00-5902

No. _____

Supreme Court, U.S.
FILED
AUG 2 2000
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

ABRAHAM CALLEROS, ----PETITIONER

VS.

GARY R. McCAUGHTRY, WISC. DEPT. OF CORRECTIONS, et al., ----RESPONDENTS

PETITION FOR WRIT OF HABEAS CORPUS
UNDER 28 U.S.C. §2254
BY A PERSON IN STATE CUSTODY

PRO SE / PETITIONER

ABRAHAM CALLEROS #304515

WAUPUN CORRECTIONAL INSTITUTION

396 S. DRUMMOND STREET

POST OFFICE BOX 351

WAUPUN , WISCONSIN 53963-0351

QUESTIONS PRESENTED

A). Whether unfair conditions of confinement are due to my sentencings or are they unconstitutional due to Retaliation,Harassment.Intimidation,Corrup-Conspiracy,Vindictive prosecution by respondents to deprive and or Discourage me from further Complaints, Lawsuits because I have and continue to exercise my Constitutional/Fundamental Rights.

B). Whether Fundamental Fairness was denied to petitioner, whether petitioner's Jury Trials proceedings were prejudicial which compels review of the procedural default pursuant to Book 39--C.J.S., §151(b) at 996--998, and whether there was Miscarriage of Justice based on reliable evidence not presented at trial, see Schlup v. Delo, 513 U.S. 298,324(1995),accord-Sawyer,505 U.S. at 339-340; Harris v. Reed,489 U.S. 255,271(1989).

C). Whether petitioner was denied a fair trial by Suppressing/Denying him the right to present Medical Records, Witnesses and Favorable Evidence in his defense pursuant to Wis.Stats.§908.02,§908.03(3)(4)(6m) and §908.04(a)(b).

D). Whether trial counsel failed and or refused to call/secure witnesses for petitioner in case #99-CF-504 and case #F-960956, whether Trial and Appellate counsel failed to Elicit/Secure Expert witnesses/testimoney for the defense. Rogers v. Israel,746 F.2d 1288(7thCir.1983); U.S. v. Valenzuela-Bernal,102 S.Ct. at 3440-3444(1982).

E). Whether State Statutes §901.04(2),§901.03(b)(4), §901.06,§907.04,§909.02(11) and Fed.R. of Evidence §401-§402

to include McCormick, §231 at 561, ch.3-B-Relevance,"Truth-Finding" and Sec. III-Kind of Evidence, in West-"A Modern Apprroach To Evidence, American Casebook Series(1977) at 140-44, are being violated, denied and or deprived to me. Washington v. Texas,87 S.Ct. at 1921-24,1926(1967); Rock v. Arkensasa,107 S.Ct. at 2708-2713(1987).

F). Whether petitioner was denied Effective Assistance of counsel, denied his Constitutional/Fundamental Rights at his Trials pursuant to U.S. Const. 1st,4th,6th,9th,10th, and 14th Amend., to include Article I, §5,§7,§8,§11,§18 of the Wisc. Const.... Jones v. State,223 N.W.2d at 891[1](1974); U.S. v. Scheffer,118 S.Ct. 1261-1262(1998); U.S. V. Mendez-Rodrigues,450 F.2d at 4-5(1971);see also Book 16A-C.J.S. §447-§449 at 406-63.

G). Whether Corrup-Conspiracy and Retaliation exists between County/State Courts,Judges,Dist.Attorneys,Court appointed attorneys, Dept.Of Corrections Staff/Officials, State Officials,Dist.Courts Staff/Officials,Police and Probation officers to fram petitioner, incarcerate him by filing Fabricated Documents and Reports, for filing Complaints and Lawsuits against them. State v. Mchmer,92 W.2d 797,285 N.W.2d 905(ct.App.1979);State v. Ambuehl,425 N.W.2d 649(Ct. App.1988); Rothenberg v. Aero Mayflower Transit Co.,Inc., 495 F.Supp.399,406;U.S. v. Lanier,117 S.Ct. 1219-28(1997); Robert v. Heim,670 F.Supp. 1466,Aff'd,855 F.2d 646; 20 F.P.D. 4th Conspiracy, n.2, at 48(Deprivation of due course of Justice & Conspiracy to conceal the Facts/Evidence).

H). Whether petitioner's Miscarriage of Justice was/is due to cover-up Eighth Amendment violations of Excessive use of Force to a Handicapped/Disabled inmate, and whether violations of Wis.Stats. §940.29 and §940.285(1)(bm) Abuse Of Vunerable Adults/Residents Of Penal Facilities, and whether Battery/Aggravated Battery was commited to petitioner by respondents in violation of State Statutes §940.19(3)(b)(6)(b), §940.20(1m)(b). Bogan v. Stroud,958 F.2d 180(7thCir. 1992); Schlup v. Delo,513 U.S. 298,324(1995): Sawyer v. Whitly,505 U.S. 333,339.

