

14AP2095

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

Appeal No. 2014AP002095

STATE OF WISCONSIN EX REL. VINCENT MARTINEZ,
PETITIONER-APPELLANT,

VS.

BRIAN HAYES,
RESPONDENT-RESPONDENT.

RECEIVED
OCT 26 2015
CLERK OF COURT OF APPEALS
OF WISCONSIN

ON APPEAL FROM THE CIRCUIT COURT FOR WASHINGTON COUNTY
THE HONORABLE ANDREW T. GONRING, PRESIDING
CIRCUIT COURT CASE NO. 14CV594
ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

BRIEF OF PETITIONER-APPELLANT

VINCENT MARTINEZ #204321
PETITIONER-APPELLANT PRO SE
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B. Issues Presented

1. The Administrative Law Judge (ALJ) did not allow Martinez to confront and cross-examine Kristy Villanueva and Charles Johnson during the revocation of Martinez' extended supervision;

The Trial Court Answered that habeas corpus was not the proper forum.

2. The ALJ did not make a finding of good cause, justifying the witnesses Kristy Villanueva and Charles Johnson not appearing and testifying at the revocation hearing and being subject to cross-examination;

The Trial Court Answered that habeas corpus was not the proper forum.

3. The ALJ did not make a determination that the hearsay statements of Kristy Villanueva and Charles Johnson were reliable;

The Trial Court Answered that habeas corpus was not the proper forum, that the hearsay statements fail under the catch-all exception to the hearsay rules.

4. Attorney Katherine Romanowich provided Martinez with ineffective assistance of counsel in the following instances:

a. Attorney Romanowich did not object to the hearsay testimony of Police Officer Kristina Meilahn and Extended Supervision Agent Jennifer Duffy-Juoni, neither witnessed any of the events to which they testified to;

b. Attorney Romanowich did not object on procedural

due process grounds to Martinez' right to confront and cross-examine adverse witnesses Kristy Villanueva and Charles Johnson;

c. Attorney Romanowich did not object to the ALJ failure to determine good cause for the witnesses Kristy Villanueva and Charles Johnson failure to appear at the revocation hearing and being subject to confrontation and cross-examination;

The trial Court Answered that Martinez should have requested the Division of Hearings and Appeals to conduct a hearing into Martinez' claims of ineffective assistance of counsel, that counsel was not ineffective.

C. Statement on Oral Argument and Publication of Opinion

Martinez believes that the issues involved in this case can be addressed and resolved by the briefs. Martinez also believes that the Court's decision should be published to help clarify and develop the law in revocation of extended supervision proceedings.

D. Statement of Case and Procedural Status

Martinez states that on or about August 6, 2014, in the State of Wisconsin, Washington County, Circuit Court, Case No 14CV594, Martinez filed a petition for a writ of habeas corpus, pursuant to 782.01 Wis.Stats., (R.5).

Martinez asserted that his extended supervision was revoked contrary to the laws of the United States Constitution Fourteenth Amendment Due Process Clause and Sixth Amendment C-

ounsel Clause, that Martinez' extended supervision was revoked for 5 years and 2 months. That Martinez had no other available remedy at law to redress the violation of his rights.

On or about August 19, 2014, the Honorable Andrew T. Gonring, presiding circuit court judge, entered a decision and order denying Martinez' petition for a writ of habeas corpus (R.8).

On or about August 29, 2014, Martinez filed a timely notice of appeal (R.11).

On or about January 16, 2015, this Court of Appeals District II, issued a decision and order remanding the matter back to the circuit court for further proceedings (R.22).

On or about January 29, 2015, Martinez filed a motion for appointment of counsel (R.24). The Court on or about February 5, 2015, entered a decision and order denying Martinez the appointment of counsel (R.27).

On or about February 5, 2015, the Court enters a decision and order supplementing the record (R.28)

On or about February 16, 2015, Martinez filed a motion for reconsideration for appointment of counsel (R.36). The Court on or about February 17, 2015, entered a decision denying Martinez' motion for reconsideration for appointment of counsel (R.37).

On or about April 27, 2015, the Respondent filed a Motion to Dismiss Petition and to Quash Writ (R.53), and a

Brief-Supporting Motion to Dismiss Petition and Quash Writ (R.55).

