STATE OF WISCONSIN

C O U R T O F A P P E A L S

District I

Case No. 2019AP000090 CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

GEORGE SAVAGE,

Defendant-Appellant

ON APPEAL TO REVIEW THE JUDGMENT OF CONVICTION ENTERED ON MAY 24, 2017, AND THE DECISION AND ORDER DENYING MOTION FOR POSTCONVICTION RELIEF ENTERED ON JANUARY 3, 2019, THE HONORABLE MARK SANDERS PRESIDING ON BOTH MATTERS, BOTH ENTERED IN THE CIRCUIT COURT FOR MILWAUKEE COUNTY.

BRIEF AND APPENDIX OF APPELLANT

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BRIEF AND APPENDIX OF THE APPELLANT

ISSUE PRESENTED

I. Whether the Trial Court erred in denying Defendant's Motion for Postconviction Relief with respect to the knowingness and voluntariness of the Defendant's guilty plea? This, even though Defendant had presented sufficient testimony at the evidentiary postconviction motion hearing to sufficiently establish that

Defendant's trial counsel had materially misled the Defendant into entering his guilty plea, thereby showing that the guilty plea was not knowingly, voluntarily, and intelligently made? Her conduct had been legally prejudicially ineffective.

Trial counsel's material misrepresentation had pertained to the legal defense that good faith efforts to comply with the sex offender registration requirements would bar his conviction. Ms. Dick, Defendant's trial attorney, had advised the Defendant of the elements of the offense, but had not informed him that this defense was available to him. Defendant had indicated that he had been homeless during the relevant time period. He did not have an address, so he could not provide an address. The address information did not exist. Further, trial counsel had information in her file that he had been homeless and had tried to provide temporary mailing addresses. Furthermore, she had informed the trial court of these matters at both the initial appearance and the guilty plea/sentencing hearings. Defendant had testified at the Postconviction evidentiary hearing that he would have proceeded to trial but for counsel's conduct.

Trial Court Answered: No

POSITION ON ORAL ARGUMENT AND PUBLICATION

This Appeal involves issues of law which are not settled. Arguments need to be presented in more detail in oral argument. Therefore, oral argument and publication are requested.

STATEMENT OF THE CASE

Defendant had originally been charged in a one Count Criminal Complaint. The Complaint had charged Defendant with one Count of Violation of Sex Offender Registry, contrary to Wis. Stats. 301.45(6), 301.45(6)1, and 939.50(3)(h). The Complaint had attached multiple pages of attachments. This Complaint had been dated on or about August 4, 2016. (2:1-10).

Subsequently, Defendant had waived his preliminary hearing. The Court Commissioner had bound Defendant over for trial. This had occurred on February 28, 2017. Also on that date, the State filed a one Count Criminal Information charging the same one Count as in the Criminal Complaint. Defendant pled not guilty at that hearing, subsequent to the court's bindover finding. (43:1-5; 4:1-1).

Eventually, Defendant pled guilty to the one Count in the Criminal Information. This occurred on May 23, 2017. Defendant pled guilty to the one Count of Violation of Sex Offender Registry, contrary to Wis. Stats. Sec. 301.45(6)(a)(1) and 939.50(3)(h).

Therese Dick was Defendant's trial attorney throughout the trial level proceedings. This had consisted of the initial appearance hearing through the plea/sentencing hearing.

The trial court had sentenced Defendant on May 23, 2017. This was the same day as the plea hearing. Judge Sanders sentenced Defendant to fifty four months prison, with thirty months as initial confinement plus twenty four months as extended supervision. The trial court ran the sentence concurrent to the time that he was

presently serving on revocation. This revocation sentence was for two years. The court had indicated that he would have to do nine more months and then he would be on supervision for two years. (44: 25, 29-30) (11:1-2; A 101-102).