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceedings in the Courts whose Judgments is the subject of this petition are as follows:

1. Gary R. McCaughtry,Warden
   WCI, 396 S. Drummond St.
   P.O. Box 351
   Waupun,WI 53963-0351

2. James E. Doyle-AG
   Dept. Of Justice
   123 W. Washington Ave.
   Madison,WI 53707

3. Wis.Dept.Of Corrections
   149 E. Wilson,P.O.Box 7925
   Madison,WI 53707-7925

4. William Shirt,Examiner
   149 E. Wilson,P.O.Box 7925
   Madison,WI 53707-7925

5. Ave M. Bie,Sectretary/Designee
   149 E. Wilson,P.O.Box 7925
   Madison,WI 53707-7925

6. Catherine J. Farrey-Warden, Debra Lance,ICE, Freda Blair-Librarian, Elaine Wheeler-HSU Supervisor, Mariam Gonzalez-Social Worker, Dr. Kane-Psychologist, all from the Oakhill Correctional Inst., 5212 CNY. HWY "M",P.O.Box 938, Oregon,WI 53575-0938.

7. Judy P. Smith-Warden, L. Misna-Unit Director, R. Cothrell-Social Worker, Sgt. Deliu-Close North Unit SGT., all from Oshkosh Correctional Inst., 1730 W. SELL RD., P.O. BOX 3530, Oshkosh,WI 54093-3530.

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner respectfully prays that a Writ of Habeas Corpus be granted, because of the Judgments below and because petitioner has been unsuccessful in optaining TRO & Preliminary Injuctions/Relief from Wis.State Courts, Fed. Dist. Courts and from the U.S. Court Of Appeals for the Seventh Circuit. Petitioner has issues of, and has filed Corrupt-Conspiracy allegations on all of this Courts and respondents. Now petitioner is been denied his Constitutional and Fundamental Rights by all Courts,Judges and State Officials.

OPINIONS BELOW

The U.S. Court Of Appeals gave no opinions in Dismissing petitioner's Motions for TRO & P./I. and only granted Suspention of Appeal on case No. 99-3686 pending Appointment Of Counsel.(App.A,infra 1a-3a) The opinions of the U.S. Dist. Court Western Dist. Of Wis. was to Dismiss petitioner's 42 U.S.C.§1983 Complaint and that petitioner's notice of appeal was construed as to proceed in forma pauperis, petitioner was denied appeal as being Frivolous on case No. 99-C-0271-S,(App.A,infra 4a-11a). The opinions of the U.S. Court of Appeals 7th Cir. were to Suspend and Deny Certificate of Appealability and then Dismiss case No. 98-1537 and case No. 98-1356,(App. B,infra 12b-15b). The opinions of the U.S. Dist. Court Western Dist. Of Wis. on case No. 98-C-27 was to Dismiss Petition under 28 U.S.C.§2254, Deny Cert. of Appealability because petitioner must have used his Left Hand if he couldn't use his Right Hand, and Denied Motion to Enlarge Records on Appeal,(App.B,infra 16b-32b). State Trial Court Judge Denied Motion For Postconviction Relief without Case Law citings and only stating that the Lower Courts Conviction stands,(App.C,infra 33c-34c) case No. F-960956. The Wis. Appelate Division Dist.1, first denied petitioner Motion For Post-

Conviction Discovery(App.D,infra 35d-36d), Judge Wedemeyer then Denied Request To Supplement Records on Appeal, even though they are Relevant to the case/appeal,(App.D,infra 37d-38d). The Wis. Supreme Court Dismissed Motion to Bypass Court Of Appeals,(App.D,infra 39d-40d). State Court Judge Dismissed Motion To Modify Sentences on case No. F-954322/F-960956, and Denied Release Of PSI-Report,(App.D,infra 41d-42d). State Appellate Division Affirmed the Judgment Of Conviction,(App.D,infra 43d-53d). The U.S. Dist. Court Western Dist. Of Wis. Dismissed 42 U.S.C.§1983 on case No.97-C-0446-C for Assult and Battery by staff/OSCI Physican,(App.E,infrs 1e-10e). The Winnebago County Small Claims Court issued an Order Dismissing case No. 97-SC-02505 Complaint,(App.F,infra 11f-13f). Finally, State Trial Court Convicted petitioner of Battery By Inmate in case No. 99-CF-504, he was denied a Fair Trial, Constitutional/Fundamental Rights to present Favorable Evidence in his defense, was not allowed to call witnesses as in all the other cases stated above,(App.G,infra 6g-16g)(App.H,infra 30h-36h)(App.I, infra 1i-81i) and (App.J,infra 1j-17j),case has not gone to State Appeals Court because petitioner has been waiting for appointment of counsel.

