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STATE OF WISCONSIN
SUPREME COURT

Case No. 2011AP2188

STATE OF WISCONSIN EX REL. ARDONIS GREER,
PETITIONER-RESPONDENT-PETITIONER,

V.

DAVID H. SCHWARZ, ADMINISTRATOR, DIVISION
OF HEARINGS AND APPEALS,
RESPONDENT-APPELLANT.

ON REVIEW OF A DECISION
OF THE COURT OF APPEALS, DISTRICT II
REVERSING A FINAL ORDER ENTERED IN RACINE
COUNTY CIRCUIT COURT CASE NUMBER 11CV952,
THE HONORABLE CHARLES H. CONSTANTINE,
PRESIDING

BRIEF AND APPENDIX OF
PETITIONER-RESPONDENT-PETITIONER

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STATE OF WISCONSIN
SUPREME COURT

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EX REL. ARDONIS GREER,
Petitioner-Respondent-Petitioner,
v.

DAVID H. SCHWARZ, ADMINISTRATOR,
DIVISION OF HEARINGS AND APPEALS,
Respondent-Appellant.

**BRIEF OF PETITIONER-RESPONDENT-
PETITIONER, ARDONIS GREER**

STATEMENT OF THE ISSUES

Whether the issuance of an absolute discharge certificate reinstating Petitioner-Respondent-Petitioner, Ardonis Greer's constitutional rights deprives the Department of Corrections of jurisdiction over him.

The circuit court and the Court of Appeals both found that because Greer's court-ordered three-years term of probation had not expired at the time the DOC commenced revocation proceedings the DOC retained jurisdiction despite the issuance of an absolute discharge certificate reinstating his constitutional rights.

Whether taking Petitioner-Respondent-Petitioner Ardonis Greer into custody and initiating revocation proceedings against him after issuance of an absolute discharge certificate reinstating his constitutional rights

over two and a half years earlier violates fundamental due process requirements.

The Court of Appeals held because Greer knew or should have known he was on probation when he committed his new felony offense and knew he could not violate the criminal laws while on probation, his due process rights were not violated by the DOC's revocation of his probation after the issuance of the absolute discharge certificate.

Whether the circuit court, sitting in certiorari, has the power to apply equitable estoppel to the question of whether the Department of Corrections and Division of Hearings and Appeals acted according to law in issuing a revocation order against Petitioner-Respondent-Petitioner Ardonis Greer.

The circuit court reversed the decision to revoke Greer's probation on review under writ of certiorari finding the DOC was equitably estopped from seeking revocation because it had issued a certificate absolutely discharging Greer from any and all supervision and reinstating his constitutional civil rights which Greer reasonably relied upon by voting in the 2008 Presidential Election, exposing him to new criminal liability. The Court of Appeals reversed the circuit court holding that equitable relief is not available in certiorari action.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The Petitioner-Respondent-Petitioner, Ardonis Greer, requests oral argument pursuant to Wis. Stat. § 809.22. Oral argument would help further develop the theories of the parties.

Furthermore, publication of the court's decision is also warranted as this is a matter of first impression.

STATEMENT OF THE FACTS AND CASE

In Racine County Case Number 2004CF1184, Ardonis Greer (herein after "Greer") pled no contest and was convicted of Possession with Intent to Deliver - THC (>200-1000g) in Count 1 and Possession of Firearm by a Felon in Count 3. Count 2 was dismissed and read-in. (3:28; A-102). On Count 1, Greer was sentenced to 3 years Wisconsin State Prison, bifurcated as 14 months initial confinement, followed by 22 months extended supervision. (*Id.*). On Count 3, Greer was sentenced to 6 years WSP, bifurcated as 3 years initial confinement, 3 years extended supervision, which was stayed and he was placed on 3 years probation to be served consecutive to Count 1. (*Id.*; A-228-230).

It is undisputed that the Department of Corrections failed to input Count 3 - Possession of a Firearm by a Felon into its record system (OATS/CACU); therefore, at no point during Greer's initial confinement or extended supervision was there any discussion of the 3 year consecutive probation sentence with Greer. (1:1, 3:27; A-223)

Greer successfully completed his initial confinement and extended supervision committing no major violations, living with his mother, attending school, and working. (13:30-32, 38-39; A-170-72, 178-80).

Greer was told by his supervising agent, Sarah Zupke, that his maximum discharge date was September 28, 2007 and he would be done with all forms of supervision at that time. (3:50; 13:30-31; A-207). On September 12, 2007, Greer met with his agent to sign documents converting his unpaid court costs and supervision fees into a civil judgment. (3:50). On September 22, 2007, Greer's agent received the completed DOC 101 form indicating that a civil judgment had been entered. (3:47-48, 50).

On September 28, 2007, Greer called his agent to verify that his supervision was done on that date and he no longer needed to report. (3:50). His agent informed him that he was technically on supervision until midnight but that his paperwork had been signed off on and he did not need to see the agent again. (*Id.*). Greer was told that when a copy of his discharge certificate was received a copy would be mailed to his house for his own records. He thanked his agent for working with him and was wished good luck on his future endeavors. (*Id.*).

Greer received an absolute discharge certificate in the mail dated October 3, 2007, ordering that "effective September 28, 2007, you are discharged completely." (3:54; A-208-13). Furthermore, the document indicated Greer's civil rights were restored, including his right to vote. (*Id.*). Greer also received a second discharge certificate on the same date that specifically referenced the drug charge. (3:55; A-210).

Greer continued to have the same contact information after his discharge from supervision, remaining at his mother's address and using the same telephone number until he was taken into custody on the hold in question on September 2, 2010. (13:41, 50; A-181,190). Greer was never contacted by anyone from the DOC after his receipt of the absolute discharge certificate. (13:32, 41; A-181, 190). During the time period after his discharge from supervision, Greer attended school at Gateway Technical College, worked full-time for Valvoline as an Assistant Manager, and voted in the 2008 Presidential Election. (13:41-2; A-181-182).

On November 5, 2009, Greer was involved in an argument with his girlfriend and was arrested and charged in Racine County Case Number 09CF1478. (3:37-39). Greer was released from custody on a cash bond on November 5, 2009, the same day as the incident, and

remained out of custody during the pending new charges. (13:43, 45; A-183, 185).

Greer entered a no contest plea to Intimidation Witness/Threat of Force on June 25, 2010 relating to the November 5, 2009 incident where he used an "airsoft pistol toy gun" to threaten a witness. (3:12, 85; A-138). Per court order, Greer reported for a Presentence Investigation Interview on September 1, 2010 with PSI writer, Agent Melissa Shambo. (3:27; A-229). It was during Agent Shambo's review of Greer's file that she discovered the 3 year consecutive probation on 2004CF1184, which was scheduled for maximum discharge on September 28, 2010, a mere 27 days away. (*Id.*). On September 2, 2010, after the PSI interview, the DOC created a "new case" in its record system so it would have a case on which to hold Greer. (13:28; A-168-72).