On April 10, 2018, Defendant filed a Motion for Postconviction Relief. By this Motion, Defendant had argued that trial counsel had been prejudicially ineffective in the taking of the guilty plea. Therefore, manifest injustice had existed which had warranted the withdrawal of that plea. Defendant had indicated that trial counsel had been prejudicially ineffective for two separate reasons. Defendant sought an evidentiary hearing to determine both of these issues. Defendant had provided attachments, to include his sworn Affidavit. (19:1-14; 20:1-14).

Subsequent to the filing of Defendant's Postconviction Motion, the trial court had issued an Order for a briefing schedule. (21:1-1). The trial court had later modified this Order. (23:1-1). The State filed its Response Brief on June 11, 2018. (26:17). Defendant filed his Reply Brief on June 21, 2018. (27:1-10).

On January 3, 2019, the trial court considered both of Defendant's issue argued in his Postconviction Motion. On this date, the trial court had taken testimony, had heard oral arguments, and had issued an Oral Decision denying both of Defendant's issues in his Postconviction Motion. (45:1-77). Also on that date, the trial court issued a written Order denying this Motion for Postconviction Relief. (37:1-1; A 103).

Defendant filed his Notice of Appeal, with attachments, in a

timely fashion. (38:1-2; 39:1-3). This Brief is being submitted pursuant to the schedule established by the Court.

STATEMENT OF THE FACTS

Defendant had originally been charged in a one Count Criminal Complaint. The Complaint had charged Defendant with one Count of Violation of Sex Offender Registry, contrary to Wis. Stats. 301.45(6), 301.45(6)1, and 939.50(3)(h). The Complaint had attached multiple pages of attachments. This Complaint had been dated on or about August 4, 2016. (2:1-10).

Subsequently, Defendant had waived his preliminary hearing. The Court Commissioner had bound Defendant over for trial. This had occurred on February 28, 2017. Also on that date, the State filed a one Count Criminal Information charging the same one Count as in the Criminal Complaint. The court arraigned Defendant immediately after the bindover finding. Defendant pled not guilty. (43:1-5; 4:1-1).

Defendant pled guilty to the one Count of the February 28, 2017 Criminal Information. This occurred on May 23, 2017. Defendant pled guilty to one Count of Violation of Sex Offender Registry, contrary to Wis. Stats. Sec. 301.45(6)(a)(1) and 939.50(3)(h). (4:1-1).

Therese Dick was Defendant's trial attorney throughout the trial level proceedings. This had consisted of the initial appearance hearing through the plea/sentencing hearing.

The trial court had sentenced Defendant on May 23, 2017. This

was the same day as, and immediately after, the plea hearing. This had been a combined guilty plea and sentencing hearing. Judge Sanders had sentenced Defendant to fifty four months prison, with thirty months as initial confinement plus twenty four months as extended supervision. The trial court ran the sentence concurrent to the time that he was presently serving on revocation. This revocation sentence was for two years. The court had indicated that he would have to do nine more months and then he would be on supervision for two years. (44: 25, 29-30) (11:1-2; A 101-102).

At the initial appearance hearing in this matter, trial attorney Therese Dick had informed the court commissioner that the Defendant was not unwilling or refusing to follow any registry requirements. Instead, he was homeless. The court had agreed that the Defendant did not have a home. (42:3-4).

Further, at the time of the plea/sentencing hearing, Defendant's trial attorney, Therese Dick, had informed the trial court of the following:

> ATTORNEY DICK: ..."I don't know how you can return a letter if you don't have an address for which the letter to be sent.
>
> I believe that was the issue for Mr. Savage and sadly for many others that they are incarcerated. Ultimately the sentenced is finished, completed, and they are released but often released back into the community with nothing. And I believe that was the situation for Mr. Savage.
>
> In reviewing the notes from the agent and the registry, he was in fact, calling in, leaving messages with phone numbers, with addresses, emails which he

could actually access at a library or other community centers and trying to do so.

...

It is noted in those reports it appears his intent was to remain compliant, but there's also an acknowledgment that it can be difficult. And I quote, 'This is happening quite a bit especially with the homeless.'

