

15AP2182



Wisconsin Court of Appeals
P.O. Box 1688
Madison, WI 53701-1688



DISTRICT III

**State of Wisconsin,
Plaintiff-Respondent,**

Vs

**Steven F. Zastrow,
Defendant-Appellant.**

Outagamie Case: 2005CF285

Appeal No.: 2015AP2182

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CLERK OF COURT OF APPEALS
OF WISCONSIN

BRIEF-IN-CHIEF OF DEFENDANT-APPELLANT

**Defendant-Appellant:
Steven F. Zastrow #165938
Winnebago Correctional Center
P.O. Box 219
Winnebago, WI 54985-0219**

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APPENDIX

- Exhibit-1 ___ Sentencing Transcripts, from October 18, 2006 Sentencing on Outagamie Cases
- Exhibit-2 ___ Amended Judgment of Conviction (JOC) on Winnebago County 2006CF0158.
- Exhibit-3 ___ Judgment & Order of January 31, 2008 Hearing Before Hon. Barbara Key, Winnebago County case2006CF0158. Finding of the Court.
- Exhibit-4 ___ July 30, 2015 dated Notification of Sentence Data, from Wis. Dept. of Corrections, on Sentence Computation effecting date of release on Outagamie County cases.
- Exhibit-5 ___ Motion to Correct Sentence and or Amend Judgment of Conviction, Outagamie County Case 2005CF285
- Exhibit-6 ___ Motion to Correct and or Modify Sentence, Outagamie County case 2002CF1013.
- Exhibit-7 ___ Letter dated September 15, 2015 to the Outagamie County Clerk of Courts.
- Exhibit-8 ___ Letter dated September 15, 2016 to Outagamie County Assistant District Attorney (ADA) Mr. Charles Stertz.
- Exhibit-9 ___ Transcript of Motion Hearing dated October 2nd, 2015 before Hon. Mark McGinnis.
- Exhibit-10 ___ Order Dated December 9th, 2015 by Hon. Judge Mark McGinnis. Finding of the Court.
- Exhibit-11 ___ Notice of Compilation of Record dated January 14th, 2015.
- Exhibit-12 ___ Offender Complaint dated October 2nd, 2015.
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- Exhibit-14 ___ Notice of Appeal dated October 21, 2015. (See Exhibit-11)
- Exhibit-15 ___ Request for Review of Rejected Complaint, and Answer.
- Exhibit-16 ___ Letter dated 10/26/15 addressed to Wisconsin Correctional Center System (WCCS), addressing the NOTIFICATION OF SENTENCE DATA dated 07/30/15.
- Exhibit-17 ___ Response/letter from WCCS Records Supervisor, dated December 22, 2015.
- Exhibit-18 ___ Letter from Meghan Thesing dated November 9th, 2015.
- Exhibit-19 ___ Letter from Warden Michael Baenen dated October 11, 2011 confirming January 20th, 2017 Release date.
- Exhibit-20 ___ Inmate Classification Report dated 07/07/2015 confirming Rel Date to ES 01/20/2017.
- Exhibit-21 ___ Letter from WCCS Records Office dated November 24, 2015.
- Exhibit-22 ___ Letter to State Public Defender

APPELLANT'S BRIEF APPENDIX CERTIFICATION

I hereby certify that filed with this brief, either as a separate document or as part of this brief, is an appendix that complies with s. 809.12(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court, and (3) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

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 or persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so produced to preserve confidentiality and with appropriate references to the record.

Date: July 1st, 2016

Signature: Steven F. Zastrow

By:
Defendant-Appellant
Steven F. Zastrow #165938
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P.O. Box 219
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FORM AND LENGTH CERTIFICATION

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

The length of this brief is (16) pages not including the Appellant's Brief Appendix Certification; the Form and Length Certification, and the Certification of Mailing.

The number of words, in this brief typed in proportional serif is 7,223 **Words**.

Date: July 1st, 2016

Signature: _____

Steven F Zastrow

By:
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CERTIFICATION OF MAILING

I certify that this brief or appendix was deposited in the United States mail for delivery to the Clerk of the Court of Appeals by first-class mail that is at least as expeditious, on April 19, 2016.

I further certify that the brief or appendix was correctly addressed and postage was pre-paid.

Date: July 1st, 2016

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FACTS



01. On September 5, 2006 I entered pleas to Outagamie County Cases 2002-CF-1013; 2005-CF-0284; 2005-CF-0285, 2006-CF-0320 and 2006-CF-0327.
02. On October 18, 2006 I was sentenced to each of the above cases with the court imposed prison terms and extended supervision terms as follows:

2006-CF-1013 Ct.1 : 5-Years Prison / 4-Years Extended Supervision
2006-CF-1013 Ct.2 : 4-Years Prison / 4-Years Extended Supervision CC to Ct.1

2005-CF-0284 Ct.3 : 2-Years Prison / 2-Years Extended Supervision CS to Ct.1 in 02-Cf-1013

2005-CF-0285 Ct.1 : 2-Years Prison / 2-Years Extended Supervision CS to Ct.3 in 05-CF-0284, and CS to Ct.1 in 02-CF-1013

2005-CF-0285 Ct.6 : 2-Years Prison / 2-Years Extended Supervision CS to Ct.1 but CC to Ct.7 in this case, and CS to Ct.3 in 05-CF-0284, and CS to Ct.1 in 02-CF-1013

2005-CF-0285 Ct.7 : 2-Years Prison / 2-Years Extended Supervision CS to Ct.1 but CC to Ct.6 in this case, and CS to Ct.3 in 02-CF-0284, and CS to Ct.1 in 02-CF-1013

2006-CF-0320 Ct.1 : 2-Years Prison / 2-Years Extended Supervision CC to all cases

2006-CF-0327 Ct.1 : 2-Years Prison / 2-Years Extended Supervision CC to all cases

NOTE: In 2005-CF-0285, Ct.2 is a Probation Sentence CS to all cases
03. **PRIOR** to the Outagamie County Cases being imposed at sentencing, defendant-appellant was sentenced in **Winnebago County**, before Hon. Barbara Key, on June 20, 2006 to the following:

Winnebago Case: 2005-CF-0158 Ct.3 : 2-Years Prison / 2-Years Extended Supervision.

