17AP0039

STATE OF WISCONSIN, COURT OF APPEALS, DISTRICT I

STATE OF WISCONSIN	)	
ex rel.	)	**APPELLANT'S**
GREGORY S. GORAK,	)	**BRIEF**
Plaintiff / Appellant,	)	
v.	)	
MICHAEL F. MEISNER	)	Last Case No. 2016-CV-7924
Defendant / Respondent.	)	**Appeal No. 2017-AP-0039-CV**

RECEIVED
MAY 25 2017
CLERK OF COURT OF APPEALS
OF WISCONSIN

ON APPEAL FROM THE CIRCUIT COURT FOR MILWAUKEE COUNTY, THE HONORABLE STEPHANIE G. ROTHSTEIN, PRESIDING OF THE 10/24/2016, 12/05/2016, & 12/22/2016 DECISIONS AND ORDERS DENYING THE PETITION FOR WRIT OF HABEAS CORPUS, MOTION FOR RECONSIDERATION OF THE DENIAL OF THE PETITION, AND MOTION TO VACATE THE PREVIOUS DECISIONS AND ORDERS.

BRIEF OF THE PLAINTIFF / APPELLANT GREGORY S. GORAK

Gregory S. Gorak
WI D.O.C. # 165289
Oakhill Correctional Inst.
Post Office Box # 938
Oregon, WI 53575-0938
Plaintiff / Appellant, pro se
April 17, 2017

APPELLANT'S TABLE OF CONTENTS

TABLE OF WISCONSIN AUTHORITIES CITED

TABLE OF FEDERAL AUTHORITIES CITED

STATE OF WISCONSIN STATUTES CITED

STATE OF WISCONSIN CONSTITUTION ARTICLES CITED

UNITED STATES CODES CITED

UNITED STATES CONSTITUTIONAL AMENDMENTS CITED

ISSUES PRESENTED FOR REVIEW

ISSUE I: DID THE CIRCUIT COURT LACK THE JURISDICTION TO DECIDE APPELLANT'S WRIT OF HABEAS CORPUS PETITION GIVEN **WIS. STAT. § 808.075(3)**?

The Circuit Court declined to entertain the question. [R14:1/APP:1].[1]

ISSUE II: IF THE CIRCUIT COURT DID NOT LACK THE JURISDICTION TO DECIDE APPELLANT'S HABEAS CORPUS PETITION, DID THE CIRCUIT COURT ERR IN FINDING THAT ALL OF APPELLANT'S ISSUES HAD BEEN PREVIOUSLY LITIGATED AND HAD BEEN RESOLVED TO BE BARRED FROM REVIEW?

The Circuit Court held that the issues raised in the petition were barred as having been previously litigated. [R6:1-2/APP:12-13].

ISSUE III: IF THE CIRCUIT COURT DID NOT LACK JURISDICTION TO DECIDE APPELLANT'S HABEAS CORPUS PETITION, DID THE CIRCUIT COURT ERR IN FINDING THAT NO MANIFEST ERROR OF FACT OR LAW WAS SHOWN IN APPELLANT'S MOTION FOR RECONSIDERATION?

The Circuit Court held that the motion did not present any newly discovered evidence nor establish a manifest error of fact or law. [R12:2/APP:10].

---

[1] Appellant's Key to Brief Reference Citations: **R** = Circuit Court Record on Appeal ◊ **APP** = Appellant's Brief Appendix ◊ **APPX** = Habeas Corpus Petition Appendix at R4.*Appellant must cite to his filed Petition Appendix as the Record pagination at **R4** & **R10** do not agree with the pagination of the appendix he sent to the circuit court.

ORAL ARGUMENT STATEMENT

Pursuant to § 809.22(2)(b), the pro se appellant does not request oral argument in this case. The briefing should fully present and meet the issues on appeal and fully develop the legal theories and legal authorities thereto.

PUBLICATION STATEMENT

Pursuant to § 809.23(4), appellant requests that the opinion in this case be published. This case addresses the interpretation and application of authorities and statutes to the unique facts of this case, which may be one of first impression. Also, this case will clarify the existing application of **Wis. Stat. § 808.075(3)** and apply an established rule of law to a factual situation significantly different from that in previously published opinions and clarify the existing application of the **State v. Escalona-Naranjo** (infra) and **Smith v. State** (infra) rules.

STATEMENT OF THE CASE

OVERVIEW

Appellant Gorak is appealing three inter-related decisions of the Milwaukee County Circuit Court issued by Judge Stephanie G. Rothstein:

(1) the 10/24/2016 denial of his habeas corpus petition [R6:1-2/APP:12-13];
(2) the 12/05/2016 denial of his reconsideration motion [R12:1-3/APP:9-11]; and
(3) the 12/22/2016 denial of his motion to vacate those decisions [R14:1/APP:1].

Gorak filed a petition for writ of habeas corpus in the Milwaukee County Circuit Court to challenge the administration and computation of his State sentence by the Wisconsin Department of Corrections (DOC), following the 01/26/2015 and 07/25/2015 denials by Milwaukee County Circuit Court Judge S. William Pocan of his motions for both sentence modification and for reconsideration thereof [R4:92;100/R4-APPX.Exh.H;I]. The latter decision was affirmed on 10/12/2016 by this Court in **State v. Gorak**, No. 2015-AP-1636-CR; 2016 WI App 88; 372 Wis. 2d 458 [R10:18/APP:14-21].

The circuit court denied and dismissed Gorak's petition on the grounds that his claims were previously litigated and resolved. [R6:1-2; APP:12-13]. The court cited **State v. Escalona-Naranjo**, 185 Wis. 2d 168, 182 (1994), **Smith v. State**, 63 Wis. 2d 496, 499 (1974), and **SXR Haas v.** McReynolds, 2002 WI 43, ¶ 10, 252 Wis. 2d. 133 in support of the decision. The court also denied Gorak's subsequent motion for reconsideration and motion to vacate. [R12:1-3/APP:9-11].

It is Gorak's primary contention that **Wis. Stat. § 808.075(3)**, deprived the circuit court of jurisdiction to decide Gorak's initial petition and concomitant motions as the record of his underlying criminal case was out on appeal at all times relative to the decisions. [R13:1-5/APP:2-5].

It is Gorak's secondary contention that the circuit court erred in denying his petition and his motion for reconsideration under the **Escalona** and **Smith** doctrines where, while some issues were admittedly previously raised in other venues, they were not "adjudicated" therein and he was directed to raise them instead via a writ of habeas corpus. He contends, therefore, that they were not "previously litigated and resolved" such that the **Escalona** and **Smith** doctrines would bar his raising them again.

SUMMARY

The basis of the Milwaukee County Circuit Court habeas corpus petition was that, while the sentence itself had been previously found to be legal, Gorak asserted that following a 2011 amendment, the DOC's sentence administration and computation were not legal. He alleged that the DOC, acted without jurisdiction, contrary to statutes, case law authorities, and constitutional protections, in making him: 1) Re-serve count two, which he, arguably, already fully served during his initial State confinement from 07/25/2006 through 10/11/2011; 2) Serve count four extended supervision ("E.S.") time while simultaneously re-serving a period of confinement on the same case; and 3) intend him to serve the count two E.S. concurrently with the Federal supervision term even though it was imposed to be served consecutively. He contended this subjects him to 5th and 14th Amendment violations of his Constitutional rights against being subject to double jeopardy and his rights to due process and equal protection of the laws. [R2:1-6].

FACTS OF THE CASE

Gorak was subject to incarcerations in both Wisconsin (WI) and the Federal Bureau of Prisons (FBOP). On 07/25/2006, he was arrested and charged by WI authorities [R4:3;19/APPX.Exh.A;B]. On 09/12/2006, he was indicted by federal authorities on weapons charges arising incident to the WI arrest [R4:9/APPX.Exh.H:01]. The State, therefore, held initial custody of and primary jurisdiction over him [R4:15-16;198-200/APPX.Exh.A:06;07;L2:22-24].

The sentence for Federal case no. 2006-CR-216 was 118 months confinement and 36 months of community supervision. [R4:9-10/APPX.Exh.A:01-02]. It was imposed on 06/07/2007, the day before the State terms were imposed.

The sentences for the three State charges Gorak pled guilty to, counts two, three, and four, were imposed in that order on 06/08/2007. As originally imposed, the six-year count two term[2] was imposed to be served consecutive ("CS") to only the previously imposed federal sentence. [R4:42-45/APPX.Exh.C:10-13].[3] The nine-month count three term was imposed to be served concurrent ("CC") with count two and the federal term. [R4:28/APPX.Exh.B:02]. The ten-year count four term[4] was imposed to be served CC with both of the State counts and with the federal sentence [R4:42-45/APPX.Exh.C:10-13].[5]

While it may be that the State sentencing Judge William Sosnay, mistakenly believed that because it was the first sentence imposed, Gorak would serve his federal term first, and thereafter return to WI and serve his count two term, he failed to comport with the provisions of **Wis. Stat. § 973.15(4)(a)** relative to the CC count four term to effectuate this intent that count two be served

---

[2] **State v. Gorak**, 2006-CF-004609: Count Two-Possession of Molotov Cocktails (six (6) years total; three (3) years of initial confinement and three (3) years of extended supervision).

[3] The original judgment contained a clerical error indicating that count two was imposed "*consecutive to any other sentence*," when in fact it was only imposed as "*consecutive to the federal sentence.*" This was corrected by a 10/10/2008 Order Correcting the Judgment reflected in judgment # 4 dated 10/15/2008 [Compare the original judgment at R4:27/APPX.Exh.B:01 with R4:42-46/APPX.Exh.C:10-14].

[4] **State v. Gorak**, 2006-CF-004609: Count Four-Burglary of a Dwelling (10 years total; five (5) years of initial confinement and five (5) years of extended supervision).