On or about May 28, 2015, Martinez filed a motion in opposition to Brian Hayes Motion to Dismiss Habeas Corpus Petition (R.63).

On or about June 15, 2015, the respondent filed a Brief in Support of Motion-Reply Brief Supporting Motion to Dismiss Petition and to Quash Writ (R.67).

On or about July 6, 2015, the Court, the Honorable Andrew T. Gonring, presiding circuit court judge, entered a decision and order dismissing Martinez' petition for a writ of habeas corpus (R.69).

On or about July 13, 2015, Martinez filed a timely notice of appeal (R.71).

This appeal follows.

E. Statement of Facts

Martinez states that his extended supervision was a result of his conviction in the State of Wisconsin Circuit Court for Washington County, Case No. 02CF284, for aggravated battery/intended-substantial bodily harm.

Martinez was sentenced to three years and six months of initial confinement, followed by ten years of extended supervision. On or about January 26, 2010, Martinez began serving the extended portion of his sentence.

Martinez asserts that, on or about August 4, 2013, revocation proceedings were initiated against Martinez to revoke his extended supervision. It was alleged that Marti-

nez had physically assaulted Charles Johnson and Kristy Villanueva, and tha a knife which was found in a sewer grate was alleged to belong to Martinez.

On October 8, 2013, Martinez appeared for a scheduled extended supervision revocation hearing before Administrative Law Judge Sally Pederson (ALJ Ms. Pederson). Martinez states that what happened at the hearing, or should have happened were the subject of his petition for a writ of habeas corpus, and are the subject of this appeal.

1. The ALJ Ms. Pederson did not allow Martinez to confront and cross-examine adverse witnesses during revocation of Martinez' extended supervision, namely Kristy Villanueva and Charles Johnson;

2. The ALJ Ms. Pederson did not make a finding of good cause justifying the witnesses not appearing at the revocation and being subject to cross-examination, the underlying facts are as follows:

a. On October 8, 2013, Martinez appeared for a scheduled extended supervision revocation hearing, before ALJ Ms. Pederson. Martinez' Extended Supervision Agent Ms. Duffy-Juoni's revocation allegations were that on July 4, 2013 Martinez had assaulted Kristy Villanueva by punching her in the face, causing injuries which required 11 stitches to her face. Extended Supervision Agent Ms. Duffy-Juoni also alleged that on August 4, 2013, Martinez had assaulted Charles Johnson, and that a knife found in the sewer grate belong to Martinez;

b. Martinez states during the revocation hearing of October 8, 2013, Martinez had been informed that Kristy Villanueva would appear and be subject to cross-examination;

c. Martinez states that during the hearing the ALJ Ms. Pederson asked the Extended Supervision Agent Ms. Duffy-Juoni if she had any witnesses, the following exchange took place:

ADMINISTRATIVE LAW JUDGE: Alright, thats all for this witness. Thank you for coming in and did you have another witness Ms. Duffy-Juoni?

AGENT DUFFY-JUONI: I need to check.

ADMINISTRATIVE LAW JUDGE: Ok. We'll go off the record until you come back.

(OFF THE RECORD)

(ON THE RECORD)

ADMINISTRATIVE LAW JUDGE: Ok. We're back on the record. Did you have another witness Ms. Duffy-Juoni?

AGENT DUFFY-JUONI: She did not show up.

ADMINISTRATIVE LAW JUDGE: So you had subpoenaed somebody else that didn't show up?

AGENT DUFFY-JUONI: That did not show up, correct.

ADMINISTRATIVE LAW JUDGE: Right. Who was that?

AGENT DUFFY-JUONI: Kristy Villanueva.

ADMINISTRATIVE LAW JUDGE: Alright. Alright well then, we will take your testimony Ms. Duffy-Juoni if you could raise your right hand please. (Agent sworn)

(R.50:14-15)

d. Martinez states that there is no mentioning of Charles Johnson appearing to testify.

3. The ALJ Ms. Pederson did not make a finding of good cause, justifying the witnesses Kristy Villanueva and Charles Johnson not appearing and testifying at the hearing and being subject to cross-examination;

a. Martinez states there is no mentioning of good cause in the transcripts of the revocation proceedings.