On September 2, 2010, Greer was called by Agent Leah Zeni and told to report to the DOC office, but was not told why they needed to see him. (13:28-29; A-168-69). When Greer reported to the office, he was immediately taken into custody on a DOC hold by Racine Police and placed in custody at the Racine County Jail. (*Id.*).

On September 8, 2010, Greer gave a statement to Agent Leah Zeni indicating that he was not aware of the 3 year consecutive probation, and that his former agent told him he had been completely discharged and no longer needed to report. (3:32-35). In this statement, he admitted to receiving a recent speeding ticket and to consuming alcohol occasionally during the period between receiving the absolute discharge certificate and the current hold being placed. (*Id.*). Greer indicated to Agent Zeni that if he had known about his probation he would have continued to report. (*Id.*).

Greer was initially told the DOC would likely permit him to pay supervision fees and discharge on the 28th. (3:47-48, 50; A-189). However, the DOC decided to

proceed with revocation after talking with the Assistant District Attorney prosecuting the new charges who told them they believed Greer had used a real gun in the incident, not a toy gun, but could not prove it. (3:27; A-229).

The DOC initiated revocation proceedings with the following allegations:

1. On or about 09/28/2007, Ardonis Greer failed to report for Consecutive Probation Supervision. This behavior is in Violation of Rules of Community Supervision 1 and 16; and in violation of the Judgment of Conviction for Racine Case 2004CF1184.
2. On or about 11/05/2009, Ardonis Greer threatened Shawn Griffin. This behavior is in Violation of Rules of Community Supervision 1; and in violation of the Judgment of Conviction for Racine Case 2004CF1184.
3. On or about 11/05/2009, Ardonis Greer possessed a gun. This behavior is in Violation of Rules of Community Supervision 1 and 12; and in violation of the Judgment of Conviction for Racine Case 2004CF1184.
4. On or about 07/20/2010, Ardonis Greer operated a motor vehicle that exceeded the posted speed limit. This behavior is in Violation of Rules of Community Supervision 1; and in violation of the Judgment of Conviction for Racine Case 2004CF1184.
5. On or about 08/20/2010, Ardonis Greer consumed alcohol. This behavior is in Violation of Rules of Community Supervision 1; and in violation of the Judgment of Conviction for Racine Case 2004CF1184.

(3:6; A-223).

Prior to the revocation hearing, on November 8, 2010, Greer objected to the jurisdiction of the DOC on several grounds through a written motion prepared by counsel. (3:40-52). The objection was supplemented on November 11, 2010 when counsel provided his original

discharge certificates. (3:53-58; A-208-13). Upon receiving his original discharge certificates, counsel also wrote a letter to Lisa Yeates, the regional supervisor of the DOC, regarding the unlawful detainer of Greer and demanding his release. (1:53-54; A-214-25). Counsel received no response. (1:4).

Greer reiterated the jurisdictional objections at the hearing on November 15, 2010, as well as objecting to *ex parte* communication between the ALJ and Agent Zeni prior to the hearing. (13:5-7, 1:55-56; A-145-47). The ALJ overruled the jurisdictional objections and all other objections and proceeded to hearing. (13:5-11; A-145-51).

On November 23, 2010, the ALJ ordered Greer's probation revoked, rejecting Greer's jurisdictional and other objections. (3:104-05; A-137-140). The ALJ found violation two – that Greer had threatened another man - had been proven by Greer's plea to intimidation of a witness based on the same incident. (*Id.*). The ALJ also found violation five – that Greer had consumed alcohol – had been proven by Greer's own admission in his statement. (*Id.*). The other allegations were found to have not been proven. (*Id.*). The ALJ found revocation was warranted based on the seriousness of the new criminal conduct and the need to protect the public. (*Id.*).

On December 8, 2010, Greer filed an administrative appeal to David Schwarz, the Division of Hearings and Appeals Administrator, requesting that the revocation decision be overturned based upon numerous factors. (3:67-78). The appeal decision, issued by Schwarz and dated December 22, 2010, sustained the ALJ's decision rejecting Greer's jurisdictional arguments and finding the new criminal conduct warranted revocation. (3:104-05; A-134-36).

Greer timely filed a Writ of Certiorari in the Circuit Court of Racine County. (1:1-7). The court granted the

petition and reversed the decision of the Division of Hearings and Appeals. (7:12; A-119-130). The court held the department had acted with jurisdiction, that its actions were not arbitrary, oppressive or unreasonable, and that its determination was warranted by the evidence. (*Id.*). However, despite these findings, the court concluded the Division did not act according to the law and had in fact been equitably estopped from proceeding with revocation against Greer. (*Id.*). The court recognized the legal significance of the absolute discharge certificate and ruled that because an absolute discharge certificate had been issued, Greer reasonably relied upon it, acted upon it (by voting in the 2008 Presidential Election) and suffered detriment based on this reliance, the elements of equitable estoppel had been met. (*Id.*). The court also found that “the revocation of probation under circumstances as unique as found here would violate the basic principles of decency and fairness.” (*Id.*).

The Administrator filed a motion for reconsideration arguing equitable estoppel did not apply in certiorari review cases. (8:1-2). The court rejected this contention and denied the motion to reconsider. (10:1-2; A-131-132). An order was entered August 4, 2011 stating that “the Respondent was estopped from pursuing revocation against Petitioner and the decision to revoke Petitioner’s probation is reversed.” (11:1; A-133). The Administrator filed a notice of appeal. (12:1-2).

The Court of Appeals reversed the circuit court order and remanded for reinstatement of the Division’s decision. (A-101-18, ¶38). The Court held the DOC retained jurisdiction despite the issuance of the discharge certificate because the court-ordered three-year term of probation on Count 3 had not expired at the time the DOC commenced revocation proceedings against Greer. (A-101-18, ¶20). The Court also held equitable relief is not available in a certiorari action and therefore the circuit court’s order overturning the revocation decision because the elements of

equitable estoppel had been met must be reversed. (A-101-18, ¶22). Finally, the Court found because Greer knew or should have known he was on probation and could not commit a new criminal offense while on probation, his due process rights were not violated by the DOC's revocation of his probation. (A-101-18, ¶23).

ARGUMENT

This Court should overturn the Court of Appeals for three reasons. First, the Department of Corrections (hereinafter "DOC") lost jurisdiction over Petitioner-Respondent-Petitioner Ardonis Greer (hereinafter "Greer") when it issued an absolute discharge certificate specifically indicating that Greer's constitutional rights, including his right to vote and ability to serve jury duty were reinstated.