[5] The initial judgment contained a clerical error indicating that count four was imposed "*consecutive to any other sentence*," when in fact it was imposed as "*concurrent with any other sentence*"]. This was promptly corrected and reflected in judgment # 2 dated 06/25/2007 [Compare original R4:27/APPX.Exh.B:01 with R4:33-35/APPX.Exh.C:01-03].

following the Federal term.[6] Thus, as a matter of law, Gorak's State terms must have immediately commenced upon imposition and his arrival at Dodge Correctional Institution, (D.C.I.).[7]

It was pursuant to the interaction of State statutes and Federal codes, in light of the longstanding principle of comity, and the undisputed fact WI held primary jurisdiction over Gorak,[8] that he was required to serve his WI sentences **prior to** being relinquished to the federal authorities to commence service of his federal sentence. Thus, Gorak contends the intent and belief of the State sentencing court that the count two sentence should or would be served **after** the federal sentence was, in reality, unenforceable and that intent merely became advisory upon the DOC and the FBOP.[9] [R4:95 ¶ 2/APPX.Exh.H:02]

On 06/18/2007, Gorak was sent to D.C.I. to begin serving his State sentences. The DOC computed count two as the governing term and commenced it upon the date of imposition. [R4:202-204;223/APPX.Exh.L2:25-27;44].[10]

On 06/25/2007, judgment # 2 corrected count four from CS to being served CC with any other sentence. He was then, in addition, being credited with service

---

[6] **Wis. Stat. § 973.15(4)** When a court orders a sentence to the Wisconsin state prisons to be served in whole or in part concurrently with a sentence being served or to be served in a federal institution or an institution of another state: **(a)** The court shall order the department to immediately inform the appropriate authorities in the jurisdiction where the prior sentence is to be served that the convicted offender is presently available to commence or to resume serving that sentence..."

[7] Since the original judgment erroneously indicated that both counts two and four were imposed consecutive to "any other sentence," at that time they were therefore necessarily consecutive to each other. Based on the operation of statutes and Wis. Admin. Code then, the DOC had no alternative but to initially commence service on only the count two term of initial confinement as it was the first sentence imposed. See **Wis. Stat. § 973.15(2m)(b)2.**

[8] **Page v. B.O.P.**, 2013 US Dist. Lexis 147315 (E.D. Wis.). "The state court judge's mistaken belief that the defendant would serve the federal sentence first did not alter the effect of primary jurisdiction being held by the state." See **Jake v. Herschberger**, 173 F.3d 1059, 1066 (7th Cir. 1999).

[9] **Jake v. Herschberger**, 173 F.3d 1059, 1066 (7th Cir. 1999): "The state authorities retain primary jurisdiction over the prisoner; federal custody does not commence until the state relinquishes the prisoner on satisfaction of the state obligation... [It] is well established that federal officials, [BOP agents], are under no obligation to follow a state judge's order that state and federal sentences are to be served concurrently [or consecutively]. Rather, [BOP agents] must determine for themselves what credit to award [for] time served prior to the start of the federal sentence."

[10] See **Wis. Stat. § 973.15(2m)(b)**: Determinate sentences imposed to run concurrent with or consecutive to determinate sentences. **2.** If a court provides that a determinate sentence is to run [CS] to another determinate sentence, the person shall serve the periods of confinement in prison under the sentences [CS] and the terms of extended supervision under the sentences [CS] and in the order in which the sentences have been pronounced.

of count four from the date of arrest.[11] This is because the DOC then properly computed the State sentences as running CC with each other, just as they had been imposed. [R4:33-35/APPX.Exh.C:01-03]. This CC calculation was evidenced for years within DOC memorandums, internal emails, sentence computations, and in six program reviews [R4:198-210;217-219;223/APPX.Exh.L2:22-32;37-39;44].

> *"You were in Wisconsin custody/jurisdiction first and will remain in Wisconsin custody until you have completed your sentence...* ***all of your [WI] time****... You have been [repeatedly] informed [ ] that Wisconsin had primary custody of you and the federal authorities will not accept custody of you until your Wisconsin sentence is complete."* (Emphasis added). [07/22/2008 Correspondence @ R4:199/APPX.L2:23].

Then, on 12/22/2009, after Gorak had submitted a **Wis. Stat. § 973.195** sentence adjustment petition on count two, the Waupun Correctional Institution, (W.C.I.), records supervisor questioned the longstanding count two sentence computation. While confirming the CC computation of the past 2½ years, she expressed her contrary opinion. She then, without any prior authorization from her superiors or written notification to Gorak, took it upon herself to amend his sentence computation by merely crossing out the count two term to effectively rescind its previously allowed service credit. [R4:202;205/APPX.Exh.L2:25;28].

Gorak naively thought that the 12/22/2009 Court of Appeals decision [R4:65-75/APPX:Exh.E:01-08],[12] which affirmed the denial of only the ***pre-sentence*** *confinement credit* on count two, clearly belied this new computation. Yet it had the opposite effect. W.C.I. unofficially interpreted it to also prohibit Gorak from receiving ***post-sentence*** *confinement credit* on count two from that point forward.

> *"... credit is applied to the sentence imposed first. In Gorak's situation, the federal sentence was imposed first, and it is that sentence for which he has/may receive(d) [**pre-sentence**] credit."* **State v. Gorak**, Id @ ¶8.

> *"Gorak also seeks reclassification of the count two sentence from CS to CC because, although the trial court expressly imposed that sentence to run CS to the federal sentence, it effectively was imposed CC to the other state court (burglary and CCW) sentences... The fact that imposition of the other sentences to run CC may effectively alter [count 2] to run CC to the other state sentences does not alter the fact or consequence of the imposition of that sentence to run CS to the federal sentence." (emphasis added) Id @ ¶9.*

---

[11] The amount of pre-sentence confinement credit on count four was corrected to 318 days by a 08/23/2008 Order Partially Granting the **Wis. Stat. § 973.155(1)(a)** Motion. This was reflected in judgment #3 dated 07/01/2008 [R4:36-41/APPX:Exh.C:04-09]. Gorak's later appeal of the denial of that same credit on count two was denied. [R4:65-75/APPX:E01-08].

[12] **State v. Gorak**, 2008-AP-2399-CR, 2010 WI App 19; (Rev. denied at 2010 WI App 110).

To Gorak, this decision plainly suggested that it was apparent to the Appellate Court that count two was then being served concurrently with the longer count four term. And up until this point, there had been no reason to contemplate otherwise. The DOC had computed these two sentences as running concurrently with each other as imposed. Suddenly, that was not the case.

W.C.I. staff claimed their amended computation was following the decision and order of the Appeals Court. Gorak corresponded repeatedly with numerous DOC officials and was directed to raise his concerns in the circuit court.

Gorak consequently filed a Sentence Structure Clarification motion seeking relief. However, Judge Dennis Cimpl denied it on 02/16/2010 holding:

> *"The court has no jurisdiction over the Department's computation authority, and therefore, the defendant is obliged to address his concerns within the Department. If the defendant believes that the Department's sentence computation is illegal, he is obliged to take civil action against the Department (i.e. petition for writ of habeas corpus)...this court has no jurisdiction to order the Department to alter its sentence computation in any manner..."* [ibid].

Judge Cimpl further stated in the Sentence Clarification denial:

> *"In addition, this court will not alter the sentence structure unless the defendant can provide the court with a letter from a federal registrar indicating how his federal sentence will be computed based upon the time he served in state prison. (n.2: It is possible that the federal system will give the defendant credit for time he served on count four, but this court has no way of knowing that without some determination from federal authorities in this regard). If the information he obtains from federal authorities demonstrates that he would be serving more time than that contemplated by Judge Sosnay, this court will consider modification of the sentence."* [R4:79, ¶ 2/APPX.Exh.F:02].

Following the circuit court's order, throughout 2010, Gorak corresponded repeatedly with the FBOP, the circuit court, and numerous DOC officials, attempting to favorably resolve the disputed computation.

Then on 12/09/2010, the FBOP elected to make the federal sentence retroactively concurrent with the State terms and designated the Wisconsin DOC as the place for federal sentence service [R4:19-23/APPX.Exh.A:7-12].[13] This meant that regardless of the State's sentencing intent, the FBOP determined that the

---

[13] **18 U.S.C. § 3621(b)** The [Federal Bureau of Prisons] shall designate the place of the prisoner's imprisonment. The Bureau may designate any available [ ] correctional facility that meets minimum standards [ ] health and habitability established by the Bureau, whether maintained by the Federal Government or otherwise..."

longer Federal sentence was to be served concurrently with both of the State terms and continue upon his DOC release.[14]

Over one year later, on 01/19/2011, after consultation with the DOC Office of Legal Counsel, the Central Records Administrator directed the Fox Lake (F.L.C.I.) Records Supervisor to, "*write a letter to the Wis judge letting him know that the federal sentence has been determined to be CC w/WI – and let our judge know what that means. That Gorak will do his entire WI sentence in WI, and then if time is left, he will be picked up by the feds.*" [R4:203/APPX.Exh.L2:26].

Nevertheless, contrary to that direction, on 04/28/2011, that F.L.C.I. records supervisor drafted and sent yet another ambiguity letter, appended the Federal information, and asked the court and parties to "*provide clarification about when the 6-year sentence for count two should begin.*" [R4:61-62/APPX.Exh.D:03-04].

In reply,[15] on 05/06/2011, without a hearing or any prior notice to the parties or to the prosecutor, Judge Dennis Cimpl, who had previously claimed: "*this court has no jurisdiction to order the Department to alter its sentence computation in any manner...,*" [R4:79/APPX.Exh.F:02], issued a sua sponte order amending the judgment of conviction for the sixth time [R4:82/APPX.Exh.G:01].