J U R I S D I C T I O N

The Judgments of the Court of Appeals For The Seventh Circuit were entered on 12/01/99,12/14/99,05/02/00(App.A, infra 1a-3a); 03/13/98,03/16/98, 03/27/98 and 08/14/98(App.B, infra 12b-15b). The State Appellate Division Dist. 1, were entered on 06/04/99,08/13/99,04/04/00 and 05/09/00(App.D, infra 35d-50d). State Supreme Court entered on 03/04/99 and 03/11/99(App. D, infra 39d-40d). The Jurisdiction of this Court is invoked under 28 U.S.C. §2254(A)(B), because the complaint raises Corrupt-Conspiracy under Civil Rights §252, including violations of U.S. Constitution, State and Federal Statutory Provisions, which also raise Federal Questions of Extraordinary Circumstances.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOKED

The following Amendments of the United States Constitution provides, in pertinent part:

First Amendment: ...[P]rohibiting the free exercise of religion, or abridging the freedom of speech;

Fourth Amendment: ...[T]he right to be secured in their persons, houses,papers,and effects against unreasonable searches and seizures, shall not be violated;

Sixth Amendment: ...[T]he accused shall enjoy the right to a speedy and public trial;

Eighth Amendment: ...[N]or cruel and unsusual punishment inflicted;

Fourteenth Amendment: ...[N]or shall any state deprive any person of life,liberty, or property, without Due Process Of Law, nor the right to Equal Protection of the Laws;

28 U.S.C.§2254(A)(B) of the United States Code provides: The Supreme Court, a Justice thereof, a Circuit Judge, or a Dist. Court shall entertain an application for writ writ of habeas corpus in behalf of a person in custody pursuant to the Judgment of a State Court only on the grounds that he is in custody of the Constitution or laws or treaties of the United States. (B)(i) there is an absence of available state corrective process; or (ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

Civil Rights §252,Book 14A-C.J.S. provides in part: ...[w]here a client alleges that state public defenders defenders conspired with state officials to deprive a client of his Constitutional rights by securing his conviction, the complaint included an adequate allegation of conduct under color of state law.

42 U.S.C.§1985(3) provides in part: ...[T]hat the defendants did "conspire or go indisquise on the highway or on the premises of another for the purpose of depriving, either directly or indirectly, any person or class of persons of the Equal protection of the laws, or of Equal privileges and immunities under the laws".

Rule 65- Injunctions under Fed.R.Civil Procedures provide in part:
...[T]hat TRO & Injunctive Relief may be issued by a Court or Justice, to prevent future Misconduct and Irreparable Harm to Plaintiff.

18 U.S.C.§241 Fed.Cim. Code & Rules(1997 Ed.)provides in part:
Conspiracy Against Rights...[I]f two or more persons conspire to injure,oppress, threaten, or intimidate any person in any State,Territory,Commonwealth,Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same;

18 U.S.C.§242 Fed. Ciminal Code & Rules(1997 Ed.)provides in part:
"Deprivation Of Rights Under Color Of Law"
...[W]hoever, under color of any law,statute, ordinance, or custom, willfully subects any person in any state,territory,commonwealth, possession, or District to the deprivation of any rights,privileges, or immunities secured or protected by the Constitution or Laws of the United States, or to different punishment,pain, or penalties, on account of such person being an Alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be find or imprisoned under this title.

STATEMENT OF THE CASE

On April 26,1999 petitioner filed 42 U.S.C.§1983, on June 30,1999 he filed Supplemental Pleadings and Joinder of Defendants to the U.S. Dist. Court Western Dist. of Wisconsin complaining that he is being placed with SMOKERS, that he is being Exposed to Unwanted Exposure to "ETS"(Environmental Tobacco Smoke), ongoing patterns of Harassment,Corrupt-Conspiracy, violations of Contemporary Stadards Of Decency and Eighth Amendment,Invation and Intrusion into petitioners Life, Civil,Constitutional and Fundamental Rights violations, Conspiracy to Retaliate against him for Lawsuits and allegations stated in his complaint, Assault and Battery,Denial Of Rights to Appeal Disciplinary Proceedings,Denial by U.S. Dist. Court to issue

Injunctive Relief/TRO because of injuries petitioner received on 09/24/99, to include being transferred into worst Institutional Conditions of Confinement every time he complaint.(see App.G, infra 1g-18g;App.H, infra 1h-37h).

While at Dodge Correctional(DCI) from 04/04/96 to 05/02/96, petitioner was placed in cells with inmates who SMOKED, he filed DOC-400 and filed DOC-400 on 04/11/96 for Missing Legal Documents taken by staff upon his arrival, filed DOC-405 on 04/18/96 to Madison Dept. Of Justice and two weeks later he was transferred to Oshkosh Correctional(OSCI), complaint was then Dismissed on 10/18/96.