Second, the actions of the DOC in taking Greer into custody and initiating revocation proceedings almost three years after issuing him an absolute discharge certificate reinstating his constitutional rights violated Greer's fundamental right to due process.

Third, the Court of Appeals erred in finding that the circuit court, sitting in certiorari, did not have the power to grant Greer relief based on equitable estoppel when reviewing the question of whether the DOC and the Division of Hearings and Appeals acted according to law.

I. THE ISSUANCE OF AN ABSOLUTE DISCHARGE CERTIFICATE REINSTATING THE CONSTITUTIONAL RIGHTS OF AN INDIVIDUAL DEPRIVES THE DEPARTMENT OF CORRECTIONS OF JURISDICTION OVER THAT INDIVIDUAL.

It is undisputed that the DOC issued Greer an absolute discharge certificate on Racine County Case

04CF1184 stating “[t]he department having determined that you have satisfied said sentence, it is ordered that effective September 28, 2007, you are discharged absolutely.” (3:54; A-209-210)(emphasis added). This certificate also included language telling Greer that his constitutional rights, including his right to vote and the obligation for jury duty were being restored to him, effective September 28, 2007. *Id.* This discharge certificate was issued and signed by the Secretary of the Department of Corrections, Rick Raemisch, on October 3, 2007 “pursuant to Ch. 304 & 973.” *Id.*

The Court of Appeals noted the relevant statutory and administrative sections:

Wisconsin's probation statute provides that an individual who is placed on probation for a felony shall be discharged from probation and issued a discharge certificate from the DOC “[w]hen the period of probation for [the] probationer has expired.” WIS. STAT. § 973.09(5) (2009-10). Consistent with § 973.09(5), as relevant here, the DOC rules provide that a probationer “shall be discharged upon the issuance of a discharge certificate by the secretary *at the expiration of the term noted on the court order* committing the client to the custody and supervision of the [DOC].” WIS. ADMIN. CODE § DOC 328.17(2) (Dec. 2006) (emphasis added).

(A-101-18, ¶8)(footnotes omitted).

It is undisputed that this certificate was issued prior to the “expiration of the term noted on the court order” as the three year consecutive probation case would not have discharged until September 28, 2010 had it been properly entered into the DOC’s record system.

The Court of Appeals held

the discharge certificate could not have had the effect of discharging Greer from that probation term because that three-year period of probation ordered by the court had not expired at the time the certificate was issued, as required by the cited statute and administrative code. Thus, to the extent the certificate could be interpreted as discharging Greer from the term of probation ordered by the court on Count 3, it was invalid. *See State ex rel. Anderson-El v. Cooke*, 2000 WI 40, ¶20, 234 Wis. 2d 626, 610 N.W.2d 821 (an administrative act is invalid if it conflicts with a statute or administrative rule).

(A-101-18, ¶6).

It is true that administrative agencies only have the power expressly conferred or necessarily implied from the statutory provisions under which it operates. *See State ex rel. Anderson-El v. Cooke*, 2000 WI 40, ¶20, 234 Wis. 2d 626, 610 N.W.2d 821; *See Conway v. Board of the Police and Fire Comm'rs*, 2002 WI App 135, ¶7, 256 Wis.2d 163, 647 N.W.2d 291. In *Anderson-El*, the court was examining the failure of the Department to provide proper notice of hearing as required by the administrative code and found that because it did not comply the proceedings were rendered invalid. *Anderson-El*, 2000 WI 40, ¶20. However, the *Anderson-El* court was not addressing the issuance of a document with significant legal repercussions relating to civil rights being rendered invalid as the DOC argues occurred in this case, but rather was reviewing a deficiency in notice that was easily corrected.

The fact that the certificate issued to Greer was done so prior to the expiration of the term of probation does not render the certificate in Greer's case invalid or lacking in legal significance as the Court of Appeals found.

Greer relies upon the language in two Court of Appeals cases, *State ex rel. Rodriguez v. DHSS*, 133 Wis. 2d 47, 393 N.W.2d 105 (Ct. App. 1986), and *State v.*

Stefanovic, 215 Wis. 2d 310, 315-16, 572 N.W.2d 140 (Ct. App. 1997), for the proposition that “the issuance of a discharge certificate is a ‘significant legal moment.’”

As the Court of Appeals noted, the probationer in *Rodriguez* was verbally told by his agent his supervision would be terminated on April 6, 1985, because she was unaware of a consecutive two year probation sentence. *Rodriguez*, 133 Wis.2d at 49. She discovered her mistake on May 21, 1985 and learned he had committed an assault on a woman between those two dates. *Id.* *Rodriguez* argued they lacked jurisdiction due to the fact he did not know he was on supervision at the time of offense. *Id.* at 50. The court found “[b]ecause no discharge certificate was produced for the child abuse and battery conviction, the department still had jurisdiction even given the agent’s erroneous statement.” *Id.* at 51-52.

There is no direct discussion in *Rodriguez* of what would have occurred *had* this discharge certificate been issued, whether validly or invalidly, and received by *Rodriguez* prior to the initiation of revocation proceedings, but this statement can be read to indicate that had the DOC issued a discharge certificate on the child abuse and battery conviction in this case, the court’s decision regarding jurisdiction would have been different. The Court of Appeals rejected this argument saying

Immediately preceding the language Greer cites, we quoted the same provision applicable to this case stating discharge occurs “only ‘upon the issuance of a discharge certificate by the secretary ... *at the expiration of the term noted on the court order.*’” *Id.* (quoting WIS. ADMIN. CODE § HSS 328.17(2), now WIS. ADMIN. CODE § DOC 328.17(2)) (emphasis added). Had we meant the mere issuance of the discharge certificate to control jurisdiction regardless of whether the term noted on the court order had expired, there would have been no reason for us to have included the highlighted language. Nowhere in *Rodriguez* do we suggest a discharge certificate in

conflict with a court-ordered term of probation
supersedes the court order.

(A-101-118, ¶17).

Significantly, however, the court in *Stefanovic* reiterated the importance of a discharge certificate and noted the sentencing scheme of the court may be "frustrated" by facts and circumstances of a given case, but if jurisdiction is lost, the court cannot act. *Stefanovic*, 215 Wis. 2d at 319. In *Stefanovic*, the probationer was placed on probation and conditional jail time was stayed pending appeal, but probation was not. *Id.* at 312. *Stefanovic* successfully completed the term of her probation while an appeal was pending and was issued a certificate of discharge. *Id.* The trial court ordered her to serve the conditional jail time, but the court of appeals reversed acknowledging the certificate was properly issued to *Stefanovic* and the "department's issuance of a discharge certificate is a significant legal moment." *Id.* at 315-16.