This case is relevant, because Hon. Judge Harold Froehlich in Outagamie County sentenced **all** above Outagamie Cases to run **Consecutive to the Winnebago Case**, as the Winnebago case was **being served** prior to my October 18, 2006 sentencing before him.. **See Exhibit-1.**
04. On **January 31, 2008** Hon. Barbara Key **Vacated** Winnebago County Sentence in case 2005-CF-0158, and re-sentenced defendant-appellant to 3-Years Probation, with a Imposed and Stayed 2-Years Prison and 2-Years Extended Supervision, to all run **Consecutive** to the Outagamie County cases listed. **See Exhibit-2 and Exhibit-3. Finding of the Court.**

FACTS CONTINUED

05. On July 30, 2015 Racine Correctional Institution Records Office served defendant-appellant with a **NOTIFICATION OF SENTENCE DATA** effectively changing defendant-appellants date of release to Extended Supervision on the Outagamie County cases listed. See **Exhibit-4**.
06. On July 30, 2015 as a result of the Sentence Calculation conducted by Racine Correctional Institution Record Office, and the Wisconsin Dept. of Corrections Central Records Office, as shown on the NOTIFICATION OF SENTENCE DATA, the **date of my release to Extended Supervision changed from January 20, 2017 to May 03, 2018**.
07. As a fact, by the Wisconsin Dept. of Corrections changing my date of release to extended supervision, **there calculation causes me to serve an additional 1-year 3-Months and 13-days beyond my original date of release to extended supervision**. Period covering 01/21/17 thru 05/02/18.
08. On August 3, 2015 Defendant-Appellant submitted a Motion to the Circuit Court **MOTION TO CORRECT SENTENCE AND OR AMEND JUDGMENT OF CONVICTION**. See **Exhibit-5**.
09. On August 6, 2015 Defendant-Appellant submitted a subsequent Motion to the Circuit Court **MOTION TO CORRECT AND OR MODIFY SENTENCE**. See **Exhibit-6**.
10. On September 16, 2016 defendant-appellant sent a letter dated September 15, 2015 to the Outagamie County Clerk of Courts with attached documents for the September 30, 2015 hearing before Hon. Judge Mark McGinnis, that was rescheduled to October 2nd, 2015. See **Exhibit-7**.
11. On September 16, 2015 defendant-appellant sent a letter dated September 15, 2016 to Outagamie County Assistant District Attorney (ADA) Mr. Charles Stertz, with an attached copy of the NOTIFICATION OF SENTENCE DATA I HAD MAILED TO THE Court for the 10/02/15 hearing before Hon. Mark McGinnis. See **Exhibit-8**.
12. On October 2, 2015 the Circuit Court before Hon. Mark McGinnis held a TELEPHONIC MOTION HEARING, where Judge McGinnis entered a Judgment and Decision denying all motions Before the court. See **Exhibit-9. Finding of the Court**, Motions Denied.
13. On October 02, 2015 Defendant-Appellant filed an **OFFENDER COMPLAINT** at Racine Correctional Inst. (Complaint Number RCI-2015-19115) addressing the Racine Correctional Institution Records Office (RCI) and Madison Central Records Office (MCRO) Sentence Computation as stated on the DOC NOTIFICATION OF SENTENCE DATA dated 07/30/15. See **Exhibit-12**.

FACTS CONTINUED

14. In the course of the Wis. DOC at (RCI) addressing the Offender Complaint I had filed, the RCI Complaint Examiner Office decided to **REJECT my complaint on 10/20/15.**
See **Exhibit-13.**
15. On October 21, 2015 Defendant-Appellant filed a **Notice of Appeal** on the decision and order Of Hon. Mark McGinnis decision on 10/02/15. **Docket No.: 77-1.**
16. On 10/25/15 Defendant-Appellant filed a **REQUEST FOR REVIEW OF REJECTED COMPLAINT dated 10/25/15** to the Reviewing Authority, and on 11/19/15 the Reviewing Authority at RCI (Warden Paul Kemper) decided the complaint was appropriately rejected, Thereby exhausting any remedy I had using the Wis. DOC Complaint System procedures. See **Exhibit-15.**
17. On October 27, 2015 Defendant-Appellant sent a letter dated 10/26/15 addressed to Wisconsin Correctional Center System (WCCS), addressing the NOTIFICATION OF SENTENCE DATA dated 07/30/15, arguing the Wis. DOC had no authority to cause this defendant To serve an additional 1-Year 3-Months and 13-Days beyond my original release to ES on 01/20/17. See **Exhibit-16.**
18. On/About December 23, 2015 Defendant-Appellant received a response/letter from WCCS Records Supervisor, dated December 22, 2015 in response to my letter dated 10/26/15. In her Response she cited Wis. Stat. § 973.04 and State v. Wagner, 2002AP000963 August 27, 2003 decision on a Waukesha County case. See **Exhibit-17.**
19. On/About November 15, 2015 Defendant-Appellant received a letter dated November 9, 2015 from WCCS Records Office. See **Exhibit-18.**
20. On October 10, 2011 Warden Michael Baenen confirmed my Release date to Extended Supervision being January 20, 2017. See **Exhibit-19.**
21. Inmate Classification Report confirms date of Release to Extended Supervision to be 01/20/2017. See **Exhibit-20.**
22. Letter sent to WCCS records Office dated November 24, 2015 arguing the DOC Sentence Computation and informing them of the ruling by Hon. Judge Barbara Key. See **Exhibit-21.**
23. Letter to Shelly M. Fite of the State Public Defender Office requesting counsel, that was later denied, not addressing issues in the case herein being argued by this Appellant. See **Exhibit-22.**

End of Statement of Facts relevant to the case before this Court.