4. The ALJ Ms. Pederson did not make a determination that the hearsay statements of Kristy Villanueva and Charles Johnson were reliable;

a. Martinez states there is no mentioning of the hearsay statements being reliable or credible in the revocation transcript;

b. Martinez states that the ALJ Ms. Pederson, in her written decision (J Appendix 3) of October 22, 2013, ALJ Ms Pederson stated isolated here in relevant part:

"Officer Meilahn testified that she personally observed Ms. Villanueva and could still see scarring on Ms. Villanueva's cheek and eye area on 08/04/13. Officer Meilahn credibly testified that she obtained a medical release from Ms. Villanueva and reviewed her medical records at St. Agnes Hospital which showed that Ms. Villanueva had received four stitches near her left eyebrow, four stitches under her left eye, and three stitches on her right cheek on 06/24/13. Officer's Meilahn's testimony was credible and reliable, and there is no rational reason to doubt the truthfulness of t-

he medical record."

5. Attorney Katherine Romanowich provided Martinez with ineffective assistance of counsel in the following instances; the underlying facts are as follows;

a. Attorney Romanowich did not object to the hearsay testimony of Police Officer Kristina Meilahn and Extended Supervision Agent Jennifer Duffy-Juoni, neither witnessed any of the events to which they testified to. Martinez states that Attorney Romanowich did enter an objection, isolated here in relevant part:

AGENT DUFFY-JUONI: St. Agnes Hospital.

ADMINISTRATIVE LAW JUDGE: Thank you.

Q: Did you receive those reports?

A: I did not receive the paper copy yet that was sent up to the District Attorney's office, but I was briefed on the information that was included in those reports.

Q: What information were you briefed on?

A: That Kristy had seen a doctor in the emergency room on June 24th. During that contact she received eleven stitches to her face--

ATTORNEY ROMANOWICH: I would object at this point.

ADMINISTRATIVE LAW JUDGE: Ok, just a minute, just wait. Just when you both are talking at the same time, it is not coming across well. So, I just want to note on the record that the Attorney is objecting. What's your objection?

ATTORNEY ROMANOWICH: Judge, obviously hearsay is

allowed at these hearings but I would argue that at this point in time Officer Meilahn is testifying to a document that she had no firsthand knowledge of. This is what I would consider to be double hearsay. She's reading a document that now she's talking about what she had read off of that document. I would argue that that kind of hearsay is not the type of hearsay that is allowed at a hearing like this. I would ask that the court not allow the Officer to testify to that kind of information. (R.50:9-10)

b. Attorney Romanowich did not object on procedural due process grounds to Martinez' rights to confront and cross-examine adverse witnesses Kristy Villanueva and Charles Johnson;

i. Martinez states that at no time during the revocation proceedings did Attorney Romanowich object to the failure of the witnesses to appear at the hearings.

c. Attorney Romanowich did not object to the ALJ Ms. Pederson failure to determine good cause for the witnesses Kristy Villanueva and Charles Johnson Failure to appear at the revocation hearing and being subject to cross-examination;

i. Martinez states that at no time during the revocation proceedings did Attorney Romanowich object to the failure of the ALJ Ms. Pederson to make a determination of good cause, justifying the witnesses absence from the hearing.

Martinez states that additional facts and references to the record will be made in the argument section.

F. Arguments

Martinez states in his petition for a writ of habeas corpus, pursuant to 782.01 Wis.Stats. (R.5), Martinez stated that;

1. revocation of his extended supervision was contrary to the laws of the United States Constitution, namely the Fourteenth Amendment Due Process Clause, and Sixth Amendment Counsel Clause;

2. Martinez stated that he did not have any other available remedy at law to redress the violations of his constitution rights; and

3. Martinez asserted that he was currently imprisoned for 5 years and 2 months.

Martinez states that the court, the Honorable Andrew T. Gonring, presiding circuit court judge, entered a decision and order dismissing Martinez petition for writ of habeas corpus, stating that Martinez should have filed a petition for a writ of certiorari for his claims concerning the ALJ Ms. Pederson, and that Martinez should have filed a request to the Respondent Brian Hayes (Administrator of the Department of Hearings and Appeals), and requested to file his claims of ineffective assistance of counsel with the respondent (R.69:4).

