

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

STATE EX REL.
MARK ANTHONY ADELL,

SUMMONS AND COMPLAINT

01CV1032

011-0045

PLAINTIFF,

CASE NO. _____
CLASS CODE 30701

-v-

JON E. LITSCHER, SECRETARY DEPT.
OF CORRECTIONS, 147 EAST WILSON STREET, MADISON, WI 53709
JAMES DOLYE-STATE OF WISCONSIN ATTORNEY GENERAL, 123 WEST WASHINGTON ST,
MADISON, WI, 53707-7875, AND WISCONSIN DATABANK 1578 SOUTH 11TH STREET,
MILWAUKEE WI, 53204-2860 and JOINT COMM. FOR REVIEW OF ADMINISTRATIVE RULES,
100 NORTH HAMILTON STREET, MADISON, WI 53708-8952

DEFENDANTS.

THE STATE OF WISCONSIN, to each person named
Above as a defendant:

CIRCUIT COURT
DANE COUNTY, WI
APR 17 7 59 AM '01

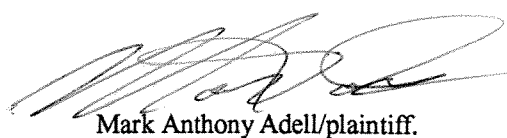
You are hereby notified that the plaintiff named above has filed a lawsuit, or other legal action against you.

The complaint, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin State Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the Statutes. The answer must be sent or delivered to the court, whose address is 210 Martin Luther king Jr. BLVD, Madison, WI 53709, and to plaintiff, pro se., whose address is POST OFFICE BOX 3310, OSHKOSH CORRECTIONAL INSTITUTION, OSHKOSH, WI 54903. You may have an attorney help or represent you.

If you do not provide an answer within 45 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure or property.

Dated this 7th day of March 2001.



Mark Anthony Adell/plaintiff.

THIS IS AN AUTHENTICATED COPY OF THE
ORIGINAL DOCUMENT FILED WITH THE DANE
COUNTY CLERK OF CIRCUIT COURT.

JUDITH A. COLEMAN
CLERK OF CIRCUIT COURT

STATE EX REL.
MARK ANTHONY ADELL,
PLAINTIFF,

01CV1032

0177-0045

CASE NO _____

-v-

JON E. LITSCHER, SECRETARY-DEPT. OF
CORRECTIONS, JAMES DOYLE, ATTORNEY
GENERAL-STATE OF WISCONSIN DEPT. OF
JUSTICE , WISCONSIN DNA DATABANK, ITS
EMPLOYEES, OFFICERS, AGENTS AND THOSE
ACTING ON ITS BEHALF OR BY ITS DIRECTION
and JOINT COMMITTEE FOR REVIEW OF ADMIN-
ISTRATIVE RULES,

CLASS CODE 30701

DEFENDANTS

CIRCUIT COURT
DANE COUNTY, WI

APR 17 7 59 AM '01

COMPLAINT FOR DECLARATORY RELIEF

1) The plaintiff, MARK ANTHONY ADELL, [hereinafter plaintiff], is a convicted felon sentenced to serve two 2 year consecutive terms of imprisonment pursuant to all relevant Wisconsin State Statutes under 973; at the Wisconsin State Prison System. He is now confined at the Oshkosh Correctional Institution located at 1730 West Snell Road in the county of Winnebago, Wisconsin, in relation to the aforesaid consecutive terms of imprisonment. [see Judgment of Conviction and Revocation Order and Warrant attached hereto as exhibits "A" and "B"]

2) The defendant, Jon E. Litscher, is the Secretary of the department of Corrections and at all times relevant to this complaint was responsible for implementation and the government of all applicable laws and regulations at the department of Corrections.

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COUNTY CLERK OF CIRCUIT COURT.

JUDITH A. COLEMAN
CLERK OF CIRCUIT COURT

3) The defendant, James Doyle, is the Attorney General of the State of Wisconsin and at all times relevant to this complaint was responsible ^{for} implementation and the government of all applicable laws and regulations at the state of Wisconsin Department of Justice.

4) The defendant, Wisconsin DNA DataBank, on information and belief is an agency under contract acting on behalf and under the direction and authority of the defendant, James Doyle, to conduct the collection of DNA [Buccal (oral) swabs and fingerprints] from all Wisconsin State prisoners pursuant to Wis. Stats., 165.76 and 165.77.

