STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT 2

County Case No.: 2020TR6342
Appeal Case No.: 2022AP0496

State of Wisconsin,

Plaintiff-Respondent,

v.

Peter John Long,

Defendant-Appellant.

ON APPEAL FROM THE CIRCUIT COURT FOR WINNEBAGO COUNTY,

THE HONORABLE DANIEL J. BISSETT, PRESIDING

BRIEF AND APPENDIX OF DEFENDANT – APPELLANT

BRIEF SUBMITTED BY:

Peter J. Long
***Pro Se* Defendant-Appellant**
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[1] Do the nature of this procedural appeal the "Statement of the Case" section and the "Statement of the Facts" section were almost redundant so they were combined to avoid unnecessary repetition.

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Statement of the Issues

I. Whether the trial court committed an error of law by [denying] the Defendant-Appellant's, Peter John Long's, (hereinafter "Mr. Long's"), timely postconviction motions to reopen the default judgment regarding his Implied Consent ("IC") Refusal Traffic Citation ("IC Citation").

The trial court *incorrectly* determined that there was no basis stated in the motions and decided to [not] reopen the default judgment regarding Mr. Long's IC Citation.

The Court of Appeals should answer "Yes."

II. Whether the trial court committed an error of law by [denying] Mr. Long's subsequent motion for reconsideration regarding the court's previous denial of his motion to reopen the default judgment regarding his IC Citation.

The trial court *incorrectly* decided to deny Mr. Long's motion for reconsideration regarding the court's previous denial of his motion to reopen the default judgment.

The Court of Appeals should answer "Yes."

III. Whether the trial court committed an error of fact and law by failing to address Mr. Long's argument of ineffective assistance of trial counsel as grounds for reopening the IC Citation default judgment.

The trial court *never* addressed Mr. Long's argument of ineffective assistance of trial counsel.

The Court of Appeals should answer "Yes."

Statement on Oral Argument

Oral argument should not be necessary for this appeal because the record on appeal and the briefs filed by Mr. Long will adequately address the facts and applicable laws regarding this matter.

Statement on Publication

Mr. Long does not request publication of this matter. However, if the Court deems this appeal warrants publication, that is fine with him.

Statement of the Case and Facts[2]

The Defendant-Appellant, Peter John Long, (hereinafter "Mr. Long"), is appearing *pro se*[1], for purposes of this appeal.

On August 20, 2020, Mr. Long was *unlawfully* arrested without probable cause and charged with OWI and OAR (Case No. 20CF540), along with an Implied Consent ("IC") Refusal Traffic Citation (Case No. 20TR6342) (hereinafter "IC Citation"). **(R1).**

Mr. Long refused the field sobriety tests and warrantless blood draw request from Officer Evers of the Fox Crossing Police Department ("FCPD") because he was [not] the operator of any motor vehicle. He was an intoxicated *pedestrian* and *sleeping* in his neighbor's yard after he had *buried* his mother the previous

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weekend, but was [not] operating or driving any motor vehicle. The FCPD officers were *unlawfully* and *unconstitutionally*[3] searching for Mr. Long, the owner of a *legally* parked Harley-Davidson motorcycle, even though [nobody] had called the FCPD to report any crimes or suspicious criminal activity. **(R32:1-48).**

On August 27, 2020, Mr. Long [did] *timely* file a written request for a refusal hearing regarding his IC Refusal Citation within ten days of the issuance of the citation on August 20, 2020, as required by Wis. Stat. § 343.305(3)(b)4.[4] **(R8).**

On September 21, 2020, the Preliminary Hearing was held for the felony OWI charge and the criminal traffic OAR charge in Case No. 20CF540. After an hour-long hearing in which the State called three witnesses and entered one exhibit, the Circuit Court Commissioner, the Honorable Bryan D. Keberlein, found that Mr. Long was [not] driving or operating his motorcycle at the time of his arrest. Furthermore, the Court found that Mr. Long's arrest was [unlawful] due to *lack of probable cause* and dismissed the case. The OWI and OAR were [not] bound over for trial. **(R29:6-8; App. Ex. 5, Pages 10-12 *and* R32:1-48 Transcript of Preliminary Hearing).**

At the end of the Preliminary Hearing the Assistant District Attorney, Eric Sparr ("ADA Sparr"), chose [not] to dismiss the tag-along IC Citation so it was

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[3] A federal civil rights violation lawsuit is pending filing against the three FCPD officers involved in the unlawful and unconstitutional search and seizure of Mr. Long in violation of his Fourth Amendment rights.

[4] **Section 343.305(3)(b) 4, Stats., provides:** That the person may request a hearing on the revocation within 10 days by mailing or delivering a written request to the court whose address is specified in the notice. If no request for a hearing is received within the 10-day period, the revocation period commences 30 days after the notice is issued.

assigned to Branch 6 for further proceedings. (Case No. 20TR6342). **(R29:7; App. Ex. 5, Pages 11).**

Attorney Scott A. Ceman ("Attorney Ceman") represented Mr. Long for Case Nos. 20CF540 and 20TR6342. After a couple of adjournments, the IC Refusal Hearing was scheduled for February 19, 2021. Mr. Long was [not] present at the hearing per the advice of counsel and Attorney Ceman *intentionally* and *unreasonably* defaulted Mr. Long on his IC Citation. **(R49:1-3; App. Ex. 10, Pages 33-35 -- Transcript of IC Refusal Hearing**).

Then the trial court adjudicated Mr. Long guilty on the IC Citation by stating, "Okay. I will find the defendant in default by agreement of counsel here. And then I guess for this matter then it's the license suspension revocation that goes along with that. So anything else that we need to do?" **(R49:2; App. Ex. 10, Page 34, Lines 17-21).**

Attorney Ceman made a mistake and was *unreasonably ineffective* as trial counsel by advising Mr. Long to "default" on his IC Refusal Citation and not even contest it in any manner. Attorney Ceman ***incorrectly*** informed Mr. Long that the only penalty would be the loss of his driver's license for **3 years** under Wis. Stat. § 343.31(1)(b)4. **(*See* R29:9-10; App. Ex. 5, Pages 13-14** *attached* legal documents given to Mr. Long by Attorney Ceman regarding the consequences of "defaulting"**).**

However, contrary to counsel's advice, Mr. Long received a **Lifetime Revocation** of his driver's license under Wis. Stat. § 343.31(1m)(b), for defaulting

on his IC Refusal Citation. Mr. Long received a Department of Transportation ("DOT") Lifetime Revocation Notice dated February 23, 2021. **(R29:12; App. Ex. 5, Page 16**).