Martinez states that 782.01(1) Wis.Stats., states in relevant part, isolated here:

782.01(1) Every person restrained of personal liberty may prosecute a writ of habeas corpus to obtain relief from such restraint subject to ss.782.02 and 974.06.

Martinez states that the court has stated that in the absence of statutory provision for judicial review of revocation of probation, "the right of review of a revocation hearing is by certiorari directed to the court of conviction". State ex rel. Johnson v. Cady, 50 Wis.2d 540, 549-50, 185 N.W.2d 306 (1971). The Court of Appeals has held, that habeas corpus review of probation revocation is available in circumstances in which certiorari is not available, see State ex rel. McMillian v. Dickey, 132 Wis.2d 266, 278-79, 392 N.W.2d 453 (Ct.App.1986), and that habeas corpus rather than certiorari is the appropriate procedure for an allegation of ineffective assistance of counsel at a probation revocation proceeding when additional evidence is needed, State v. Ramey, 121 Wis.2d 177, 181-82, 359 N.W.2d 402 (Ct.App. 1984).

Martinez states that a review court in certiorari proceedings, reviewing revocation of probation is limited to

1. Whether, the Administrative Agency kept within its jurisdiction;
2. Whether, the DHA Administrator acted according to law in making the decision.
3. Whether, the Administrator's decision was arbitrary, oppressive or unreasonable and represented the Agency's will

rather than its judgement.

4. Whether, based on the evidence, the Administrator could reasonably have decided as he or she did. See State ex rel. Griffin v. Smith, 2004 WI 36, n.4, 270 Wis.2d 235, 239, n.4, 677 N.W.2d 259.

Martinez states that the issues regarding the proper forum for claims of ineffective assistance of counsel in revocation proceedings, was addressed by the Wisconsin Supreme Court in State ex rel. Vanderbeke v. Endicott, 210 Wis. 2d 883 (1997), there the court stated:

The court stated that in the absence of statutory provisions for judicial review of a revocation of probation, the "right of review of a revocation hearing is by certiorari directed to the court of conviction." Cady, 50 Wis.2d 540 at 549-50. The Court of Appeals has held, however, that habeas corpus review of probation revocation is available in circumstances in which certiorari is not available, State ex rel. McMillian v. Dickey, 132 Wis. 2d 266, 278-79, 392 N.W.2d 453 (Ct.App. 1986), and that habeas rather than certiorari is the appropriate procedure for an allegation of ineffective assistance of counsel at probation revocation proceedings, when additional evidence is needed. Id. Vanderbeke, 210 Wis.2d 502 at 522.

Martinez states that the Circuit Court Judge, the Honorable Andrew T. Gonring, presiding, erroneously excerci-

sed his discretion in deciding that habeas corpus was not the proper forum to pursue claims of ineffective assistance of counsel. Martinez states the facts and law support the conclusion, that a writ of habeas corpus should have issued.

1. The Administrative Law Judge did not allow Martinez to confront and cross-examine Kristy Villanueva and Charles Johnson, during the revocation proceedings.

Martinez states that according to Morrissey v. Brewer, 408 U.S. 471, 482, 92 S.Ct. 2593 (1972), the court held that the due process clause required the following minimum protections in revocation proceedings;

(a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a "neutral and detached" hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reason for revoking parole. Id. 408 U.S. 471 at 489.

Martinez states that in the case presently before the court, that Martinez had been informed that the witnesses would appear at the hearing and be subject to cross-examination.

Martinez states that at one point during the proceedings, the Extended Supervision Agent Duffy-Juoni stepped out of the hearing searching for Kristy Villanueva (R.50:14 15). Ms. Villanueva did not appear on her own volition.

Martinez states that Charles Johnson did not appear and the transcript from the revocation hearing, appears to indicate that the Agent Ms. Duffy-Juoni was not expecting for him to appear (R.50:20), and that there was no mentioning of Charles Johnson failure to appear.

Martinez states at no time did the ALJ Ms. Pederson make a determination during the revocation proceedings, that Martinez would not be allowed to confront and cross-examine the witnesses Kristy Villanueva and Charles Johnson.