While the facts of *Stefanovic* are different than those in this case because the certificate was issued properly at the end of the term of supervision, a "frustration" of the sentence as discussed by the court is precisely what occurred here.

The Court of Appeals disagreed with this reading of *Stefanovic*, pointing to the reference to WIS. ADMIN. CODE § DOC 328.17(2) and the fact *Stefanovic* had received her discharge certificate properly upon completion of her sentence. (A-101-18, ¶19). The Court indicated the language in *Stefanovic* suggests "had the circuit court in that case ordered the original probation period modified a discharge certificate from the DOC might be *improperly issued* if it conflicted with a new court order altering the period of probation." *Id.*

However, what the Court of Appeals fails to acknowledge or address is the fact that an absolute

discharge certificate is not legally significant *only* because it is provided at the end of the term of supervision, it is also legally significant because an absolute discharge certificate reinstates the constitutionally protected civil rights of the individual. Pursuant to Wisconsin Statute Section 304.078 (2) - Restoration of Civil Rights of Convicted Persons,

...every person who is convicted of a crime obtains a restoration of his or her civil rights by serving out his or her term of imprisonment *or otherwise satisfying his or her sentence*. The certificate of the department or other responsible supervising agency that a convicted person has served his or her sentence or otherwise satisfied the judgment against him or her *is evidence of that fact and that the person is restored to his or her civil rights*. The department or other agency shall list in the person's certificate rights which have been restored and which have not been restored...

Wis. Stats. §304.078(2)(emphasis added).

The DOC did not act in excess of its expressly conferred or necessarily implied powers in issuing Greer the absolute discharge certificate in question because the DOC does have the ability and is well within its administrative operational limitations pursuant to Wisconsin Administrative Code § DOC 328.17(2)(c) to terminate supervision early when “[t]here is a reasonable probability that it is no longer necessary either for the rehabilitation and treatment of the client or for the protection of the public that the department retain custody, and discharge is merited.” Wis. Admin. Code § DOC 328.17(2)(c)(2006). In these cases, “the client *shall be discharged* at the date of expiration of the modification of the term *or earlier if the client receives a discharge from the governor or department, or a pardon.*” *Id.*(emphasis added).

In this case Greer *did* receive an absolute discharge from the DOC. The Court of Appeals rejected this argument finding “...Greer does not argue, and the record

does not support the inference, that the DOC actually issued the discharge certificate pursuant to that code subsection, or that the certificate was issued for any reason other than an administrative error resulting from the DOC's failure to input Count 3 into its record system." (A-101-118, ¶11). The Court of Appeals is correct, as Greer points to this provision only as evidence of the fact there are times when the DOC does take actions that are contrary to the original sentence structure of the circuit court and therefore it does not necessarily invalidate the discharge certificate simply because it was produced prior to the expiration of the term originally imposed by the court. In fact, the language in this section suggests that as long as the individual receives a discharge from the DOC, there is no longer jurisdiction.

Greer's case is distinguishable from *Rodriguez, Stefanovic*, and any other cases previously reviewed by the Court of Appeals and this Court because Greer was issued an absolute discharge certificate reinstating his civil rights and acted upon that document. If this Court were to find this certificate was invalid and did not operate to terminate jurisdiction or actually reinstate Greer's civil rights, then Greer's actions in relying on the certificate and voting in the 2008 Presidential Election would be committing a new felony offense and would subject him to further criminal liability, all due of the recklessness of the DOC.

Furthermore, the issue of service on a jury could have arisen during the almost three years Greer was not supervised by the DOC after his civil rights were reinstated. If Greer had served on a jury and a verdict had been submitted, either party finding out about a juror's service and participation in rendering a verdict without a valid reinstatement of civil rights could lead to additional appellate issues for this and other courts.

The court's sentencing scheme may be frustrated by the fact that Greer was not supervised for the three years of consecutive probation, but once Greer received his absolute

discharge and had his civil rights reinstated, the DOC cannot regain jurisdiction, strip him of those reinstated civil rights and then initiate the revocation proceedings. The discharge certificate was issued effective September 28, 2007 and Greer was taken into custody by the DOC on September 2, 2012, almost three years after this absolute discharge reinstating his civil rights and nullifying any jurisdiction it might have.

The absolute discharge certificate was not invalid and operated to terminate the jurisdiction of the DOC. Therefore, this Court should reverse the Court of Appeals and find the DOC lacked jurisdiction in this matter.

II. TAKING AN INDIVIDUAL INTO CUSTODY AND INITIATING REVOCATION PROCEEDINGS AGAINST THAT INDIVIDUAL AFTER ISSUANCE OF AN ABSOLUTE DISCHARGE CERTIFICATE REINSTATING CONSTITUTIONAL RIGHTS ALMOST THREE YEARS EARLIER VIOLATES FUNDAMENTAL DUE PROCESS REQUIREMENTS.

The Due Process Clause of the Fourteenth Amendment prohibits a state from depriving “any person of life, liberty, or property without due process of law.” U.S. Const. amend XIV. Article I, Section 8 of the Wisconsin Constitution also guarantees the right to due process of law. *See* Wisconsin Const. Article I, Section 8. The constitutional guarantee of due process protects both procedural and substantive rights. *See Zinermon v. Burch*, 494 U.S. 113, 125, 110 S.Ct. 975, 983, 108 L.Ed.2d 100 (1990). Greer maintains that his procedural and substantive due process rights have been violated by the actions of the DOC.

Part of the certiorari analysis is whether the DOC followed its own rules and complied with Due Process requirements. *See Curtis v. Litscher*, 2002 WI App 172,

¶15, 256 Wis. 2d 787, 650 N.W.2d 43. “When used in conjunction with certiorari review, the phrase ‘acted according to law’ includes the common law concepts of due process and fair play. *State ex rel. Lomax v. Leik*, 154 Wis. 2d 735, 740, 454 N.W.2d 18, 20-21 (Ct. App. 1990). “The cardinal and ultimate test of the presence or absence of due process of law in any administrative proceeding is the presence or absence of the ‘rudiments of fair play long known to our law.’” *State ex rel. Madison Airport Co. v. Wrabetz*, 231 Wis. 147, 153, 285 N.W. 504, 507 (1939).

