

15AP0692

STATE OF WISCONSIN  
COURT OF APPEALS  
(DISTRICT IV)

State of Wisconsin,	§	
Plaintiff-Respondent,	§	
v.	§	DANE COUNTY
Jermaine D. Greer, Sr.,	§	CASE ACTION NUMBER
Defendant-Appellant.	§	13CF78

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APPELLANT'S BRIEF SEEKING POSTCONVICTION RELIEF  
APPEAL ACTION NO. 2015AP000692  
CIRCUIT COURT CASE NO. 2013CF000078

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JERMAINE GREER (PRO SE)  
Reg. No. 08303-090  
FEDERAL CORRECTIONAL INSTITUTION  
P.O. BOX 1000  
OXFORD, WI 53952

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# STATEMENT OF ISSUES

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[1] THE HONORABLE CIRCUIT COURT ERRED IN DENYING APPELLANT HEREIN THE RIGHT TO APPEAL AFTER FILING NUMEROUS

LETTERS PERTAINING TO HIS DESIRE TO FILE A "NOTICE OF APPEAL."

[2] COUNSEL COMMITTED INEFFECTIVE ASSISTANCE OF COUNSEL AFTER FAILING TO FILE THE NOTICE OF APPEAL THAT APPELLANT HAD REQUESTED HIM TO FILE.

[3] STATE DISTRICT ATTORNEY DELIBERATELY COMMITTED PROSECUTORS MISCONDUCT FOR WITHHOLDING SWORN STATEMENT MATERIAL THAT WOULD HAVE PROVED THAT APPELLANT WAS ACTUALLY INNOCENT OF THE OFFENSE CHARGED, BASED ON THE FACT THAT APPELLANT WOULD HAVE PROCEEDED TO WITHDRAW HIS GUILTY PLEA AND PROCEEDED TO TRIAL HAD THIS SWORN STATEMENT FROM THE ACCUSER BEEN DISCLOSED BEFORE APPELLANT'S PLEA AND SENTENCING HEARING.

STATE OF WISCONSIN  
COURT OF APPEALS  
(DISTRICT IV)

STATE OF WISCONSIN,	§	
Appellant,	§	
V.	§	DANE COUNTY
JERMAINE GREER,	§	CASE ACTION NUMBER
Appellee.	§	13CF78

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APPELLANT'S BRIEF SEEKING POSTCONVICTION RELIEF

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TO THE HONORABLE JUDGES OF SAID COURT:

COMES NOW, Jermaine Greer (hereinafter "Appellant")  
and hereby through PRO SE submits his Appellant's Brief  
Seeking Post Conviction Relief, and in support thereof,  
respectfully shows this Honorable Said Court as follows:

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I. INTRODUCTION

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In support of the foregoing Appellant's Brief,  
Appellant herein will first of all inform this Honorable Said  
Court that he is unskilled and is a layman at the Profession

of Law, and would therefore ask that this Honorable Said Court recognize the standards set forth by the Honorable United States Supreme Court in HAINES v. KERNER, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972), and in doing so, NOT hold Appellant herein to the rigid standards of a Professional Legal Litigator.

MOREOVER, Appellant informs this Honorable Said Court that he is currently confined within the jurisdiction of the Federal Bureau of Prisons serving a Federal Sentence and DOES NOT have ANY WISCONSIN STATE LAW to support his Issues with the proper Case Law. Thus, Appellant will try to provide this Honorable Said Court FEDERAL CASE LAW, the only case law that is available in the Federal Institution's Law Libraries.

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## II. STATEMENT OF ISSUES

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[1] THE HONORABLE CIRCUIT COURT ERRED IN DENYING APPELLANT HEREIN THE RIGHT TO APPEAL AFTER FILING NUMEROUS LETTERS PERTAINING TO HIS DESIRE TO FILE A "NOTICE OF APPEAL."