Martinez states that in these proceedings, Martinez never had any chance to confront and cross-examine the witnesses, there was no preliminary hearing where the witnesses were made available and subject to cross-examination.

Martinez states that the court in Morrissey, made clear, revocation involves a loss of liberty and inflicts a "grievous loss" on the parolee, the Due Process Clause in the Fourteenth Amendment demands that parolee's have an opportunity to be heard before the decision to revoke parole is made. Morrissey, 408 U.S. 471 at 482, and 487.

In the case presently before the court, there was no determination made by the hearing examiner that Martinez could not confront these witnesses. There was no determination made, that the witnesses statements were reliable. And,

no where in the Agent's Ms. Duffy-Juoni's Revocation Summary (Ex.#3 page 1 in R:31) in the Violation Statement (Allegation Format), do the dates corroborate Kristy Villanueva statements (Ex.#6 in R.31) or the Police Reports (Ex.#4 in R.31), regarding the alleged violations.

Furthermore, Ex.#4 in the R.31, there is no Police Report (#13-8854) regarding the June 24, 2013, incident. You have Police Reports of August 4, 2013 (#13-7470), but no Police Reports of June 24, 2013, that Attorney Romanowich allowed Officer Meilahn to testify to without raising any objection. The following exchange took place:

ADMINISTRATIVE LAW JUDGE: I just have one follow-up and then we'll have cross exam by Attorney Romanowich. Based upon what you read on that medical record, did it appear that the injuries requiring the stitches were consistent with anything that Ms. Vilanueva had told you about being, I think you said the word attacked by Mr. Vincent three weeks prior.

A: Yes, she had stated to me that he had punched her repeatedly in the face and that's when she felt and saw blood dripping down from the area of her face where she received stitches. (R.50:12)

Martinez further states that, there was no previous warning to Martinez that Officer Meilahn would be permitted to testify as an expert, or give a qualified opinion of the injuries sustained by Ms. Villanueva.

Martinez states that he never had a chance to challenge

the statements of Kristy Villanueva and Charles Johnson, their account of the events that occurred on August 4, 2013, or on any other date. Martinez could not show that their account of events were not reliable.

Martinez states that the police reports used during the revocation proceedings were not reliable, the police reports did not fall within a firmly rooted exception to the hearsay rules, they were not reliable source as indicated by the testimony of Officer Meilahn. Officer Meilahn demonstrated her willingness to distort the truth, and to change her story. When being questioned by Agent Duffy-Juoni, Officer Meilahn indicated that she had not read the medical reports, that she had been briefed on the contents of the medical reports. Officer Meilahn began explaining how she had been briefed.

Attorney Romanowich objected, stating that it was double hearsay, and that Officer Meilahn should not be allowed to testify to what someone else had told her about the medical records. When questioning resumed, Officer Meilahn reversed course, and now Officer Meilahn stated that she had obtained the records and she personally read them. See (R.50:10-11).

2. The ALJ Ms. Pederson did not make a good cause finding, justifying the witnesses not appearing and testifying at the revocation hearing.

Martinez states that there is no determination in the record, which was made by the ALJ Ms. Pederson concerni-

ng good cause for the witnesses not appearing and testify-
ng. In State ex rel. Simpson v. Schwarz, 2002 WI.App.7, 250
Wis.2d 214, 640 N.W.2d 527, the court held:

We agree with those courts concluding that a find-
ing of good cause should generally be based upon
a balancing of the need of the probationer in cr-
oss-examining the witnesses and the interest of the
state in denying confrontation, including co-
nsideration of the reliability of the evidence and
the difficulty, expense, or other barriers to obt-
aining live testimony. Because "cross-examination
is the principle means by which the believability
of a witness and the truth of his testimony is te-
sted. Id. Simpson, 2001 WI.App. at 15.

Martinez states that in United States v. Jordan, 742
F.3d 276 (7th Cir. 2014), that court applied the balancing
test (the right to cross-examine verses reasons which would
justify denying confrontation), that court held that the r-
ight to cross-examination should not be denied without a s-
trong reason, that court ruled that the determination to d-
eny confrontation should be explicitly stated in the record
Id. Jordan, 742 F.3d 276 at 280.