ARGUMENT IN SUPPORT OF



01. Defendant-Appellant plead guilty to Counts 1, 2, 6 and 7 in Outagamie case 2005CF0285 on September 6, 2006 before Hon. Judge Harold Froehlich. It was part of a “global” plea agreement, relevant to Outagamie Cases 2002CF1013, 2005CF0284, 2006CF0320 and 2006CF0327.
02. As part of the “plea deal” defense attorney Jason Farris informed this defendant that “the State would be requesting between six to nine years”.
 - A. Now, in my motion to the Circuit Court, I had **mistakenly written** that defense attorney had informed me that the State would be requesting 6 to 9/10 years initial confinement and same/similar on extended supervision.
 - B. When in fact I argue, defense attorney Jason Farris did not at any time inform me what the State would be requesting pertaining to extended supervision, and he only informed me that the State by Mr. John Truby would only be requesting six to nine years, with no statement on whether that was the total requested, or whether it was including prison term and or extended supervision.
03. On October 18, 2006 Hon. Judge Harold Froehlich sentenced me to Two-Years Initial confinement and Two-years Extended Supervision to Count 1 in this case before this Court, Consecutive to all previous sentences imposed and serving.

To Count 2 he sentenced me to a probationary term consecutive to all prison and extended supervision sentences imposed and serving.

To Count 6 he sentenced me to Two-Years Initial Confinement and Two-Years Extended Supervision Consecutive to Ct. 1 and sentences imposed and serving, and Concurrent to Ct.7 in this case.

To Count 7 he sentenced me to Two-Years Initial Confinement and Two-Years Extended Supervision Concurrent to Ct.6 and all previous cases imposed and serving.
04. The sentencing court sentenced me to a total combined initial confinement period in all cases of Eleven Years.
 - A. Case 2002CF1013 = 5 years Initial Confinement
 - B. Case 2005CF0284 = 2 years Initial Confinement, CS to 2002CF1013 and cases serving.
 - C. Case 2005CF0285 Ct.1 = 2 years Initial Confinement, CS to previous cases.
 - D. Ct.6 = 2 years Initial Confinement CS to Ct.1 and previous cases.
 - E. Ct.7 = 2 years Initial Confinement CC to Ct.6 and previous cases.

Issue Number One

05. My argument is that during sentencing on October 18, 2006 the State, and Defense Attorney Jason Farris, failed to correct the Court, when Hon. Judge Harold Froehlich went off record to address Ct. 2 in this case and also Ct.6 in this case, as I argue that the Court inadvertently and mistakenly imposed Ct.6 to be Consecutive to Ct.1 and Previous cases imposed and serving.
- A. I argue that the Court did in fact go “off record” to address Ct.2 being a probationary case, the Court was confused about, and Ct.6 also was addressed. However, when the Court continued and went back on record, the State and Mr. Farris failed to notice that the Court either forgot or was still confused, when it imposed Ct.6 to run Consecutive to Ct.1 and the other cases he had been imposing before going off record.
- B. I argue that the Court was upset that Ct.2, being there was no clear avenue the State wanted to recommend, prior to the sentencing being imposed, and as Ct.6 was also addressed, as I assume that neither the State nor Mr. Farris had indicated either CS or CC on Ct.6 in particular, and that is why Judge Froehlich went off record for a few minutes.
06. I acknowledge that the sentencing transcript of October 18, 2006 does not show the Court going off record, but I argue that the Court did factually go off record to address these two issued stated in 05(A) and 05(B) above.
07. I argue that a correct transcript, and correct record of events is crucial in this case, and that an evidentiary hearing is warranted, as I argue Mr. Jason Farris can testify that the Court did in fact go off record, and the Court did address Ct.2 and Ct.6 as I have stated.
08. I argue that the Courts factual intent was to impose Ct.6 Concurrent to cases 2005CF0284 and 2002CF1013 and Ct.7 in this case, because the Court stated off record that “it appears that the State and defense agree to Counts Six and Seven being Concurrent to one another and Ct.1 in the case before me”.
- A. In an evidentiary hearing Mr. Farris can testify to that statement as having being said by Judge Froehlich verbally.
09. I argue that when the court continued and went back on record that the Courts intent was to factually sentence me on Ct.6 Concurrent to Ct.1 in this case and Concurrent to case 2005Cf0284 and Concurrent to case 2002CF1013, and that the Court inadvertently overlooked the fact that Ct.6 was to in fact be Concurrent to Ct.1 and the previous cases.
10. I argue that the Courts Intent **said verbally off record is highly relevant and goes directly to the courts intent to Ct.6**, as I argue that the two-year imposed sentence on Ct.6 being imposed consecutive to Ct.1 affects my freedom from imprisonment by having to serve two additional years that was to be ran concurrent, but **overlooked at the moment Judge Froehlich imposed sentence.**

