot file the Appeal of this 19CF397 Conviction and refunded RYAN's \$6000 retainer, which he was paid in full by 2/6/2020 to Commence the Appellate filing process immediately.

Apparently, the deadline to re-file the Notice of Appeal [that RYAN filed from jail, pro-se on 12/9/2019 (App.17) and Singleton had Voluntarily Dismissed on 12/26/2019 solely because Singleton communicated that he wanted more time to file this Appeal] was 2/13/2020 [20 days (per 809.30) from the 1/24/2020 Revised Judgment of Conviction]. Singleton failed to re-file this Notice of Appeal by 2/13/2020 and failed to do essentially everything that he communicated to RYAN he would be doing regarding this Appeal, after getting paid-in-full on 2/6/2020. It should also be noted that Singleton reviewed the 9/6/2019 Transcript (App.13) on 12/11/2019 and it was 100% clear that there was at least one issue (Prior to the commencement of trial, RYAN was prohibited from advancing a theory of Self-Defense- Issue#1) that had very strong merit for appeal, but instead he has RYAN's 12/9/2019 Pro Se NOA (App.17) Voluntarily Dismissed on 12/26/2019!

Initially assuming there is at least a minimum level of Professionalism required here in Wisconsin, RYAN assumed that Singleton would file a Statement to explain why Singleton failed to file this Appeal, despite clearly communicating to RYAN (from 12/11/2019 to 1/9/2023) that he would be. The state of WI apparently encourages fraudulent attorney representation situations that cause

Appellants to be scammed out of their Appellate rights, because this is exactly what Singleton did.

Not knowing what to do about this situation that Singleton put him in, on 3/24/2023, RYAN filed [Motion For Abeyance On Filing Appeals] and received an 3/24/2023 Wisconsin Court of Appeals Order denying this.

On 4/6/2023, RYAN filed [2023XX441 Motion For Reconsideration] after meeting with Attorney Singleton on 3/31/2023 and being handed what Singleton had prepared and recommended he file, which included many fictitious statements implying that Singleton was never responsible for filing this Appeal. This received the 4/13/2023 Appeals Order (App.18) that caused RYAN to file his 5/12/2023 Petition For Review with the WI Supreme Court.

CURRENT WISCONSIN COURT PROCEEDINGS

- On 7/21/2023, RYAN filed 2023AP769 : [Motion To Add To The Record On Appeal- In Response To the 7/20/2023 Order]
- On 7/22/2023, RYAN filed his first and only 2023AP769: [Brief of Appellant] on 2019CF397 and the State of Wisconsin rejects reviewing it on 8/22/2023.
- On 8/30/2023 RYAN gave Notice of Appeal of these 2019CF397 items, creating 2023AP1596:

1. Document 203: Court Orders and Assumption Of Facts, related to Ineffective Assistance of Post-Conviction/Appellate Council, Singleton (who was Retained for purposes of filing appeal to Document 96&110 thru 1/9/2023), filed 7/20/2023
 - a. This is a response to RYAN's [Revised Motion For Evidentiary Hearing With Attorney Justin Singleton] (Document #200), filed 6/29/2023
 2. Document 96: Judgment of Conviction, filed 11/26/2019 and Document 110: Judgment of Conviction- Corrected, filed 1/24/2020
 3. Document 199: which relates to the prospective Jurors selected to participate in the Voire Dire on 9/11/2019, filed 6/28/2023
 - a. This is a response to RYAN's [Proposed Order For State To Provide The Racial Distribution Of The 27 Jurors Used In Voir Dire On 09/11/2019] (Document #197), filed 6/19/2023
 4. Issues 1-7, as stated in his 2023AP769 [Brief of Appellant], filed 7/22/2023 and [Petition For Review], filed 5/12/2023
- On 9/10/2023, RYAN files [2023XX441 Motion For Reconsideration] in response to the 8/22/2023 WI Court of Appeals Order denying jurisdiction, which was also denied in an on 9/13/2023.

- On 10/11/2023, RYAN files his [10/11/2023 Petition For Review] in response to the 9/13/2023 Appeals Order denying his 9/10/2023 [2023AP769 Motion For Reconsideration], which was essentially denied by a Non-Response Letter (App.25) from the WI Supreme Court on 10/25/2023.
- On 11/5/2023, RYAN files his [2023AP1596 Brief Of Appellant]
- On 12/20/2023, RYAN files his [Petition For Writ Of Habeas Corpus], creating 2023AP2368

BACKGROUND- THE 2/7/2018 INCIDENT

On or around 2/7/2018, this incident happened at roughly 1 AM.