Furthermore, *prior* to the IC Refusal Hearing on February 19, 2021, Attorney Ceman informed Mr. Long that he was thinking about filing a **dispositive motion** to dismiss the IC Citation to the Circuit Court based on the **doctrine of issue preclusion.** ***See Lindas v. Cady***, 183 Wis. 2d 547, 558, 515 N.W.2d 458, 463 (1994). The issue regarding whether Mr. Long *drove* or *operated* his motorcycle on August 20, 2020, which was found *legally parked* on his street south of his residence, has already been fully litigated and decided by the Court at his Preliminary Hearing on September 21, 2020, for Case No. 20CF540, the Honorable Bryan D. Keberlein presiding. The Court found that Mr. Long was [not] *driving* or *operating* his motorcycle at the time of his *unlawful* arrest and dismissed the case. **(R29:1-12; App. Ex. 5, Pages 5-16 and R32:38-48).**

Attorney Ceman was ineffective as trial counsel when he unreasonable decided [not] to file the dispositive motion to dismiss the IC Citation to the trial court based on the doctrine of issue preclusion. **(R29:2-4; App. Ex. 5, Pages 6-8 ¶¶ 7-12 and R38:4 at ¶ 13 and Page 7; App. Ex. 8, Pages 23, 26).**

After further consideration, Mr. Long seeks to [reopen] Case No. 20TR6342 by dismissing the default judgment against him. The actual penalty of a *Lifetime Revocation* of his driver's license, unbeknownst to Mr. Long at the time of

defaulting, is *far too severe a punishment* to [not] litigate against since he was the victim of an unlawful arrest by the police. **(R29:12; App. Ex. 5, Page 16)**.

Pursuant to Wis. Stat. § 343.305(2), implied consent did [not] apply to Mr. Long on August 20, 2020, as a pedestrian. He neither "*drove*" nor "*operated*" a motor vehicle under the definitions of s. 343.305(1), which is a requirement for "Implied Consent" as a matter of law. **(R29:3 at ¶ 11; App. Ex. 5, Page 7 at ¶ 11 *and* R38:2 ¶¶ 3-4; App. Ex. 8, Page 21 at ¶¶ 3-4).**

Mr. Long [never] *received* a Final Order or Judgment of Conviction ("JOC") regarding the IC Citation default on February 19, 2021, because the Clerk of Winnebago County Circuit Court – Branch 6, Saka Yang ("Ms. Yang"), informed Mr. Long *during February 2022* over the phone that she made a mistake and sent the JOC to his home address even though she new that he was incarcerated in the Winnebago County Jail ("WCJ") at the time. Mr. Long has been *continuously incarcerated* since his arrest date of August 20, 2020. The JOC indicates Mr. Long's DOT license revoked for 12 months. **(R21; App. Ex. 2, Page 2).**

On December 17, 2021, Mr. Long filed a *timely* handwritten "Motion to Reopen Default Judgment" with attached Exhibits 1-6 regarding the IC Citation. Mr. Long was forced to *write the motion by hand* because he was incarcerated at Dodge Correctional Institution ("D.C.I.") during November and December 2021. During that time, DCI was operating under a "modified lockdown" due to another COVID-19 outbreak throughout the inmate population. Inmate movement was restricted and the DCI Law Library was closed. **(R26:1-12).**

On January 24, 2022, Mr. Long filed a *timely* "Motion to Reopen Traffic Forfeiture" (Circuit Court Form TR-310) regarding the IC Citation pursuant to Wis. Stat. § 345.51. The trial court took [no] action on this motion. **(R26; App. Ex. 3, Page 3).**

Wis. Stat. § Section 345.51, Stats., which provides as follows:

> Except as provided in ss. 345.36 and 345.37, there shall be no reopening of default judgments unless allowed by order of the trial court after notice and motion duly made and upon good cause shown. The notice of motion must be filed within 6 months after entry of judgment in the case docket. Default judgments for purposes of this section include pleas of guilty, no contest and forfeitures of deposit.

On January 25, 2022, the trial court filed an "Order Denying Motion to Reopen." **(R27; App. Ex. 4, Page 4).**

On February 2, 2022, Mr. Long filed a *timely* [t]yped "Notice of Motion and Motion to Reopen Default Judgment" regarding the IC Citation. **(R29:1-12; App. Ex. 5, Pages 5-16).**

On February 2, 2022, the trial court *stamped* the first page of Mr. Long's Motion to Reopen Default Judgment "DENIED" and filed it accordingly. **(R30:1; App. Ex. 6, Pages 17).**

On February 21, 2022, Mr. Long filed the Transcript of the above referenced Preliminary Hearing (OWI Case No. 20CF540) for the trial court to take judicial notice and for asserting the **doctrine of issue preclusion** to dismiss this matter with a future dispositive motion once this case is reopened. However, the trial court *denied* all of Mr. Long's motions to reopen this matter. **(R32:1-48).**

On February 24, 2022, Mr. Long mailed Ms. Yang a letter informing her that *he [never] received* a Final Order or Judgment of Conviction ("JOC") regarding the IC Citation default judgment on February 19, 2021. Mr. Long also included a *proposed* Final Order for the trial court to sign and file regarding the IC Citation default judgment. **(R36:1-2; App. Ex. 7, Pages 18-19).**

The trial court refused to take action on Mr. Long's *proposed* Final Order since a JOC already existed and instructed Ms. Yang to mail Mr. Long a copy of the JOC to him at Kettle Moraine Correctional Institution ("KMCI"). ***Id.***

On March 2, 2022, Mr. Long filed a *timely* "Notice of Motion and Motion to Modify Sentence" regarding the IC Citation default judgment. **(R37:1-10).**

The **new factor** warranting a sentence modification was the *recent* decision and holding of the Court of Appeals of Wisconsin released on April 28, 2021, regarding ***State v. Forrett,*** 2021 WI App 31, 398 Wis.2d 371, 961 N.W.2d 132. This Opinion was filed on May 5, 2021, which was [after] Mr. Long's IC Refusal Citation conviction date of February 19, 2021. Neither ADA Sparr and ADA Levin, nor the Sentencing Court, were aware of the ***Forrett*** decision and holding on February 19, 2021. ***Id.***

The "Motion to Modify Sentence" actually moved the trial court to order that this IC Refusal Citation conviction *cannot be counted* under Stat. § 343.307(1) and that Mr. Long's driver's license must be revoked for **only 3 years**, versus lifetime, pursuant to Wis. Stat. § 343.31(1)(b)4, with the effective date remaining February 19, 2021. ***Id.***