[2] COUNSEL COMMITTED INEFFECTIVE ASSISTANCE OF COUNSEL AFTER FAILING TO FILE THE NOTICE OF APPEAL THAT APPELLANT HAD REQUESTED HIM TO FILE.

[3] STATE DISTRICT ATTORNEY DELIBERATELY COMMITTED

PROSECUTORS MISCONDUCT FOR WITHHOLDING SWORN STATEMENT MATERIAL THAT WOULD HAVE PROVED THAT APPELLANT WAS ACTUALLY INNOCENT OF THE OFFENSE CHARGED, BASED ON THE FACT THAT APPELLANT WOULD HAVE PROCEEDED TO WITHDRAW HIS GUILTY PLEA AND PROCEEDED TO TRIAL HAD THIS SWORN STATEMENT FROM THE ACCUSER BEEN DISCLOSED BEFORE APPELLANT'S PLEA AND SENTENCING HEARING.

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### III. STATEMENT OF CASE

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Appellant herein, submits this Brief Seeking Postconviction Relief, based on the ERRORS committed by the Circuit Court, Counsel, and the State District Attorney. Appellant tried numerous times to file his "Notice of Appeal" to pursue his Right to DIRECT APPEAL, but was nevertheless denied based on the fact that Appellant's Counsel had NOT withdrawn as Appellant's Counsel. Thus, Appellant now seeks Post-Conviction Relief.

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### IV. STATEMENT OF FACTS

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On or around January 09, 2013, Appellant was arrested at his residence and charged, inter alia, with two counts of

DISORDERLY CONDUCT and one count of CRIMINAL DAMAGING OF PROPERTY.

Appellant was furthermore accused later on of violating a Restraining Order and Stalking. These charges were subsequently DISMISSED as part of a plea agreement reached in this case.

On January 11, 2013, Appellant was released on Bail Monitoring.

On or around February 28, 2014, Appellant pleaded guilty to TWO Counts of Disorderly Conduct; ONE Count of Damage to Property; and to TWO Counts of O.W.I. (3rd and 4th Offenses), based on his Counsel's ADVICE. Defendant was sentenced to serve 30-days of jail time on each of the Disorderly Conduct charges and to the Criminal Damage to Property. The total sentence for the above offenses was 90-days, along with 90-days for the 3rd O.W.I. Offense and 6-months on the 4th O.W.I. Offense.

Thereafter, Appellant mailed letters and called Counsel's Office living messages that he wanted for him to file a "NOTICE OF APPEAL" based on the fact that Counsel's advised and the State District Attorney had breached their agreement. Furthermore, that inter alia, there were other issues that should have been considered before he accepted the ERRONEOUS agreement on the DISORDERLY CONDUCT and CRIMINAL DAMAGE TO PROPERTY charges, because he had in fact NEVER



committed those offenses.

NEVERTHELESS, the letters mailed to the Counsel's Law Office were IGNORED and the letters mailed to the Circuit Court were returned based on the fact that Appellant could NOT file PRO SE Motions, and Appellant therefore DENIED the RIGHT TO A DIRECT APPEAL.

Moreover, during further Court proceedings, Appellant DISCOVERED that the STATE DISTRICT ATTORNEY had in fact received letters from the person who had filed the FABRICATED CHARGES against his person. These letters were SWORN STATEMENTS in which the Accuser (Christal N) was RECANTING her statement and testimony.

Thus, on or around December of 2014, Appellant filed and requested his Counsel to file a Motion to WITHDRAW HIS GUILTY PLEA based on the NEWLY AVAILABLE EVIDENCE, where Appellant had found out from the STATE DISTRICT ATTORNEY himself that he had received letters from the person WHO HAD FILED THE CHARGES AGAINST Appellant, RECANTING HER STATEMENT AND TESTIMONY given to the Law Enforcement.

On or around FEBRUARY 02, 2015, the Honorable Circuit Court DENIED Appellant's Motion based on the fact that no legal authority had been cited in support of the requested relief. Thus, Appellant now moves this Honorable Court of Appeals to give this Post-Conviction Appeal a close SCRUTINY.