5) The plaintiff, who has requested permission from this court to waive costs and filing fees pursuant to 801.7(a)(c)&(d) and 829.14(3)(b) Wis. Stats., will cause a copy of this complaint to be served upon all the defendants named herein pursuant to sec. 802.02 and 806.04(11) WRCR, by the County Sheriffs in their prospective counties, immediately, if this court decides to grant the fee waiver petition.

6) The plaintiff brings this complaint under the Uniform Declaratory Judgments Act 806 Wis. Stats., for declaratory relief and damages seeking to have this court DECLARE invalid and unconstitutional, defendants' policy, practice or custom which defendants believes authorizes their prospective offices or departments to forcibly cause plaintiff, including all Wisconsin State prisoners, to sign a "Consent For DNA Specimen Collection" before plaintiff may be allowed to involuntarily or voluntarily comply with the provisions under Wis. Stats., 165.76 and 165.77, as those provisions have been represented to plaintiff and other adversely affected Wisconsin State prisoners at such times and places such compliance has been demanded by the named defendants.

7) The defendants appear to believe and have expressed or implied that Wis. Stats., 165.76 and 165.77 authorize them to force inmates to sign DNA Collection Consent forms prior

to taking DNA samples and further authorize defendants to refuse to allow plaintiff and other inmates to voluntarily or involuntarily submit to the collection of the DNA samples and fingerprints alleged to be required under Wis. Stats., 165.76 and 165.77.

8) The defendants appear to believe and have expressed or implied that Wis. Stats., 165.76 and 165.77 authorizes them to subject plaintiff and other inmates to disciplinary punishments under DOC 303 and a class A misdemeanor punishable by nine months in jail, a \$10,000 dollar fine or both if they refuse to first sign the "Consent For DNA Specimen Collection" regardless to whether plaintiff or said inmates are willing to voluntarily or involuntarily submit to the DNA testing supposedly required by law. [plaintiff incorporates by reference here a copy of the said "Consent For DNA Specimen Collection" form attached hereto as exhibit "C" and a copy of the "Wisconsin DNA DataBank Sample Information Sheet" attached hereto as exhibit "D" which defendants have implemented to facilitate their DNA collection process and procedures.

9) WHEREAS on February 11, 2001 plaintiff was ordered by employees of defendant Jon Litscher at the Oshkosh Correctional Institution [OSCI] to submit to the collection of his DNA. The collection of his DNA was being administered by an agent or employee of the defendant-Wisconsin DNA DataBank. Said DataBank agent/employee informed plaintiff that he must submit to the collection of his DNA pursuant to Wis. Stats., 165.76 and 165.77 and further, that if he refused he will be punished by the DOC under DOC 303 and be subject to misdemeanor penalties under State law. Plaintiff was then ordered by said agent/employee to sign a consent form. [exhibit "C"]. Plaintiff asserted that based on the information provided him by the DataBank agent/employee that implied or expressed authority to collect his DNA, that he would comply with the DNA collection only on that premise, but, did not believe it necessary or

lawful to force him to sign the consent form [exhibit "C"] in a threatening manner. Said DataBank agent/employee advised plaintiff that if he continued to refuse to sign the consent form, she would not take his DNA sample or fingerprints and was under orders by the DOC and DOJ to abort the DNA collection process attempted and alert security staff at the prison about his **refusal to sign the consent form**--- whereupon plaintiff would be found to be in violation of DOC 303 regulations and the laws under 165.76 and 165.77 Wis, Stats. and receive the consequent punishments thereunder. Said DataBank agent/employee issued plaintiff a final ultimatum, that he could sign the consent form [exhibit "C"] and note therein that he was doing so under duress. To avoid the threatened arbitrary, capricious and unlawful punishments, plaintiff signed the consent form under duress as directed, whereupon the said DataBank agent/employee finally took two "Buccal (oral) swabs" for DNA analysis and two fingerprints. This information was documented and affixed (bar coded) to a form such as that attached hereto as exhibit "D"].

