

State of Wisconsin)
 _____)
 _____)
 (party designation) Plaintiff-Respondent)
 _____)
 -vs-)
 _____)
 Desmond Anthony Mattis)
 _____)
 _____)
 (party designation) Defendant-Appellant)

**Brief
Cover**

Case No. 2016AP000982

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OF WISCONSIN

ON APPEAL FROM THE CIRCUIT COURT FOR St Croix COUNTY,

THE HONORABLE (name of Judge) Scott R. Needham, PRESIDING

BRIEF OF Desmond Anthony Mattis - Defendant-Appellant *

Name: Desmond Anthony Mattis
 State Bar No., if applicable: _____
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 Telephone No.: 920-450-5651

BRIEF COVERS, FRONT AND BACK, MUST BE THE FOLLOWING COLORS:

- Appellant's Brief: **BLUE**
- Respondent's Brief: **RED**
- Reply Brief: **GRAY**
- Separate Appendix: **WHITE**

* STATE THE PARTY'S STATUS in the circuit court *and* in the appellate court (e.g., Plaintiff-Appellant, Defendant-Appellant, Plaintiff-Respondent, etc.).

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STATEMENT OF THE ISSUE

I, Desmond Mattis sought relief because an unfair conviction was handed down, because mental deficiency exist during trial court proceedings.

The motion filed was based on constitutional matters as stated by law. As a result, trial court erred in its decision and order in denying my motion for post conviction relief.

ORAL ARGUMENT AND PUBLISHING STATEMENT

No oral argument is necessary in this appeal in the court of appeal.

This states that the opinions of this brief in the court of appeal of Wisconsin may be published.

STATEMENT OF THE CASE

January 29, 2014, information was filed in the St. Croix Municipal Court with the charges :

- Attempting to Flee or Elude a Traffic Officer (Count 1)
- Disorderly Conduct - Domestic Abuse Assessment (Count 2)
- Contact After Domestic Abuse Arrest (Count 3)

On September 15, 2014, on advice of counsel, a no contest plea was entered. On further advice from counsel, an agreement with amendment on counts 1 and 2 was entered into. Including Deferred Prosecution on count 3.

Approximately eighteen months thereafter and upon attaining good mental health, the first of 3 motions was filed. relying on Wis. § 974.06(2).

ARGUMENT

I. STANDARD OF REVIEW

The issue of whether I am entitled to an evidentiary hearing on postconviction motion filed is an issue of law. The motions are based on laws of this state, and presented with evidence relevant to the investigation and prosecution that resulted in the conviction. Trial court has proceeded on an erroneous view of the law, that amounts to an abuse of discretion. See *State v. Mills*, 62 Wis. 2d 186, 214 N.W.2d 456 (1974).

The judgment was rendered without due process and the sentence imposed was not authorized by law. Wis. § 974.06(2)(d).

By providing true evidence of facts, my post conviction motion have demonstrated sufficient facts that warranted a hearing. Additional, the arguments of in my appeal on order denying the motion, provided further detail of incompetency. Therefore the motion shows conclusively that relief should be granted.

II. CIRCUIT COURT ERRED IN STATING REASONS FOR DENYING MATTIS' POST CONVICTION MOTION WITHOUT A HEARING

Whereas trial court stated; "Mattis knowingly, intelligently and voluntarily..." This is incorrect. Because when trial court ordered Mattis to "...maintain current mental health care treatment"(id). It alluded to the existence of a history of deficient mental health. Therefore this amount to unfairness and error by trial court.

The defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts" (18 U.S.C. § 17). The Act also contained the Insanity Defense Reform Act of 1984, 18 U.S.C. § 4241, which sets out sentencing and other provisions for dealing with offenders who are or have been suffering from a mental disease or defect.

Competence to stand trial is rudimentary, for upon it depends the main part of those rights deemed essential to a fair trial, including the right to effective assistance of counsel, the rights to summon, to confront, and to cross-examine witnesses, and the right to testify on one's own behalf or to remain silent without penalty for doing so.