The Court of Appeals recognized the circuit court was “concerned that revocation of Greer’s probation after Greer had been issued the discharge certificate violated ‘basic principles of decency and fairness.’” (A-101-18, ¶23). Since the Court of Appeals rejected the ability of the circuit court to apply equitable estoppel as a remedy for these concerns, it addressed these concerns through a due process analysis. *Id.*

This Court should overturn the Court of Appeals because it improperly concluded that the “DOC did not violate Greer’s due process rights because Greer knew or should have known he was on probation at the time he committed the new intimidation of witness offense in November 2009 and we impute to him knowledge that he cannot violate other criminal laws while on probation.” *Id.* Greer’s due process rights were violated by the actions of the DOC and must be remedied.

- A. The procedural due process rights of Greer were violated when the Department of Corrections failed to accurately maintain its records as ordered by statute and administrative rules and failed to give adequate notice or address jurisdictional objections relating to the revocation.

Procedural due process requires Greer has an absolute right to have notice of the case which DOC is seeking to revoke. U.S. Const. amend XI; Wis. Const., Article 1, §8; and Wis. Admin. Code Sec. HA 2.05-Revocation Hearing Notice. The DOC did not provide adequate notice to Greer because the forms provided listed differing information and did not clearly address how the DOC was claiming jurisdiction since the absolute discharge certificate had been issued almost three years earlier.

As noted in Greer's repeated objections, the forms produced by the DOC list various different cases on which revocation was being sought. Greer had previously received two discharge certificates dated October 3, 2007. The first certificate indicated discharge from the "A-04" case, specifically referenced the possession charge and said discharge was from "said judgment only." (A-210). The second certificate did not reference any case number but indicated "you are discharged absolutely" and reinstated Greer's civil rights. (A-209). The DOC Form 44 - Recommendation for Administrative Action, lists Case #04CF1184B (3:23; A-219); the Face Sheet of the revocation packet lists Case #04CF1184A (3:22; A-218), and the revocation hearing request (DOC-429;A-220-21) and the revocation summary (DOC-1950; A-223-27) make no distinction between an "A" or a "B" case. The DOC had no distinction between an "A" or "B" case and created this distinction by adding a new case 04CF1184A to the record system on September 2, 2010 in order to have a case on which to place Greer into custody on a hold. (13:28; A-168). This is apparently the probation case in question, yet DOC still cannot keep its paperwork straight. As the DOC-3 states the DOC is seeking revocation in the "A" case, however, the "A" case is completed and Greer has received a discharge certificate for that case. (3:22, 54; A-208-13). This only adds to the confusion the discharge certificates already created. Greer did not receive proper notification of which case the DOC was seeking revocation in violation

of his due process rights when the DOC's own paperwork is unclear.

The Court of Appeals dismissed this concern, arguing Greer knew he had completed his sentence on Count 1 and received a discharge certificate, so the only count remaining they could possibly seek revocation on was Count 3. However, this is precisely the problem. Greer did receive a discharge certificate that specifically referenced Count 1, (A-210), but then he also received an *absolute discharge certificate* and was told his civil rights were restored and that he had completed *all* his sentences, including the probation sentence which he told the ALJ he thought was running concurrently to his prison sentence. (A-209). The paperwork provided by the DOC during the course of the revocation proceedings continued to switch between trying to revoke case "A" or "B" and sometimes there was no distinction at all.

The Division relied upon the Notice of Violation, Recommendation Action, Statement of Hearing Rights and Receipt as being the document which actually provided Greer with notice of the nature of the allegations." (A-101-18, ¶29). This document identifies the case recommended for revocation as 2004CF1184 and identifies the behavior as "contrary to this status on probation." *Id.* The Court of Appeals stated "at the hearing, the ALJ noted, without contradiction from Greer, that the exhibit indicated it was served on Greer 'prior to his case running out.'" *Id.* This is a misrepresentation of Greer's position at the hearing. Greer did acknowledge if the DOC had *not* issued the discharge certificate, the document would have been served within the three year consecutive probation time period; however, Greer repeatedly raised objection to the jurisdiction of the DOC to seek revocation on the probation case arguing that due to the discharge certificate, the notice did not prove the DOC still maintained jurisdiction. Rather than address this issue, the ALJ told the DOC it did not need to respond to Greer's pre-hearing jurisdiction

objections and never made the DOC offer any proof of jurisdiction.

The law provides that it is the DOC's responsibility to carry out the sentence which the court imposes. See, Wis. Stats. §§ 301.01 and 302.11(1). Furthermore, Wis. Admin. Code § 328.04(2)(n) outlines the duties of agents and tasks them with "[m]aintaining complete and accurate case records for each client under supervision..." Here the DOC admits it failed to maintain accurate records of Greer and that it failed to do so for a period of almost 6 years from the time of his sentencing on the underlying case until he reported for his PSI interview on the new charge and the DOC discovered the consecutive probation.

Due solely to DOC's recklessness in failing to maintain accurate records, Greer was released from all supervision and given a full and complete discharge including a restoration of civil rights. He went about his life including voting. Then, after taking responsibility for new unrelated conduct, and following the court order by reporting for his PSI interview, he was taken into custody without warning, placed on a hold and put through revocation proceedings with defective notice resulting in him being held in custody for almost 10 months before the circuit court order reversing the revocation permitted his release.

To revoke Greer under these circumstances deprives him of his right to procedural due process as discussed in both *Gagnon v. Scarpelli*, 411 U.S. 778 (1973), and *Morrissey v. Brewer*, 408 U.S. 471 (1972) which require fundamental procedural due process rights to apply to revocation proceedings. The Court in *Morrissey* recognized fundamental liberties are at stake and that termination of supervision inflicts "grievous loss" on the person and therefore the decision must be made in conformity with due process standards. *Morrissey*, 408 U.S. at 482. This revocation has resulted in a "grievous

loss” to Greer, a loss not expected or warranted because he reasonably relied upon the absolute discharge certificate and properly objected to the jurisdiction and notice deficiencies in the DOC’s revocation case.

Wherefore, the decision to revoke is a violation of Greer’s procedural due process rights because of defective notice and the DOC’s recklessness in properly maintaining its records.

- B. The substantive due process rights of Greer were violated when the Department of Corrections failed to accurately maintain its records as ordered by statute and administrative rules and reinstated his civil rights only to take him into custody and proceed with revocation based on conduct occurring after the restoration of his civil rights.

Substantive due process prevents the government from engaging in conduct that “shocks the conscience.” *United States v. Salerno*, 481 U.S. 739, 746, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987). “The substantive component of the Due Process Clause protects individuals from ‘certain arbitrary, wrongful actions ‘regardless of the fairness of the procedures used to implement them.’” *Penterman v. Wisconsin Elec. Power Co.*, 211 Wis. 2d 458, 480, 565 N.W.2d 521, 533 (1997)(internal citations omitted). In evaluating a substantive due process claim, the claimant must demonstrate that he has been deprived of a liberty or property interest that is constitutionally protected. *Penterman*, 211 Wis.2d at 480.

