

# United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Submitted January 15, 2025

Decided January 22, 2025

Before

JOHN Z. LEE, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 24-1957

GREG GOGIN,  
*Petitioner-Appellant,*

*v.*

MICHAEL MEISNER,  
*Respondent-Appellee.*

Appeal from the United States District  
Court for the Eastern District of  
Wisconsin.

No. 22-cv-1264

Lynn Adelman,  
*Judge.*

## ORDER

Greg Gogin has filed a notice of appeal from the denial of his petition under 28 U.S.C. § 2254 and an application for a certificate of appealability. This court has reviewed the final order of the district court and the record on appeal. We find no substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c)(2).

Accordingly, the request for a certificate of appealability is DENIED.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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GREG GOGIN,  
Petitioner,

v.

Case No. 22-cv-1264

MICHAEL MEISNER, *Warden,*  
*Fox Lake Correctional Institution.*  
Respondent.

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ORDER

IT IS ORDERED that Petitioner's Motion to Amend/Correct the Certificate of Appealability (ECF No. 39) is DENIED.

Dated at Milwaukee, Wisconsin this 13th day of March.

/s/ Lynn Adelman  
LYNN ADELMAN  
District Judge

# United States District Court

EASTERN DISTRICT OF WISCONSIN

## JUDGMENT IN A CIVIL CASE

GREG GOGIN,  
Petitioner,

v.

CASE NUMBER: 22-CV-1264

MICHAEL MEISNER,  
Respondent.



**Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.



**Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

**IT IS ORDERED AND ADJUDGED** that this petition for a writ of habeas corpus is denied.

5/1/2024

Date

Gina M. Colletti

Clerk

/s/ Alexis H.

(By) Deputy Clerk

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**GREG GOGIN,**  
Petitioner,

v.

Case No. 22-cv-1264

**MICHAEL MEISNER,<sup>1</sup> Warden,**  
**Fox Lake Correctional Institution,**  
Respondent.

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**DECISION AND ORDER**

Petitioner Greg Gogin is a Wisconsin state prisoner currently incarcerated at Fox Lake Correctional Institution. In 2016, he pleaded guilty to two counts of incest with a child and one count of first-degree sexual assault. He was sentenced to a total of forty years of initial confinement followed by thirty-five years of extended supervision. He petitions this court for a writ of habeas corpus under 28 U.S.C. § 2254, asserting a violation of his due process right to be sentenced upon accurate information.

**I. BACKGROUND**

In 2015, petitioner was charged with ten offenses relating to sexual abuse of his two daughters, ACG and PVG. Petitioner pleaded guilty to two counts of incest with a child for conduct with his younger daughter ACG and to one count of first-degree sexual assault of a child under 13 for conduct with his older daughter PVG. On August 3, 2016, the Green County Circuit Court sentenced petitioner to eighteen years of initial

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<sup>1</sup> At the time petitioner filed his petition, he was an inmate at Redgranite Correctional Institution. Dan Cromwell, then Warden at Redgranite, was named as respondent in this action. Petitioner is currently incarcerated at Fox Lake Correctional Institution where Michael Meisner is Warden. Pursuant to Federal Rule of Civil Procedure 25(d), I will substitute Meisner for Cromwell as respondent.

confinement followed by fifteen years of extended supervision on each of the two incest counts, concurrent with one another, and to twenty-two years of initial confinement followed by twenty years of extended supervision on the sexual assault count, consecutive to the sentence for the incest counts. As a result, petitioner received a total combined sentence of forty years of initial confinement followed by thirty-five years of extended supervision.

Petitioner filed a postconviction motion seeking sentence modification under state law or resentencing based on his allegation that the circuit court relied on inaccurate information at sentencing. Petitioner argued that the court made two inaccurate statements during sentencing:

But the decisions you've made, and the course of conduct you engaged in over a long period of time for ACG was from the time she was 5 or 6 until she was 18. ***I don't know the extent, but I expect it is longer than 5 to 10 years with PVG.***

Sentencing Tr. at 42:21–43:1, ECF No. 9-6 (emphasis added).

I've got to sentence you with a punitive aspect understanding that these children for one, at least one child, for 12 to 13 years before she became 18, ***and the other child, at least 5 to 10 years before she turned 18***, have suffered in the past and will continue to suffer in the future.

*Id.* at 43:23–44:3 (emphasis added). The Lafayette County Circuit Court<sup>2</sup> held a hearing on the motion. In support of his motion, petitioner testified that he assaulted PVG only twice approximately six months apart. Postconviction Tr. at 3:9–8:5, ECF No. 9-7. The postconviction court denied petitioner's motion for resentencing finding that he had failed

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<sup>2</sup> The Lafayette County Circuit Court heard petitioner's postconviction motion. See Postconviction Tr. at 2:10–13, ECF No. 9-7 ("[I]t should be noted for the record this is Green County case that I've been assigned and because at the time we set this, availability in the Green County Courthouse it wasn't known, so we set it here.").

to establish by clear and convincing that evidence that the challenged information was inaccurate and that the sentencing court had relied on it. *Id.* at 40:6–41:20.