Martinez states that the hearing examiner did not a-
llow Martinez to confront and cross-examine the adverse wi-
tnesses, there was no determination of good cause for deny-
ing the right to cross-examine these witnesses, there was
no determination made that their statements to police were

reliable.

3. Martinez states that Attorney Romanowich provided ineffective assistance of counsel, her conduct was both deficient and prejudicial, the underlying facts are as follows

a. Attorney Romanowich did not object to the hearsay testimony of Officer Meilahn and Extended Supervision Agent Duffy-Juoni, neither witnessed any events to which they testified to;

b. Attorney Romanowich did not object on procedural due process grounds to Martinez' right to confront and cross-examine adverse witnesses;

c. Attorney Romanowich did not object to the Administrative Law Judge's failure to determine good cause for the witnesses Kristy Villanueva failure to appear and be subject to cross-examination.

Martinez states that in order to maintain a claim of ineffective assistance of counsel, in Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052 (1984), Martinez must show that counsel's performance was deficient, and that this deficient performance prejudiced the defense. To establish deficient performance, Martinez must show that counsel's representation was below and objective standard of reasonableness; and to establish prejudice, Martinez must show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different." Strickland, 466 U.S. 668 at 694.

Martinez states that usually in Wisconsin, in bring-

ing a claim of ineffective assistance of counsel, counsel must be given a chance to explain the challenged conduct.

See State v. Machner, 92 Wis.2d 797, 285 N.W.2d 905 (Ct.App.)

The Court in Machner, held:

This court is of the opinion that where a counsel's conduct at trial is questioned, it is the duty and responsibility of subsequent counsel to go beyond mere notification and to require counsel's presence at the hearing in which his conduct is challenged. We hold that it is a prerequisite to a claim of ineffective representation on appeal to preserve the testimony of trial counsel. We cannot otherwise determine whether trial counsel's actions were the results of incompetence or deliberate trial strategies. In such situations, then, it is the better rule, and in the client's best interest, to require trial counsel to explain the reasons underlying his handling of a case. Id. Machner, 92 Wis.2d 797 at 804.

In the case presently before the court, Martinez asked the court to conduct a Machner hearing, the court stated that Martinez had another remedy, that Martinez should have petitioned the Administrator of the Division of Hearings and Appeals to conduct a hearing (a Booker motion), State ex rel. Booker v. Schwarz, 2004 WI App.50, 9-14, 270 Wis.2d 745, 678 N.W.2d 361. Martinez pointed out that he was not aware of any Wisconsin case law which required Martinez to petit-

ion the respondent for a Machner, hearing.

Martinez asked the court on two separate occasions to appoint counsel (R.24 and R.36), to assist Martinez with his habeas corpus petition. Martinez asked to be referred to the Public Defender's Office for the discretionary appointment of counsel. The court said that it did not have the authority to appoint counsel, that Martinez did not have a statutory right or a constitutional right to the assistance of counsel in habeas corpus proceedings. The court denied both requests (R.27 and R.37).

Martinez states that during the initial phase of his revocation hearing, the ALJ Ms. Pederson identified all the exhibits which had been submitted by Agent Duffy-Juoni.

Martinez states that these exhibits included all the police reports which had been written. The ALJ Ms. Pederson, then stated:

ADMINISTRATIVE LAW JUDGE: Ok. Any objections to any of those exhibits being received into evidence?

ATTORNEY ROMANOWICH: No.

ADMINISTRATIVE LAW JUDGE: Ok, they are received. Ok, Ms. Duffy-Juoni do you have any witnesses other than yourself? (R.50:4)

Martinez states that his Attorney Romanowich agreed from the beginning of the revocation hearing that the police reports could be used against Martinez.

Martinez states that his Attorney Romanowich was under the impression that the hearsay reports and testimony could

be used against Martinez, and that Attorney Romanowich did not make any efforts to challenge the reliability of any of the reports or testimony. Attorney Romanowich allowed Officer Meilahn and Agent Duffy-Juoni to testify concerning medical reports which were not introduced during the hearing, reports which the ALJ Ms. Pederson deemed to be reliable in her written decision and order, revoking Martinez' extended supervision.