The circuit court's solution to "remedy" the indicated perceived count two sentence computation quandary was to:

> "*...remove the language 'concurrent with count two' from the sentence imposed in count four so that it will only run concurrent with the federal sentence. When the federal sentence is over, count two will commence to run.*" [R4:82/APPX.Exh.G:01].

Gorak immediately sought appeal assistance from L.A.I.P., as he was not represented by counsel at that time. Unfortunately, they were unable to provide timely assistance and his statutory deadline to file an appeal of the

---

[14] **Ray v. Bezy**, 190 Fed. Appx. 502, 503 (7th Cir. 2006)("A federal sentence that is run partially CC with an unexpired state sentence effectively will not commence until the state sentence has concluded, though credit will be given against the federal term for the concurrent period. See **18 U.S.C. §§ 3585(a) & (b)**; U.S. Dept. of Justice, FBOP Program Statement No. 5880.28(3)(e) (1997); **Binford v. U.S.**, 436 F.3d 1252, 1254-56 (10th Cir. 2006)(explaining that the federal sentence commenced only when petitioner had completed his state sentence and was finally received into federal custody for the purpose of serving his federal sentence; the federal sentence had not commenced... his Wisconsin sentence had not expired...").

[15] Contrary to the Court of Appeals implication otherwise at page 3 of their decision, [R10:19/APP:16], this order was NOT in response to a motion to rescind count four pre-sentence confinement credit filed by Gorak on 04/29/2011 and denied on 05/03/2011.

05/06/2011 order lapsed. Their proposition had been for him to file yet another discretionary sentence modification or a § 974.06 motion, but they could not assist him in doing either prior to Gorak's imminent release to Federal custody.

Therefore, Gorak filed a 09/19/2011 pro se Motion to Vacate the sentence amendment order. It was denied without reference to any of the statutory arguments raised or citation to any supporting authorities. [R4:86-88].

However, of significant note, Judge Cimpl based his denial decision in large part on a factual error, that the DOC had not commenced count two service. This negated Gorak's dispositive case law supported argument that once a sentence had been commenced it could not be interrupted.[16]

Inexplicably, even though Gorak had included multiple DOC documents to the contrary, Judge Cimpl for some reason ignorantly held in the decision:

> "*There is no showing that the DOC has commenced service of the consecutive sentence on count two, and the defendant's argument ignores the fact that count two will still run consecutive to his federal sentence.*" [R4:87;104 ¶ 4/APPX.I:03].

The DOC then had no choice but to follow the amended sentence order and the CC service credit from count two was formally rescinded. Gorak was released to FBOP custody upon the completion of the count four term on 10/11/2011, and a detainer was issued for his return to the State upon the completion of the retroactively CC Federal sentence to "**re-serve**" the count two term.

As Judge Cimpl suggested in both the 02/16/2010 Sentence Structure Clarification motion denial and in the 10/04/2011 Sentence Amendment Vacate motion denial, Gorak filed a habeas corpus petition in the Court of Appeals on

---

[16] **Smith v. Swope**, 91 F.2d 260, 262 (9th Cir. 1937). "The least to which a prisoner is entitled is the execution of the sentence of the court to whose judgment he is duly subject. The prisoner is entitled to serve his time promptly if such is the judgment imposed, and he must be deemed to be serving it from the date ordered to serve it and is in the custody of the marshal under the commitment." (Citing **White v. Pearlman**, 42 F.2d 788 (10th Cir. 1930)).
Dunne v. Keohane, 14 F.3d 335, 336 (7th Cir. 1994). "There is a common law rule,[ ], that unless interrupted by fault of the prisoner..., a sentence runs continuously from the date on which the defendant surrenders to begin serving it. The government is not permitted to delay the expiration of the sentence either by postponing the commencement of the sentence or by releasing the prisoner for a time and then re-imprisoning him.
U.S. v. Melody, 863 F.2d 499, 504 (7th Cir. 1988). The government is not allowed to play cat and mouse with the prisoner, delaying indefinitely the expiration of his debt to society and his reinstatement into the free community. Punishment on the installment plan is forbidden."
Cox v. United States, 551 F.2d 1096, 1098-99 (7th Cir. 1977). "The [common law rule that prisoners may not be made to serve their sentences on the installment plan], prohibits postponement, [ ], of the date the prisoner may expect to be free..."

10/05/2011. [R4:173b/APPX.Exh.L1:18].[17] It was denied as having been previously litigated, because he also included as a ground the denial of pre-sentence credit on count two in light of an intervening published case that reached an opposite result than the 2009 appellate decision in his case.[18] It was erroneous for the appellate court to find that this issue of denial of post-sentence credit on count two was previously litigated as the 2011 sentence amendment and subsequent sentence computation could not possibly have been previously litigated in the 2008 appeal.

The 2011 habeas petition languished in the appellate court for a year before being summarily dismissed without any briefing nor a State response being ordered. The Court of Appeals never addressed or decided the merits of his count two post-sentence credit issue. The ensuing Petition for Review in the State Supreme Court likewise languished, albeit after briefing, before earning a 08/04/2014 denial of review.

That aside, it was not until October of 2012, a year after his release from State custody, in response to a written inquiry from Gorak, that the DOC finally explained how they intended to administer his WI sentence relative to the Federal term [R4:97/APPX.Exh.H:04]. The clarification letter indicated in relevant part:

> "*Your street supervision [on Count 4] started on [10/11/2011] your ES date... The street supervision is continuing to run on Count 4 while you are in federal custody. It will continue to run when you are returned to WI to serve Count 2 on this case*" [R4:97/APPX.Exh.H:04].

The DOC's expressed intent that Gorak would simultaneously be made to serve the count two term of confinement and the count four E.S. term clearly would not comport with the statutes and case law authorities.[19]

---

[17] **SXR Gorak v. Clements**, 2011-AP-2308-W, was filed 10/05/2011, denied 09/07/2012, and reconsideration was denied 12/28/2012. State Supreme Court Petition for Review, 2011-AP-2308-W; 2014 WI 109; 358 Wis. 2d 303, was filed 01/28/2013 and denied 08/14/2104.

[18] **State v. Brown**, 2010 WI App 43, 324 Wis. 2d 236. "Until the other sovereignty has acted on whether to grant credit, the Wisconsin sentence is the only outstanding sentence against which the court can grant credit. Therefore, the question of "double credit" is not ripe. The Wisconsin Court, as the only court this issue is before, should grant [it]." "[The defendant] is due the benefit of the credit earned and that credit must be granted in Wisconsin." (The court also concluded that there was authority to support the proposition that a defendant be requited to provide proof of a negative that he will not receive later dual credit).

[19] See **State v. Larson**, 2003 WI App 235, ¶¶4, 7, 268 Wis.2d 162. "[ ] Wis. Stat. 973.01(2) means that a bifurcated sentence has two phases; a term of incarceration and a term of supervision... The statute **requires** incarceration to occur in prison and extended supervision

After the WI Supreme Court denied his petition for review, but prior to his release from the FBOP, Gorak filed a circuit court sentence modification motion based on the 2012 DOC clarification letter as his stated new factor. It was denied on 01/26/2015 [R4:94-96/APPX.Exh.H]. His reconsideration motion was denied on 07/09/2015 [R4:102-112/APPX.Exh.I]. Curiously, just like the 2011 denial of his motion to vacate, these motions were denied without reference to a single relevant state statute nor citation to any case law authority supporting the decisions.

The latter decision opined that the sentence itself was legally imposed and that count four was not a split sentence. It held that Gorak's remaining claims raised issues challenging only his sentence administration or computation by the DOC, not the legality of the sentence imposition itself. The circuit court therefore held that it was not the proper venue for the computation challenges as it lacked authority or jurisdiction over the matter [R4:109-110/APPX.Exh.I:08-09] Gorak was also, once again directed to seek relief through a writ of habeas corpus. [R4:109 ¶ 2/APPX.I:08]. Though Gorak appealed these decisions,[20] he also simultaneously filed, and later withdrew, an appellate state petition for writ of habeas corpus.[21]

On 05/24/2016, Gorak filed a habeas corpus petition in Waushara County Circuit Court under **Wis. Stat. § 801.50(4)(b)**. This was dismissed without prejudice. The court held his challenges *were* sentence-related (not computation-related) and he was thus required to file in the county of conviction and sentence under **Wis. Stat. § 801.50(4)(a)**.[22] On 10/03/16, Gorak's reconsideration and change of venue motions were also denied. [R4:234-254/APPX.Exh.N:01-21].

On 10/18/2016, Gorak filed the circuit court habeas corpus petition now being appealed. He appended copies to the Milwaukee County habeas petition of the Waushara County decisions indicating that the proper habeas venue was within

---

to occur upon release from confinement. Although a prison supervises an inmate in its custody, the term "extended supervision" in a bifurcated sentence means supervision of an individual not incarcerated... "[S]upervision cannot be the same as confinement, as currently defined by the statutes." Id @ ¶4. **"A person convicted of a crime cannot be jailed and released at the same time."** Id @ ¶7.

[20] **State v. Gorak**, 2015-AP-1636-CR; 2016 WI App 88; 373 Wis. 2d 458. [APP:14-21].

[21] **SXR Gorak v. Meisner**, 2015-AP-001698-W, filed 08/20/2015. A motion to consolidate with the sentence modification denial appeal was denied on 09/09/2015 and the appellate habeas petition was held in abeyance until the appeal was decided withdrawn on 10/24/2016 following the indication from the appellate decision dated 10/12/2016. [R13:6-7/APP:7-8].