Consistent with those statements, the Supreme Court has further determined that "the failure to observe procedures adequate to protect a defendant's right not to be tried or convicted while incompetent to stand trial deprives him of his due process right to a fair trial."

See Drope, 420 U.S. at 172; *See also State v. Wanta*, 224 Wis. 2d 679, 692, 592 N.W.2d 645 (Ct App. 1999) ("competence to stand trial in a criminal proceeding [is] a fundamental right requiring due process protections")

Wisconsin's codified procedures to protect a defendant from being tried while incompetent can be traced back to 1878. Wis. Stat. § 4700 (1878). The current procedures are found in Wis. Stat. § 971.14. Under the statute, if there is reason to doubt a defendant's competency, the court "shall appoint one or more examiners having the specialized knowledge determined by the court to be appropriate to examine and report upon the condition of the defendant." Wis. Stat. § 971.14(2)(a). Copies of the report are delivered to the State, the defendant, and defense counsel. Wis. Stat. § 971.14(4)(a). If each waives the opportunity to present evidence on the issue, "the court shall promptly determine the defendant's competency." Wis. Stat. § 971.14(4)(b)

A. Stated reasons of ineffective assistance of counsel.

Counsel's failure to ascertain the true nature of event from Mattis, in order to form an effective defense amounted to inadequacy of assistance. Which by itself amounted to ineffective assistance. The fact that there is no defendant's statement on record creates an unfairness. Thus, allowing a wrong conviction, and a miscarriage of justice. Furthermore, attorney Smestad had failed to:

- 1) Advise me of my rights
- 2) Take a true statement of actual events
- 3) Challenge the prosecution case
- 4) Motion for assessment of competency based on documents in hand
- 5) An overall approach prejudicial to my case

Inaccurate legal advice renders a plea an uninformed one and can compromise the voluntariness of the plea.

See State v. Woods, 173 Wis. 2d 129, 496 N.W.2d 144 (Ct. App. 1992)

Trial courts do not have subject matter jurisdiction to convict defendants under unconstitutionally vague statutes. The right to raise the issue on appeal cannot be waived, regardless of a guilty plea. *See State ex rel. Skinkis v. Treffert*, 90 Wis. 2d 528, 280 N.W.2d 316 (Ct. App. 1979).

In its analysis, the Johnson court explained that the procedure for determining competency laid out in Wis. Stat. § 971.14 is a critically important fail-safe device for the benefit of accused persons who may not be able to fully cooperate and assist in their defense. It further observed that the protection is illusory if, when there is a reason to doubt defendant's competency, neither the court nor counsel seek the procedures provided by the State for determining competency.

B. Because the credibility of the complaint exist in material gain after conviction, it qualifies as newly discovered evidence.

(1) Authentic recordings discovered after my conviction are of my accuser and therefore fits the criteria to warrant a hearing or new trial.

(2) A fact that the evidence was recorded by myself, proves that there was no negligence in seeking evidence. (3) The credibility of the allege victim and accuser is material to the issue in the case. (4) The evidence is singularly substantial by itself and not merely cumulative.

The established fact that I was not of substantial mental capacity, prevented me from raising objections and enter a sworn statement of events during trial proceedings. Therefore, a sworn statement of facts of event was not possible during court proceedings. While the complaint authored by officer Sather of allege statement made by me, does not bear my signature, and it should be deem inadmissible.

A challenge to the sufficiency of evidence is different from other types of challenges not previously raised during trial, which justifies allowing a challenge to the sufficiency of the evidence to be raised on appeal as a matter of right despite the fact that the challenge was not raised in the circuit court. *See State v. Hayes*, 2004 WI 80, 273 Wis. 2d 1, 681 N.W.2d 203, 02-1542.