The alleged victim, RYAN's girlfriend at the time, who had been living at his house since almost 4 years prior, had come home after working a long shift at the hospital. The alleged victim was emotional and upset with RYAN for some relationship flaws mostly related to RYAN not putting in enough effort in and also not ever going to her family outings. RYAN said something to her that night about her being "a maggot just like her brother living at her mom's house," for her not contributing with helping do anything and relying on RYAN too much with their living situation.

The alleged victim became very confrontational when RYAN came to sleep (after working in his garage for too long after she came home, further upsetting the alleged victim) in the bed that they shared and ended up shoving RYAN so hard that he ended up hitting the back of his on the corner edge of the closet drywall in his room. RYAN felt the back of his head swelling right away, so he went downstairs and got an icepack out of his freezer. RYAN returned upstairs with his ice pack, trying to go to bed and the alleged victim was so upset with him that she chased him around while screaming for roughly 15 minutes and would dig her nails in his forearms and kick him in his shins whenever she got close enough to do so.

After about 15 minutes of that, the alleged victim cornered RYAN in his upstairs bathroom, with the back of his head facing the hard places and sharp drywall edges in this picture (App2). At this point, RYAN's forearms were bleeding pretty bad and the alleged victim kept viciously digging her nails in his forearms, since she was so close to him, to the point where RYAN was almost paralyzed from the pain of her clenching her nails in his skin and it was reasonably possible that he could easily be pushed backwards and hit the back of his head again, which was already swollen. He instinctively got behind her while bringing her to the floor and

squeezed her tight for a few seconds to get her to stop attacking him. Then he held her there for a few minutes until she calmed down and stopped hyperventilating so much (which was due to her being so emotionally charged and winded from the amount of effort she put into attacking him). For the next half hour or so, the alleged victim was still hyperventilating and upset with RYAN, but no longer confrontational.

BACKGROUND- SUMMARY OF PROCEEDINGS AFTER THE INCIDENT

19CF397 began 5/1/2018 as a Disorderly Conduct, Domestic Abuse charge (18CM830; with a date of offense of 2/7/2018 that was reported to police on 4/9/2018) that was filed after a Harassment Restraining Order (18CV138) hearing on 4/30/2018.

After RYAN fired his 18CM830&18CV138 attorneys, Mark Richards and Natalie Wisco, he explained that he wanted to continue Pro Se, and filed:

1. McMorris Motion on 1/24/2019 (App.1), which Honorable Timothy Boyle explained ("Okay, and so this is proper and what you're doing now is putting the state on notice that you're making a self-defense argument, okay.") and the state accepted it (App.6)

2. Motion to Dismiss 2018CM830 [Disorderly Conduct] (pointing out how the alleged victim was obviously lying about literally everything in their records)

The state decided to "Reissue" this case as 2019CF397 on 3/28/2019 with both Felony Strangulation and Disorderly Conduct as the alleged charges.

2019CF397 is now presided by Honorable Faye Flancher, who rejects (App.13) the same exact McMorris Motion at a Pre-Trial Hearing on 9/6/2019, saying this is "Not a Self-Defense Case."

The 2019CF397 trial took place on 9/11/2019, where RYAN was convicted of both of the alleged charges, without the Jury given an Instruction for Self-Defense, in addition to Issues #2-6.

So in November 2019, RYAN hired Attorney Justin Singleton for his Sentencing Hearing initially, then to Appeal this conviction because he always seemed very promising, up until 1/9/2023. He said that he had the highest LSAT score in his class at Marquette, which is believable because he is a very sharp lawyer, especially in person. From 12/11/2019 to 1/9/2023, RYAN has been waiting on Attorney Justin Singleton to file an Appeal of this conviction, but (apparently) Attorney Justin Singleton has lied to RYAN about actually filing this Appeal and is

currently making statements that imply he was never even responsible for filing this Appeal, and alleges some FICTITIOUS Public Defender situation caused RYAN's Direct Appellate Right to expire.

When RYAN came to Attorney Justin Singleton's office, to talk about Singleton (finally) filing this Appeal, on 1/9/2023, Attorney Justin Singleton had refunded \$6000 to Ryan saying that he has Cancer and cannot file this Appeal now that he has Cancer.