[22] Gorak was convicted and sentenced in the Milwaukee County Circuit Court in 2007.

the sentencing court. [Id]. He also appended copies to the Milwaukee County habeas petition of the appellate decision in which Gorak was directed that, to the extent he was challenging the manner in which the DOC was implementing his sentence, his remedy was an action against the DOC. [R10:21 ¶ 13/APP:20].

On 10/24/2016, Judge Rothstein issued an order denying and dismissing Gorak's petition on the grounds that his claims were "*barred because they were previously litigated and resolved.*" [R6:1¶ 3/APP:12,¶ 3]. In support, the court cited to **State v. Escalona**, **Smith v. State**, and **SXR Haas v. McReynolds**, [supra & infra].

On 11/30/2016, Gorak submitted a notice of intent to appeal the habeas petition denial, which was returned by the court clerk as inapplicable.

On 12/05/2016, Judge Rothstein issued an order denying and dismissing Gorak's motion for reconsideration on the grounds that he had "*not established any newly discovered evidence or shown a manifest error of law or fact,*" without addressing the arguments his motion raised to the contrary. [R12:3¶ 2/APP:11,¶ 2].

On 12/13/2016, Gorak submitted a notice of intent to appeal the motion for reconsideration denial, which was returned by the court clerk as inapplicable.

On 12/22/2016, Judge Rothstein issued an order denying Gorak's motion to vacate stating that the Court would "*not entertain more repeated, successive motions for reconsideration of this matter.*" [R14:1¶ 1/APP:1,¶ 1].

On 01/04/2017, Gorak's Notice of Appeal was filed challenging each of the previous related decisions. [R15:1].

Gorak asserts that the Milwaukee County Circuit Court lacked jurisdiction to consider his petition in the first place in light of **Wis. Stat. § 808.075(3)**.

However, if this Court finds otherwise, then, provisionally, Gorak asserts that if correct jurisdiction had attached, the court improperly denied and dismissed his petition and reconsideration motion. He further avers that he has never had the merits of his sentence computation claims addressed beyond the circuit court. He further asserts that he has shown sufficient reason for not previously raising certain claims, in spite of the fact that the Appeals Court was presented with and denied a 2011 habeas petition on the grounds of previous litigation. He avers that res judicata does not apply to at least issues 1, 2 and 5 of the petition. Given these circumstances, he is entitled to have the merits of his claims properly adjudicated by the circuit court on remand.

STANDARD OF REVIEW

Habeas corpus petition reviews present mixed questions of law and fact and the standard of review in such an appeal is *de novo*.

See **SXR McMillian v. Dickey**, 132 Wis. 2d. 266, 276 (Ct. App. 1986), (*"We independently review the 'legal issues arising in the context of a petition for habeas corpus.'"*); **Mayberry v. Macht**, 2003 WI 79, ¶8, 262 Wis. 2d 720, (*"We apply a de novo standard of review to legal issues arising in the [habeas] context."*).

Initially, appellant alleges that the circuit court lacked jurisdiction to decide the petition pursuant to **Wis. Stat. § 808.075(3)**. The appellate court reviews statutory interpretation and application matters *de novo*. See **Garell v. Morgan**, 2000 WI App. 223, ¶12, 239 Wis.2d 8. (*"A question of statutory interpretation is one that we review de novo."*).

The underlying historical and procedural facts in this case are undisputed. See SXR McMillian v. Dickey, 132 Wis. 2d. 266, 277. (*"When the facts are undisputed, the question presented upon appeal is one of law."*).

Appellant alleges that the circuit court made erroneous applications of law with regard to the relevance of **State v. Escalona-Naranjo** and **Smith v. State** [infra] to the facts of this case. See **State v. Dean**, 111 Wis.2d 361, 364 (Wis. App. 1983), (*"As to questions of law, an appellate court need not give special deference to determinations by the trial court."*). See also, **State v. Jones**, 63 Wis.2d 97, 99 (1974), (*"Where a question of law is presented, the applicable test is whether the court was in error, **not** a test of whether there has been an abuse of discretion."*).

ARGUMENTS

Appellant Gorak argues that the court lacked jurisdiction in this matter from the outset, because the entire circuit court record was out to the Court of Appeals for the duration of the decisions subject to this appeal.

Additionally, Gorak argues that: (1) to the extent he may have previously raised any of the claims presented in the habeas corpus petition, they were not resolved in the previous litigation such that they would be barred from later habeas review and (2) to the extent he did not previously raise any particular claim in the habeas corpus petition, he had sufficient reason for not raising it.

ARGUMENT I:

THE CIRCUIT COURT LACKED JURISDICTION TO DECIDE APPELLANT'S WRIT OF HABEAS CORPUS PETITION.

The Circuit Court declined to entertain the question. [R14:1/APP:1].

Gorak primarily argues that the circuit court lacked jurisdiction over the habeas corpus petition, because the underlying criminal record was out on appeal. Therefore, all of the related decisions are void *ab initio*. Gorak's final motion to vacate the earlier decisions for want of subject matter jurisdiction was denied by the court without consideration. [R14:1/APP:1].

Gorak only filed his 10/18/2016 habeas corpus petition in the Milwaukee County Circuit Court because of the 09/07/2016 Waushara County Circuit Court dismissal without prejudice of his habeas corpus petition filed there. [R4:234/APPX:Exh.N]. The Waushara court held that Gorak's challenges *were* sentence related and pursuant to **Wis. Stat. § 801.50(4)(a)** he was required to file his habeas petition in the county of conviction and sentence; Milwaukee County. The entire point behind the statutory requirement of filing for habeas relief in the court of criminal conviction and sentence is for the reason that that is where the court record is retained and the venue most familiar with the case.

Yet, as Gorak only learned after the fact, **Wis. Stat. § 808.075(3)** regulates what actions a trial court may take while an appeal is pending, specifically:

> "In a case not appealed under s. 809.30, Stats., the circuit court retains the power to act on all issues *until the record has been transmitted to the court of appeals.*" [Emphasis added].

Gorak's Notice of Intent to Appeal the Milwaukee County Circuit Court sentence modification denial decisions was filed on 07/29/2015. [R13:2, ¶ 2 /APP:03]. His Notice of Appeal was filed in the Court of Appeals 08/12/2015 as Docket No: 2015AP001636-CR; Case No: 2006CF004609. The Record on Appeal was filed in the Court of Appeals on 09/04/2015. [R13:6/APP:06]. The circuit court decision was affirmed on 10/12/2016. [R10:18/APP:14]. Gorak's Reconsideration Motion was denied on 11/08/2016 and the Remittitur of the Record back to the circuit court was reported as scheduled for 12/08/2016, [R13:2, ¶ 2/APP:03], but did not actually occur until 01/06/2017. [R10:Missing/APP:21-3].

As Gorak's motion to vacate explained, it was indisputable that:

(1) At all times relative to the circuit court petition and the motion for reconsideration of said petition's denial, the record in the underlying criminal case had been remitted to the appellate court;

(2) At the time the circuit court petition for writ of habeas corpus was filed, appeal 2015AP001636-CR had not been decided; and

(3) At the time the circuit court petition for writ of habeas corpus was filed, the appellate court petition for writ of habeas corpus 2015AP001698-W was being held open and in abeyance.

Gorak's motion also explained that when he filed his Milwaukee petition, he was unaware of the provisions of **Wis. Stat. § 808.075** and he was merely attempting to follow the directions of the Waushara court.

Gorak's vacate motion cited to **State v. Neutz**, 73 Wis. 2d 520, 522 (1976), for the proposition that:

> *"there is one dispositive fact: the trial court lacked jurisdiction to enter judgment prior to receiving the remittitur and the record from [the appeals court]."*

Gorak's vacate motion further referenced to the case of **Hengel v. Hengel**, 120 Wis. 2d 522, 524 (Ct. App. 1984), holding that:

> *"In **Seyfert v. Seyfert**, 201 Wis. 223, 226, (1930), the court recognized the general rule that: The service of a notice of appeal and undertaking upon the parties as required by the statute and the filing thereof with the clerk of the circuit court strips that court of all jurisdiction with reference to the case, except in certain unsubstantial and trivial matters, and transfers jurisdiction of the entire case to this court."*

More recently, in **Schmidt v. Smith**, 162 Wis. 2d 363, 169-171 (Ct. App. 1991), the Court affirmed the historical common law understanding that, "*The service [and filing] of a notice of appeal... strips the trial court of all jurisdiction with reference to the case... and transfers jurisdiction of the entire case to [the appellate] court.*"

As Gorak reminded the circuit court, his petition clearly made multiple references to the circuit court docket in support of his assertions, which the court could not possibly have referenced without the record. Also, without access to the actual filings he had made within the circuit and appellate courts, the court could not possibly have properly considered his petition nor reached the findings it did concerning what issues he had previously raised or not raised.

Wis. Stat. § 806.07(1)(d) provides for relief from a civil judgment that is void. It is clear from the aforementioned case law authorities and statute that the circuit court lacked jurisdiction and competency to consider and decide Gorak's petition. Therefore, the decisions of the circuit court are void ab initio and must be vacated and/or expunged forthwith.

Where the circuit court lacked competency and jurisdiction to decide the petition for writ of habeas corpus and the subsequent motion for reconsideration for the reasons stated herein, the motion to vacate and/or expunge said decisions and orders as void ab initio must be granted.

ARGUMENT II:

NOT ALL OF THE APPELLANT'S HABEAS ISSUES WERE BARRED AS HAVING BEEN PREVIOUSLY LITIGATED AND RESOLVED AND THUS THE PETITION SHOULD HAVE BEEN GRANTED.

The Circuit Court held that the issues raised in the petition were barred as having been previously litigated [R6:1-2/APP:12-13].