This case clearly involves a constitutionally protected liberty – Greer’s fundamental rights to freedom from the intrusion of the government and physical freedom from being taken and held in custody without warning or legal basis after receiving a legally significant document

indicating discharge and restoration of civil rights almost three years earlier. This also involves Greer's fundamental right to vote and exercise his other civil obligations such as jury duty. Even if this Court finds the procedures were fair here, the decision to revoke Greer's probation under these circumstances is arbitrary and, as the circuit court noted, "would violate basic principles of decency and fairness." *See Rochin v. California*, 342 U.S. 165 (1962), (7:8; A-126). The reckless actions of the DOC in taking Greer into custody and initiating revocation proceedings against him under these circumstances does "shock the conscience" and offends the basic canons of fairness and decency and must be remedied.

The Court of Appeals rejected this argument, finding

there was a legal basis for Greer's custody and revocation. Greer was present when the sentencing court ordered him to serve a three-year period of probation on Count 3 consecutive to his three-year prison term on Count 1. The DOC's issuance of the discharge certificate to Greer did not nullify or supersede the court's order imposing that three-year period of probation. Greer was still within that three-year period of probation when he committed the new felony offense and when revocation proceedings were initiated. Knowledge that he cannot commit a criminal offense is imputed to Greer. The DOC's initiation of revocation proceedings based upon Greer's new felony offense does not "shock the conscience" and did not violate his substantive due process rights.

(A-101-18, ¶31). However, the DOC cannot expect to be able to repeatedly fail to maintain accurate records, affecting an individual's physical freedom and constitutional rights without ramifications.

As the Court of Appeals noted, an agency's decision is not arbitrary and capricious and represents its judgment if

it represents a proper exercise of discretion. *State ex rel. Warren v. Schwarz*, 211 Wis. 2d 710, 724, 566 N.W.2d 173, 178 (Ct. App. 1997) *aff'd*, 219 Wis. 2d 615, 579 N.W.2d 698 (1998). In this case, the DOC failed to consider all the facts and disregarded any legal ramifications resulting from its reckless maintenance of records making such decision an improper exercise of discretion. This Court should find when an agency fails to address all the facts in the record, ignores reckless action of its employees, and gives a contradictory decision, the decision cannot be reasonable and is therefore a due process violation.

In this case, the ALJ found two of five allegations were proven: that Greer threatened the victim in the intimidation of a witness incident and that he consumed alcohol in violation of the court ordered conditions of supervision both based on Greer's admission. (A-137-140). Neither the ALJ, the Administrator or the Court of Appeals addressed the contradictory nature of the ALJ's decision. The ALJ found Greer did not have any rules in effect at the time of the admitted speeding incident on July 20, 2010 and that Greer had not been under any rules after September 28, 2007. *Id.* The only basis for proceeding with the revocation was therefore to rely on the court ordered terms of probation as listed on the judgment of conviction.

In regard to allegation 5, the ALJ found Greer violated the court ordered condition of probation not to possess alcohol. *Id.* However, neither he, nor the Administrator ever addresses the fact that the same court ordered terms of probation include "Voting prohibited during terms of prison, extended supervisions and probation." (A-234). This important fact is clearly not addressed by the ALJ or Administrator because it demonstrates how the argument of the DOC contradicts its own findings. Addressing the issue of Greer voting would mean admitting the recklessness of the DOC in maintaining accurate records in the case induced him to commit a

felony. The Court of Appeals dismissed this concern arguing that because Greer's voting was not an allegation leading to revocation, it was irrelevant. (A-101-18, ¶31, n.7). However, it is certainly a real and valid concern for Greer and other individuals who may find themselves facing new felony charges due to the recklessness of the DOC and is ripe for this Court's consideration.

In assessing the reasonableness of the revocation decision, the Court of Appeals noted "[t]he ALJ found revocation necessary to avoid undue depreciation of the seriousness of Greer's conduct, to hold Greer to account for his behavior, and 'to protect the community from further criminal conduct by Mr. Greer.'" (A-101-18, ¶35). The ALJ did consider Greer's recommendation of tolling his probationary term back to the beginning and continuing him on probation, but rejected this alternative, finding it an inadequate response to his "serious new criminal behavior." *Id.* In sustaining the revocation, the Administrator rejected Greer's jurisdictional and due process arguments and concluded Greer's threatening behavior in the new criminal offense and intimidation of a witness demonstrated he was a potential danger to others and the need to protect the community outweighed "the positive factors that Greer cite[d] on appeal." (A-101-18, ¶36).

However, the positive factors listed by Greer are relevant to the decision and were never addressed. First, the DOC initially offered to permit Greer to pay his supervision fees and toll the time, thus being released from supervision on September 28, 2010 at maximum discharge. (13:33-34, 49; A-189). The DOC, even with the new charges, did not believe a revocation was warranted or that Greer was a threat to the community. The DOC only revoked this offer after talking with the Assistant District Attorney on the new case, based on his statement that he "thinks" it was a real gun but can't prove it. (3:27; A-229) The DOC did not prove Greer had a real gun at the hearing. (A-137-40). The District Attorney's request that the DOC

pursue revocation is the only reason Greer was not permitted to discharge and the reason the District Attorney's office requested the pursuit of revocation was not proven at the hearing. This is certainly an important factor in this analysis that was not addressed.

Also not addressed was the fact that Greer demonstrated he was not a threat during the 10 months he was out on bond. The testimony of Shawn Griffin demonstrated Greer hadn't made any contact, let alone any threats or problems since the incident. (13:18; A-158). Greer also produced evidence that during the 10 month period he continued to work, attend school, and went about his daily life, not posing any threat to the community, waiting for his sentencing day when he would need to face the consequences of his actions. (13:41-46; A- 181-86). This demonstrates the fact that Greer was not a threat to the community. To the contrary, Greer complied with all the rules of supervision during his extended supervision period and there is every reason to believe he would have continued to comply and may not have committed the intimidation charge had he known he was still on supervision. Greer was never given the opportunity to comply with the probation supervision because of the recklessness of the DOC.

In *Anderson-El*, 234 Wis.2d at 641, the court explained that requiring the DOC to follow its own rules promotes respect for the rules and the people who enforce them. The DOC has clearly failed to fulfill its obligations under both the statutes and its own administrative rules. As discussed above, the DOC admittedly failed to maintain accurate records which lead to several violations of Greer's constitutional rights.