11. I attempted to address the issue of Ct.6 with Mr. Farris during sentencing, but he ignored me, so I asked him how he can say the sentence was only nine years, when it added up to eleven years, and Mr. Farris refused to address the Court by stating what I remember to this day....
“Steve, the Judge gave you nine years not eleven”.
 - A. I argue that statement is supported, because even Mr. Farris stated his continued belief was that I was sentenced to nine years initial confinement during the February 4, 2009 evidentiary hearing before Hon. Judge Mark McGinnis, and I argue that even Judge McGinnis had believed during that hearing, that the total period of confinement in the Outagamie cases was nine years.
12. I argue that under State v. Oglesby, 2006 WI App 95 @ [P*16] “When an unambiguous oral pronouncement at sentencing conflicts with the equally unambiguous pronouncement in the Judgment of Conviction, the ORAL PRONOUNCEMENT CONTROLS. See also State v. Lipke, 186 Wis.2d 358, 364, 521 N.W.2d 444 (Ct. App. 1994) and at [*P34].
 - A. As stated in the Oglesby Court, I argue that when Judge Froehlich went off record, asked the State and defense counsel what was recommended to Ct.6, and that the Court did indicate **during that off-record conference** that its intent was to impose Ct.6 and Ct.7 both Concurrent to Ct.1 and one another, that, I argue is not only relevant, as it was I argue an oral statement of the Courts intent, but also **directly affects the length of my incarceration** and my 14th Amendment Rights related to imprisonment which I argue also includes the length of such imprisonment.
 - B. I argue as I cannot control the Courts off record “record of statements and intentions” I believe that an evidentiary hearing where Mr. Farris can give testimony about what he recollects what was said, and the Courts intent, and that if his testimony mirrors my argument that Ct.6 was to be imposed Concurrent to Ct.1 and Ct.7, I believe then my argument for the Circuit Court to Correct my Sentence to order Ct.6 being Concurrent to Ct.1 as well as to Ct.7, and Ct.6 Concurrent to all previous cases, would be supported.
 - C. I acknowledge that Outagamie County Assistant District Attorney Mr. John Truby has retired, but I argue that Mr. Farris is still in practice, and can appear where I can question him accordingly under oath, in relation to the off record statements by him, Mr. Truby and Hon Judge Froehlich on October 18, 2006.

Issue Number Two

13. My next challenge is concerning the State of Wisconsin Department of Corrections **Sentence Computation dated July 30, 2015** as stated in my Motion to Correct and or Modify Sentence, dated August 6, 2015 at Paragraph Three. See **Exhibit-4.**
14. To begin, on June 20, 2006 Hon. Barbara Key sentenced me to a 2-Year Initial Confinement and 2-Year Period of Extended Supervision. See **Exhibit-2. Judgment of Conviction, 3rd Amended, as it references original sentence, and the 3rd Amended Sentence.**
 - A. On August 25, 2006 I was transported to Dodge Correctional Inst. to begin serving the sentence “confinement portion” imposed by Judge Key in Winnebago Case 2005CF0158.

15. Following the Winnebago Case, on October 18, 2006 Outagamie County Judge Harold Froehlich sentenced me to Outagamie Cases 2002CF1013; 2005CF0284, 2005CF0285, 2006CF0320 and 2006C0327. **See Exhibit-1. Sentencing Transcripts dated 10/18/2006.**
 - A. Hon. Judge Froehlich imposed each sentence consecutive, in each case, except Ct.7 in Case 05CF0285, to the case I was serving for Winnebago County case 2005CF0158.
16. On January 31, 2008 Hon. Judge Key Vacated the sentence imposed in case 2005CF0158, and she then "Re sentenced" me to a 3 Year Period of Probation, with a Stayed & Imposed 2-Year period of initial confinement and 2-Year period of extended supervision **TO BE CONSECUTIVE TO THE OUTAGAMIE CASES. See Exhibit-2 and Exhibit-3.**
 - A. **So the cases out of Winnebago and Outagamie Counties effectively changed around.**
17. The total period of initial confinement of the Winnebago and Outagamie cases, with the Outagamie cases originally following the Winnebago case, **consecutively**, brings my **original total period of initial confinement to (THIRTEEN) years**, for combined Winnebago & Outagamie cases, **as they were prior to January 31, 2008**. With an original combined 288 days jail credit. Three days credit in the Winnebago case, and 285 days credit in the Outagamie cases.
 - A. This is shown because my **ORIGINAL date of Release on ALL CASES was JANUARY 20, 2017**. That was upheld in all Dept. of Corrections records from October 2006 thru July 29, 2015. **See Exhibit-20 "Inmate Classification Report dated 07/07/2015"** where it states **Rel Date 01/20/2017**.
18. On/ about July 30, 2015 the Records Office at Racine Correctional Institution conducted a **Sentence Computation**. **See Exhibit-4. NOTIFICATION OF SENTENCE DATA.**
 - A. The Sentence Computation states that my Release to Extended Supervision is **05/03/2018**. See **Exhibit-4** where it states **"Truth-In-Sentencing Extended Supervision Date."**
 - B. The Records Office and Wis. DOC Central Records Office (CRO) all are shown to have verified the change, that would be date of Release to ES **from 01/20/2017 to 05/03/2018**.
19. I sent a letter addressed to the WCCS RECORDS OFFICE DATED October 26, 2015. **See Exhibit-16. Note: WCCS is the Wis. Correctional Center System.**
 - A. I argued to the WCCS Records Office that **Wis. Stats. 302.01 thru 302.40 has no wording implying it has the authority, nor gives authority**, to compute my Outagamie cases to begin on the date of which case 2005CF0158 out of Winnebago County was vacated. **I argue those statutes are silent to such authority under the Wis. DOC.**
 - B. I further argued to the WCCS Records Office that by their calculation, the Wis. DOC is now effectively causing and making me serve an **Additional 1-year 3-Months and 13-Days Beyond my Original date of release to Extended Supervision.**