C. Mental deficiency was cause for not raising the claim of incompetency at trial court level. Based on this fact, relief is sought

I have demonstrated and shown by clear and convincing evidence that incompetency existed before, during and after court proceedings. And as such, was unable to have assisted in my defense at the time of court proceedings.

Wis. § 971.14(4)(b) The burden of proof under sub. (4) (b), when a defendant claims to be competent, does not violate equal protection guarantees. It balances the fundamental rights of not being tried when incompetent and of not having liberty denied because of incompetence. *See State v. Wanta*, 224 Wis. 2d 679, 592 N.W.2d 645 (Ct. App. 1999), 98-0318

Fundamental fairness precludes criminal prosecution of a defendant who is not mentally competent to exercise his or her constitutional and procedural rights.

See State ex rel. Matalik v. Schubert, 57 Wis. 2d 315, 322 (1973)

A prior mental illness or a mental illness diagnosis made subsequent to the proceeding in question may create a reason to doubt competency, but neither categorically creates a reason to doubt competency. *See State v. Farrell*, 226 Wis. 2d 447, 595 N.W.2d 64 (Ct. App. 1999), 98-1179.

The trial court abused its discretion in denying Mattis' motion for Postconviction Relief for the reason given. Although it acknowledge the existence of poor mental health status in its condition for probation.

The test [for competency] must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding -- and whether he has a rational as well as factual understanding of the proceedings against him. See *State v. Byrge*, 2000 WI 101, ¶127, 237 Wis. 2d 197, 614 N.W.2d 477.

A defendant is incompetent if he or she lacks the capacity to understand the nature and object of the proceedings, to consult with counsel, and to assist in the preparation of his or her defense.

CONCLUSION

For the reasons stated in the foregoing, the defendant Desmond Mattis respectfully ask the Wisconsin Court of Appeal to"

- 1) Discretionary reversal of trial court's decision and order on motion for Post Conviction Relief
- 2) Discretionary reversal of convictions on count 1, 2 and 3



Desmond Anthony Mattis

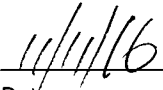
Date

CERTIFICATE

I hereby certify that this brief conforms to the rules contained in s. 809.19(8)(b) and (c) for a brief and appendix produced with a single spaced, san serif font. The length of this brief is 13 pages, 2090 words



Desmond Anthony Mattis




Dates

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, or other class of mail that is at least as expeditious, on (date of mailing) November 11, 2016. I further certify that the brief or appendix was correctly addressed and postage was pre-paid.

Date: 11/11/2016



Signature

OR

CERTIFICATION OF THIRD-PARTY COMMERCIAL DELIVERY

I certify that on (date of delivery to carrier) _____, this brief or appendix was delivered to a third-party commercial carrier for delivery to the Clerk of the Court of Appeals within 3 calendar days. I further certify that the brief or appendix was correctly addressed.

Date: _____

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NOTE: You may also file an affidavit of mailing or delivery, setting forth the same information. See §809.80(4), Wis. Stats.

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 [choose one] monospaced or proportional serif font.

The length of this brief is 14 pages [if a monospaced font is used] or 2090 words [if a proportional serif font is used].

Date: November 11, 2016

Signature: _____

**Notes:**

This form and length certification must be included at the end of each brief. See also Wis. Stat. § (Rule) 809.50(4), 809.51(4) and 809.62(4) for additional form and length requirements.

Examples of fonts acceptable under §809.19(8)(b):

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A proportional serif font must have a minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of a minimum 2 points, maximum of 60 characters per full line of body text. This font is Times New Roman, 13 point.


APPELLANT'S BRIEF APPENDIX CERTIFICATION

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with s. 809.19(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 one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

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Note: This certification must be appended to the appendix.

Note: An appendix certification is also required if a respondent or cross-appellant files a supplemental appendix (809.19(3)(b) and 809.19(6)(f)).

APPENDIX

Appeal No. 2016AP000982

Desmond Anthony Mattis

Appellant

11/11/2016

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