Gorak raised two central grounds for relief in his habeas corpus petition, both of which were based upon the DOC's allegedly illegal sentence computation and administration subsequent to the 05/06/2011 count two sentence amendment:

Ground 1: *I am being denied the right to be free from double jeopardy in violation of Article I § 8 of the Wisconsin Constitution and in violation of the 5th Amendment of the United States Constitution by being made to twice serve count 2 of my state of Wisconsin sentence.* [R2:3].

Ground 2: *I am being denied the protection from cruel and unusual punishment and the rights of due process and equal protection in violation of the 5th, 8th, and 14th Amendments of the United States Constitution and Article I §§ 6 & 8 of the Wisconsin Constitution by the WI DOC computing my sentences in violation of the applicable State statutes and administrative codes and by refusing to justify same.* [R2:4].

Gorak's memorandum in support of the petition raised six claims in support of his grounds for relief. [R3:10-20]. Without delineation or discussion of the individual claims, the circuit court impermissibly held that **all** of the claims were barred because they were previously litigated and resolved. [R6:01-02/APP:12-13].

The six claims Gorak raised in his petition were as follows.[23]

Claim 1: Gorak's present sentence administration by the DOC cannot be reconciled with **Wis. Stats. §§ 973.01(2)** and **302.113** and the holdings of **State v. Larson**, 2003 WI App 235, ¶¶4-9, 268 Wis.2d 162 and **State v. Polar**, 2014 WI App 15, ¶13, 352 Wis.2d 452, prohibiting *any* portion of an E.S. term from being served in prison and require *all* E.S. terms to be served *after* all confinement. [See R3:10].

Claim 2: Gorak's present sentence administration by the DOC cannot be reconciled with **Wis. Stat. § 973.15(2m)(b)1** and the holding of **Thomas v. Schwarz**, 2007 WI 57, ¶61, 300 Wis.2d 381, mandating that all periods of confinement be served *prior* to any period of E.S. regardless of whether sentences are run CC or CS. [See R3:11].

Claim 3: Gorak's present sentence administration by the DOC cannot be reconciled with **Wis. Stat. § 973.15(1), Wis. Admin. Code § 302.21(c)**, and the holding of **Medlock v. Schmidt**, 29 Wis.2d 114, 119-120 (1965), mandating that sentences commence on the date imposed and that CC sentences be served simultaneously. [See R3:12].

Claim 4: Gorak's present sentence administration by the DOC cannot be reconciled with the holdings of **Goyer v. State**, 26 Wis.2d 244, 249 (1965) and **State v. Bagnall**, 61 Wis.2d 297, 312 (1973), mandating that WI sentences cannot be imposed or administered as split so that a portion of a sentence is served CS and a portion is served CC with another. [See R3:17].

Claim 5: Gorak's present sentence administration by the DOC cannot be reconciled with **18 U.S.C. § 3624(e), Wis. Stat. §§ 302.113(2)**, and **973.15(2m)(b)2.** Pursuant to that federal code, his three-year term of Federal supervision will automatically commence upon his release from WI custody. However, per the prior State statute, his three-year term of **State** [E.S.] also must commence upon his WI release, which means the two supervision terms will run CC, contrary to the CS imposition of count 2 and in clear violation of the latter state statute. [See R3:19].

Claim 6: Gorak's present sentence administration by the DOC cannot be reconciled with the holdings of **State v. O'Brien,** 2014 WI 54, ¶71, 354 Wis. 2d 753 and **SXR Parker v. Fielder**, 180 Wis.2d 438, 448, 509 NW 2d 440 (WI App. 1993) and **Lisney v. Labor & Industry Review Commission,** 171 Wis.2d 499, 505-6, 493 NW 2d 14, 16 (1992), mandating state agencies must follow unambiguous statutes. The DOC is choosing to disregard the statutes in deference to an unenforceable prior court order that has been held to have been of no effect by a later court order and by the DOC also [R4:107;112/ APPX.Exh.I:6;11]. [See R3:20].

---

[23] In the reconsideration motion, Gorak conceded that he had previously raised or could have previously raised, litigated, and resolved claims three and four. [R10:10, n.9].

A. Gorak is not categorically barred from now challenging the DOC's post-2011 amendment sentence computation and administration.

The habeas court apparently took the position that Gorak is categorically barred from challenging the DOC's sentence computation and administration subsequent to the 2011 count four sentence amendment, because he has previously challenged the original sentence imposed, the amended sentence, or generally challenged the denial of *post-sentence* confinement credit on count two in any venue, without regard for whether each of the previous claims were the same and whether each of the previous claims was "finally adjudicated."

Though Gorak's habeas petition was not challenging the sentence itself, citing **Escalona** as the basis for the decision, the habeas court stated:

> "*All grounds for relief under a statute providing post-conviction procedure for correcting erroneous sentences must be raised in an original, supplemental, or amended motion and if any grounds for relief have been finally adjudicated, they may not become the basis for relief... Merely rephrasing the issues submitted on appeal does not constitute as a basis for a habeas corpus.*" [R6:02/App:13].

For the reasons shown herein, that application was a manifest error of law.

This Court must now recognize and clarify for the habeas court the distinction between previous challenges to the legality of the original *count two sentence* imposed, the 2011 amendment order itself, and the post-2011 amended *count four sentence* **versus** subsequent challenges to the DOC *counts two and four sentence computations* following the 2011 count four sentence amendment.

The habeas court's denial is based primarily upon Gorak having previously litigated and resolved challenges to the legality of the original sentences as imposed, the legality of the sentence amendment, and the legality of the post-amendment sentences. While related, that is clearly not the same thing as a challenge to the computation of the sentences by the DOC many years later. The circuit and appellate courts raised this distinction in reply to Gorak's challenges in declining to assume authority or jurisdiction over the computation issue presented.

This Court must also now then distinguish for the habeas court the difference between claims previously raised which were actually litigated and resolved with preclusive effect **versus** claims which were not "finally adjudicated" or denied without prejudicial effect for want of jurisdiction or authority.

1. It was an error of law for the court to find that *every* claim was barred.

The court did not engage in any analysis or findings of fact with regard to precisely which of Gorak's six claims may have been previously litigated and resolved. Understandably, with the circuit court record out on appeal, this would have been impossible, short of conducting an evidentiary hearing. Nonetheless, the court applied the holdings and rules of law from **State v. Escalona-Naranjo** [ibid] to find that every claim was barred. This was an erroneous exercise of discretion as well as an error of law.

State v. Escalona-Naranjo, 185 Wis. 2d 168 at 181, held that,

> "If the defendant's grounds for relief have been finally adjudicated, waived, or not raised in a prior post conviction motion, they may not become the basis for a sec. 974.06 motion... unless the court ascertains that a 'sufficient reason' exists for either the failure to allege or adequately to raise the issue [previously]."

In order to establish that a claim is barred, the court must conduct some type of analysis of that claim. Here, the court did not do so. The court merely assumed that because Gorak had had a string of previous litigations, all of the claims he was now presenting had been or could have been previously raised and were therefore barred. Gorak's claims can only be barred if they were waived or finally adjudicated, or as the circuit court stated, "*previously raised and resolved.*"

a. The habeas claims were not the same claims made in the 2008 appeal.

The habeas court's denial incorrectly indicated that, "*Mr. Gorak is making the same allegations he made in his 2008 direct appeal.*" [R6:01/APP:12].

Appeal 2008-AP-2399-CR [See n. 12], raised two central issues only. 1) The appeal challenged the denial of **Wis. Stat. § 973.155** *pre-sentence* confinement credit on count two, whereas his habeas petition challenged the denial of *post-sentence* confinement credit on count two. 2) The appeal alleged that count two, as imposed, was an illegally split sentence, whereas his habeas petition alleged that count four was illegally split following the 2011 count four sentence amendment.

The habeas court misconstrued that appellate decision. The sentence credit the appellate court held Gorak was not entitled to on count two because he had or may later receive it on the Federal sentence was just the 318 days of *pre-sentence*

confinement credit he had sought in the action. [See n. 11]. At that time, the DOC was already granting him *post-sentence* confinement credit, which was precisely why they questioned whether count two was illegally split. [R4:59-60/APPX.D:1-2].

In fact, Gorak advised the habeas court in his petition [R2:03] and in the supporting memorandum [R3:03] that, the 12/22/2009 decision acknowledged this circumstance that Gorak was then serving **both** of his State sentences stating:

> "*The fact that imposition of the other sentences to run CC may effectively alter [count 2] to run CC to the other state sentences does not alter the fact or consequence of the imposition of that sentence to run CS to the federal sentence.*" (Emphasis added). [R4:72, ¶ 9/APPX.Exh.E:06].

Thus, notwithstanding the previous denial of *pre-sentence* credit, *post-sentence* credit was at that time a foregone conclusion. Gorak argues that this prior finding of the higher court should have become the law of the case, but it seems to have been simply disregarded. In any event, the later denial of *post-sentence* credit on count two was obviously not the same issue as the denial of *pre-sentence* credit raised in the 2008 appeal. Therefore, the habeas court made an error of fact and law in determining that this issue was barred from review under **Escalona**.

The habeas court also misconstrued the appellate finding regarding the legality of "*the sentence.*" As a basis then for the habeas denial, the court stated:

> "*The [appellate] court also held that the sentence was not imposed illegally and therefore, his constitutional claims that are dependent on his sentence credit issue also fail.*" [R6:01/APP:12].

"*The sentence*" which the appellate court held was not illegally imposed, (meaning not illegally split), was the count two sentence that Gorak challenged only at the instigation of the DOC who sent two ambiguity letters in that regard.

Prior to the habeas denial, Appeal 2015-AP-1636-CR already held the 2008 appeal did **not** address the specific issue of whether count four was an illegally split sentence as a result of the 2011 sentence amendment [R10:20/APP:18].