While at O.S.C.I., petitioner filed the following DOC-400's and DOC-405's:

DOC-400 dated 06/26/96 complaint that OSCI Business office staff did refuse to return checks belonging to the VA and Social Security office, the fact that petitioner is incarcerated he is not allowed to receive any money from SDI/VA Disability payments, complaint was dismissed on 07/03/96. Petitioner went on a Hunger Strike until such funds were returned, he was put into SEG for Disobeying Orders, Standing up for his Rights and for being on a Hunger Strike on 07/01/96, putting his health at risk, but staff didn't care, they only wanted siad money on their books, in violation of Federal Laws to cash or keep money to pay themself.

DOC-400 dated 04/16/97 for refusal of dental Care by Hygienist and for violations of Privacy/Confidentiality pursuant to Wis.Stats. §252.12(3), s.252.14(2)(d)(4)(5)(6) and s.252.15(8), Dismissed on 05/16/97.

DOC-400 dated 07/10/97,petitioner had no hot water in his wet cell from 05/22/97 to 07/30/97, complaint Dismissed on 07/31/97. DOC-400 dated 10/07/97 against Ms. Jane Sondalle-Unit Director who told petitioner she didn't care about his Constitutional Rights, nor did she have time to listen to them regarding petitioner's rights to Refuse to go to HSU, Dismissed on 10/16/97, he filed DOC-405 to Madison 10/21/97, on 11/04/97 he was then

all dairy products, which is mostly what is served here and in all of the institutions. On 03/28/00 I wrote Ms. Polenska-RN, that I was refusing the double portions food trays, I was told I was going to be monitored as to what I eat, when in fact I had signed DOC-3220 Refusal Of Recomended Treatment/Tests on 01/28/00,04/21/0005/17/00 and 06/20/00, because I don't want to be seen by and or treated by any HSU satff,Employee of the State nor by any one who is contracted by the state to provide medical treatment to inmates, as long as I am incarcerated and in this state, I only believe in Herbal Medicines for my conditions and Disabilities, but HSU staff keep calling me to be seen only to Harass me, in violation of my Constitutional Rights, to refuse treatment.(App.I, infra 26i-32i, and 38i-81i) see-Johnson v. Meltzer, 134 F.3d 1393(9thCir.1998).

STATE CONVICTIONS AND APPEALS

Petitioner was convicted 11/16/95 and sentenced on 12/07/95 for ARSON in violation of Wis.Stats. §943.02(1)(a) case No. F-954322 in Milwaukee County Cir. Court Br.#42, the Hon. David A. Hansher presiding, to 5Yrs. Stayed Sentence, 5Yrs. Probation. After sentencing, petitioner was told to go go to the Dept. of Probation at the Safety Building, 821 W. State St.Rm#605, he was told to come back after New Years because they were short of staff, petitioner insisted on getting a probation officer(PO) because he knew it was all a setup to get him hookedup on not showing up as ordered by the Court. Petitioner pleaded Guilty to Arson even though he only set his own personal belongings on fire on 09/29/95, because he had no place to go, could not get another apartment and every one, including state agencies and officials wanted petitioner to donate/give away all his furnishings and personal belongings, so he felt that if he couldn't have them no one else could.... When petitioner was put out on the streets after sentencing, he

had no place to go, but Judge Hansher,Dist. Attorney and Ms. Hill-SPD all conspired with each other and violated State Statutes that state "[n]o perisoner shall be released on Probation or Parole without a physical place of address and phone number", but they said that since I had money in the bank, I could find a place to live. Yet, I couldn't find an apartment before I was incarcerated/convicted, how could I get a place after my Arson conviction. During my time in the County Jail I went on a Hunger Strike because the court appointed attorney Ms. Hill would not take me before a judge, Ms. Hill told me that I had no rights, that she was taking all my rights away from me, that she was going to represent me whether I wanted her or not, that she was going to do what ever she wanted, when she wanted and how she wanted. Ms. Hill's Unprofessional Misconduct, her Misrepresentation is a violation of "SCR-20:1.2 Scope Of Representation", "SCR-20: 1.16 Declining or Terminating Representation,and SCR-20:8.4 Misconduct.

Staff at Milwaukee County Jail(MCJ), Ms. Hill and Mental Health staff told me that they didn't care if I eat,drank or died, that no one on the outside would know nor find out whats going on inside the Jails and Prison System, nor would they find out why I died, they would make it look like a suicide as in the past with others, thatno one is going to believe me if I tried to communicate with the Media/outside because I am a convict/Felon. Therefore, this people have and continue to conspire against petitioner to deprive him of his Constitutional and Fundamental Rights. Petitioner wrote to judge Hansher telling him about all of the above statement, but noting was done. Bell v. city of Milwaukee,746 F.2d at 1255[A](1984); Sellner v. Panagoulis,565 F.Supp. at 244(1982); Martin v. King,417 F.2d at 459-62(1969).