On March 10, 2022, Mr. Long filed a *proposed* Final Order granting the "Motion to Modify Sentence" regarding the IC Citation default judgment. The *proposed* Final Order indicated Mr. Long's license revoked for **3 years. (R41).**

Obviously, Mr. Long *[never] received* the actual JOC filed on February 19, 2021, pursuant to his claims, because he [thought] the JOC indicated a DOT Lifetime Revocation of his driver's license, but actually it only indicated that his driver's license was revoked for 12 months. Apparently, the Lifetime Revocation is a DOT administrative action. **Therefore, Mr. Long was [u]nknowingly moving the trial court to *increase* his DOT license revocation from only 12 months up to 3 years (36 months). (R37, R41, and R21; App. Ex. 2, Page 2).** That is *proof* that he never received a copy of the JOC after it was filed because Mr. Long is intelligent and well educated with a B.S. Degree in Industrial Engineering from UW-Platteville and an MBA from UW-Milwaukee. Logically, he would [not] be moving the trial court to *increase* his DOT license revocation.

Subsequently, on March 15, 2022, Mr. Long filed a *timely* "Notice of Motion and Motion for Reconsideration" regarding the trial court's Order of January 25, 2022 denying the Defendant's Motion to Reopen Default Judgment regarding the IC Citation. **(R38:1-11; App. Ex. 8, Pages 20-30).**

In this motion to reconsider, Mr. Long [asserts] that **sec. 799.29, Stats.,** ***permitted*** the trial court to reopen the default judgment and revocation order.

> **Section 799.29(1), Stats., provides in part:**
>
> **(a) There shall be no appeal from default judgments, but the trial court may, by order, reopen default judgments upon notice and motion or petition duly made and good cause shown.**

(b) In ordinance violation cases, the notice of motion must be made within 20 days after entry of judgment. In ordinance violation cases, default judgments for purpose of this section include pleas of guilty, no contest and forfeitures of deposit.

(c) In other actions under this chapter, the notice of motion must be made within 90 days after entry of judgment unless venue was improper under s. 799.11. The court shall order the reopening of a default judgment in an action where venue was improper upon motion or petition duly made within one year after the entry of judgment. (**emphasis** added).

Furthermore, Mr. Long [asserts] that **sec. 806.07, Stats.,** ***permitted*** the trial court to reopen the default judgment and revocation order.

Section 806.07(1), Stats., provides in part:

On motion and upon such terms as are just, the court may relieve a party or legal representative from a judgment, order or stipulation for the following reasons:

(a) Mistake, inadvertence, surprise, or excusable neglect;

(b) Newly-discovered evidence which entitled a party to a new trial under s. 805.15(3);

(c) Fraud, **misrepresentation**, or other misconduct of an adverse party;

(d) The judgment is void;

(e) The judgment has been satisfied, released or discharged;

(f) A prior judgment upon which the judgment is based has been reversed or otherwise vacated;

(g) It is no longer equitable that the judgment should have prospective application; or

(h) Any other reasons justifying relief from the operation of the judgment. (emphasis added).

Mr. Long filed this motion to reconsider reopening the default judgment against him before, or within 20 days after, the JOC/Final Order was *actually served upon him during March 2022* and with good cause shown based upon ineffective assistance of counsel. Attorney Ceman *incorrectly advised* Mr. Long that he would only have his driver's license revoked for 3 years and *failed* to file a

meritorious dispositive motion to dismiss the IC Refusal Citation based upon the **doctrine of issue preclusion.** (*See* **R29:2-3; App. Ex. 5, Pages 6-7, ¶¶ 7-12).**

Therefore, this motion to reconsider should have been granted by the trial court and the previous motion to reopen default judgment should have been granted by the trial court pursuant to Wis. Stat. § 806.07(1). **(R38:1-11; App. Ex. 8, Pages 20-30).**

On March 20, 2022, Mr. Long ***finally received*** **the JOC** regarding the IC Citation default judgment which occurred on February 19, 2021. **(R21; App. Ex. 2, Page 2).**

On March 25, 2022, the trial court filed an "Order Denying Defendant's Motion to Modify Sentence and Motion for Reconsideration." **(R43:1-2; App. Ex. 9, Pages 31-32).**

On March 28, 2022, Mr. Long filed the Notice of Appeal to the Wisconsin Court of Appeals, District 2. **(R44).**

On March 28, 2022, Mr. Long filed the Statement on Transcript. **(R45).**

On April 4, 2022, the official Transcript of the IC refusal hearing held on February 19, 2021, was filed. **(R49:1-3).**

On April 27 2022, the **Record** in this matter was submitted electronically and filed with the Clerk of the Court of Appeals.

Therefore, Mr. Long appeals the trial court's denial of his motions to reopen and the denial of his motion for reconsideration, both of which include the claim

of ineffective assistance of trial counsel which was never specifically addressed by the trial court. **(R44).**

ARGUMENT – FIRST ISSUE

Standard of Review
Motion to Reopen Default Judgment

We uphold the exercise of trial court discretion if it is a reasonable application of a correct legal standard to relevant facts. ***Hedtcke v. Sentry Ins. Co.***, 109 Wis.2d 461, 471, 326 N.W.2d 727, 732 (1982).

The interpretation and application of a statute presents a question of law which we review de novo. ***Revenue Dept. v. Milwaukee Brewers***, 111 Wis.2d 571, 577, 331 N.W.2d 383, 386 (1983).

In addition, as relevant here, there are two methods by which courts typically review motions to withdraw guilty or no contest pleas after judgment and sentence. The first method is based on the general rule that a defendant seeking to withdraw a guilty or no contest plea after sentencing must show " 'manifest injustice by clear and convincing evidence.' " ***State v. Hampton***, 2004 WI 107, ¶ 60, 274 Wis.2d 379, 683 N.W.2d 14 (**quoting** ***State v. Bentley***, 201 Wis.2d at 311, 548 N.W.2d 50). This method, often referred to as the ***Bentley*** standard applies a two-step standard of review for motions to withdraw guilty or no contest pleas.

Mr. Long proffers that this method may also be used to by this Court to review a motion to reopen a default judgment after conviction because the defendant is adjudicated guilty.

I. The trial court committed an error of law by [denying] Mr. Long's *timely* postconviction motions to reopen the default judgment regarding his Implied Consent ("IC") Refusal Traffic Citation ("IC Citation").