- C. I challenged the Wis. DOC by stating that my Outagamie cases, case 2002CF1013 in particular, should begin to be served **on the date stated on the Judgment of Conviction**, now that the Winnebago case had been vacated, **then was re sentenced to serve that case consecutive to the Outagamie cases.**
- D. I argued to the WCCS Records Office that the Wis. DOC was causing me to serve a term of imprisonment beyond what the law allows and or requires, because, if I am not released after I complete Outagamie case 2005CF0285 Ct.6 term of initial confinement until 05/03/2018, I will have factually served a total of over Twelve Years in prison, which I argued is unlawful, because the total period of initial confinement in the Outagamie cases is Eleven Years minus 285 days credit on those Outagamie cases.
1. My release to Extended Supervision on the Outagamie cases, **10/18/2006 thru 10/17/2017 totals eleven years of initial confinement as imposed.**
 2. Deducting the 285 days jail credit on 2002CF1013 brings my date of Release to extended Supervision to 01/20/2017.
- E. I argued to the WCCS Records Office that when I arrived at Dodge Correctional Inst. on August 25, 2006 to begin the confinement portion of Winnebago case 2006CF0158, that I would not get jail credit for time served between **August 25, 2006 thru January 30, 2008 from the Wis. DOC.**
1. This is supported, because on November 20, 2015 Hon. Judge Barbara key held a hearing to address Jail Credit on case 2005CF0158, and she ordered that the only Jail Credit I am due **is between April 6, 2006 thru October 17, 2006.** Which she indicated that I am due that jail credit **up until when I was to have began serving the Outagamie County cases, on October 18, 2006 as she had vacated the Winnebago case and re sentenced it to run consecutive to the now controlling Outagamie cases. See Exhibit-2 and Exhibit-3. Third Amended Judgment of Conviction Winnebago case 2005CF0158. 195 days Jail Credit ordered, 04/06/2006 thru 10/17/2006.**
 2. This is further supported, because under **Wis. Stats. 973.04(3)** “an offender is **NOT** entitled to additional credit under this section when”: “The **Vacated Sentence** is re imposed **Consecutively to the Non-Vacated Sentences**”. The non-vacated sentences in this case being the Outagamie Cases.
20. The WCCS Records Office responded with a Memorandum dated December 22, 2015. See **Exhibit-17.**
- A. WCCS stated that it is applying **Wis. Stats 973.04** “Credit for Imprisonment under earlier sentence, for the same crime”. I argue that they are overlooking Section (3).
 - B. WCCS also stated in a letter dated November 9, 2015 that it, the Wis. DOC, is following **State vs. Wagner, 2002AP000963 August 27, 2003.** Where that Court discussed the effects of a consecutive sentence to a sentence that was vacated...”If the start date of the Waukesha county case were advanced to the date of sentencing, then Wagner would be receiving double credit...” See **Exhibit-18.**

- C. WCCS further states on Page 2 “In your instance, the Outagamie County sentence in 2002CF1013, Ct.1 & 2 does not advance to the date of sentencing, because the first sentence imposed in Winnebago County was vacated. To do so, would be giving you double credit, and not giving effect to the consecutive sentence imposed by Outagamie County.” **I argue the DOC’s argument is without Merit to the application of Wis. Stats 973.04 and State vs. Wagner, as applied to me.**
21. In a Letter addressed to Outagamie County Clerk of Courts dated September 15, 2015 I submitted 1-copy of my Sentencing Order Judgment of Conviction in Winnebago case 2005CF0158 to the Court for the scheduled hearing before Hon. Judge mark McGinnis. **See Exhibit-7.**
- A. I also submitted 1-Copy of the NOTIFICATION OF SENTENCE DATA dated July 30, 2015 to the Court, in preparation for the scheduled hearing before Judge McGinnis.
- B. Noted on the letter was that I copied all documents to Outagamie County Assistant District Attorney Mr. Charles Martin Stertz for the State. **See Exhibit-7.**
22. On October 2, 2015 a Motion Hearing before Hon. Mark McGinnis was held, where Judge McGinnis ordered, motion and/or request for other relief denied. **See Exhibit-9.**
23. On October 2, 2015 I submitted an Offender Complaint, addressing argument to the Wis. DOC Sentence Computation. **See Exhibit-12.**
- A. The Wis. DOC Rejected the Complaint, therefore exhausting that avenue with the State Dept. of Corrections actions of the WCCS records office, and the Racine Correctional Inst. Records Office. **See Exhibit-13.**
24. On December 9, 2015 the Court gave a Written Order of the October 2, 2015 Motion Hearing. **See Exhibit-10.**
25. In a letter dated November 24, 2015 addressed to Ms. Thesing of the Wis. WCCS, I argued that as Judge Barbara Key stated on the November 20, 2015 hearing to address sentence credit in the 2005CF0158 case, that I was **NOT** given credit for time spent after October 17, 2006 on the case before her. And that the only credit she recognized was to be given from April 6, 2006 thru October 17, 2006, totaling 195 days jail credit due. **See Exhibit-21.**
- A. I further argued to the Wis. DOC Records Office that as **State v. Wagner** is not a **statute law**, and is only a case law authority to give direction to the Courts, that the Sentencing Court in this case has the authority to have granted jail credit beyond October 17, 2006 for the time I had served on Winnebago Case 2005CF0158 until she, Judge Key, had vacated that sentence, and then re sentenced me as she had done on January 31, 2008.

26. On February 4, 2008 Hon. Judge Key gave a written order of the Jail Credit hearing held on January 31, 2008. **See Exhibit-3.**
27. I now argue before the Court of Appeals, that by the Wisconsin Department of Corrections having used, Wis. Stats. 973.04, State V. Wagner, 2002AP 000963, August 27, 2003, and Wis. Stats. 302.113(4) to justify extending my period of incarceration on Outagamie Cases 2002CF-1013; 205CF0284; 2005CF0285; 2006CF0320 and 2006CF0327, from January 20, 2017 to May 03, 2018, thereby causing me to serve an additional 1-Year, 3-Months and 13-Days, I argue that it is unlawful and violates my Federal and State Constitutional Rights against Involuntary Servitude, **as I argue that I will have served the total period of punishment for the crimes I have been convicted of, on the Outagamie cases listed above on January 20, 2017.**
28. I argue that the U.S. Constitution, under the Thirteenth Amendment, guarantees “Neither Slavery, nor involuntary servitude, except as punishment for crimes whereof the party shall have been duly convicted, shall exist in the United States.”
- A. I further argue that the U.S. Constitution, under the Fourteenth Amendment, guarantees “Nor shall any State deprive any person of life, liberty, or property, without due process of law.”
- B. As Wisconsin’s Constitution, Article 1 Section 2 mirrors the U.S. Constitutional Thirteenth Amendment, I argue that the Wisconsin Constitution also guarantees the stated protections against subjecting me to involuntary servitude, as I believe that by the Wis. DOC causing me to serve a period of initial confinement beyond what is allowed by law, is in violation of my rights.
29. Being that Hon. Judge Barbara Key vacated my Winnebago Sentence in Case 2005CF0158 on January 31, 2008, I argue that Outagamie Case 2002CF1013 should then go into effect as of the date that I was to begin serving Ct.1 and Ct.2 in that case, **which would be on October 18, 2006** as stated in the order of the Judgment of Conviction by Judge Harold Froehlich.
- A. I argue that because Judge Key had vacated my original sentence that Outagamie case 2002CF1013 was ordered to follow, and that once Judge Key “Vacated” that sentence and re sentenced me to a CONSECUTIVE period of Probation with the imposed and Stayed period of initial confinement and extended supervision to now be CONSECUTIVE to the Outagamie cases, **that Wis. Statute 973.04 would not apply**, because as stated under Wis. Stats. 973.04(3) “The vacated sentence is re imposed consecutively to the non-vacated sentences.”
- B. So here you have two different counties and two different circuit courts. The first court imposes a sentence of 2-years initial confinement and 2-years extended supervision, and I begin serving that period of confinement on June 20, 2006 and **transferred to DCI on August 25, 2006**. Then three months later I am sentenced by Outagamie County Judge