The Wisconsin Court of Appeals affirmed. The court pointed out that the sentencing court “acknowledged uncertainty as to the length of time” of the abuse of PVG and that petitioner had not produced clear and convincing evidence that the challenged information was inaccurate:

[E]ven if we assume that the [sentencing] court found that Gogin assaulted [PVG] numerous times over a period of time “longer than” or “at least” “five to ten years,” Gogin has not shown this finding was inaccurate. The criminal complaint allegations and the presentence investigation report support a finding that Gogin sexually assaulted [PVG] numerous times over the course of a minimum of six or seven years. And, such a finding is consistent with the court’s comments that the assaults occurred for “longer than” or “at least” “five to ten years.”

*State v. Gogin*, 959 N.W.2d 79, ¶ 6 (Wis. App. 2021). The court of appeals also found petitioner’s testimony “not persuasive” and noted that the postconviction court had not credited it either. *Id.*, ¶ 7. The Wisconsin Supreme Court denied review.

## II. DISCUSSION

The authority of federal courts to issue habeas corpus relief for persons in state custody is provided by 28 U.S.C. § 2254, as amended by the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”). *Harrington v. Richter*, 562 U.S. 86, 97 (2011). Under AEDPA, a federal court may grant habeas relief only if the state court’s decision on the merits of the petitioner’s claim was “either (1) ‘contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States,’ or (2) ‘based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.’” *Miller v. Smith*, 765 F.3d 754, 759–60 (7th Cir. 2014) (quoting 28 U.S.C. § 2254(d)(1), (2)). I review the

decision of the Wisconsin Court of Appeals as the "last state court to rule on the merits of the petitioner's claim." *Charlton v. Davis*, 439 F.3d 369, 374 (7th Cir. 2006).

Under the Fourteenth Amendment's Due Process Clause, a criminal defendant is constitutionally entitled to be sentenced only upon proper and accurate information. *United States v. Tucker*, 404 U.S. 443, 447 (1972); *Townsend v. Burke*, 334 U.S. 736 (1948). Petitioner asserts that the state court of appeals unreasonably determined that the sentencing court did not rely on inaccurate information. I disagree. I cannot say that the court of appeals' analysis was unreasonable. Both the criminal complaint and the pre-sentence report stated that petitioner assaulted PVG over the course of six or seven years. The sentencing court's comments were not materially inconsistent with this information. Both the court and PVG were relying on approximations, and the approximations the sentencing court verbalized were very similar to PVG's allegations in the criminal complaint. As evidence to the contrary, petitioner produced only his own testimony. It was not unreasonable for the court of appeals to find that the postconviction court had discredited petitioner's testimony in denying the motion. Although the sentencing court might have phrased things more artfully, it said nothing that suggested that the sentence it imposed was based on inaccurate information. Thus, the court of appeals' decision was not unreasonable in any respect.

### III. CONCLUSION

For the above reasons, petitioner is not entitled to habeas relief. **THEREFORE, IT IS ORDERED** that the petition for a writ of habeas corpus is **DENIED**. The Clerk of Court shall enter final judgment. Pursuant to Rule 11 of the Rules Governing § 2254 Cases, I

find that petitioner has not made the showing required by 28 U.S.C. § 2253(c)(2), so I will not issue a certificate of appealability.

Dated at Milwaukee, Wisconsin, this 1st day of May, 2024.

/s/ Lynn Adelman

LYNN ADELMAN

District Judge



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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GREG GOGIN,  
Petitioner,

v.

Case No. 22-cv-1264

MICHAEL MEISNER, *Warden,*  
*Fox Lake Correctional Institution.*  
Respondent.

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ORDER

Petitioner Greg Gogin has filed an appeal of my denial of his petition for a writ of habeas corpus and requests leave to proceed in forma pauperis on appeal pursuant to 28 U.S.C. § 1915. Having reviewed petitioner's affidavit of indigency, I am satisfied that he meets the poverty requirements of 28 U.S.C. § 1915.

**THEREFORE, IT IS ORDERED** that petitioner's second motion for leave to appeal without prepayment of the filing fee (ECF No. 33) is **GRANTED**.

**IT IS FURTHER ORDERED** that petitioner's motion for leave to appeal without prepayment of the filing fee (ECF No. 29) is **DENIED AS MOOT**.

Dated at Milwaukee, Wisconsin this 27th day of June, 2024.

/s/ Lynn Adelman  
LYNN ADELMAN  
District Judge

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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GREG GOGIN,  
Petitioner,

v.

Case No. 22-cv-1264

MICHAEL MEISNER, *Warden,*  
*Fox Lake Correctional Institution.*  
Respondent.

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ORDER

Petitioner Greg Gogin has filed a request for a certificate of appealability. Pursuant to Rule 11 of the Rules Governing § 2254 Cases, I find that petitioner has not made the showing required by 28 U.S.C. § 2253(c)(2), so I will not issue a certificate of appealability.

THEREFORE, IT IS ORDERED that petitioner's a request for a certificate of appealability (ECF No. 32) and motion to amend/correct certificate of appealability (ECF No. 37) are DENIED.

Dated at Milwaukee, Wisconsin this 30th day of September, 2024.

/s/ Lynn Adelman  
LYNN ADELMAN  
District Judge