The circuit court has jurisdiction to hear matters concerning implied consent. *See* WIS. STAT. § 343.305(9)(a)4.[5] (court hearing on the refusal revocation is available). However, when the statutory time limit is not met, the question becomes whether the court has competency to proceed in this particular case. In the instant case, there is no question of the trial court's competency to proceed because Mr. Long *[did] timely file* a written request for a refusal hearing regarding his IC Refusal Citation on August 27, 2020, which is within ten days of the issuance of the citation on August 20, 2020, as required by Wis. Stat. § 343.305(3)(b)4. **(R8).**

In Village of Elm Grove v. Brefka, 2013 WI 54, ¶ 44, 348 Wis.2d 282, 832 N.W.2d 121, our supreme court concluded the ten-day time limit set forth in WIS. STAT. § 343.305(9)(a)4. and (10)(a) is mandatory and a court is without competency to consider a refusal hearing request made outside the ten-day period. The court also concluded that, because the time limit is mandatory, the time limit cannot be extended, even due to excusable neglect.

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[5] WISCONSIN STAT. § 343.305(9)(a) provides that, if an individual refuses to submit to a chemical test under the implied consent law, the officer shall prepare a notice of intent to revoke the person's operating privilege. Section 343.305(9)(a)4. requires that the notice inform the individual that he or she may request a hearing on the revocation within ten days and that, if no request is received within the ten-day period, the individual's license will be revoked. Section 343.305(10)(a) directs the court to revoke the individual's license if the individual does not request a hearing within ten days after being served with the notice of intent to revoke.

On approximately, March 20, 2022, Mr. Long finally received the JOC regarding the IC Citation default judgment. **(R21; App. Ex. 2, Page 2).**

However, prior to even receiving the JOC, on December 17, 2021, Mr. Long filed a *timely* handwritten "Motion to Reopen Default Judgment" with attached Exhibits 1-6 regarding the IC Citation default judgment pursuant to Wis. Stat. § 345.51 because his trial counsel *unreasonably* and *ineffectively* **defaulted him** at the IC Refusal Hearing.. **(R26:1-12).**

Wis. Stat. § Section 345.51, Stats., which provides as follows:

> Except as provided in ss. 345.36 and 345.37, **there shall be no reopening of default judgments unless allowed by order of the trial court after notice and motion duly made and upon good cause shown.** The notice of motion must be filed within 6 months after entry of judgment in the case docket. Default judgments for purposes of this section include pleas of guilty, no contest and forfeitures of deposit. (**emphasis** added).

In his "Motion to Reopen Traffic Forfeiture," Mr. Long stated that, "My failure to appear was *due to incorrect advice and mistake* by paid counsel." ***Id.*** Mr. Long was [not] present at the hearing per the advice of counsel and Attorney Ceman *intentionally* and *unreasonably* [defaulted] Mr. Long on his IC Citation. **(R49:1-3; App. Ex. 10, Pages 33-35 -- Transcript of IC Refusal Hearing**). As a paid defense attorney, it is *unreasonable* to provide [no] valid defense and simply default the client because the client could have defaulted himself just by not showing up without paying any attorney fees. There would have been no need for paid defense counsel.

In a similar case, ***State v. Rapholz***, 95 Wis.2d 739, 291 N.W.2d 662 (1980), the circuit court [granted] the defendant's motion to reopen the case and *vacated*

the "default judgment" and ordered the matter be set for a hearing. In the ***Rapholz*** case the defendant *failed to even request* an IC Refusal Hearing within the ten day period provided by law. The circuit court judge still allowed the defendant to have his day in court because default judgments are fundamentally unfair.

The relevant excerpt from ***State v. Rapholz***, 95 Wis.2d 739, 291 N.W.2d 662 (1980), reads as follows:

> The defendant was arrested for driving under the influence of alcohol on January 23, 1979 in violation of sec. 346.63(1), Stats. He refused to submit to a breathalyzer examination pursuant to the implied consent law, sec. 343.305, Stats. He failed to request a hearing concerning his refusal to take the test on or prior to the return date given on the notice of intent to revoke operating privilege citation. He also failed to appear in person or by an attorney on the return date. In default of his appearance an order revoking his driving privileges for six months was entered on February 13, 1979.
>
> On April 11, 1979, the defendant moved to reopen the "judgment" against him on the ground that he was unaware of the requirement that he must request a hearing "as to whether or not his refusal to take a breath test ... was reasonable." He also moved for a hearing "on the reasonableness of" his refusal to take the test. **The circuit court entered an order on that date vacating the "default judgment" and ordering that the matter be set for hearing." (emphasis** added) **(*See* App. Ex. 11, Pages 36-38).**

In the instant case, Mr. Long filed his "Motion to Reopen Default Judgment" regarding the IC Citation on December 17, 2021, which was approximately *three months before* he actually [received] the JOC from the Clerk of Circuit Court at KMCI; so, it was *timely* pursuant to Wis. Stat. § 345.51.

Furthermore, the Wisconsin Constitution, Article I, § 9, provides as follows: "Every person is entitled to a certain remedy in the laws for all injuries, or wrongs which he may receive in his person, property, or character; he ought to obtain justice freely, and without being obliged to purchase it, completely and without

denial, promptly and without delay, conformably to the laws." Mr. Long should be allowed his day in court.

Therefore, based upon the aforementioned facts, the trial court *erred by denying* Mr. Long's "Motion to Reopen Default Judgment." **(R21; App. Ex. 2, Page 2).**

Second Filed Motion to Reopen Default Judgment

On February 2, 2022, Mr. Long filed a *timely* [t]yped "Notice of Motion and Motion to Reopen Default Judgment" regarding the IC Citation. **(R29:1-12; App. Ex. 5, Pages 5-16).**

Attorney Scott A. Ceman represented Mr. Long for Case Nos. 20CF540 and 20TR6342. After a couple of adjournments, the IC Refusal Hearing was scheduled for February 19, 2021.

Attorney Ceman was *ineffective* as trial counsel and provided Mr. Long with *no defense strategies* when Attorney Ceman advised Mr. Long to "default" on his IC Refusal Citation and *[not] fight it* because the only penalty would be the loss of his driver's license for **3 years** under Wis. Stat. § 343.31(1)(b)4.

Mr. Long was [not] present at the hearing per the advice of counsel and Attorney Ceman *intentionally* and *unreasonably* [defaulted] Mr. Long on his IC Citation. **(R49:1-3; App. Ex. 10, Pages 33-35 -- Transcript of IC Refusal Hearing**).