Harold Froehlich in case 2002CF1013, to 5 years initial confinement and 4 years extended supervision to run **CONSECUTIVE** to the Winnebago case I was already serving. He then sentences the additional Outagamie cases, except 2006CF320 and 2006CF327, to run consecutive to the one prior, and the Winnebago case.

1. Then on January 31, 2008, Hon. Judge Key "VACATES" the original sentence in case 2005CF0158, and proceeds to Re Sentence me to a 3 year probationary period with a imposed and Stayed 2-Year Initial Confinement and 2-Year Extended Supervision sentence to run **CONSECUTIVE** to the Outagamie cases. (Two years plus eleven years of initial confinement in the combined Winnebago and Outagamie cases). Totaling 13 Years for all cases, but for Wis. DOC they run all consecutive cases as One-Continuous Sentence for "Computation" purposes and effect, and under **302.113(4)** "Provides that all consecutive sentences imposed for crimes committed on or after 12/31/99 shall be as one continuous sentence..."
 - A. I argue that because Judge Key ordered the "new" sentences to run "Consecutively" to the Outagamie cases, my Outagamie Cases beginning with 2002CF1013 should be calculated and ordered to begin on the date of the Judgment of Conviction of 10/18/2006, and not on 01/31/2008 as the DOC has calculated.
 - B. As **973.04 Section (3)** states, that I am NOT entitled to credit, as I argue the record is clear, that Judge Key imposed the new sentences to run consecutively to the Outagamie cases.
30. I argue that by Judge Kay giving me credit between April 6, 2006 thru October 17, 2006 shows that I am not entitled to any jail credit on 2005CF0158 beyond 10/17/2006, because she was well aware that on 10/18/2006 I was to begin serving the Outagamie cases for the periods of initial confinement.
 - A. Therefore I argue that I would NOT be due any jail credit on Winnebago case 2005CF0158 between 10/18/2006 thru January 31, 2008, because Outagamie Case 2002CF1013 should have been calculated by the Wis. DOC to have started on 10/18/2006, as stated on the Judgment of Conviction following Winnebago case being VACATED and re sentenced as Consecutive Sentences **now following the Outagamie cases.**
31. I argue that this Court has the Jurisdiction under Subject matter Jurisdiction, to order the Wis. Dept. of Corrections, to re calculate Outagamie Cases, beginning with 2002CF1013, to start on October 18, 2006 as stated in that cases' Judgment of Conviction, and thereafter following to cases 2005CF0284, 2005CF0285, 2006CF0320 and 2006CF0327 to all run as ordered in each Judgment of Conviction for sentences imposed on 10/18/2006.
32. I argue that the time I had served on Winnebago case 2005CF0158, from August 25, 2006 thru January 31, 2008 as the DOC sees, is certainly mixed up, now with it being that Judge Key gave me credit of 195 days to be credited for time served **from April 6, 2006 thru October 17, 2006 as stated in record.**

33. I argue that the DOC is overlooking the fact that Judge Key not only vacated the original sentence, but that when she ordered the new prison term and probation term to run Consecutive to the Outagamie cases, **that I was then not eligible to be awarded jail credit**, for the time I had served before Judge Key vacated and re sentenced me as shown in record, **I argue that the DOC is misapplying Wis. Stats. 973.04 as it does not apply to me with the sentence in 2005CF0158 being ran consecutive to the Outagamie cases it was originally leading.**