JUDGMENT OF CONVICTION AND POSTCONVICTION
RELIEF ON CASE No. F-960956

On 02/16/96 at about 10:45AM while petitioner was on probation his PO made a visit to the Ambassador Hotel at 2308 W. Wisconsin Ave., where he was staying, whenshe showed up, she told petitioner, "I am here" in a very unhappy voice and with a chip on her shoulders as to provoke petitioner into a confrontation, I said, "yes, I see, you did make this appoinment", since she never showed up for her prior visit, and didn't even call me, no one in her office knew where she was when I called. Petitioner and Ms. Hoffmeister had a disargrement about police contact, since I had gone to Madison on 02/09/96 and I asked a police officer for directions, she told me, "thats not what I asked", she snapped and said, "I mean did you have police contact?".... I then told her in a Figuer of Speech, expressing/exercising my First Amendment Rights, "that with everone and every agancy I went to with my problems about my case and housing, and every one saying to me "I don't know what to tell you-its not our problem", I said," I mit as well blow my brains out".... She stormed out of my room, slaming the door, I finished getting dressed to go eat since I had not eaten since the day before due to her appointment and no food in my room. When I got to the Lobby she was standing by the elevators, she asked, "where are you going", I responed, "I am going to eat, she said no you can't, I said I am going and you can't stop me". We walked outside the Hotel and the police showed up, she had called them and told them that I was going to commit suicide. Officer Molina approached me, asked if I had any weapons, I raised my arms so they could pat me down, my PO was in front of me, I took one step backwards, officer Molina grabb my right arm and my Organizer fell to the ground, he then tried to take me to the ground as if I was going to run, his partner officer Keller came from behind him and OC Sprayedboth eye, I was then

taken to the ground, I fell on my left arm and officer Molina on top of my right arm. Then officer Keller OC Sprayed me again to both eye and face, I couldn't see nor Breath because of the OC and my Asthma, plus both officers were on top of me. While they were trying to hand cuff me and put shackels on me, the officers and PO told the Court that I took the GUN away from officer Molina, that I had the gun in my "Right Hand", that I fired it and hit a parked car. Yet, I am unable to grabb, open nor use my Right Hand due to 95% Paralysis, due to a Laceration of Right Forearm, Secondary to Dismemberment on January 17,1982.... I was given a stand by counsel or I was told by Judge Hansher that I would not be able to represent myself, that said counsel knew tha laws and would help me get what I needed. I wrote to Ms. Boynton and told her to Subpoena my VA Doctor, Physical Therapist and my Medical Records to show the Jury that it would be impossible for me to take said gun from the officer because, (1) I could not see nor was I able to open my eyes until I was taken to the Hospital ER, (2) I can't use or open right hand, (3) the officers were on top of me, (4) they also did testify that officer Keller and officer Molina had their hands on the gun and that officer Molina's hand was on top of me hand when the gun went off. But at no time did the State prove that I did take the gun, nor how it got into my right hand from officer Molina's Holster, (5) I was wearing ski Gloves-size large and my hans are small, (6)Judge Hansher, DA Hornak then Suppressed/Deprived me the right to refer to my documents as Medical Records because the Jury would then want to see them, therefore, depriving me the right to present witnesses and Favorable Evidence in my defense. accord-U.S. v. Scheffer,118 S.Ct. at 1262(1998); U.S. v. Valenzuela-Bernal,458 U.S. 855,867,102 S.Ct. at 3441-42, Id. at 3446(1982); accord-Chambers v. Mississippi 410 U.S. 284,93 S.Ct. 1038(1978)(the court invalidated a state's hearsay Rule on the grounds that it abridged the defendand's right to per-

present witnesses in his own defense. Id.,at 302,93 S.Ct. at 1049); (7) at Trial DA Hornak violated her own Motion In Limine, when she brought up issues that petitioner wanted to go see Dr. Kevorkian in Michigan because of his medical condition, yet, I was refuse the right to state my side and or present said medical records because they state that petitioner is HIV-positive, (8) at sentencing DA told the court that I was angry at my PO thats why I commited the crime, an out wright lie; the Judge sentenced me to 5Yrs. running concurrent with the 5Yrs. I was already serving, and 2Yrs. running concurrent to the five and five, only if I would promise to leave the State, that the State was better off without me and I was better off without the state, I agreed.(App.D, infra 53d). State appointed appellate counsel refused to raise issues of ineffective assistance of counsel because in accordance with Post-Conviction Considerations and State Procedures, a State Public Defender Appellate Division is prohibited from raising said issues/claims against another SPD from a Trial Court, thats why there is Co Corrupt-Conspiracy in this State. Tower v. Glover,104 S.Ct. 2820,467 U.S.914.