However, contrary to counsel's advice, Mr. Long received a *Lifetime Revocation* under Wis. Stat. § 343.31(1m)(b), for defaulting on his IC Refusal Citation resulting in a fundamentally unfair outcome in the proceeding.

After further consideration, Mr. Long seeks to *reopen* Case No. 20TR6342 by dismissing the default judgment against him. The actual penalty of a *Lifetime Revocation* of his driver's license, *unbeknownst* to Mr. Long at the time of defaulting, is *far too severe a punishment* not to litigate against since he was the victim of an unlawful arrest by the police.

Once the case is reopened, Mr. Long will file a *dispositive motion* to the trial court based on the *doctrine of issue preclusion.* ***See Lindas v. Cady***, 183 Wis. 2d 547, 558, 515 N.W.2d 458, 463 (1994). The issue regarding whether Mr. Long drove or operated his motorcycle on August 20, 2020, which was found *legally parked* on his street south of his residence, has already been *fully litigated* and decided by the Court at his Preliminary Hearing on September 21, 2020, for Case No. 20CF540, the Honorable Bryan D. Keberlein presiding. **The Court found that Mr. Long was not *driving* or *operating* his motorcycle at the time of his *unlawful* arrest and dismissed the case.** Mr. Long's dispositive motion will include the Transcript of the Preliminary Hearing. **(R29:1-12; App. Ex. 5, Pages 5-16 and R32:38-48).**

Pursuant to Wis. Stat. § 343.305(2), *implied consent did [not] apply* to Mr. Long on August 20, 2020, as a pedestrian. He neither "*drove*" nor "*operated*" a

motor vehicle under the definitions of s. 343.305(1), which is a requirement for "Implied Consent" as a matter of law.

Attorney Ceman was *ineffective* as trial counsel when he *unreasonably decided [not] to file* the dispositive motion to dismiss the IC Citation to the trial court based on the doctrine of issue preclusion. **(R29:2-4; App. Ex. 5, Pages 6-8 ¶¶ 7-12 and R38:4 at ¶ 13 and Page 7; App. Ex. 8, Pages 23, 26).**

On February 2, 2022, the trial court stamped the first page of Mr. Long's Motion to Reopen Default Judgment "DENIED" and filed it accordingly. **(R30:1; App. Ex. 6, Pages 17).**

In addition, as relevant here, there are two methods by which courts typically review motions to withdraw guilty or no contest pleas after judgment and sentence. The first method is based on the general rule that a defendant seeking to withdraw a guilty or no contest plea after sentencing must show " 'manifest injustice by clear and convincing evidence.' " ***State v. Hampton***, 2004 WI 107, ¶ 60, 274 Wis.2d 379, 683 N.W.2d 14 (**quoting *State v. Bentley***, 201 Wis.2d at 311, 548 N.W.2d 50). This method, often referred to as the ***Bentley*** standard applies a two-step standard of review for motions to withdraw guilty or no contest pleas. Mr. Long proffers that this method may also be used to by this Court to review a motion to reopen a default judgment after conviction because the defendant is adjudicated guilty. **(R21:1; App. Ex. 2, Page 2).**

Under the first step of a ***Bentley*-type** review, a reviewing court must determine whether a defendant's postconviction motion alleges sufficient material

facts that, if true, would entitle the defendant to relief. ***See State v. Allen***, 2004 WI 106, ¶ 9, 274 Wis.2d 568, 682 N.W.2d 433 (**citing *Bentley***, 201 Wis.2d at 309–10, 548 N.W.2d 50). This presents a question of law subject to independent review. ***Id.*** Where a defendant's motion alleges facts that would entitle him to withdraw his plea, but the record conclusively demonstrates that the defendant is not entitled to relief, no evidentiary hearing is required. ***Id.*** Whether the record conclusively demonstrates that the defendant is entitled to no relief is also a question of law, subject to independent review. ***Id.***

Under the second step of a ***Bentley*-type** review, if the defendant's motion does not allege sufficient facts to entitle the defendant to relief, an appellate court reviews the circuit court's decision to grant or deny an evidentiary hearing under an erroneous exercise of discretion standard. ***Id.*** The circuit court's discretionary decision will be sustained if the court has examined the relevant facts of record, applied a proper legal standard, and reached a conclusion that a reasonable judge could reach. ***Miller v. Hanover Ins .Co.***, 2010 WI 75, ¶¶ 29–30, 326 Wis.2d 640, 785 N.W.2d 493.

In the instant case, Mr. Long's "Motions to Reopen Default Judgment" alleged sufficient facts regarding ineffective assistance of counsel which prejudiced him by receiving a *Lifetime Revocation* under Wis. Stat. § 343.31(1m)(b), for defaulting on his IC Refusal Citation instead of contesting it.

Mr. Long has also clearly stated sufficient facts to be successful with the future filing of his *dispositive motion* to the trial court based on the *doctrine of*

issue preclusion. ***See Lindas v. Cady***, 183 Wis. 2d 547, 558, 515 N.W.2d 458, 463 (1994). The issue regarding whether Mr. Long drove or operated his motorcycle on August 20, 2020, which was found *legally parked* on his street south of his residence, has already been fully litigated and decided by the Court at his Preliminary Hearing on September 21, 2020, for Case No. 20CF540, the Honorable Bryan D. Keberlein presiding. The Court found that Mr. Long was [not] *driving* or *operating* his motorcycle at the time of his *unlawful* arrest and *dismissed* the case.

Pursuant to Wis. Stat. § 343.305(2), *implied consent did [not] apply* to Mr. Long on August 20, 2020, as a pedestrian. He neither "*drove*" nor "*operated*" a motor vehicle under the definitions of s. 343.305(1), which is a requirement for "Implied Consent" as a matter of law.

Therefore, based upon the aforementioned facts, the trial court *erred by denying* Mr. Long's "Motion to Reopen Default Judgment."