Issue Number Three

34. If the State is allowed to keep my sentence calculation as it now is, with my date of release to extended supervision of May 03, 2018, **I then CHALLENGE Wis. Stats. 973.04 and Wis. Stats, 302.113(4), as being UN constitutional, as applied in my particular case.**
- A. As allowed under **Winnebago Cnty. V. Christopher S. in re: Christopher 2015 Wisc. App. LEXIS 269. (2014AP1048, Filed 04/01/2015)**. At HN 1 “A facial challenge to the Constitutionality of a Statute implicates subject matter jurisdiction and such challenges may be raised for the first time on appeal.” Id ¶¶17, 19. **State V. Nelson, 2006 Wisc. App. LEXIS 1284, Certification to the WI Supreme Court (WI APP Mar.2 2006)**, and at HN 8 “An as-applied challenge concedes the general Constitutionality of the Statute, but asserts that the Statute is UN Constitutional as applied to the defendant’s particular facts and circumstances.” See also **State V. Konrath, 218 Wis.2d 290, 1998 Wisc. LEXIS 60** at HN 8 “A party may challenge the constitutionality of a Statute on the fact, or a party may challenge the Constitutionality of a Statue as applied to that party under the facts presented in a given case.”
- B. My challenge is that **Wis. Stats. 973.04** If applied in my cases, to then **cause my Outagamie County Cases herein stated to not begin on October 18, 2006, following Winnebago case 2005CF0158 having been vacated and re sentenced as a Consecutive case, on 01/31/2008**, I argue that Wis. Stats. 973.04 does not apply to me **in this case** as it is UN Constitutional, and subjecting me to serve more days in prison than allowed, because Judge Key;
1. Effectively ordered that the only jail credit I am due on the case she presides over is a total of 195 days, from the period between 04/06/2006 thru 10/17/2006, as she ordered on November 20, 2015.
- C. I further challenge that being the Wis. DOC I argue has to follow the Sentence Computation statutes stated in **Wis. Stats. 302.01 thru 302.40**, with attention to **302.21**, and that there is no stated authority shown in those statutes that allows the Wis. DOC to begin my Outagamie case 2002CF1013 on January 31, 2008, after case 2005CF0158 had been vacated and then re sentenced **as a consecutive case** as shown in the record to the **non-vacated Outagamie Cases, See Wis. Stats. 973.04(3)**, that the Sentence Computation changing my date of release to extended supervision on May 3, 2018 is improper, and that the Wis. DOC should recalculate my Outagamie Case 2002CF1013 for the prison term to begin being served as shown on the Judgment of Conviction, being October 18, 2006. With Outagamie cases 2005CF0284, 2005CF0285, 2006CF0320 and 2006CF0327 following accordingly.

Issue Number Four

35. I argue that Wisconsin Statutes **302.113(4)** “Provides that all consecutive sentences imposed for crimes committed on or after 12/31/99 shall be as one continuous sentence...” **is Un Constitutional, as applied to me in my instant case.** To all consecutive sentences imposed after 12/31/1999 to persons convicted of felonies and subject to an imposed consecutive sentence.
36. I present argument that Wis. Stats **302.113(4)** is UN Constitutional because, if the Wis. DOC is allowed to run all my Outagamie and Winnebago cases as “one continuous sentence” in order to calculate my date of release to extended supervision, as they state is now not until May 3, 3018, it violates my constitutional rights. As the calculation I argue causes me to serve more time than allowed by law, and allowed by Judge Key, and Judge Froehlich, when my sentences were imposed prior to 01/31/2008, and then following my re sentencing on 01/31/2008 to the consecutive sentence Judge Key ordered.
37. I argue that I am being denied Due Process, by Wisconsin Statute **302.113(4)** and Wisconsin Statute **973.15(2m) (b) (2)** as being, or if applied in my case, because I argue that the Court’s intent as well as the Wisconsin Legislative intent, **is for a bifurcated sentence to be served in its entirety** prior to the next following consecutive case is to begin, **see Wis. Stats. 973.01(2).**
- A. I argue that in my case, the sentencing court clearly intended me to serve the prison portion and extended supervision portion in Case 2002CF1013 and all counts in that case, prior to beginning to serve Case 2005CF0284, and each separate case and the applicable counts each thereafter.
- B. I argue that Wisconsin Statute **302.113(4)** defeats the intent of the sentencing Court, when the Wisconsin Dept. of Corrections changes the structure of the bifurcated sentence’s intent, by being allowed to “run each prison term in each consecutive case as one continuous sentence” for the purpose of computing the offenders sentence as being only one period of incarceration stemming from the periods of imprisonment in each consecutive case.
- C. By the Wisconsin Dept. of Corrections following s. 302.113(4) the Dept. denies me a viable avenue of Due Process by denying me the ability to serve and complete both the prison term and the extended supervision term of the imposed bifurcated sentences in Case’s 2002CF1013, 2005CF0284, 2005CF0285 and all applicable counts therein each case, before I am to begin my next case.
1. I argue that when I served the prison term of the bifurcated sentence in 2002CF1013, that the dept. should have released me to extended supervision in that case, for me to have served the extended supervision term in that case, before starting my next consecutive sentence.

2. I argue by the Dept. using s. **302.113(4)** and denying my release to extended supervision in 2002Cf1013 before I was to begin serving the confinement portion in case 2005CF0284, defeats the purpose of an imposed CONSECUTIVE SENTENCE where I further argue that the Wis. Legislature intended each bifurcated case sentenced Consecutive is not to begin until the previous case is completed.

Then, upon completing that case as the sentencing court intended prior to beginning the confinement period in 2005Cf0284, I **could** have petitioned my sentencing Court to Modify 2005CF0284 to a Concurrent Sentence following completion of 2002CF1013, **if I had been able to show the Court that I had completed that sentence as imposed, and that it would be in the interest of justice to grant the modification of 2005CF0284 to a concurrent sentence to 2002CF1013**, but because I am denied that avenue of due process by the Wis. DOC using s. **302.113(4)** to make me serve all periods of confinement in 202CF1013 and 2005CF0284, and each consecutive case thereafter, I argue that Wis. Statute **302.113(4) as applied to me is UN Constitutional in denying my ability to seek due process prior to beginning my next consecutive case.**

38. I argue that **Wis. Stats. 302.113(4)** is a tool that is used by the Wis. Dept. of Corrections, and the Wisconsin Legislature, to cause a defendant to serve longer periods of imprisonment by implementing this statute, to run all periods of confinement in particular, as one continuous sentence, and all periods of extended supervision as one continuous sentence.

A. I argue that the sentencing courts in Wisconsin have knowledge on how s. **302.113(4)** is used, and that the sentencing court and the State knows that a defendant has one or more cases subject to imprisonment, that as for an example, the defendant can only be made to serve say 2 years initial imprisonment and 2 years extended supervision, I argue that the sentencing court in my case used the knowledge of how s. **302.113(4)** will be used to cause me to serve a **continuous period of confinement** when he sentenced each case and the applicable counts in each case, as to be consecutive to one another.