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V. REASONS FOR GRANTING POST-CONVICTION RELIEF

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[1] THE HONORABLE CIRCUIT COURT ERRED IN DENYING APPELLANT HEREIN THE RIGHT TO APPEAL AFTER FILING NUMEROUS LETTERS PERTAINING TO HIS DESIRE TO FILE A "NOTICE OF APPEAL."

On different dates, Appellant herein submitted letters to the Honorable Circuit Court requesting that a NOTICE OF APPEAL be filed on his behalf, based on the fact that his Counsel would NOT respond to his letters and/or calls. Nevertheless, the Honorable Circuit Court DENIED and PRECLUDED Appellant from filing a NOTICE OF APPEAL himself and/or any other Motions, based on the fact that Appellant was still being represented by Counsel.

Thus, based on the PRECLUSION above by the Honorable Circuit Court, Appellant was DENIED the right to FILE HIS DIRECT APPEAL, even after Appellant had notified the Honorable Circuit Court that his Counsel would NOT respond to his letters and/or answer his calls. WHEREFORE, the proper remedy for this ERROR and PRECLUSION of Right to a DIRECT APPEAL, is granting Appellant herein leave to file a DELAYED APPEAL, WITH THE RIGHT TO APPOINTED COUNSEL.

[2] COUNSEL COMMITTED INEFFECTIVE ASSISTANCE OF COUNSEL AFTER FAILING TO FILE THE NOTICE OF APPEAL THAT APPELLANT HAD REQUESTED HIM TO FILE.

On numerous times, BY LETTER and VERBALLY, Appellant REQUESTED his Counsel to FILE A NOTICE OF APPEAL, but Counsel IGNORED Appellant herein. In fact, a conflict aroused between Appellant and Counsel, that Counsel began to intentionally ignore Appellant herein. Thus, Counsel committed INEFFECTIVE ASSISTANCE OF COUNSEL for FAILING to FILE the NOTICE OF APPEAL that Appellant had requested.

To show ineffective assistance of counsel, a petitioner must demonstrate: (1) his counsel's performance was deficient; and (2) the deficient performance prejudiced the defense. See STRICKLAND v. WASHINGTON, 466 U.S. 668, 687, 104 S.Ct 2052, 80 L.Ed.2d 674 (1984). In determining whether counsel's performance was prejudicial, "[t]he 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." Id. at 694. A "reasonable probability is a probability sufficient to undermine the confidence in the outcome." Id.

THUS, a lawyer provides ineffective assistance by FAILING TO FILE AN APPEAL on his client's REQUEST, WITHOUT REGARD TO THE PROBABILITY OF SUCCESS ON APPEAL. "[A] lawyer who DISREGARDS specific instructions from the defendant to

file a NOTICE OF APPEAL acts in a manner that is professionally UNREASONABLE." ROE v. FLORES-ORTEGA, 528 U.S. 470, 477, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000). In other words, "[W]hen a defendant ASKS his attorney to pursue a Direct Appeal and the attorney DOES NOT DO SO, it is PER SE INEFFECTIVE ASSISTANCE OF COUNSEL." GANT v. UNITED STATES, 627 F.3d 677, 681 (7th Cir. 2010).

Thus, Appellant herein VERBALLY requested Counsel TO FILE A NOTICE OF APPEAL because he wanted to Appeal his case. Not only did Appellant requested verbally for the NOTICE OF APPEAL to be filed to pursue his right to a DIRECT APPEAL, but mailed letters numerous of times to Counsel's Office, REQUESTING such.

The first time that Appellant requested for Counsel to file his Notice of Appeal was during his Sentencing Hearing, to which Counsel only answered "I'll see You later on." And therefore, NEVER assisted Appellant with such request.

The other times that Appellant REQUESTED Counsel to make sure to file his NOTICE OF APPEAL, was through the mail. Nevertheless, Counsel NEVER responded and/or answered Appellant's letters.