FEDERAL DISTRICT COURT WESTERN DISTRICT
OF WISCONSIN CASE No. 99-C-271-C AND U.S. COURT OF
APPEALS SEVENTH CIRCUIT CASE No. 99-3686

On April 26,1999 petitioner sought 42 U.S.C.§1983 Relief, filed Motion for TRO and Preliminary Injunction on 05/21/99 along with other Motions and Exhibits.(App.B, infra 7b, at NR.03-07) On 06/16/99 he filed another motion for TRO and P./I. along with other motions and documents, 06/30/99 filed for TRO, all motions were denied on 07/07/99.(App.B, infra 7b, at NR.009-074).

On 09/29/99 Court Granted Defendants Motion for Summary Judgment, petitioner appealed,(App.B, infra 8a, at NR.075-078; infra 4b-11b). On 11/16/99 petitioner filed Extention of Time and Motion To File only one Original, Motion For TRO and P./I., Motion To Appoint Counsel, to the Ct. of Appeals Seventh Cir., Court granted part on 12/01/99.(App.A, infra 1a).

On 12/06/99 petitioner Filed Supplemental Memorandum Of Law, on 12/14/99 Court of Appeals Denied motion for TRO & P./I.(App.A, infra 2a).

On February 28,2000 petitioner filed Motion for Reconsideration for TRO and P./I. , on April 11,2000 he filed for an Emergency TRO, the Court then Denied said Motions,(App.A, infra 3a).

The Dist. Court should have never granted Summary Judgment, S.J. is only granted if there is no genuine issues as to any material facts. see-- Tobey v. Extel/JWP,INC.,985 F.2d 330,332(7thCir.1993). The Dist. Court improperly resolved factual disputes by granting S.J. after petitioner submitted his witnesses Affidavits and Exhibits, that squarely contradic the defendants stories that no one smokes in the buildings or by petitioner's window, that there is no violations of conditions of confinement or of DOC-348.05, these rule is Promulgated under the Authority of s.301.36(1) and s.227.11(2)(a), Wis.Stats.(Register, 8/87, No.380) which states that under DOC-348.05-Required Bathrooms, there shall be one Stool for every (8)Eight Male/inmates. Wilson v. Williams,997 F.2d 348,350-51(7thCir.1993); Helling v. McKinney,113 S.Ct. 2475,2481-82(1993); Fisher v. Winter,564 F.Supp. 281, 302(N.D.Cal.1983). Petitoner did not receive an understandable notice of the requirements of the Summary Judgment rules; accord-Timms v. Franks, 953 F.2d 281,282-85(7thCir.)cert.denied,112 S.Ct. 2307(1992), therefore, I was unable to properly submit an objection to the Court. Petitioner sued Multiple Parties, raised multiple Legal Claims, filed Motion For Subpoenas Duces Tecum and raised other issues, he filed exhibits #1 throught #10 on 05/21/99 and again on 09/20/99,09/27/99 filed Exhibit List with Exhibits #1 through #67. Abdul-Wadood v. Duckworth,860 F.2d 280,282-83(7thCir.1988); Wood v. thieret,903 F.2d 1080,1082(7thCir.1990)(allegations of three days denial of food states a Constitutional Claim). The use of Excessive Force by correctional officers and the Physical Abuse by Dr. Kaplan is a violation

of the Eighth Amend. to include Wis.Stats. §302.08 Humane Treatment By Custodians, §940.29 Abuse Of Residents Of Penal Facilities, §940.285(bm) Abuse Of Vunerable Adults, and is a form of deliberate indifference with Recless Disregard of Anothers Rights per Restatement(Second) Tort Law,§500-§503, and is a form of Interference,Punishment and Retaliation because I continue to Exercise my Rights. accord-Hudson v. McMillian,112 S.Ct. at 1000(1992); Valencia v. Wiggins,981 F.2d 1440,1443(5thCir.)cert. Denied, 113 S.Ct. 2448(1993); Racon v. Hardiman,803 F.2d 269,276-77(7thCir.1986); Brownlee v. Conine,957 F.2d 353,354(7thCir.1992); see also-U.S. v. Lanier, 117 S.Ct. 1219(1997), and 18 U.S.C.§241 & §242.(App.G, infra 1g-18g).

FEDERAL DISTRICT COURT EASTERN DISTRICT OF WISCONSIN CASE No. 98-C-27 AND U.S. COURT OF APPEALS SEVENTH CIRCUIT CASE No. 98-1356

On January 14,1998 petitioner filed Petition For Writ Of Habeas Corpus pursuant to 28 U.S.C.§2254, challenging his 12/12/96 conviction in Wis.State Court for Reckless Endangering Safety and Disarming A Peace Officer.