It was the DOC that initiated the discharge process so that Greer would be completely discharged. The discharge certificates were a direct result of affirmative actions on the part of the DOC. The Court of Appeals

imputes the knowledge of the consecutive probation sentence to Greer because he was physical present at the sentencing, yet completely disregards the fact that the DOC had the information available to them in the JOC regarding the consecutive probation the entire time Greer was under their supervision in both the prison setting and extended supervision. The Court of Appeals is imputing knowledge of consecutive versus concurrent sentences to Greer and expects him to know the legal difference between probation and a “sentence.” (A-101-18, ¶24, n.5). Greer was told he was done September 28, 2007 and was *never* told otherwise at any point during his incarceration or extended supervision and then received the legally significant document from the DOC. This is given no consideration by the DOC or the Court of Appeals.

Noting the DOC’s errors and requiring DOC’s compliance with the rules and administrative code is the only way to promote respect for the laws and the entities entrusted to enforce them. Punishing Greer for his reasonable reliance on such a legally significant document does “shock the conscience” because it was the DOC who erred, not Greer. In this case, the responsible state agency advised Greer that he was no longer subject to probation and, as a matter of due process, Greer was entitled to rely upon that assurance. He cannot constitutionally be required to make an independent determination that the DOC was wrong in issuing him a discharge certificate.

Wherefore, this Court should find Greer’s substantive due process rights were also violated by the actions of the DOC.

III. A CIRCUIT COURT, SITTING IN CERTIORARI, HAS THE AUTHORITY TO APPLY EQUITABLE ESTOPPEL TO THE QUESTION OF WHETHER THE DEPARTMENT OF CORRECTIONS AND DIVISION OF HEARINGS AND APPEALS ACTED ACCORDING TO LAW IN ISSUING THE REVOCATION ORDER AGAINST GREER.

The circuit court in the certiorari action in this case held the Division had not acted according to law because the DOC was equitably estopped from seeking revocation. (7:8-12;A- 126-130). However, the Court of Appeals, in overturning the circuit court ruling, maintained “[e]stoppel is an equitable remedy and thus cannot be employed in this certiorari action to estop the DOC from seeking revocation of Greer’s probation or the Division from revoking Greer.” (A-101-18, ¶22).

The Court of Appeals relied upon this Court’s decision in *Town of Delafield v. Winkelman*, 2004 WI 17, 269 Wis.2d 109, 675 N.W.2d 470, for the proposition that equitable relief is unavailable in certiorari actions. (A-101-18, ¶22). The DOC had previously raised *Winkelman* in its Motion to Reconsider filed with the circuit court in this matter, arguing that equitable estoppel was not a remedy available in certiorari actions. The circuit court found that “[a]ny discussion [in *Town of Delafield v. Winkelman*], concerning whether certiorari Courts are precluded from hearing equitable arguments was, at best, dicta and not controlling.” (A-131-32). The Court of Appeals noted, “[e]ven assuming the supreme court’s language in *Winkelman* is dicta, we are nonetheless bound by it. See *Zarder v. Humana Ins. Co.*, 2010 WI 35, ¶58, 324 Wis.2d 325, 782 N.W.2d 682.” (A-101-18, ¶22, n.4).

In *Winkelman*, this Court was not reviewing a certiorari decision. Rather, the issue of equitable powers of a certiorari court arose when the Court reviewed the question of whether the circuit court in an enforcement

action, the second action in that case, was precluded from considering the Winkelman's equitable arguments due to the prior certiorari review of the first action. *See Winkelman*, 2004 WI 17, 269 Wis.2d 109, 675 N.W.2d 470. The issue of equity powers of a certiorari court was only briefly discussed in the context of distinguishing a hearing before a certiorari court and a circuit court for the purposes of discussing issue and claim preclusion. *Id.* at ¶ 29-37. This Court found there was no identity of causes of action in the certiorari action and the enforcement action in that case. *Id.* at ¶35. In the certiorari action owners sought certiorari review to challenge the board's decision to impose raze condition on the variance, while in the second action the town sought enforcement of that condition. *Id.* There were significant differences in quality or extensiveness of certiorari and enforcement proceedings, and the owners had inadequate opportunity or incentive to obtain full and fair adjudication in the certiorari action, as they did not know what relief the town would be seeking. *Id.* at ¶36.

In the certiorari action, the Winkelman's had claimed the board's actions were unreasonable based on the contingency of the mortgage upon the rental income of the second residence but they failed to present any evidence to support that contention. *Town of Delafield v. Winkelman*, 2003 WI App 92, 264 Wis. 2d 264, 276, 663 N.W.2d 324, 330 *aff'd*, 2004 WI 17, 269 Wis. 2d 109, 675 N.W.2d 470. The certiorari court did not dismiss their equitable arguments because it did not have the power to hear those arguments or rule on them, it dismissed them because they failed to present any evidence to support their contentions.

This Court noted in *Winkelman*, that the "traditional criteria by which certiorari review a board's decision do not involve consideration of equitable arguments," *id.* at ¶36. However, equitable estoppel is not merely an "equitable argument," it is also applied as a defensive doctrine, as it was in this case by the circuit court.

Equitable estoppel is not limited to claims brought in equity; it may also apply to “preclude the assertion of rights and liabilities under a note or contract.” *Gabriel v. Gabriel*, 57 Wis.2d 424, 428, 204 N.W.2d 494 (1973). Furthermore, equitable estoppel has been applied in various family law contexts. See *Randy A.J. v. Norma I.J.*, 2004 WI 41, ¶ 26, 270 Wis.2d 384, 677 N.W.2d 630. The court has also permitted equitable estoppel to be used to “prevent raising a statutory defense in other types of actions. See *Fritsch v. St. Croix Cent. Sch. Dist.*, 183 Wis.2d 336, 345-46, 515 N.W.2d 328 (Ct.App.1994)(concluding that a school district was equitably estopped from raising a teacher's failure to comply with the notice of claim requirements of Wis. Stat. § 893.80(1)(b) because of the conduct of the school district's agents).” *Id.*

The circuit court in this action recognized “[e]stoppel may be available as defense against government if government’s conduct would work serious injustice and if public’s interest would not be unduly harmed by application of estoppel.” (7:9; A-127) citing *Department of Revenue v. Moebius Printing Co.*, 89 Wis.2d 610, 639 (1979). The circuit court noted the “application of estoppel as a defense against the government, therefore, involves balancing the injustice that might be caused if the doctrine is not applied against the public interest at stake if the doctrine is applied.” *Id.* Furthermore, “[a] court can at its discretion apply the doctrine of equitable estoppel if undisputed facts in the record lead to the conclusion that elements of equitable estoppel are present and no alternative view of the facts supports a contrary conclusion.” (7:8; A-126) citing *Affordable Erecting, Inc. v. Neosho Trompler, Inc.*, 291 Wis.2d 259 (2006).