ARGUMENT – SECOND ISSUE

Standard of Review
Motion for Reconsideration

To prevail on a motion for reconsideration, a party must either present newly discovered evidence or establish a manifest error of law or fact. ***Koepsell's Olde Popcorn Wagons, Inc. v. Koepsell's Festival Popcorn Wagons, Ltd.***, 2004 WI App 129, ¶ 44, 275 Wis.2d 397, 685 N.W.2d 853. A manifest error of law or fact

occurs when the circuit court disregards, misapplies, or fails to recognize controlling precedent or facts. ***Id.***

We review a circuit court's denial of a motion for reconsideration to determine if the court properly exercised its discretion. ***Id.*, ¶ 6.** A circuit court erroneously exercises its discretion if that exercise is based on an error of law, ***State v. Davis***, 2001 WI 136, ¶ 28, 248 Wis.2d 986, 637 N.W.2d 62, and we review questions of law *de novo*. ***See State v. Kramer***, 2001 WI 132, ¶ 17, 248 Wis.2d 1009, 637 N.W.2d 35. The issue of the correct legal standard presents a question of law. Thus we review *de novo* whether the court's denial of the motion for reconsideration was based on an error of law in that it did not apply controlling precedent. ***Id.***

The interpretation and application of a statute presents a question of law which we review de novo. ***Revenue Dept. v. Milwaukee Brewers***, 111 Wis.2d 571, 577, 331 N.W.2d 383, 386 (1983).

II. The trial court committed an error of law by [denying] Mr. Long's subsequent motion for reconsideration regarding the court's previous denial of his motion to reopen the default judgment regarding his IC Citation.

On December 17, 2021, Mr. Long filed a *timely* handwritten "Motion to Reopen Default Judgment" with attached Exhibits 1-6 regarding the IC Citation. **(R26:1-12).**

On January 25, 2022, the trial court filed an "Order Denying Motion to Reopen." **(R27; App. Ex. 4, Page 4).**

On March 15, 2022, Mr. Long filed a *timely* "Notice of Motion and Motion for Reconsideration" regarding the trial court's Order of January 25, 2022 denying the Defendant's Motion to Reopen Default Judgment regarding the IC Citation. **(R38:1-11; App. Ex. 8, Pages 20-30).**

On March 25, 2022, the trial court filed an "Order Denying Defendant's Motion to Modify Sentence and Motion for Reconsideration." **(R43:1-2; App. Ex. 9, Pages 31-32).**

Furthermore, in the Motion for Reconsideration, Mr. Long [asserts] that **sec. 799.29, Stats.,** *permitted* the trial court to reopen the default judgment and revocation order. **(R38:4; App. Ex. 8, Page 23).**

> **Section 799.29(1), Stats., provides in part:**
>
> **(a) There shall be no appeal from default judgments, but the trial court may, by order, reopen default judgments upon notice and motion or petition duly made and good cause shown.**
>
> (b) In ordinance violation cases, the notice of motion must be made within 20 days after entry of judgment. In ordinance violation cases, default judgments for purpose of this section include pleas of guilty, no contest and forfeitures of deposit.
>
> (c) In other actions under this chapter, the notice of motion must be made within 90 days after entry of judgment unless venue was improper under s. 799.11. The court shall order the reopening of a default judgment in an action where venue was improper upon motion or petition duly made within one year after the entry of judgment. (**emphasis** added).

Furthermore, in the Motion for Reconsideration, Mr. Long [asserts] that **sec. 806.07, Stats.,** *permitted* the trial court to reopen the default judgment and revocation order. **(R38:4-5; App. Ex. 8, Page 23-24).**

Section 806.07(1), Stats., provides in part:

On motion and upon such terms as are just, the court may relieve a party or legal representative from a judgment, order or stipulation for the following reasons:

(a) Mistake, inadvertence, surprise, or excusable neglect;

(b) Newly-discovered evidence which entitled a party to a new trial under s. 805.15(3);

(c) Fraud, misrepresentation, or other misconduct of an adverse party;

(d) The judgment is void;

(e) The judgment has been satisfied, released or discharged;

(f) A prior judgment upon which the judgment is based has been reversed or otherwise vacated;

(g) It is no longer equitable that the judgment should have prospective application; or

(h) Any other reasons justifying relief from the operation of the judgment. (**emphasis** added).

In the Court of Appeals, "Civil appeal procedures apply to civil, small claims, family, paternity, probate, guardianship, adoption, **non-criminal traffic**, forfeiture, municipal ordinance violation cases and Wis. Stat. § 974.06 appeals." [6] Small Claims civil procedure regarding a motion to reopen is governed by Wis. Stats. § 799.29(1)(a). Trial court civil procedure regarding a motion to reopen is governed by Wis. Stat. § 806.07(1). In the instant case, since civil procedures apply to **non-criminal traffic cases** (20TR6342), the trial court committed a manifest error of law by [not] allowing Mr. Long to reopen the default judgment regarding IC Refusal Citation pursuant to Wis. Stats. §§ 799.29(1)(a) or 806.07(1).

In the ***Village of Greendale v. Aldridge***, 148 Wis.2d 951, 437 N.W.2d 237 (1988), the Court of Appeals decided, in relevant part, as follows:

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[6] Quoted from the Guide to Appellate Procedure for the Self-Represented at Page 12.

> We conclude, upon transmittal of a municipal forfeiture action to the circuit court, **such relief is afforded by sec. 806.07(1)(a), Stats., which provides relief from a judgment in the event of mistake, inadvertence, surprise, or excusable neglect.** This provision is substantially the same as sec. 345.36(2)(b), Stats. for relief in a traffic forfeiture. We apply the same standard to both.
>
> When Aldridge failed to appear at the jury trial date, July 5, the circuit court properly entered no contest pleas and default judgments. Aldridge filed timely motions to reopen the default judgments. The circuit court was vested with discretion whether to open the judgments if satisfied Aldridge's failure to appear was due to mistake, inadvertence, surprise or excusable neglect. See secs. 345.36(2)(b) and 806.07(1)(a).

Mr. Long filed this motion to reconsider reopening the default judgment against him before he was even served a copy of the JOC and the motion provided *good cause shown* to reopen the default judgment based upon ineffective assistance of trial counsel. Attorney Ceman *incorrectly advised* Mr. Long that he would only have his driver's license revoked for 3 years and *failed* to file a *dispositive motion to dismiss* the IC Refusal Citation based upon the *doctrine of issue preclusion.*

Therefore, the trial court committed an *error of law* by [denying] Mr. Long's subsequent motion for reconsideration regarding the court's previous denial of his motion to reopen the default judgment regarding his IC Citation pursuant to Wis. Stats. §§ 799.29(1)(a) or 806.07(1). The motion for reconsideration should have been granted.