I believe that this is exactly the situation for Mr. Savage. The GPS here was discretionary. I don't know what the thought was behind that or the reasoning. But Mr. Savage was literally was staying where he could whether it was empty buildings, back of a car, stairwells.

...

I believe he was doing the best he could.

...

I also note they kept sending letters to an address where, in fact, the letters were returned." (44:23-25).

Trial counsel had indicated that, in her case notes, she had received information as to an email on 5/19/16 from DoC Employee AOR Akinsaya that "...since he reported the address to SORP, it may appear his intent is to remain compliant with SORP and just does not want to be on supervision (or follow the rules). This is happening quite a bit especially with the homeless - and who have been through FTR cases already. I also note that he is on discretionary GPS so if arrested, a felony charge for tampering with it could not be issued." The case notes also indicate that the Department of Corrections was aware that the Defendant was homeless. See e.g, 5/18/16 email, as referred to by Ms. Dick.

(20:Exhibit 3) (35:1-1; A 112).

In Defendant's Postconviction Motion, Defendant had indicated that prior to the guilty plea hearing, his trial attorney had made multiple representations to him that had induced him to plead guilty. These representations are as follows:

I. Defendant had discussed the plea offer with Ms. Dick over the telephone while he was at the Milwaukee County jail. This was prior to his transfer to Dodge Correctional Institution to serve his two year revocation sentence. He had indicated to her that he only wanted to accept a concurrent recommendation to this revocation sentence as part of the plea offer. She had informed him that the recommendation would be concurrent and that he would not serve any additional time. However, she had also indicated to him that she would confirm this with the assigned Assistant District Attorney.

Subsequently, Defendant had met with Ms. Dick the day before the plea hearing. This meeting was at the Milwaukee County jail. At that meeting, she had confirmed that the State's recommendation was for a concurrent sentence. Once again, she had also indicated that he would not serve any additional jail time. This, based upon the recommendation. This was an unequivocal promise. Based upon this assurance, Defendant had accepted the plea offer. He would not have pled guilty otherwise.

<u>This issue and matter is not presently before this Court</u>.

II. Furthermore, Ms. Dick had never informed the Defendant that good faith efforts to comply with his sex offender supervision requirements would bar his conviction. Essentially, he was homeless

during the relevant time period of time. He now understands that this homelessness was a defense to his ability to provide an address. Ms. Dick had advised him of the elements of the offense, but she had never advised him that this defense was available to him. He had informed her of his homelessness, and his inability to provide an address due to this homelessness. He would have proceeded to trial had he realized from Ms. Dick that he could pursue this defense.

Defendant's Motion for Postconviction Relief had indicated that State vs. Dinkins, 339 Wis.2d 78, 810 N.W.2d 787 (2011) had indicated that a registrant cannot be convicted of violating the sex offender registration statute for failing to report the address at which he will be residing when he is unable to provide this information. A registrant is unable to provide the required information when that information does not exist, despite the registrant's reasonable efforts to provide it.

The Postconviction Motion had indicated that Defendant had indicated that he had pled guilty to this above-captioned case only due to attorney Dick's representations, omissions, and promise(s) indicated previously. Defendant only signed the plea agreement because of these representations, omissions, and promise(s). If not for these representations, omissions, and promise(s), he would have proceeded to jury trial.

Defendant's Postconviction Motion had attached Savage's sworn Affidavit in support of Postconviction Motion in order to support all of Defendant's assertions. (20:Exhibit 4).

Defendant had argued that, clearly, the fact scenarios indicated within his Postconviction Motion had constituted an unknowing and involuntary plea.

Subsequent to the filing of Defendant's Postconviction Motion, the trial court had issued an Order for a briefing schedule. (21:1-1). The trial court had later modified this Order. (23:1-1). The State filed its Response Brief on June 11, 2018. (26:17). Defendant filed his Reply Brief on June 21, 2018. (27:1-10).