B. I argue that **Wis. Stats. 302.113(4)** is used in my case UN Constitutionally as a tool to cause me to **serve a longer and uninterrupted period of confinement**, when the Court sentenced me consecutively on each of my cases named herein, therefore denying me further ability of seeking due process by being able to complete my 2002CF1013 case and petitioning the court to modify my sentence in Case 2005CF0284 before that case began.

C. I argue that a sentencing court **can modify** a defendant's sentence when the defendant shows the court that such modification is within **the interest of justice**.

1. I argue that being able to complete both the period of confinement and then the period of extended supervision in case 2002CF1013 where I could have shown the court prior to have begun the confinement portion in case 2005Cf0284, that I could have been gainfully employed, and that I could have completed supervision and would not have involved myself in further criminal activities, I argue that avenue of due process was denied to me,

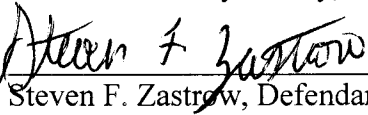
and is being denied to me as I serve 2005CF0285 Ct.6 under the restraint of s. **302.113(4)** and how it is applied in my case. And therefore it is UN Constitutional in this instant case.

39. I argue that I should have been represented by the State Public Defender, as Attorney Manager Mr. Joseph Ehmann stated on the phone on November 20, 2015 that I was correct, in that the DOC should be starting my Outagamie cases on the date of the Judgment of Conviction after Judge Key had vacated my original sentence and re sentenced my new sentences to run **consecutive** to the Outagamie cases. Mr. Ehmann verbally quoted **Wis. 973.04(3)** and its app.
- A. I Motion the Court of Appeals to order the Wis. State Public defender to represent me on this appeal, **if the Court cannot understand the arguments I am presenting in regards to the sentence calculation by the Wis. DOC as I argued**, that has resulted in the date of my release to extended supervision having been extended, causing me to serve an additional 1-year, 3-months and 13-days beyond my original date of release to extended supervision. **That the Court Appoints Counsel by the Wis. State Public defender.**
- B. I did request the State Public defender to represent me, but they declined, stating they felt there was no need to represent me in regards to the sentence in case 2005CF0285 Ct.1, Ct.6 and Ct.7 as I argued herein. I tried to tell them that I was also arguing what the Wis. DOC has done in regards to my sentence computation, but they ignored that issue, and I am trying to present argument in support of my appeal, but I am not trained in law and I believe that representation, if this court deems would better serve the interest of justice while also protecting my rights if the State Public Defender would represent me regarding the sentence calculation, then I ask that the Court directs the State Public Defender to review my case in a timely manner and to appoint counsel to represent me so my rights are protected and my appeal is proper and best presented in the interests of justice by a trained attorney capable of arguing proficiently. See letter dated October 02, 2015 addressed to Ms. Shelly M. Fite of the Wis. State public Defender. **Exhibit-22.** As my attempt to request representation.
40. If the Court does not feel representation is necessary, then I ask that the Court grant my Appeal in my favor, and order the Wis. DOC to re calculate my Outagamie cases, beginning with 2002CF1013, by ordering the DOC to begin that case as shown on the Judgment of Conviction for Outagamie case 2002CF1013 on 10/18/2006, following Winnebago case 2005CF0158 having been vacated on 01/31/2008, and new sentence having been imposed and stayed, by being re sentenced consecutively to the Outagamie cases.
- A. My date of release to extended supervision should be January 20, 2017, not 05/03/2018, given the total length of all Outagamie cases for the terms of initial confinement, and then deducting the 285 days jail credit ordered on case 2002CF1013, accordingly.

RELIEF REQUESTED

41. I request that Ct.6 in Outagamie case 2005CF0285 be ordered to run Concurrent to Ct.1 in this case, and Concurrent to 2005CF0284, and Concurrent to case 2002CF1013 as I argued previously in this Brief, or for the Court to order the Circuit Court to hold an evidentiary hearing where Attorney Jason Farris can appear and give testimony as to the facts he has knowledge of that took place off record during my sentencing on 10/18/2006, in support of my motion, and my argument presented herein.
42. I request that the Court orders the Wisconsin Dept. Of Corrections to Re Calculate my Sentence in 2002CF1013 to begin on the date I was sentenced, and which the sentencing court stated my sentence was to begin, being October 18, 2006, and not as the Wis. DOC now states is January 31, 2008.
43. I request that the Court orders the Wisconsin Dept. of Corrections to Re Calculate my remaining Outagamie Cases, 2005CF284, 2005CF285, 2006CF320 and 2006CF327 to all begin following the Initial Sentence in 2002CF1013 as originally sentenced, with 2002CF1013 Confinement Portion to have legally begun on 10/18/2006.
44. I request that the Court orders the Wisconsin Dept. of Corrections to change my date of release to Extended Supervision on all Outagamie Cases back to the original date of January 20, 2017 being that I am not going to receive "dual credit" as the Wis. DOC tried to argue would occur, as I argued herein that Wis. 974.04 does not apply, because Section (4) in that Statute does not allow me to receive credit being that the Outagamie Cases were not vacated, following Judge Key having re sentenced me to being consecutive to the Outagamie cases, as shown in Court records attached herein.
45. I request that the Court find that my argument and challenge to Wis. Statutes **302.113(4) and 973.15(2m) (b) (2)** are as applied in my specific case before this Court, as being Un Constitutional by denying me the due process ability to complete my initial sentence in its entirety by serving the confinement portion and extended supervision portion PRIOR to beginning my next sentence imposed by the sentencing court, beginning with case 2002CF1013 and then 2005CF284, 2005CF285, 2006CF320 and 2006CF327, or to Certify this Appeal for the Wis. Supreme Court to review my challenge of the stated statutes as applied to me.

Dated this 1st day of July, 2016



Steven F. Zastrow, Defendant-Appellant
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CC: State DOJ Mr. Gregory Weber