WHEREFORE, the proper remedy for this ERROR and PRECLUSION of Right to a DIRECT APPEAL, is granting Appellant herein leave to file a DELAYED APPEAL, WITH THE RIGHT TO APPOINTED COUNSEL.

[3] STATE DISTRICT ATTORNEY DELIBERATELY COMMITTED PROSECUTORS MISCONDUCT FOR WITHHOLDING SWORN STATEMENT MATERIAL THAT WOULD HAVE PROVED THAT APPELLANT WAS ACTUALLY INNOCENT OF THE OFFENSE CHARGED, BASED ON THE FACT THAT APPELLANT WOULD HAVE PROCEEDED TO WITHDRAW HIS GUILTY PLEA AND PROCEEDED TO TRIAL HAD THIS SWORN STATEMENT FROM THE ACCUSER BEEN DISCLOSED BEFORE APPELLANT'S PLEA AND SENTENCING HEARING.

During Appellant's Pre-Trial proceedings, Appellant twice requested his Counsel to proceed to Trial. Nevertheless, based on the many postponed Court hearings and on the advise of his Counsel, based on the fact that Appellant would be serving a Federal Sentence, Appellant pleaded guilty KNOWING that he was in fact Innocent of the Charges for DISORDERLY CONDUCT and of CRIMINAL DAMAGING OF PROPERTY.

On or around January 09, 2013, Appellant was arrested at his residence and charged, inter alia, with two counts of DISORDERLY CONDUCT and one count of CRIMINAL DAMAGING OF PROPERTY.

Appellant was furthermore accused later on of violating a Restraining Order and Stalking. These charges were subsequently DISMISSED as part of a plea agreement reached in this case.

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Thereafter, Appellant mailed letters and called Counsel's Office leaving messages that he wanted for him to file a "NOTICE OF APPEAL" due to the fact that the State District Attorney had breached their agreement and the proceeding had NOT taken place according to Counsel's advise.

Furthermore, that inter alia, there were other issues that should have been considered before he accepted the ERRONEOUS agreement on the DISORDERLY CONDUCT and CRIMINAL DAMAGE TO PROPERTY charges, because he had in fact NEVER committed those offenses.

NEVERTHELESS, the letters mailed to the Counsel's Law Office were IGNORED and the letters mailed to the Circuit Court were returned based on the fact that Appellant could NOT file PRO SE Motions, and Appellant therefore DENIED the RIGHT TO A DIRECT APPEAL.

Moreover, during further Court proceedings, Appellant DISCOVERED that the STATE DISTRICT ATTORNEY had in fact received numerous letters ( letters from the person who had filed the FABRICATED CHARGES against his person. These letters were SWORN STATEMENTS in which the Accuser (Christal N) was RECANTING her statement and testimony.

Thus, on or around December of 2014, Appellant filed and requested his Counsel to file a Motion to WITHDRAW HIS GUILTY PLEA based on the NEWLY AVAILABLE EVIDENCE, where Appellant had found out from the STATE DISTRICT ATTORNEY himself that he had received letters from the person WHO HAD FILED THE CHARGES AGAINST Appellant, RECANTING HER STATEMENT AND TESTIMONY given to the Law Enforcement, stating that she had FALSELY ACCUSED and FALSELY PRESSED CHARGES against Appellant based on the fact that she was mad at him for threatening to leave their home and their relationship; and that she was on prescribed narcotics for a back injury and was NOT thinking Clearly. Due to the effects of the narcotic.

Furthermore, she also stated that she had coerced her NIECE (Marisa) to lie to the State Authorities, and that in no way, shape, or form, had Appellant ever caused her any physical injuries and any destruction to the property as she had FALSELY CLAIMED. And in fact the defendant was living at the said address of 1 horned owl.