On January 3, 2019, the trial court considered both of Defendant's issues argued in his Postconviction Motion. On that date, the trial court had taken testimony, had heard oral arguments, and had issued an Oral Decision denying both of Defendant's issues in his Postconviction Motion. (45:1-77). Also on that date, the trial court issued a written Order denying this Motion for Postconviction Relief. (37:1-1; A 103).

On January 3, 2019, the trial court took testimony from Terese Dick as well as the Defendant. As indicated, Ms. Dick had been Defendant's trial attorney during the trial case.

On January 3, 2019, Ms. Dick had testified that she had represented the Defendant during the trial portion of his case. (45:8-9). She had indicated that it was her understanding that the Defendant was homeless during the relevant time period. She had agreed that she had documentation from the sex offender registration people concerning the Defendant. She had indicated that she had referred to this documentation at the sentencing hearing which had occurred the very same day as the guilty plea

hearing. She had referenced to the court that the Defendant had been calling and leaving messages with phone numbers. The sex offender registration people had also been sending him letters and they were bouncing back. There was a reference that apparently his intent was to remain compliant. He had cut off his discretionary GPS, but this had only been discretionary. Defendant had introduced this documentation as Exhibit 1. This was the same documentation as Exhibit 3 to Defendant's Postconviction Motion. Ms. Dick had received this Exhibit as part of the discovery material. (44:13-16) 35:1-1; A 112).

Ms. Dick had continued to testify on January 3, 2019. She had agreed that she had hearing Exhibit 1 at the time of Defendant's plea and sentencing hearing. (44:16). Exhibit 1 had indicated that the Defendant had called the sex offender registration people on both May 16, 2016 as well as June 17, 2016. (35:1-1). Ms. Dick had acknowledged the phone call during her testimony. Further, Ms. Dick had testified that Exhibit 1 had indicated that Defendant had not received correspondence from the sex offender registration people. The documentation indicated that Defendant had called the appropriate phone number twice. He did give a new address. She had testified that she had told the court at the sentencing hearing that Defendant was, in fact, calling and leaving messages with phone numbers, with addresses, emails which he could actually access in the library or other community centers trying to do so. She acknowledged that she had received this information from the notes from the agent and the registry. She never told the trial

court that she had received this information from the Defendant. (44:16-19).

Ms. Dick had continued to testify on January 3, 2019. She had testified that she had told the court during sentencing that it had appeared that Defendant's intent was to remain compliant, but that there was an acknowledgment that it can be difficult. This information was in the reports. She also told the court that this was happening quite a bit especially with the homeless. She also testified that she had told the court her opinion that this was exactly the situation for the Defendant. She had told the court that the GPS was discretionary, but that the Defendant was literally staying where he could, whether it was empty buildings, back of a car, stairwells. (44:19-20).

On January 3, 2019, Ms. Dick had testified that she was somewhat familiar with the case State vs. Dinkins. She had testified that the author of the sex offender report, Exhibit 1, had indicated that Defendant's intent was to remain compliant. She had relayed this information to the trial court at sentencing. Empty buildings, back of a car, or stairwells were not addresses. The GPS had been discretionary, as indicated in Exhibit 1. She also had testified that the report that she had referenced at sentencing had indicated that on June 17, 2016 Defendant had called the sex offender registry that he did not receive a letter from them. (44:20-22).

On June 17, 2016, the author of Exhibit 1 had written that she or he had received a phone call from the Defendant reporting that

he did not receive his letter and that he had called the appropriate phone number twice. The author of Exhibit 1 had indicated that it had appeared that his intent was to remain compliant. She had assumed that the writer of Exhibit 1 had been a specialist. (44:29-31).