On 01/29/98 the U.S.D.C. Dismissed petition under Rule 4, Governing Section 2254 Cases,(App.D, infra 16b-25b). Justice Stadtmuller abused his discretion and pwers by making an assumption that petitioner used his Left Hand rather than his Right Hand to Disarm the officer without looking at the Exhibits and Witnesses Statements(state witnesses) that petitioner had gun in his right hand, thereby, conspiring with state officials to keep me in prison, and in this state.(App.B, infra 24b) Lawson Prods.,Inc. v. Aunet, Inc.,782 F.2d 1429,1437(Ca7,1986); 1 S. Childress & M.Davis,Fed.Standards Of Review §4.21 at 4-163(to the weighing of these factors in light of the particular facts).

On 02/09/98 U.S.D.C. Denied Application For A Certificate Of Appealability.(App.B, infra 26b-30b). On 02/23/98 U.S.D.C. Denied Motion to Enlarge Record on Appeal.(App.B, infra 31b-32b). Petitioner filed to the

U.S. Court of Appeals 7th Cir. for Certificate of Appealability per Judge Stadtmuller(App.B, infra 29b), on 03/13/98 U.S. Court of Appeals issued a Court Order for petitioner to voluntarily dismiss his appeal(App.B, infra 12b). On 03/16/98 U.S. Court of Appeals issued Order Suspending Briefings until further court order(App.B, infra 13b). On 03/27/98 U.S. Court of Appeals issued Court Order Dismissing as Unnecessary(App.B, infra 14b), and on 08/14/98 U.S. Court of Appeals Denied Request For Certificate Of Appealability(App.B, infra 15b).

STATE POST-CONVICTION PROCEEDINGS
CASE No. F-960956 AND APPEAL No. 99-0494

On 01/27/99 petitioner filed a pro se Motion For Post-Conviction Relief pursuant to Wis.Stats.§974.06(1997-98) to his sentencing Judge David A. Hansher. On 01/29/99 Judge Jeffrey Wagner denied postconviction relief without citing Authority/case law and only assumed that petitioner had a Fair Trial(App.C, infra 33c-34c). Petitioner filed Notice Of Appeal to the Wis. Court Of Appeals Dist. 1, Case No.99-0494(App. D, infra 51d-53d). On 03/02/99 petitioner filed Motion to Bypass Ct. of Appeals, on 03/04/99 the Wisconsin Supreme Court Denied Motion to Bypass Ct. of Appeals and on 03/12/99 petitioner received letter from Chief Justice Abrahamson reference bypass correspondance (App.D, infra 39d-40d).

On 06/04/99 the State Ct. of Appeals denied Request for Post-Conviction Discovery(App.D, infra 35d-36d), on 08/13/99 Ct. of Appeals denied my Request to Supplement Records on appeal, even though they are relevant to the case(App.D, infra 37d-38d, Id., infra 38d). On 02/10/00 petitioner filed pro se Motion to Modify His Sentences case No. F-954322 and F-960956, the same day Judge Wagner denied Motion(App.D, infra 41d). On 03/01/00 I filed pro se Motion To Release my PSI-Report on case No.'s F-954322 and F-960956, Motion was denied on 03/14/00(App.D, infra 42d). On 04/04/00

Court of Appeals Entered an Opinion and Order Affirming Circuit Court decision pursuant to Wis.Stats. Rule 809.21(App.D, infra 43d-48d), on 05/09/00 Court of Appeals issued another Order Affirming same(App.D, infra 49d-50d).

OTHER LAWSUITS IN FEDERAL DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN
CASE No. 97-C-446-C

On July 17,1997 petitioner filed 42 U.S.C.§1983 against Dr. Kaplan and Bureau Of Health Services for Assault and Battery, Improper Treatment, petitioner also filed Motion For TRO and P./I. to Cir. Judge Barbara Crabb, but she refused to address the issue, she Dismissed the Complaint on 09/25/97 (App.E, infra 1e-10e).

WINNEBAGO COUNTY SMALL CLAIMS COURT
CASE No. 97-SC-02505

On 06/26/97 petitioner filed Summons and Complaint against Jody Gerhart Dental Hygeinist, for Refusing to provide Dental Service to me, violation of patient Confidentiality and Privacy Rights(App.F, infra 12f-13f), then on 08/06/97 Small Claims Court Dismissed said Claim(App.F, infra 11f).

REASONS FOR GRANTING WRIT

The decisions in this case Expands Federal Habeas Corpus Review of state convictions to permit courts to exercise supervisory powers over the conduct of state prosecutors, court appointed attorneys and state officials by nullifying convictions even if the challenged conduct did or did not affect the outcome of the Trial. Habeas Corpus Review is also expanded to permit Federal courts to exercise supervisory powers where District Courts and Appellate Courts refuse to release petitioner from state custody to prevent further Misconduct by state and prison staff/officials and or further injuries to petitioner, to include reviews where Corrupt-Conspiracy exists between public defenders, state court judges, court appointed attor-

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted August 11, 1998

Decided August 14, 1998

Rec'd. A.C. 8-17-98 1:45 PM

Before

Hon. JOEL M. FLAUM, *Circuit Judge*

Hon. TERENCE T. EVANS, *Circuit Judge*

ABRAHAM CALLEROS,
Petitioner-Appellant,

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

No. 98-1356

v.