ARGUMENT – THIRD ISSUE

Standard of Review
Ineffective Assistance of Counsel

The Sixth Amendment guarantees the right to effective assistance of counsel in criminal prosecutions. ***See Yarborough v. Gentry***, 540 U.S. 1, 5 (2003); ***see also Padilla v. Ky.***, 130 S. Ct. 1473, 1480-81 (2010) (6th Amendment right to counsel is a right to effective counsel); ***McMann v. Richardson***, 397 U.S. 759, 771 n.14 (1970). The right to effective assistance of counsel applies to both retained and appointed counsel. ***See Cuyler v. Sullivan***, 446 U.S. 335, 344-45 (1980).

To obtain reversal of a conviction, the defendant must prove that **(1)** counsel's performance "fell below an objective standard of reasonableness." ***Strickland v. Washington***, 466 U.S. 688. 687-88 (1984) and **(2)** counsel's deficient performance prejudiced the defendant, resulting in an unreliable of fundamentally unfair outcome in the proceeding. ***See Strickland***, 466 U.S. at 687, 691-92. A defendant's failure to satisfy either prong of the test is fatal to the entire claim. ***See Strickland***, 466 U.S. at 697.

In deciding whether counsel's performance was ineffective, a court must consider the totality of the circumstances. ***See Strickland***, 466 U.S. at 690 (court must "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance"). The Court in ***Strickland*** stated that "[n]o particular set of detailed rules for

counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant." ***Id.*** at 688-89.

III. The trial court committed an error of fact and law by failing to address Mr. Long's argument of ineffective assistance of trial counsel as grounds for reopening the IC Citation default judgment.

On August 20, 2020, Mr. Long was *unlawfully* arrested without probable cause and charged with OWI and OAR (Case No. 20CF540), along with an Implied Consent ("IC") Refusal Traffic Citation (Case No. 20TR6342) (hereinafter "IC Citation").

Mr. Long refused the field sobriety tests and warrantless blood draw request from Officer Evers of the Fox Crossing Police Department ("FCPD") because he *was [not] the operator* of any motor vehicle. He was an intoxicated *pedestrian* and *sleeping* in his neighbor's yard after he had *buried* his mother the previous weekend, but was [not] *operating* or *driving* any motor vehicle.

The FCPD officers were *unlawfully* and *unconstitutionally* searching for Mr. Long, the owner of a *legally* parked Harley-Davidson motorcycle[7], even though [nobody] had called the FCPD to report any crimes or suspicious criminal activity. This was because Officers Evers and Colburn ran the license plates on the legally parked motorcycle and they came back to Mr. Long being the owner. Colburn was

[7] FCPD Officers testified that Mr. Long's motorcycle was legally parked, was not involved in any type of accident, and had no noticeable damage to it during the Preliminary Hearing for Case 20CF540. **(R32:1-48 Transcript of Preliminary Hearing).**

involved in Mr. Long's last arrest for OWI back in 2011 and knew that he was a recovering alcoholic from prior contacts. Therefore, based upon a *personal bias* and a *hunch*, three FCPD officers began *unlawfully searching* for Mr. Long in violation of his Fourth Amendment rights against illegal search and seizure.

On September 21, 2020, the Preliminary Hearing was held for the felony OWI charge and the criminal traffic OAR charge in Case No. 20CF540. After an hour-long hearing in which the State called three witnesses and entered one exhibit, the Circuit Court Commissioner, the Honorable Bryan D. Keberlein, found that Mr. Long was [not] *driving* or *operating* his motorcycle at the time of his arrest. Furthermore, the Court found that Mr. Long's arrest was *[unlawful] due to lack of probable cause* and *dismissed* the case. The OWI and OAR were [not] bound over for trial.

At the end of the Preliminary Hearing the Assistant District Attorney, Eric Sparr ("ADA Sparr"), chose [not] to dismiss the tag-along IC Citation so it was assigned to Branch 6 for further proceedings. (Case No. 20TR6342).

Attorney Scott A. Ceman ("Attorney Ceman") represented Mr. Long for Case Nos. 20CF540 and 20TR6342. After a couple of adjournments, the IC Refusal Hearing was scheduled for February 19, 2021. Mr. Long was [not] present at the hearing per the advice of counsel and Attorney Ceman *intentionally* and *unreasonably defaulted* Mr. Long on his IC Citation.

Then the trial court adjudicated Mr. Long guilty on the IC Citation by stating, "Okay. I will find the defendant in default by agreement of counsel here. And then

I guess for this matter then it's the license suspension revocation that goes along with that. So anything else that we need to do?" **(R49:2; App. Ex. 10, Page 34, Lines 17-21).**

Attorney Ceman made a *mistake* and was *unreasonably ineffective* as trial counsel by advising Mr. Long to "default" on his IC Refusal Citation and *not even contest it in any manner.* Attorney Ceman *incorrectly* informed Mr. Long that the only penalty would be the loss of his driver's license for *3 years* under Wis. Stat. § 343.31(1)(b)4.

However, contrary to counsel's advice, Mr. Long received a *Lifetime Revocation* of his driver's license under Wis. Stat. § 343.31(1m)(b), for defaulting on his IC Refusal Citation. Mr. Long received a Department of Transportation ("DOT") Lifetime Revocation Notice dated February 23, 2021.

Furthermore, *prior* to the IC Refusal Hearing on February 19, 2021, Attorney Ceman informed Mr. Long that he was thinking about filing a *dispositive motion* to dismiss the IC Citation to the Circuit Court based on the *doctrine of issue preclusion.* ***See Lindas v. Cady***, 183 Wis. 2d 547, 558, 515 N.W.2d 458, 463 (1994).

The issue regarding whether Mr. Long *drove* or *operated* his motorcycle on August 20, 2020, which was found *legally parked without damage* on his street south of his residence, has already been *fully litigated and decided* by the Court at his Preliminary Hearing on September 21, 2020, for Case No. 20CF540, the Honorable Bryan D. Keberlein presiding. The Court found that Mr. Long was

[not] *driving* or *operating* his motorcycle at the time of his *unlawful* arrest and dismissed the case.

Attorney Ceman was *ineffective* as trial counsel when he *unreasonably decided [not] to file the dispositive motion* to dismiss the IC Citation to the trial court based on the doctrine of issue preclusion.

After further consideration, Mr. Long seeks to [reopen] Case No. 20TR6342 by dismissing the default judgment against him. The actual penalty of a *Lifetime Revocation* of his driver's license, unbeknownst to Mr. Long at the time of defaulting, is *far too severe a punishment* to [not] litigate against since he was the victim of an unlawful arrest by the police.