Defendant George Savage had testified after Ms. Dick. He had testified that Ms. Dick had told him nothing about the defense of good faith efforts to comply with sex offender supervision requirements. She had never discussed this sort of defense with him. During the time of the period of supervision he had been staying in alleys, back of cars, bus stops. He did not have a home. He also did not have an address that he could provide to the agent. He had called the Sex Offender Registration (SOR) people in Madison. He had never been given any protocol about how he should handle the situation if he was homeless. He had not been told to call in for daily locations or anything like that. She had never indicated to him that an inability to provide an address because of his personal situation was a defense. He had informed her of his situation. He had told Ms. Dick as well as his agent that he was living in abandoned buildings, bus stops, back of cars. His agent knew from the GPS that he was staying at a bus stop all night on a given night or on another night he was between blocks in the alley all night. Had he known about the defense he would not have pled guilty. Instead, he would have proceeded to trial. He had relied upon Ms. Dick's comments. (44:37-40).

Subsequent to the testimony, the trial court had issued its

oral ruling. The trial court had simply indicated that, with respect to the inability to provide an address defense, that the Defendant had misconstrued Dinkins. The court had indicated that Dinkins had contained the words recited by the Defendant, but Defendant had misconstrued this case's meaning. The trial court had indicated that Dinkins had involved a Defendant who had been in custody on a sex related crime. The court had indicated that Dinkins was to report to the Sex Offender Registry but could not. This, because Dinkins had been in custody and was unable to find a place to live. The trial court attempted to distinguish Dinkins from the present situation because of this custody status. The court had never discussed the factual matters concerning Defendant's situation. (44:71-75; A 106-111).

Defendant filed his Notice of Appeal, with attachments, in a timely fashion. (38:1-2; 39:1-3). This Brief is being submitted pursuant to the schedule established by the Court.

ARGUMENT

I. MS. DICK WAS PREJUDICIALLY INEFFECTIVE FOR MISINFORMING AND MISREPRESENTING DEFENDANT DURING THE CHANGE OF PLEA PROCESS. THIS CONSTITUTES MANIFEST INJUSTICE, THEREBY CONSTITUTING A VALID GROUND FOR WITHDRAWAL OF A GUILTY PLEA. DEFENDANT IS ENTITLED TO WITHDRAW HIS GUILTY PLEA ON THIS BASIS. THE TRIAL COURT'S ORAL DECISION DOES NOT ADEQUATELY REBUT THIS CONCLUSION.

A. The Constitutional and Legal Standard.

The right to effective assistance of counsel stems from the

Sixth Amendment of the United States Constitution and Article I, Section 7, of the Wisconsin Constitution, which guarantee a Defendant a fair trial and effective assistance of counsel. The test for ineffective assistance of counsel is two pronged. First, the Defendant must demonstrate that his trial counsel's performance was deficient; and second, the Defendant must demonstrate that the deficient performance prejudiced him. Strickland vs. Washington, 104 S.Ct. 2052, 466 U.S. 668 (1984); State vs. Sanchez, 201 Wis.2d 219, 227-228, 548 N.W.2d 69 (1996). In order to show prejudice, the Defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. State vs. Sanchez, 201 Wis.2d 219 at 236 citing Strickland vs. Washington, 466 U.S. at 694.

An appellate court will reverse a discretionary ruling if there is not a reasonable basis for the trial court's determination. State vs. Wyess, 124 Wis.2d 681, 370 N.W.2d 745 (1985); State vs. Alsteen, 108 Wis.2d 723, 324 N.W.2d 426 (1982).

B. The Standard for Withdrawal of Guilty Pleas after Sentencing.

A Defendant may withdraw a plea of guilty or no contest after sentencing if he or she is able to demonstrate that a manifest injustice would exist if the plea were allowed to stand. State vs. Reppin, 35 Wis.2d 377, 151 N.W.2d 9 (1967); State vs. Carlson, 48 Wis.2d 222, 179 N.W.2d 851 (1970).