Martinez states that those medical records were referred to as being in the record (See R.31 EXHIBIT A HEARING NOTICE page 2). In fact, the medical records from June 24, 2013 indicate:

06/24/2013 Chief Complaint Pt. to ED stating
taht about 15 minutes ago fell down some steps.
She hit her face and has some laceratins. She
has pain to her neck, moving all extremities.
Pain to right anterior forearm, pt. states 15 steps.
History of Present Illness

The patient presents following fall. The onset was just prior to arrival. The occurrence was single episode. Slipped (states steps slippery from humidity) fell down 15 steps. The location where the incident occurred was at home. (See R.32)

Martinez states that the report continues on page 3, states Differential Diagnosis, states alcohol intoxication and drug abuse. Furthermore, in the Notes on page 3, states "Denies any domestic violence or other concerns." (emphasis

added)

Martinez states that the medical records from June 3, 2013, indicates:

06/03/2013 Chief Complaint Pt. States she was playing softball and got hit in the left eye with ball three days ago, denies any LOC. Pt. has a visible bruise on her left eye by a thrown ball.

Martinez states that Ms. Villanueva went on to explain that she was struck by a thrown ball. Martinez should have been given a copy of the medical reports to show how Ms. Villanueva sustained the injuries.

Martinez states that the medical records are assumed to be correct and reliable, because a patient gives accurate information to obtain treatment. Martinez did not receive a copy of the medical records on or about November of 2014.

Martinez states pursuant to Wis.Stats. 905.04(2) a patient has the privilege to refuse to disclose and to prevent others from disclosing confidential communications made for purposes of diagnosis or treatment. "A privilege holder waives the privilege if he or she voluntarily discloses or consents to disclose of any significant part of the matter or communication." State v. Speese, 191 Wis.2d 205, 217-18, 528 N.W.2d 510 (1996).

Martinez states that the medical records were admissible, and should have been turned over to disprove any claims that Ms. Villanueva was physically assaulted. And furtherm-

ore, the Agent Duffy-Juoni and Officer Meilahn's testimony regarding the medical reports were misleading and deceptive. Their testimony only conveyed a distorted version of the medical records.

The ALJ Ms. Pederson, was not given a copy of the medical reports, yet she declared them to be reliable in her decision. The ALJ Ms. Pederson was given a copy of the Police Reports, yet there is no determination by Ms Pederson that those Police Reports are reliable.

Martinez states that he knows he is not entitled to a perfect hearing, however, Martinez is entitled to a fair hearing. This was supposed to be a contested case, and Martinez should have been afforded an attorney who would assist him in defending against these false allegations. There can be no argument that Attorney Romanowich's conduct failed below an objective standard of reasonableness. That unreasonably influenced the outcome of the revocation hearing.

G. Conclusion

1. Martinez states that the decision of the circuit court should be reversed, and the petition for writ of habeas corpus should issue, either the Respondent granting Martinez a new hearing or the original decision and order revoking Martinez' extended supervision should be reversed;
2. Martinez states that he request this Court to do what is fair and just.

Dated this 22 day of October, 2015.

Respectfully Submitted,

Vincent Martinez

Vincent Martinez

H) Form and Length Certification

I hereby certify that this brief conforms to the rules contained in 809.19(8)(b) and (c) for briefs produced with a monospaced font.

The length of this brief is 23 pages.

Dated this 22 day of October, 2015.




Vincent Martinez

I) Certification of Mailing

I certify that this brief and appendix was deposited in the United States mail for delivery to the Clerk of the Court of Appeals, and the Assistant Attorney General(s) by first class mail. I further certify that the brief and appendix was correctly addressed and postage was pre-paid.

On this date 22 of October, 2015.


Vincent Martínez

J) Appellant's Brief Appendix Certification

I hereby certify that filed with this brief, is an appendix that complies with s. 809.19(2)(a) and that contains (1) a table of contents; and (2) the decision of the circuit court; and (3) the decision on order of the ALJ Ms. Pederson; and (4) the decision of the Administrator from the Division of Hearings and Appeals.

Dated this 22 day of October, 2015.



Vincent Martinez