Pursuant to Wis. Stat. § 343.305(2), *implied consent did [not] apply* to Mr. Long on August 20, 2020, as a *pedestrian*. He neither "*drove*" nor "*operated*" a motor vehicle under the definitions of s. 343.305(1), which is a *requirement* for "Implied Consent" as a matter of law.

Mr. Long applies the ***Strickland*** standard to the case at bar. The *first prong* is satisfied because counsel's performance "fell below an objective standard of reasonableness." Mr. Long paid Attorney Ceman to provide an effective legal defense for Case Nos. 20CF540 and 20TR6342. He was very effective at defending Mr. Long's charges in case 20CF540 which resulted in the OWI and OAR being *dismissed* at the Preliminary Hearing. Attorney Ceman has practice law for over 20 years and should have used that same legal savvy to get Mr. Long's IC Refusal Citation also dismissed based on the doctrine of issue

preclusion. However, Attorney Ceman was *completely ineffective* as trial counsel in defending Mr. Long in the instant case because he provided absolutely no defense against the IC Refusal Citation and intentionally *defaulted* him on it. There can be [no] strategic reason not to file a dispositive motion to dismiss the IC Refusal Citation based upon the doctrine of issue preclusion and/or to argue that point during the IC Refusal Hearing on February 19, 2021.

The *second prong* of the Strickland standard is satisfied because trial counsel's deficient performance prejudiced the defendant, resulting in an unreliable of fundamentally unfair outcome in the proceeding. Based upon Attorney Ceman *unreasonably defaulting* Mr. Long on his IC Refusal Citation, he received a *Lifetime Revocation* of his driver's license under Wis. Stat. § 343.31(1m)(b). Had Attorney Ceman filed and won dispositive motion based upon the doctrine of issue preclusion, Mr. Long would [not] have lost his driver's license at all.

Therefore, based upon the aforementioned facts, it is clear that the trial court *erred* by not addressing Mr. Long's argument of ineffective assistance of trial counsel which was clearly presented in both motions to reopen and the motion for reconsideration.

Conclusion

WHEREFORE, based upon the aforementioned facts, attached appendix exhibits, Wisconsin State Statutes, applicable case law, and Article I, § 9[II] of the Wisconsin Constitution, the Defendant, Peter J. Long, respectfully requests that

the Court of Appeals *reverse* and *remand* this matter with instructions to the trial court to reopen this case in the interest of justice to allow him his day in court to remedy the ineffective assistance of counsel by asserting the doctrine of issue preclusion to dismiss this matter in a future dispositive motion.

Dated this 23rd day of May, 2022.

Respectfully Submitted By:

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Attachments: Appendix Exhibits 1→12

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[1] Mr. Long, as a *pro se litigant*, respectfully requests that the Court give this motion more than a shrift review pursuant **SCR 60.04(hm)**, which provides as follows:

"A judge shall uphold and apply the law and shall perform all duties of judicial office fairly and impartially. A judge shall also afford to every person who has a legal interest in a proceeding, or to that person's lawyer, the right to be heard according to the law. A judge may make reasonable efforts, consistent with the law and court rules, to facilitate the ability of all litigants, **including self-represented litigants, to be fairly heard.**

Comment (2014): A judge may exercise discretion consistent with the law and court rules to help ensure that all litigants are fairly heard. A judge's responsibility to promote access to justice, combined with the growth in litigation involving self-represented litigants, may warrant more frequent exercise of such discretion using techniques that enhance the process of reaching a fair determination in the case. Although the appropriate scope of such discretion and how it is exercised will vary with the circumstances of each case, a judge's exercise of such discretion will not generally raise a reasonable question about the judge's impartiality. Reasonable steps that a judge may take in the exercise of such discretion include, but are not limited to, the following:

1. Construe pleadings to facilitate consideration of the issues raised.
2. Provide information or explanation about the proceedings.
3. Explain legal concepts in everyday language.
4. Ask neutral questions to elicit or clarify information.
5. Modify the traditional order of taking evidence.

6. Permit narrative testimony.
7. Allow litigants to adopt their pleadings as their sworn testimony.
8. Refer litigants to any resources available to assist in the preparation of the case or enforcement and compliance with any order.
9. Inform litigants what will be happening next in the case and what is expected of them."

The Supreme Court of Wisconsin's holding in the Bin-Rilla case provides, in pertinent part as follows: "We re-emphasize today what we have said previously. A court presented with a prisoner's pro se documents seeking relief must look to the facts stated in the document to determine whether the petitioner may be entitled to any relief if the facts alleged are proven." ***Amek Bin-Rilla v. Thomas R. Israel***, 113 Wis. 2d 514, Supreme Court of Wisconsin.

"However, we follow a liberal policy when judging the sufficiency of *pro se* pleadings by prisoners." ***State ex rel. Terry v. Traeger***, 60 Wis. 2d 490, 496, 211 N.W.2d 4, 8 (1973); ***State ex rel. Staples v. DHSS***, 130 Wis. 2d 285, 288, 387 N.W.2d 118, 120 (Ct. App. 1986).

[Please] be mindful that pro se documents are held to less stringent standards than formal pleadings drafted by lawyers. ***Haines v. Kerner***, 404 U.S. 519, 520-21, 92 S. Ct. 594, 595-96, 30 L.Ed.2d 652 (1972). It is, by now, axiomatic that district courts have a special responsibility to construe pro se complaints liberally and to allow ample opportunity for amending the complaint when it appears that by so doing the pro se litigant would be able to state a meritorious claim. Not only is the district court to view the pro se complaint with an understanding eye, but, while the court is not to become an advocate, it is incumbent on it to take appropriate measures to permit the adjudication of pro se claims on the merits, rather than to order their dismissals on technical grounds. Indeed, it is the "well-established duty of the trial court to ensure that the claims of a pro se litigant are given a fair and meaningful consideration." ***Palmer v. City of Decatur***, 814 F.2d 426, 428-29 (7th Circuit 1987).

II **Wisconsin Constitution, Article I, § 9**, provides as follows: "Every person is entitled to a certain remedy in the laws for all injuries, or wrongs which he may receive in his person, property, or character; he ought to obtain justice freely, and without being obliged to purchase it, completely and without denial, promptly and without delay, conformably to the laws.

Form and Length Certification

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

The length of this brief is 7,728 words. The font is Times New Roman with 13 point for body text and 11 point for quotes and footnotes.

Date: May 23, 2022

Peter J. Long

Certificate of Service

I certify that this brief was timely 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 May 23, 2022. I further certify that the reply brief was correctly addressed and postage was pre-paid.

Date: May 23, 2022

Peter J. Long