Manifest injustice occurs under any of the following

circumstances: (1) he was denied effective assistance of counsel guaranteed to him by constitution, statute or rule; (2) the plea was not entered or ratified by the defendant or a person authorized to so act on his behalf; (3) the plea was involuntary, or was entered without knowledge of the charge or that the sentence actually imposed could not be imposed; or (4) he did not receive the charge or sentence concessions contemplated by the plea agreement and the prosecuting attorney failed to seek or not to oppose these concessions as promised in the plea agreement. State vs. Rock, 92 Wis.2d 554, 285 N.W.2d 739 (1979), citing State vs. Reppin, 35 Wis.2d 377 at 385.

Furthermore, on timely application, the trial court will vacate a plea of guilty shown to have been unfairly obtained or given through ignorance, fear or inadvertance. LeFebre vs. State, 40 Wis.2d 666, 162 N.W.2d 544 (1968) citing Pulaski vs. State, 23 Wis.2d 138, 126 N.W.2d 625 (quoting Kercheval vs. United States, 274 U.S. 220, 47 Sup. Ct. 582, 71 L.Ed. 1009 (1927)).

A defense attorney must advise the client with complete candor concerning all aspects of the case. A.B.A. Standard for Criminal Justice, Standard 4-5.1(a) (The Defense Function: Third Edition, August 1990). Furthermore, under no circumstances should a defense counsel recommend to a Defendant to take a plea unless appropriate investigation and study of the case has been completed, including an analysis of the evidence likely to be introduced at trial. A.B.A. Standard for Criminal Justice, Standard 4-6.1(b) (The Defense Function: Third Edition, August 1990).

A Defendant has a constitutional right to effective assistance of counsel during the plea bargain stage. Lafler vs. Cooper, 132 S.Ct. 1376, 566 U.S. 156, 182 L.Ed.2d 398 (2011); State vs. LaMere, 368 Wis.2d 624, 879 N.W.2d 580 (2016).

When a Defendant's assertion of a violation of a constitutional right forms the basis for a plea withdrawal request, he may withdraw the plea as a matter of right by demonstrating (1) that a violation of constitutional right has occurred, (2) that the violation caused the Defendant to plead guilty, and (3) that at the time of the plea, the Defendant was unaware of the potential constitutional challenge to the case against him or her because of the violation. State vs. Harris, 272 Wis.2d 80, 680 N.W.2d 737 (2004); State vs. Sturgeon, 231 Wis.2d 487, 605 N.W.2d 589 (Ct.App. 1999).

C. The Further Standard with Respect to Trial Counsel's Failure to Advise the Defendant that his Homelessness was a Defense to the Charge. Based upon this Law Concerning this Legal Defense, the Trial Court had Materially Erroneously Erred in Denying Defendant's Postconviction Motion.

An attorney's performance was deficient when he was unaware of pertinent case law that would have supported a defense or prevented a prejudicial error. State vs. Domke, 337 Wis.2d 268, 805 N.W.2d 364 (2011); State vs. Coleman, 362 Wis.2d 447, 865 N.W.2d 190 (Ct.App. 2015).

An attorney has a duty to advise the Defendant effectively throughout the plea process. This, with respect to defenses and the

legal ramifications of a plea. Lafler vs. Cooper, 132 S.Ct. 1376 at 1383-1384; Padilla vs. Kentucky, 559 U.S. 356, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010). Affirmative misrepresentation of the law by a defense counsel can support a holding that withdrawal of a plea of guilty must be permitted because the plea is uninformed and its voluntariness is compromised. State vs. Dillard, 358 Wis.2d 543, 859 N.W.2d 44 (2014). The failure of an attorney to inform his client of the relevant case law clearly satisfies the first prong of the Strickland analysis, as such an omission cannot be said to fall within "the wide range of professionally competent assistance" demanded by the Sixth Amendment. Strickland vs. Washington, 466 U.S. 668 at 690.