The Supreme Court has held that "a conviction obtained

through use of FALSE EVIDENCE, known to be such by representative of the State, must fall under the Fourteenth Amendment." *NAPUE v. ILLINOIS*, 360 U.S. 264, 269, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959); see also *UNITED STATES v. AGURS*, 427 U.S. 97, 103, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976) (holding prosecutor has an obligation to provide defense with exculpatory information even when NO request has been made); *GIGLIO v. UNITED STATES*, 405 U.S. 150, 154-55, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972) (new trial required where government failed to correct false testimony by key witness about a benefit he received for testifying and the prosecutor should have been awarded of the falsehood). "The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." *NAPUE*, 360 U.S. at 269.

Thus, as mentioned above, when a conviction is obtained through the KNOWING USE OF FALSE TESTIMONY, it [MUST] be set aside if there is any reasonable likelihood that the FALSE TESTIMONY could have affected the conviction. Hence, this Honorable Said Court should VACATE the Judgment and permit Appellant to proceed to a trial if petitioner establishes that (1) the prosecution presented FALSE TESTIMONY or FAILED TO DISCLOSE that FALSE TESTIMONY was used to Convict, (2) the PROSECUTION KNEW OR SHOULD HAVE KNOWN THAT THE TESTIMONY WAS FALSE, and (3) there is a reasonable likelihood that the testimony could have affected the outcome of the Conviction proceeding. *GRIFFIN v. PIERCE*, 622 F.3d 831 (7th Cir. 2010).



Therefore, Appellant herein respectfully requests that this Honorable Said Court give this BRIEF SEEKING POSTCONVICTION RELIEF a CLOSE SCRUTINY. Appellant was DENIED several rights under the Wisconsin State Statutes and under the Constitutional Rights of the United States. Moreover, as mentioned above, Appellant DOES NOT have any WISCONSIN STATE LAW and therefore COULD NOT use any to submit his BRIEF SEEKING POSTCONVICTION RELIEF.

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PRAYER AND CONCLUSION

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WHEREFORE, for all the foregoing reasons mentioned above, Appellant respectfully prays and requests that this Honorable Said Court GRANT the requested RELIEF; and VACATE his Conviction and Sentence; due to fact that the proper remedy for this ERROR and PRECLUSION of Right to a DIRECT APPEAL, is GRANTING Appellant herein leave to file a DELAYED APPEAL, WITH THE RIGHT TO APPOINTED COUNSEL.

MOREOVER, this Honorable Said Court should further VACATE this Judgment and permit Appellant to proceed to a trial if this Honorable Said Court finds that petitioner has indeed established that (1) the prosecution presented FALSE TESTIMONY or FAILED TO DISCLOSE that FALSE TESTIMONY was used

to Convict, (2) the PROSECUTION KNEW OR SHOULD HAVE KNOWN THAT THE TESTIMONY WAS FALSE, and (3) there is a reasonable likelihood that the testimony could have affected the outcome of the Conviction proceeding.

FURTHERMORE, Appellant herein prays that this Honorable Said Court GRANT all further RELIEF to which Appellant may be entitled to in this proceeding in the interest of justice.

Respectfully submitted,

J. Greer 7/13/2015

Jermaine Greer (PRO SE)

Reg. No. 08303-090

FEDERAL CORRECTIONAL INSTITUTION

P.O. BOX 1000

OXFORD, WI 53952

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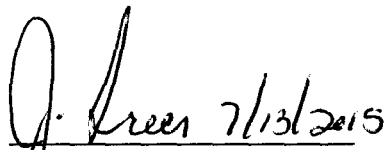
CERTIFICATE OF SERVICE

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I, Jermaine Greer, hereby certify that I have forwarded a true and correct copy of the foregoing instrument by the method indicated to all counsel of record listed below on the \_\_ day of July, 2015.

(U.S. FIRST CLASS MAIL)

RACHEL ELEANOR SATTLER  
ASSISTANT DISTRICT ATTORNEY  
ROOM 3000  
215 SOUTH HAMILTON  
MADISON, WI 53703

  
Jermaine Greer