The Court of Appeals did not address Greer’s argument regarding equitable estoppel because it found equitable estoppel was not a proper form of relief on a certiorari action. However, when applying equitable estoppel in this case, it is clear the elements have been met.

“The defense of equitable estoppel consists of action or non-action which, on the part of one against whom estoppel is asserted, induces reliance thereon by the other, either in action or non-action, which is to his detriment.” *State v. City of Green Bay*, 96 Wis.2d 195, 202, 291 N.W.2d 508 (1980)(quoting *Chicago & Northwestern Transportation Co. v. Thoreson Food Products, Inc.*, 71 Wis.2d 143, 153, 238 N.W.2d 69 (1976). Furthermore, that reliance must be reasonable. *City of Green Bay*, 96 Wis.2d at 202.

In this case, Greer was issued an absolute discharge certificate which was an affirmative action with substantial legal significance. (A-209). Greer reasonably relied on the certificate as being a valid document because he was not only told he had completed supervision, but he had no reason to question the validity of a document signed by the Secretary of the DOC. As Greer noted in his written statement, “I was in court the date of sentencing but I did not know if the 3 years were consecutive since I went to prison and then had 22 months on extended supervision.” (3:34; A-203-6). He also said he would have continued to report had he known about the consecutive probation. *Id.* Given his performance on extended supervision for 22 months, there is no reason to doubt he would have continued to report as he asserts.

As the circuit court noted, the fact that Greer was present for sentencing does not negate the reasonableness of his reliance on the certificate. (7:10; A-128). Greer was never told, during the three year time period he was in prison or on extended supervision that there was any consecutive probation and he received a legally signed absolute discharge certificate issued by the Rick Raemisch, the Secretary of the DOC. Furthermore, because “[a]brogation of the DOC’s custody of a probationer cannot occur absent the issuance of a discharge certificate,” *id.* citing *Rodriguez*, 133 Wis.2d at 51, it is reasonable for an

individual who has never heard otherwise to accept a document of this significance as valid and rely upon it.

Finally, Greer acted upon that reasonable reliance to his own detriment by voting in the 2008 Presidential Election. If the certificate is invalid, as the Court of Appeals held, then Greer committed a felony in violation of and exposing himself to further prosecution under Wis. Stats. §§ 12.13(1)(a), 12.13(1)(b) and 12.60(1)(a). Had it not been for that document, Greer would never have attempted to vote.

Once the elements of equitable estoppel have been established as a matter of law, the decision to actually apply the doctrine to provide relief is a matter of discretion. *Nugent v. Slaght*, 249 Wis.2d 220, 238, 638 N.W.2d 594 (2001). As discussed above, when applying equitable estoppel against a government, the court must balance the injustice that might be caused if the doctrine is not applied against the public interest at stake if the doctrine is applied. *Moebius Printing*, 89 Wis.2d at 638. In this case, the circuit court found “the danger faced by the public is minimal” because the government is not precluded from prosecuting and sentencing Greer for the charge underlying the revocation, which in fact has already occurred. The court ultimately held that “[t]he injustice that will be faced by [Greer] if this court affirms [the revocation] is greater than the danger the public will face if this court decides to reverse.” (7:12; A-130). As the circuit court acknowledged, revoking Greer under “circumstances as unique as found here would violate the basic principles of decency and fairness.” (7:8; A-101-118). There must be a remedy available to Greer, and that remedy is found in equitable estoppel.

Upon reaching a conclusion that a government agency did not act according to the law, a certiorari court can reverse the agency's decision and remand it to the agency but cannot order the agency to perform a certain act.

See State ex rel. Richards v. Leik, 175 Wis.2d 446, 455, 499 N.W.2d 276, 280 (Ct.App.1993), *Guerrero v. City of Kenosha Housing Authority*, 2011 WI App 138, ¶ 9. The circuit court in this case did not order the DOC to take any certain actions, and did not offer Greer any other equitable relief; rather, it used equitable estoppel as a defensive doctrine and deemed the DOC to be precluded from revoking Greer, leaving it up to the DOC as to how to proceed.

While the Court of Appeals held in a recent decision that equitable estoppel is not available to preclude a criminal prosecution, *see State v. Drown*, 2011 WI APP 53, 332 Wis.2d 765, 797 N.W.2d 919, there is no case law expressly finding a certiorari court cannot apply equitable estoppel when the elements of equitable estoppel have been met in a civil probation revocation matter. As the circuit court noted, a criminal prosecution is substantially different from a revocation proceeding. (7:10; A-128). A criminal proceeding is presided over by a circuit court judge and defendant's rights are protected by the statute of limitations, due process and the Fifth Amendment, none of which are available to probationers under the control and supervision of the DOC. *Id.* As the circuit court also recognized, if this Court is to find the DOC maintained jurisdiction then, "[s]ince the DOC cannot invalidate a court order, a probationer is effectively without recourse if he is erroneously discharged from supervision." *Id.*

Greer is not seeking protection of property rights, to avoid payment of forfeitures, or for any monetary compensation. This case involves the civil rights and physical freedom of an individual – basic fundamental constitutionally protected rights that have been violated due to the admitted recklessness of the DOC. This case involves an individual who now faces new criminal liability, liability that could result in further deprivation of life and liberty due to the DOC.

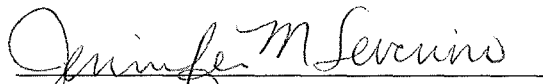
This Court should find that equitable estoppel is a proper form of relief under the “contrary to the law” analysis of a certiorari court because equitable estoppel is not merely an equitable doctrine, it is also a valid defensive doctrine against governmental action. The elements of equitable estoppel have clearly been met in this case, and this Court should reverse the Court of Appeals and find that the circuit court, sitting in certiorari did have the authority to grant relief on this basis.

CONCLUSION

For the reasons set forth above, Petitioner-Respondent-Petitioner Ardonis Greer respectfully asks this Court to reverse the decision of the Court of Appeals and find that the Department of Corrections lacked jurisdiction over Greer after the issuance of the absolute discharge certificate, that Greer’s due process rights were violated by the actions of the DOC, rendering the actions void, and that the DOC is equitably estopped from revoking Greer’s probation supervision.

Dated this 26th day of July, 2013.

Respectfully Submitted,




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CERTIFICATION

I certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c) in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line. The length of this brief is 9,499 words.

Dated this 26th day of July, 2013.

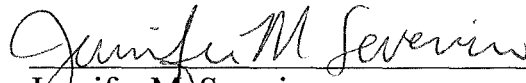

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Petitioner
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CERTIFICATION OF COMPLIANCE WITH WIS. STAT. § (RULE) 809.19(12)

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § (Rule) 809.19(12). I further certify that this electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 26th day of July, 2013.


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