A registrant cannot be convicted of violating Wis. Stats. 301.45(6) for failing to report the address at which he will be residing when he is unable to provide this information. A registrant is unable to provide the required information when that information does not exist, despite the registrant's reasonable efforts to provide it. State vs. Dinkins, 339 Wis.2d 78, 810 N.W.2d 787 (2011).

Here, Defendant had indicated that his trial counsel had been prejudicially ineffective for failing to inform him that he could not be convicted of his failure to provide an address as part of his Sex Offender Registration Requirements due to his homelessness. This, because he did not have an address. Hence, his homelessness had prevented him from being able to provide an address. This defense was an absolute defense. Prior to the plea hearing, trial

counsel had information that he did not have an address. She had informed the court commissioner of such at the initial appearance as well as the trial court during the guilty plea/sentencing hearing. She had also informed the trial court during the sentencing hearing that he was trying to comply, but could not do so because of his personal conditions. He was living out of cars, in empty buildings, and in stairwells. These living conditions do not constitute "addresses." These are transient and on-the-street locations. Park benches, transient locations, or other on-the-street locations do not constitute an address for purposes of registration requirements. State vs. Dinkins, 339 Wis.2d 78 at 96. Trial counsel had confirmed at the January 3, 2019 evidentiary hearing that she had made such representations to the trial court during the sentencing hearing. This had been the same date as the guilty plea hearing.

Furthermore, Exhibit 3 to the Postconviction Motion, which had been Exhibit 1 to the Motion hearing, had indicated that the Department of Corrections had been aware that the Defendant was transient, homeless, and had lacked an address. For example, the agent had indicated on May 18, 2016 that the Defendant was homeless. Furthermore, as trial counsel had conceded at the evidentiary hearing, this Exhibit had indicated that Defendant had called the sex registry twice, and had acknowledged that he had not received the correspondence from the registry. He had been calling into the registry, and leaving phone numbers. Exhibit 1 had indicated that the Defendant had been attempting to remain

compliant, but could not due to his personal situation. (35:1-1; A 112). Counsel had testified at the evidentiary hearing that she had known of such information, and had relayed it to the court on May 23, 2017.

Also, attorney Dick cannot argue that any failure to know of the case law and holding of State vs. Dinkins, cited above, is a defense to prejudicial ineffectiveness of counsel. As cited above, failure to learn of potential defenses and relevant and applicable case law is not a defense to prejudicial ineffectiveness of counsel. Clearly, Ms. Dick had known of the relevant facts that had further clearly warranted the defense cited in that case law. Hence, either: (1) any failure to learn of such a defense; or (2) advise the Defendant of such a defense, would constitute prejudicial ineffectiveness of counsel.

Here, the trial court had not discounted or rebutted any of Ms. Dick's statements at the guilty plea/sentencing hearing, and as confirmed on January 3, 2019. The trial court had not discussed any of these facts or representations. The court had never discussed any of the relevant and pertinent facts, as previously discussed herein and adduced at the evidentiary hearing and Defendant's Postconviction Motion. Instead, the trial court had simply focused on its belief that Dinkins had been limited solely to situations where Defendants cannot meet the sex offender registration requirements solely because of "impossibility" due to custody. However, the clear language of Dinkins does not limit its holding to simply a situation where the Defendant had been in

custody and had, therefore, a situation where compliance was "impossible." According to the trial court, impossibility is solely limited to situations where the Defendants are in custody. Dinkins does not limit its holding to such situations. Furthermore, a clear reading of Dinkins indicates that this case does not limit itself to "impossible" situations.

Here, the trial court had indicated that Defendant had quoted the words of Dinkins, but had misconstrued the meaning of this case. This indication is illogical. Logically, when a Defendant correctly quotes the words of a case, then that Defendant has correctly quoted that case's holding. A clear reading of case law is sufficient. Dinkins is not ambiguous. As this case had indicated, one must look to the plain language of the sex offender registration statute. Statutory interpretation begins with the plain language of the statute. State vs. Dinkins, 339 Wis.2d 78 at 90.