> "*We disagree with the State that this issue is barred by [**Witkowski**]. The issue in the prior appeal was whether the count two sentence was illegally split. The issue here is whether the 2011 judgment caused the count four sentence to become illegally split.*" [Id @ n. 4].

That notwithstanding, on habeas review, Gorak would have asked the court to address the distinction between an illegally split sentence and a sentence

computation that causes a sentence to be served in an illegally split manner. That is not a threshold the Court of Appeals addressed in their 2015 decision.

Therefore, the habeas court made an error of fact and law in determining that this count four split sentence issue was barred from review under **Escalona**.

b. The habeas claims were not the same claims made in other state post-conviction motions prior to 2010 and sufficient reason exists for why he did not raise the present claims earlier.

Prior to the 12/22/2009 appellate decision, none of Gorak's post-conviction circuit court motions concerned the denial of *post-sentence* confinement credit on count two, because throughout that time, the DOC was admittedly and indisputably awarding Gorak concurrent credit toward the service on both the count two and the count four sentence. [R4:205/APPX.Exh.L2:25].

The four post-conviction motions Gorak filed in 2008 and 2009 concerned only the correction of errors contained in the judgments of conviction and the pursuit of *pre-sentence* confinement credit on both counts two and four. [R4:33-56/APPX.Exh.C:01-18]. The present habeas issues did not exist at that time.

Thus, the sufficient reason why Gorak could not have raised nor did raise his present denial of *post-sentence* confinement credit on count two arguments at that time, is because the present asserted illegal sentence computations were not applicable at that juncture. Following the 2011 amendment, no official sentence computation determination was made by the DOC until 2012 and the habeas court was made aware of this fact. [R3:05-06;8]. This Court must acknowledge that fact.

As supported above, the 2008 and 2009 post-conviction motions and appeal did not in any way relate to any of the issues surrounding the denial of *post-sentence* credit on count two. They could not possibly have as Gorak was receiving service credit on count two at that time. Also, the illegal split sentence argument then concerned count two, not count four as is the present claim. It was an error of law for this court to find to the contrary in regard to every one of the five claims he presented in his habeas corpus petition and memorandum.

c. The habeas claims were either not the same ones Gorak made in the 2010 post-conviction motions or are not barred under Escalona as they were effectively dismissed without prejudice, not 'finally adjudicated.'

The sentence modification motions that Gorak filed throughout 2010 in which he sought the circuit court's official clarification to the DOC that the count two sentence must be served concurrently with the other state counts and had commenced upon its imposition, were dismissed without prejudice.[24] [Circuit Court Dkt. 60-73]. The court repeatedly directed Gorak to obtain information from the Federal Bureau of Prisons regarding how they were going to compute his federal sentence, before the circuit court would consider modifying his State sentence. It was at this time that the circuit court also first asserted that it lacked the jurisdiction or authority to order the DOC how to administer a sentence in any way [R4:79, ¶ 2/APPX.Exh.F:02]. By its nature and definition, a dismissal without prejudice cannot act to cause any future prejudice to the defendant in any manner.

Consequently, where the circuit court did not 'resolve' the issues, the motions were dismissed 'without prejudice' as to the issues they failed to resolve, and were not 'finally adjudicated,' Gorak's post-conviction filings throughout 2010 cannot be a bar to later litigation of the same underlying issue. The Escalona bar requires actual "adjudication," not merely presentment of an issue. It was an error of law or misapprehension of fact for this court to find to the contrary.

The sufficient reason why Gorak did not raise his present claims **1**, **2**, and **5** of the habeas petition at that time, is because the present asserted illegal sentence computations giving rise to those claims were not applicable until his sentence was amended and the DOC had not yet formally rescinded the concurrent count two service credit at that time. He could not have foreseen these claims prior to the amendment and receiving the subsequent October 2012 computation clarification letter. The court must now recognize this fact. It was an error of law or misapprehension of fact for the habeas court to find to the contrary.

d. The habeas claims were either not the same ones Gorak made in the 2011 motion to vacate or are not barred under Escalona as they were effectively dismissed without prejudice, not 'finally adjudicated.'

Gorak's September 2011 motion to vacate the May 2011 sentence amendment specifically raised claims attacking the amendment order by the court.

[24] A DNA surcharge removal motion was dismissed with prejudice, but is immaterial here.

"the Court acted without the authority or competence to amend what was a legally imposed and valid sentence, that the amendment was an abuse of judicial discretion and an abuse of process, that the amendment violated Gorak's [5th and 14th Amendment rights], that the sentence was now an illegally split sentence, and finally that the amendment violated Gorak's legitimate expectation of finality in his imposed state sentence and actually increased its length." [Dkt. 80-83; 98:1-2].

The October 2011 denial decision only addressed a single issue presented:

"The defendant asserts that the initial confinement term on count two commenced on the date it was imposed and that count four was therefore able to run concurrent with count two. He also asserts that the initial confinement term on count two has been served and that he cannot be returned to state custody to serve this count after he serves his federal sentence. There is no showing that the DOC has commenced service of the consecutive sentence on count two,..." [R:87, ¶ 2].

That finding by the circuit court was a manifest error of fact itself and as the basis for the decision, should invalidate the entire decision. As Gorak has conclusively shown, the DOC did commence service of the count two sentence upon its imposition and, once commenced, Gorak had a legitimate expectation of finality in the service of that sentence. This is especially true in light of the 2009 appellate decision supporting the concurrent service computation.

That decision, once again, directed Gorak to seek and left open the remedy of habeas corpus to the extent he was challenging the computation of his sentence service by the DOC. The decision held: *"If the defendant believes that count two has already been served, his remedy is to file a petition for writ of habeas corpus."*[Id].

Based upon that fact alone, it cannot be fairly found that the circuit court 'resolved the issues presented,' or that they were 'finally adjudicated' with preclusive effect. The decision also could not have later preclusive effect where it left open the option of further consideration, to wit:

"Under this circumstance, the court declines to consider a request for credit on count two at this time. The court will reconsider a request for credit on count two if the BOP denies the defendant's petition."[R:88, ¶ 1].

Thus, the 2011 motion attacked the initial sentence amendment and the circuit court held only that the amendment itself was not illegal. It did not rule upon the sentence computation issues, but directed Gorak to seek relief of those via a habeas corpus action. Consequently, the circuit court 'did not resolve the issues,' it was effectively dismissed 'without prejudice' as to the issues it failed to

resolve, and was not 'finally adjudicated.' Gorak's 2011 post-conviction motion to vacate cannot then be a bar to later habeas corpus litigation which the court itself advised that a habeas corpus petition was the appropriate remedy. It was an error of law or misapprehension of fact for the habeas court to find to the contrary.

The sufficient reason why Gorak did not raise his present claims **1**, **2**, and **5** of the habeas petition at that time, is because the present asserted illegal sentence computations giving rise to those claims were not applicable at least until he was apprised in 2012 of how the DOC intended to administer his amended sentence. He could not have foreseen them prior to the amendment and the subsequent computation clarification letter. The court must now recognize this fact. It was an error of law or misapprehension of fact for the habeas court to find to the contrary.

2. The habeas claims were either not the same ones Gorak made in the 2011 Court of Appeals habeas petition, 2014 Federal Habeas Petition, and 2016 Waushara County habeas petition or are not barred under Escalona or Smith as they were not 'finally adjudicated.'

The habeas court claimed "*Mr. Gorak has raised similar issues in several habeas petitions and on direct appeal.*" [R6:2/APP:13]. The latter statement is a misapprehension of a material fact. The earlier portion of the statement, while substantially accurate, is not preclusive for the reasons stated herein below.

This court cited to **Smith v. State**, 63 Wis. 2d 496, 499 (1974), for the proposition that, "*courts will not entertain successive petitions for writs of habeas corpus which are based on the same grounds or facts, or upon other grounds or facts, which existed at the time of a prior habeas petition.*" [R6:2/APP:13]. The habeas court omitted an important modifier in that case law, which applies here. The citation actually reads, "*courts will not* **ordinarily** *entertain successive petitions for writs of habeas corpus...*" Gorak asserts that his is just such an unordinary case, one in which the merits of his sentence computation claims have never been addressed, which cries out for the judiciary to demand that the DOC explain how his sentence can be allowed to be computed or administered contrary to the statutes.

This court, citing **SXR Haas v. McReynolds**, 2002 WI 43, ¶ 10, 252 Wis. 2d 133, further stated that, "*Mr. Gorak is not entitled to file separate habeas petitions that address the same issues as earlier petitions.*" [Id]. He may, since:

a. The habeas claims were either not the same ones Gorak made in the 2011 Court of Appeals habeas petition, or are not barred under Escalona or Smith as they were not 'finally adjudicated.'

Gorak's 2011 appellate habeas corpus petition was dismissed on procedural grounds, was not briefed, and never reached the merits of Gorak's claims.[25] It cannot be a bar to the present habeas action as it was not an adjudication on the merits, nor resolved any of the new claims he presented therein, namely, the *post-sentence* confinement credit denial on count two and the count four split sentence claim, the latter of which the 2016 appellate decision plainly concurs had not been raised in the 2008 post-conviction appeal.

That 2012 appellate summary dismissal decision was based entirely upon the re-presentation of one of his claims, the denial of *pre-sentence* confinement credit on count two in light of an intervening change in the law. As Gorak explained in his memorandum, [R3:7],

> "The petition and a reconsideration were summarily denied under the mistaken belief that all of the issues presented had already been raised and decided by the previous appeal [Dkt. 84; 88]. This was because, in light of the intervening published decision of **State v. Brown**, 2010 WI App 43, 324 Wis. 2d 236, Gorak imprudently also included the issue of the denial of ***pre-sentence confinement credit*** in his claims. He maintains the CoA's conclusion that he had previously fully litigated **all of the issues** offered was just plain incorrect."