STATEMENT OF THE ISSUES

1. Prior to the commencement of trial, RYAN was prohibited from advancing a theory of Self Defense.
 - a. This was a Due Process violation, protected by the Fourteenth Amendment.
2. Exculpatory Evidence was Denied to both Defendant and Jurors.
 - a. This was a Due Process violation, protected by the Fourteenth Amendment.
3. The Lead Juror essentially stated that the Jury was not Unanimously decided based on the proof of the case that the state presented at trial.

4. The Jurors Used in Voire Dire were obviously selected in favor of the Prosecution.
 - a. This was a Impartiality violation, protected by the Sixth Amendment.
 - b. (Just as RYAN did on 10/14/2021) RYAN again demanded the state provide the racial distribution of the 27 Jurors Used in Voire Dire and was denied by Circuit court on 6/28/2023.
 - i. Did the Circuit Court Err by Denying this request? Yes, since this denial is a due Process violation, protected by the Fourteenth Amendment.

5. Malicious/Vindictive Prosecution
 - a. This was a Due Process violation, protected by the Fourteenth Amendment.

6. State Witnesses from 4/30/2018 18CV138 Injunction Hearing were Promised at PreTrial, but the court wouldn't Adjourn the jury trial due to RYAN not being able to find a Process Server who would actually Serve Commissioner Alice Rudebusch, Honorable Judge Timothy Boyle, and Reporter Mark Garvin.
 - a. This was a Compulsory Process violation, protected by the Sixth Amendment.

- b. This was a Due Process violation, protected by the Fourteenth Amendment
- 7. A Deceitful and Ineffective Post-Conviction & Appellate Council always giving excuses as to why he cannot file this appeal.
 - a. This was an Ineffective Assistance of Council violation by Attorney Singleton, protected by the Sixth Amendment.
 - b. An Evidentiary hearing regarding Ineffective Assistance of Council with Attorney Singleton was denied by Circuit court on 7/20/2023.
 - i. Did the Circuit Court Err by Denying this hearing? Yes, since this denial is a due Process violation, protected by the Fourteenth Amendment.
- Regarding questions in 4.b.i. and 7.b.i:
 - The function of a judicial proceeding is to “determine where the truth lies.”
- ➔ Why does this apparently always stop when there is a desire for truth that is unfavorable to the state’s case/accusations against a defendant?

ISSUE #1 EXPLAINED

The elements of Self-defense:

1. An unprovoked attack
 - a. The alleged victim was actually the person who was angry ["I woke up very upset" (4/9/2018PoliceReport_page11)] and combative.
 - b. RYAN was not provoking her to attack him.
2. Which threatens imminent injury
 - a. Threat of the back of RYAN's head being pushed into something (again) while vulnerable due to being in a state of pain from fingernails in his skin
3. An objectively reasonable degree of force, used in response to
 - a. RYAN getting behind and restraining the alleged victim was an objectively reasonable degree of force that resulted in no injuries.
4. An objectively reasonable fear of injury
 - a. RYAN feared the injury that was already on the back of his head could get worse

RYAN's 9/11/2019 Opening Statement:

(Trial_pages70-71)

When I turned the second one off she pushed me. She was kind of angry, you know, like -- and I don't remember if she screamed before or I think she just pushed me. I wasn't really expecting it and I hit my head on the corner of my drywall where there's a metal, you know, beam that's there and, you know, right away I could feel that, you know, I had a little bit of a lump on my head.

So I went downstairs. I grabbed an ice pack. I came back upstairs. I wanted -- I was trying to go to bed. She had chased me around for about 15 or 20 minutes after that. Every time she got close to me she would grab my arm and dig her nails in it in random places and she would kick me in my shins. Eventually she cornered me in my bathroom and I restrained her. I pulled her tight for about two seconds and then I just held her there until she, you know, stopped trying to bite [fight] me, because I really just wanted to go to bed.

Facts Established From Testimony at Trial and the Police Report:

1. The alleged victim did in fact push RYAN and admitted "He stumbled backwards and bumped his head on the drywall" (Trial_page94)

a. (Trial_page93) "I felt as though he was in my personal area and I decided to kind of push him away from me to remain safe"

b. (Trial_page107)

MR. COATY: Forgive me, your Honor, that's not what the testimony was. She pushed him, he hit his head against the drywall. She has never used the word injury.

Q: Okay, did that cause any injury?