No. 98 C 27

CATHERINE FARREY,
Respondent-Appellee.

J. P. Stadtmueller,
Chief Judge.

ORDER

Petitioner filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The district court dismissed the petition and declined to issue a certificate of appealability. Petitioner now has filed a notice of appeal which we shall construe as an application for a certificate of appealability. Fed. R. App. P. 22(b); Circuit Rule 22.1.

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. 28 U.S.C. § 2253(c)(2).

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

EXHIBIT #44-C

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Copy mailed to attorneys for parties by the Court pursuant to Rule 77 (d) Federal Rules of Civil Procedures.

U.S. DIST. COURT EAST DIST. WI
FILED
JAN 2 9 1998
AT ___ O'CLOCK ___ M
SOFRON B. NEDILSKY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ABRAHAM CALLEROS,

Petitioner,

v.

Case No. 98-C-27

CATHERINE J. FARREY,

Respondent.

Page 2

ORDER

On January 14, 1998, Abraham Calleros filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his December 12, 1996 conviction in Wisconsin state court for reckless endangerment of safety and disarming a peace officer. Calleros's petition is before the court for preliminary consideration under Rule 4 of the Federal Rules Governing Section 2254 Cases.

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I. BACKGROUND

In 1995, Calleros was convicted of arson and placed on probation. During a home visit by his probation officer in 1996, Calleros, who has a history of mental health problems, told the probation officer that he "might as well blow [his] brains out." The probation officer called 911 and two police officers arrived at the scene. A scuffle ensued, during which one officer's gun was removed from its holster, and the officers used pepper spray to apprehend Calleros. He was taken to the hospital,

where his eyes were flushed, then to a mental health center, where he was evaluated, and finally to jail. Page 3

Calleros's probation was revoked and he was charged with recklessly endangering safety and disarming a police officer, contrary to Wis. Stat. §§ 941.30(2) and 941.21, along with a penalty enhancer for habitual criminality under Wis. Stat. § 939.62. Calleros pleaded not guilty and chose to represent himself at trial, although the court appointed standby counsel. At trial, Calleros attempted to show that his statement that he "might as well blow [his] brains out" was sarcastic and that he could not have disarmed one of the police officers because he was incapacitated by the pepper spray and his right hand is all but useless. The jury found Calleros guilty of all counts and on January 16, 1997, he was sentenced to five years of imprisonment on the first count and two years on the second count, both sentences to run concurrently with his five-year sentence for the arson conviction.

Calleros did not appeal his conviction. His standby counsel filed a notice of intent to pursue postconviction relief on Calleros's behalf, which included a request that counsel be appointed for Calleros. Although a public defender was appointed to represent Calleros, it does not appear that any postconviction motion was filed. Instead, the public defender explained to Calleros in a letter dated June 18, 1997, that after meeting with Calleros and reviewing the file, he could not identify any meritorious ground to support an appeal of the conviction and sentence. The letter further explained that Calleros could request his appointed counsel to file a "no

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merit" report with the Wisconsin Court of Appeals in order for the appellate court to review those issues that Calleros believed had merit. Apparently, Calleros did not direct his appointed counsel to file a "no merit" report or otherwise pursue postconviction relief or direct appeal of his conviction and sentence.

II. DISCUSSION

An application for a writ of habeas corpus may be granted only on the grounds that the petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). In other words, federal habeas corpus jurisdiction is limited to claims of violations of federal law. *Brewer v. Aiken*, 935 F.2d 850, 854 (7th Cir. 1991). Before considering the petitioner's claims, however, the court must determine whether the petitioner provided the state courts "a full and fair opportunity to review the petitioner's claims through its own judicial processes before asserting federal review." *Farrell v. Lane*, 939 F.2d 409, 410 (7th Cir.), *cert. denied*, *Farrell v. McGinnis*, 502 U.S. 944 (1991); *see also* 28 U.S.C. § 2254(b). In making such a determination, "a district court must make two inquiries -- whether the petitioner exhausted all available state remedies and whether the petitioner raised all his claims during the course of the state proceedings." *Henderson v. Thieret*, 859 F.2d 492, 496 (7th Cir. 1988), *cert. denied*, *Henderson v. Greer*, 490 U.S. 1009 for a failure to exhaust state remedies or for a procedural default." *Henderson*, 859 F.2d at 496.

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