The claim Gorak raised regarding the illegal denial of *post-conviction* sentence credit on count two was not addressed by that court pursuant to its reliance upon **State v. Witkowski**, 163 Wis.2d 985, 990 (Ct. App. 1991). Therefore, "no matter how artfully [Gorak] may [have rephrased] the issue," the Court of Appeals would not have considered it.

However, as stated in **Cone v. Bell**, 556 US 449, 467, 129 S. Ct. 1769 (2008), "When a state court declines to review the merits of a [ ] claim on the ground that it has done so already, it creates no bar to [ ] habeas review..." See also **Muth v. Frank**, 412 F.3d 808, 815 (7th Cir. 2005), citing **Sellen v. Kuhlman**, 261 F.3d 303, 311 (2nd Cir. 2001), finding adjudication on the merits "is perhaps best understood by stating what it is not: it is not the resolution of a claim on procedural grounds."... "'Adjudicated on the merits' has a well settled meaning: a decision finally

[25] **SXR Gorak v. Clements**: 2011-AP-2308-W; (Rev. @ 2014 WI 109, 358 Wis. 2d 303).

resolving the parties claims, with *res judicata* effect, that is based on the substance of the claim advanced, rather than on a procedural, or other, ground."

His un-briefed 2011 petition clearly stated that he had not previously raised the issue of the DOC's denial of ***post-sentence*** *confinement credit* on count 2 aside from in the 2011 Circuit Court motion to vacate, as it had just occurred following the 2011 amendment order. Further, the entire purpose of Gorak's reconsideration motion should have made that point clear. Therefore, the Court of Appeal's decision was unreasonable in light of the facts presented to it and Gorak should not be faulted for their refusal to consider the issues. He had not had the merits of his arguments adjudicated beyond the Circuit Court.

Finally, at the time of that 2011 appellate habeas filing, the DOC had still not informed Gorak as to how they were going to administer his sentence in light of the recent sentence amendment. Therefore, notwithstanding any of the arguments he was then able to raise, he has a sufficient reason for not then raising issues **1**, **2**, and **5** from the instant petition.

b. The habeas claims are not barred under Escalona as they were not 'finally adjudicated' in the 2014 Federal Habeas Corpus Denial.

Gorak's 2014 federal appellate habeas corpus petition [26] was dismissed on procedural grounds, namely that Gorak had not exhausted State remedies. More so than with the appellate habeas petition, this is not a bar to later litigation. Gorak is not aware of any authorities holding that the **Escalona** bar applicable in a case where the predicate venue was a federal habeas proceeding.

c. The habeas claims are not barred under Escalona as they were not 'finally adjudicated' in the 2016 Waushara Habeas Corpus Denial.

Gorak's 2016 Waushara County Circuit Court initial habeas corpus petition was dismissed without prejudice and directed him to re-file in Milwaukee pursuant to Wis. Stat. § 801.50(4)(a) as opposed to (b). [R4:234/APPX. Exh.N:1]. Gorak is not aware of any authorities holding that the **Escalona** bar applicable in a case where the previous habeas was dismissed without prejudice based upon improper venue.

---

[26] **Gorak v. A.G. of Wisconsin**, 2015 U.S. Dist. Lexis 116157 & 134786.

In light of arguments (a) through (c), Gorak's case is therefore distinguishable from that of **Smith v. State** and **Haas v. McReynolds** such that the previous habeas actions are not a bar to him. Consequently, where none of these habeas corpus decisions 'resolved the issues,' were either dismissed or effectively dismissed 'without prejudice' as to the issues they failed to resolve, and were not 'finally adjudicated,' they cannot be a bar to later habeas corpus petition which multiple courts advised was the appropriate remedy. It was an error of law for the habeas court to find to the contrary.

3. The habeas claims are not barred under Escalona as they were not 'finally adjudicated' in the 2015 Sentence Modification Denials.

As the habeas court recognized, Gorak has sought relief in the court of conviction and sentence through sentence modification motions. He was categorically denied relief and directed to file the instant action. The sentencing court's determination (and the appellate court's affirmance) that it lacked subject matter jurisdiction over what it categorized as Gorak' illegal DOC sentence computations claims, as opposed to his making illegal sentence claims, makes for a meritorious basis for his claims to be permitted on further habeas review.

Following the May 2011 sentence amendment, neither Gorak nor the DOC precisely understood how the DOC could administer his sentence to comply with the order, a fact supported by the unanswered August 1, 2011 ambiguity letter # 4 sent to the court and the October 2011 release documents indicating he was being released on both count two and count four [R3:5;217-220/APPX.Exh.L2:37-40]. Prior to his release in October of 2011, Gorak repeatedly sought a new sentence computation from the DOC, but was not provided with any directive until the September 2012 letter he received from the DOC while in federal custody [R4:159/APPX.Exh.H:4]. As stated herein and as expressed in his habeas petition and in his memorandum, only upon receipt of that letter did it become apparent to Gorak that the DOC would attempt to disregard the statutes and case laws in administering and computing his post-amendment sentence.

The DOC now intended he return to Wisconsin to re-commence the count two term of initial confinement, while he simultaneously served out the remaining

term of E.S. on count four. There is no way the habeas court can hold him accountable for not guessing years earlier how the DOC would hypothetically and illegally administer his sentence. And in any event, until the alleged illegal sentence administration or computation occurred, he had no basis upon which to challenge it. However, once this administration, which clearly did not conform with the applicable statutes as Gorak understood them, was made known to him, he was then finally able to pursue relief on this **new** basis in the circuit court.

Gorak has shown sufficient reason for not raising the computation claim.

> "The fact that [the defendant] could not have foreseen the effect of the [decision] at the time of his appeal constitutes a sufficient reason for not raising the issue at an earlier date... Unlike the defendant in Escalona, [the defendant here] was not aware of the legal basis for his present motion at the time of his trial and earlier post-conviction motions and appeal... [This] case is just such an example of the 'sufficient cause' exception to the finality of issues under s. 974.06." **State v. Howard**, 211 Wis. 2d 269. 286-88 (1997).

Gorak asserts that his situation is not unlike that of **Howard** and his claims are not barred. Until the authority, (the DOC in this case), interpreted and decided how the 2011 sentence amendment would be put into effect, Gorak had no legal basis to put forward his sentence computation claims 1, 2, & 5.

a. Notwithstanding other arguments herein, the habeas court failed to apprehend that Gorak was required to first apply for relief to the sentencing court before he could present sentence computation claims in a habeas corpus petition.

> "Wis. Stat. § 974.06 states in part...(8) A petition for writ of habeas corpus...shall not be entertained if it appears that the applicant has failed to apply for relief by motion, to the court which sentenced the person, ..." **State v. Knight**, 168 Wis.2d 509 (1992),

Gorak cannot then be faulted for first challenging the legality of the amended sentence itself before the sentencing court and then later the legality of the computation of the sentence by the DOC via habeas at the court's direction.

Gorak's 2015 sentence modification motion was predicated upon this new factor. See **State v. Simmons**, 2008 WI App 172, ¶7, 314 Wis. 2d 746, "... **Escalona** does not apply to a legitimate new factor claim for sentence modification..."

b. The 09/07/2015 sentence modification reconsideration denial held that, "*the defendant's current claim is that the Cimpl amendment resulted in a split*

*sentence **as to count four**. This specific argument was not before the Court of Appeals previously.*" [R4:105/APPX.Exh.I:05].

While the sentence modification court technically did 'adjudicate' the count four split sentence claim, the decision merely stated that: "*The court fails to perceive the split. Count four is concurrent with the federal sentence and effectively concurrent with count two...*" [R4:107/APPX.Exh.I:06].

c. The 07/09/2015 sentence modification reconsideration denial decision held that Gorak's claims raised only DOC **sentence administration** issues, **not** the legality of the sentence imposition. To wit:

> "*The defendant's claim that the supervision terms are not running consecutively raises an issue about his sentence computation, over which the court has no jurisdiction. If the defendant believes that his sentence computation is erroneous, he is obliged to address the matter to the Wisconsin DOC.. If he maintains that count two of this case has been fully served and that he is being illegally detained, his remedy is to file another petition for writ of habeas corpus.*" [R4:109/APPX.Exh.I:8].
>
> The denial decision further held, "*The defendant's challenges to his sentence computation are not properly before this court, and therefore, he is obliged to raise those arguments in another forum.*" [R4:110/APPX.Exh.I:9].

That is precisely what Gorak has done in the case at bar after exhausting his DOC administrative remedies [R4:130-138/APPX.Exh.J]. It is also the proper remedy prescribed by law.

> See **SXR Richards v. Leik**, 175 Wis. 2d 446, 454, (Ct. App. 1993), "Habeas corpus is the proper remedy for the inmate who seeks to shorten the time of his imprisonment... **Graham v. Broglin**, 922 F. 2d 379, 380-81 (7th Cir. 1991)("If a prisoner seeks by his suit to shorten the term of his imprisonment, he is challenging the state's custody over him and must therefore proceed under the habeas corpus statute with its requirement of exhausting state remedies...") citing **Preiser v. Rodriguez**, 411 US 475, 93 S. Ct. 1827 (1973).

> See also, **Jones v. Morgan**, 2012 U.S. Dist. Lexis 26730 (E.D. Wis. 2011-cv-926) @ ¶4, "Under Wisconsin law, the appropriate vehicle for challenging the computation of a sentence is a petition for writ of habeas corpus. See **State v. Johnson**, 101 Wis. 2d 698, 702-03 (Ct. App. 1981)("We hold that a [974.06 motion], is ineffective to test the legality of a prisoner's detention on the ground of an allegedly improper method of computing [sentence] credit.").

d. The habeas court disregarded Gorak's argument that the **Escalona** bar did not apply to his present habeas petition because since the sentence modification court declined to address the computation issues they were not 'adjudicated.'