THE WITNESS: Do I need to answer that question?

THE COURT: If you can.

A: I don't believe that it caused injury because I was choked then afterwards.

c. (4/9/2018PoliceReport_page3)

"she pushed him away from her to get space."

d. (4/9/2018PoliceReport_page11)

"Ryan got in my face, so I pushed him away for my safety as defense!"

Explanation of what happened at the 8/30/2019 and 9/6/2023 Pre-Trial Hearings:

8/30/2019 (App.13)

THE COURT: All right, you then most recently filed a motion for a preliminary ruling on the admissibility of evidence of the victim's violent character. You cite a number of statutes and some

case law and are you saying to me that your defense is one of self-defense, Mr. Thornton?

MR. THORNTON: No, I'm not, but I'm just, you know, letting the Court know what actually happened; it was not part of the police report for whatever reason.

Given how ridiculous he thought this judge is, RYAN too quickly responded and misspoke when he said, "No, I'm not."

When he heard her say, "are you saying to me that," RYAN instinctively responded to that with a negative response because he didn't want her putting words in his mouth like she and the state did on 9/6/2019: (App.15)

MR. COATY: ...Mr. Thornton explained that he would not be asserting self-defense.

THE COURT: Correct.

RYAN was clear with the court that he intended to use Self-Defense law to defend himself at the 9/11/2019 Trial:

1. In his 2018CM830 McMorris Motion (App.1) on 1/24/2019
 - a. Where Honorable Timothy Boyle, on 3/11/2019, explained to RYAN (what he was doing by filing this Motion) as, "so this

is proper and what you're doing now is putting the state on notice that you're making a self-defense argument" (App.6).

2. In his 2019CF397 McMorris Motion (App.8) on 8/27/2019

The reason for RYAN refilling this same exact McMorris motion (App.8), as he did on 1/24/2019 in 18CM830 (App.1), is that he clearly intended to "put the state on notice" that he was making a self-defense argument (as Honorable Timothy Boyle explained it in 1.a.)

3. (App.15)

MR. THORNTON: Then I'll change that then.

THE COURT: Sir, you can't just change it. It's not a self-defense case. You told me that.

The Jury was not instructed to evaluate the Wisconsin Statute regarding the privilege of self-defense (§939.48) and given the Jury Indicated that they indicated that they were Not Unanimous at 2:25PM, this Juror Instruction very likely could have altered their Final Verdict.

The Trial Court Erred when it Estopped Ryan from using Self-Defense, as a Defense, without legal basis and never had a proper Hearing to even evaluate this Motion.

State v. Thornton and State v. Johnson are both cases where the Defendants requested that the State need to overcome the extra burden of proving the case with proper disclosure of self-defense law at trial.

REASONS FOR GRANTING THIS PETITION

The State of Wisconsin has jurisdiction over an appeal or habeas corpus of RYAN's convictions in Racine County Circuit Court's 2019CF397 and whether the Circuit Court or the Appellate Court has that jurisdiction because of what some deceitful lawyer did with RYAN's Appellate Rights, it shouldn't matter from the standpoint of the Defendant-Appellant-Petitioner.

The Wisconsin Supreme Court should have Remanded 2023AP769 to the appropriate court.

CONCLUSION

Please ensure that the State of Wisconsin issues a response, accepting jurisdiction to either:

1. 2023AP769: which essentially commenced as a motion for an extension of time to file an Appeal
2. 2023AP1596: which commenced as an appeal of the Circuit Court's denial to:

- an evidentiary hearing with Attorney Singleton and
- a records request of the racial distribution of the 27 Jurors Used in Voire Dire

3. 2023AP2368: Petition For Writ Of Habeas Corpus

The facts of 2019CF397 that were eventually stated in 2023AP769, 2023AP1596, and 2023AP2368 are identical.

Although Wisconsin Case Law indicates that RYAN should seek relief via a Petition For Writ Of Habeas Corpus to the Wisconsin Court of Appeals, the state should reach the same conclusion no matter which of these 3 vehicles for relief is chosen. By the time RYAN filed his 2023AP769 [10/11/2023 Petition For Review], there was overwhelming evidence and legal precedence that should have led to a favorable court order.

- [State of Wisconsin ex rel. Kyles v. Pollard] ¶ 38 “we determine that the court of appeals is the proper forum for claims of ineffectiveness premised on counsel’s failure to file a notice of intent.”