In Dinkins, the Wisconsin Supreme Court had stated its holding as that a registrant cannot be convicted of violating Wis. Stats. 301.45(6) for failing to report the address at which he will be residing when he is unable to provide the required information when that information does not exist, despite the registrant's reasonable attempt to provide it. Id. At 82. Here, the plain language of this case uses the word "unable" and not "impossible," as the trial court would interpret. In this case, the Supreme Court never utilizes or uses the word "impossible." Instead, the Supreme Court couches its ruling with the word "unable." Clearly, a

situation as the trial court had interpreted, where an individual is incarcerated, would create an "impossible" situation. Although Dinkins had involved a situation with an incarcerated Defendant, the Supreme Court clearly had not limited itself to such a situation. The Supreme Court had never specifically limited its holding to such custodial Defendants, or to such factually "impossible" situations. The trial court had materially misinterpreted this case.

Here, Defendant had not been incarcerated. However, as evidenced in hearing Exhibit 1, and as outlined by the trial counsel at the sentencing hearing and acknowledged at the evidentiary hearing, he had been unable to provide an address. The Postconviction hearing Exhibit 1 indicates that the registry had acknowledged such inability. He had contacted the sex offender registry by phone twice, and had not received their correspondence. The sex offender registry had found that he had the intention of being compliant. As counsel had indicated at the sentencing hearing, the Defendant was unable to provide an address. This, due to his living in places that did not have a legal address for purposes of registration. Such places had included empty buildings, cars, and stairwells. As indicated in Dinkins, such locations are not addresses for purposes of sex offender registration requirements. The Department, as indicated in hearing Exhibit 1, had known of the Defendant's situation. Hence, Defendant had been unable to provide an address. Contrary to the trial court, this inability is legally sufficient for the legal defense at issue in

the present matter, as mandated by Dinkins. The trial court had materially erred in denying Defendant's Postconviction Motion. This Decision must be reversed.

Based upon the foregoing, Defendant should be allowed to withdraw his guilty plea.

CONCLUSION

Attorney Dick was prejudicially ineffective during the entire plea process. This prejudicial ineffectiveness had led to a guilty plea that was involuntary, ignorant, and unfairly obtained. Defendant should be allowed to withdraw his guilty plea. This, for the cited reason. Also, the legal standard is under a Manifest Injustice standard because this present Motion is post-sentencing.

Based upon the relevant and applicable case law, cited above, this Court must reverse the trial court's oral Decision and allow the Defendant to vacate his guilty plea. This Decision had been an erroneous exercise in discretion.

Dated this _____ day of March, 2019.

Respectfully Submitted,

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CERTIFICATION

I hereby certify that the Appellant's Brief of Defendant-Appellant in the matter of State of Wisconsin vs. George Savage, 2019AP000090-CR conforms to the rules contained in Wis. Stats. 809.19 (8)(b)(c) for a Brief with a monospaced font and that the length of the Brief is twenty three (23) pages.

Dated this 7th day of March, 2019, in Waukesha, Wisconsin.

Mark S. Rosen
Attorney for Defendant-Appellant
State Bar No. 1019297

CERTIFICATION

I hereby certify that filed with this Brief, either as a separate document or as a part of this Brief, is an appendix that complies with Wis. Stats. 809.19(2)(a) and that contains:

(1) a table of contents;

(2) relevant trial court record entries;

(3) the findings or opinion of the trial court; and

(4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decision showing the trial court's reasoning regarding those issues.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 7th day of March, 2019, in Waukesha, Wisconsin.

Mark S. Rosen
Attorney for Defendant-
Appellant

CERTIFICATION

I hereby certify that the text of the e-brief of Appellant's Brief of Defendant-Appellant in the matter of State of Wisconsin vs. George Savage, Case No. 2019AP000090-CR is identical to the text of the paper brief in this same case.

Dated this 7th day of March, 2019, in Waukesha, Wisconsin.

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Appellant