The habeas court also disregarded Gorak's argument that because the sentence modification court instead directed him to file for relief via a habeas petition, that habeas relief was indeed an available option to him.

> "*Mr. Gorak argues that the sentencing court cited to its own lack of jurisdiction to remedy a sentence modification and directed him to file a habeas corpus petition. He further explains that because the court directed him to file the habeas corpus, that res judicata cannot be a bar to the petition. Mr. Gorak's reasoning has no merit. The sentencing court simply provided Mr. Gorak with the correct forum to challenge the computation of a sentence. The sentencing court gave Mr. Gorak information, not a guarantee that the habeas would be granted or even whether the court would consider the merits of his petition.*" [R6:2, ¶ 3/APP:13].

The habeas court did not cite to any authority in support of this conclusion and the court's proposition makes no sense. Gorak's initial habeas claim raised in Waushara County was dismissed without prejudice. **Escalona** did not then bar Gorak was from re-filing and raising his claim in Milwaukee County, the alleged proper venue. Yet here, the habeas court makes a leap to find that where the pro se litigant first labeled his papers as a sentence modification motion[27] and that court held it lacked jurisdiction to hear the computation claims, that this creates a bar.

Consequently, where the 2015 sentence modification decisions failed to 'resolved the issues,' and were effectively dismissed 'without prejudice' as to the issues they failed to resolve, the sentence computation issues were not 'finally adjudicated' These motions cannot be a bar to later habeas corpus petition which the court advised was the appropriate remedy. It was an error of law for the habeas court to find to the contrary.

From the discussion above, it is apparent that it was an error of law for the habeas court to apply **Escalona, Smith** and Haas to find that issues 1, 2, 5, & 6. This Court should remand for consideration of the merits of these issues.

---

[27] "As [he] was without counsel..., his petition is entitled to a liberal construction, his petition contains enough detail to describe a claim that is within the power of [the] court to address." **Perruquet v. Brimley**, 390 F.3d 505, 512 (7th Cir. 2004).

ARGUMENT III:

APPELLANT DID SHOW A MANIFEST ERROR OF LAW OR FACT THEREFORE WARRANTING RECONSIDERATION OF THE HABEAS PETITION.

The Circuit Court held that the motion did not present any newly discovered evidence nor establish a manifest error of fact or law. [R10:2/APP:10].

In his reconsideration motion, [R:10], Gorak not only asserted that claims one, two, and five should **not** have been barred, but his motion analyzed the specifics of why each claim was entitled to consideration. He explained why the previous actions failed to 'resolved the issues,' were effectively dismissed 'without prejudice' as to the issues they failed to resolve, were not 'finally adjudicated' or sufficient reason was shown as to why they were not previously raised. Their previous denial constituted a manifest error of law.

1. The habeas claims are not barred under Escalona as they were not 'finally adjudicated' in the 2016 Sentence Modification Denial Appeal.

The habeas court's reconsideration denial decision represents a "wholesale disregard, misapplication, or failure to recognize the controlling precedent." See **Oto v. Metro. Life Ins. Co.,** 224 F.3d 601, 606 (7th Cir. 2000). Gorak is not merely disappointed with the previous results as the habeas court alluded to. Not having the merits of his claims addressed means the issues were **not** resolved.

Though it was provided to the court [R:10], the habeas court did not receive the 2016 appellate decision prior to issuing the habeas denial because the Office of the Chief Judge apparently did not provide it to the court.

Then, upon reconsideration, the habeas court simply disregarded it. The appellate decision in relevant part held:

> "*To the extent that Gorak is actually challenging the manner in which the Department of Corrections is implementing his sentences, his remedy is an action against the Department, not a motion for sentence modification. See, e.g.* ***State ex rel. Darby v. Litscher****, 2002 WI App 258, ¶ 1, 258 Wis. 2d 270.*"

The 10/12/2016 Court of Appeals decision also affirmed the finding of the circuit court in holding: "*Gorak first contends that his count four sentence is illegally split. n.4: We disagree that this issue is barred...*" [R10:20/APP:18].

However, the appellate Court was "not persuaded that the amended judgment created an illegally split sentence. The circuit court did not impose a sentence with the prohibited structure described in **Bagnall**." [R:20/APP:18].

Though this holding would seem to exclude this specific issue from habeas review, Gorak suggests that if there remains a distinction between a sentence imposed as illegally split versus a sentence computed or administered **to be served** in an illegally split manner (such as this situation does), then this issue remains ripe for habeas review.

> "The Wisconsin Court of Appeals has held that when no identity of issues exists on a previous appeal and a post conviction motion, they should be heard, quoting **Sanders v. United States**, 373 US 1, 83 S. Ct. 1068 (1963) holding as follows: 'should doubts arise in particular cases as to whether two grounds are different or the same, they should be resolved in favor of the petitioner.' **State v. Sharlow**, 106 Wis. 2d 440, 444 (Ct. App. 1982)..." **Escalona**, Id at 193.

2. The habeas court was in error to not find the reconsideration motion identified manifest errors of law in the habeas denial.

Gorak cannot fathom how every court he files an action in refuses to address the merits of his claims and directs him to file some other action in another venue or denies him on procedural grounds. In **Marlow v. I.D.S. Property**, 2013 WI 29, ¶53, 346 Wis. 2d 450, 492, it was held that, "... the courts have not just the option, but the duty to correct a [body] that refuses to apply the statute, lest the judiciary neglects its responsibility to enforce the duly-enacted laws of the legislature." It was an erroneous exercise of judicial discretion of the habeas court to turn a blind eye to the DOC's illegal sentence administration.

All Gorak seeks is for a court, any court, to rule on whether the DOC has / is administering and computing his sentence legally. To date, all he has been afforded is the right to challenge whether the sentence imposed, as amended, is legal. That is not the same issue as whether the DOC is administering and computing his amended sentence legally. He could not challenge that until the count two sentence actually commenced in 2015. Where he could not get relief in the previous venues, he cannot be barred now.

Gorak has shown sufficient reason for either his failure to have alleged or to have adequately raised the sentence computation issues previously and begs the court to resolve any doubts thereto in his favor. Short of that, he urges the court to

acknowledge and exercise the holding of **State v. Crockett**, 2001 WI App. 235, 248 Wis. 2d 120. "Waiver of the [**Escalona**] bar is a rule of judicial administration, not jurisdiction, and courts have discretion to make exceptions."

Conclusion

Gorak asserts that the habeas court's "determination of the facts is unreasonable in light of the evidence presented." **Williams v. Taylor**, 529 US 362, 410, 120 S.Ct. 1495 (2000).

It was a misapprehension of facts and an erroneous conclusion to find that, "*Mr. Gorak's claims are barred because they were previously litigated and resolved.*" The habeas court failed to adduce that there is a fundamental difference between a challenge to the legality of an amended sentence and a challenge to the legality of a sentence computation.

Also, at any time, the Milwaukee County Circuit Court could have exercised its discretion to re-label Gorak's pro se sentence modification actions as a petition for writ of habeas corpus and addressed the merits of his claims. It chose instead to not exercise jurisdiction in that manner, but left Gorak with the present venue. The Court of Appeals concurred with habeas corpus as the proper venue and now must remand for proper consideration of the surviving issues.

See **State v. Brady**, 130 Wis. 2d 443, 448 (Wis. S. Ct. 1986). "A decision of a legal issue or issues by an appellate court establishes the 'law of the case' and must be followed in all subsequent proceedings in the same case in the trial court or on later appeal..."

Submitted this 17th day of April 2017, by;

Gregory S. Gorak

Gregory S. Gorak,
WI DOC # 165289
Oakhill Correctional Inst.
Post Office Box # 938
Oregon, WI 53575-0938
Petitioner/Appellant, Pro Se

cc: A.A.G. Gabe Johnson-Karp
Petitioner / Appellant

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 __X__ monospaced font or ___ proportional serif font.

The length of this brief is _33_ pages [if a monospaced font is used] or _____ words [if a proportional font is used].

Dated: April 17, 2017.

Signature: Gregory S. Gorak

Gregory S. Gorak
WI DOC # 165289
Oakhill Correctional Inst.
Post Office Box # 938
Oregon, WI 53575-0938
Petitioner/Appellant, Pro Se

STATE OF WISCONSIN, COURT OF APPEALS, DISTRICT I

STATE OF WISCONSIN)		
ex rel.)		
GREGORY S. GORAK,)	**APPELLANT'S**	
Plaintiff / Appellant,)	**BRIEF APPENDIX**	
v.)		
MICHAEL F. MEISNER,)	Last Case No. 2016-CV-7924	
Defendant / Respondent.)	**Appeal No. 2017-AP-0039-CV**	

ON APPEAL FROM THE CIRCUIT COURT FOR MILWAUKEE COUNTY, THE HONORABLE STEPHANIE G. ROTHSTEIN, PRESIDING OF THE 10/24/2016, 12/05/2016, & 12/22/2016 DECISIONS AND ORDERS DENYING THE PETITION FOR WRIT OF HABEAS CORPUS, THE MOTION FOR RECONSIDERATION OF THE DENIAL OF THE PETITION, AND THE MOTION TO VACATE THE PREVIOUS DECISIONS AND ORDERS.

BRIEF APPENDIX OF THE PLAINTIFF / APPELLANT

Gregory S. Gorak
WI D.O.C. # 165289
Oakhill Correctional Inst.
Post Office Box # 938
Oregon, WI 53575-0938
Defendant/Appellant, pro se
April 17, 2017

PLAINTIFF / APPELLANT'S BRIEF APPENDIX
TABLE OF CONTENTS

GORAK V. MEISNER * APPEAL NO. 2017-AP-0039-CV