10) Plaintiff believes that the defendants' aforementioned policy, practice or custom is unconstitutional and contrary to Wis. Stats., 165.76 and 165.77. **If said Statutes clearly authorize the defendants to collect plaintiff's DNA, then there is no legitimate need or interest for the plaintiff to be required to sign a consent form where a law, in mandatory language, already supposedly compels unconditional compliance.**

11) Plaintiff believes that the defendants aforementioned policy, practice or custom threatens and impinges upon his right to be free from self-incrimination secured him under the fifth Amendment to the U.S. Constitution. Because DNA evidence is directly linked to the identification process in a criminal prosecution and this process is clearly being deployed for such a purpose, present or future, the defendants would be at liberty now or at a later date, to

claim, if necessary or self serving, that the consent form plaintiff signed [exhibit "C"] constitutes a waiver to any defense(s) in law available to plaintiff to challenge the DNA identification, collection process or procedures concerned with such.

12) Plaintiff believes and avers that coercing him or outright threatening him with harsh and arbitrary punishments in order to obtain his signature on any consent form, be it ordered to be achieved under duress or otherwise, is illegal. Forcible signing of the consent form^M is the only option being advanced by the defendants in a situation where legally, only the plaintiff has the right to waive any rights he may be entitled to under the law—not the defendants. Plaintiff asserts that a waiver signed under duress is not the same as a refusal to sign the consent form outright. A waiver signed under duress is subject to collateral attack and does not provide plaintiff the full protection he is entitled to under the law.

13) Plaintiff believes and avers that even if the defendants collection of his DNA is constitutional under the law [see SHELTON V. GUDMANSON, 934 F.Supp. 1048 W.D. WIS. 1996], the supposed mandatory requirement that he must first sign a consent form as part of defendants' unpromulgated collection procedures, renders the DNA collection procedures at issue, unreasonable and unconstitutionally intrusive under the first, fourth, fifth, sixth, eighth and fourteenth Amendments to the United States Constitution and therefore, provides an arguable basis at law for plaintiff to establish his cause of action on the file herein.

14) Plaintiff has suffered injury to his rights as a direct and approximate result of the defendants' unlawful and unconstitutional conduct alleged on the file herein.

15) The validity of defendants' policy, practice or custom which they believe to authorize them to force plaintiff and other inmates to sign consent forms in a manner alleged herein to be contrary to law and unconstitutional, should be freed from doubt and uncertainty,

16) On information and belief plaintiff avers that there is no legislative enactment, Wisconsin Administrative Code provision or Law, specifically authorizing defendants' aforementioned policy, practice or custom and thus, an actual controversy has arisen and continues to cause irreparable harm to plaintiff and among the inmates at the Wisconsin State Prison System who have been threatened with arbitrary punishments as an inducement to force them/us to sign consent forms in concert with the collection of their/our DNA and fingerprints as described heretofore.

17) On further information and belief plaintiff avers that forcing plaintiff and other inmates to sign consent forms in this way, without promulgation of Administrative rules to govern such as required under Wis. Stats., 165.77 and 227 is a direct and flagrant disregard for the rights secured plaintiff and other prison inmates. Again, an actual controversy has arisen because the defendants are acting in this way in direct conflict with State and Federal law and thus, giving rise to several types of deprivations under the law.

18) The resolution to this controversy is within the jurisdiction of this court under the Uniform Declaratory Judgments Act Wisconsin Stats., 806.04.

**PLEADINGS REGARDING COMPLIANCE WITH THE
EXHAUSTION DOCTRINE UNDER DOC CH. 310 AND
CHAPTER 802 OF THE WISCONSIN STATE STATUTES**

19) Plaintiff contends that he has no administrative remedies available to him which are adequate to redress his foregoing claims for relief. He claims herein that the defendants' acts and omissions are unconstitutional and otherwise contrary to law. The questions he raises through his claims are unsuited to resolution through an inmate complaint review process or an

administrative tribunal in a particular government or non-governmental agency. The constitutionality of a statute, or administrative rule, is, perforce, a question for the courts. See STATE EX REL. HENSLEY V. ENDICOTT, (Citation omitted) (Wis. App. 2000). Exhaustion would be futile by review under any administrative review defendants could offer. In fact, the defendants assert the reversal, setting aside or vacation of a criminal sentence as the only grounds available to plaintiff for expungement of the DNA data included in it's data bank. [see exhibit "C" for emphasis]. There are no established procedures for expungement of the "Consent For DNA Specimen Collection" form. [exhibit "C"].

Accordingly, the issues are purely legal and to file a complaint with the defendants to obtain review of a purely legal issue would be futile. See TRANTZ V. ZUNKER, 550 N.W.2d 141 (Ct. App. 1996); BENSON V. GATES, 525 N.W.2d 278 (Ct. App. 1994) and STATE EX REL. SMITH V. McCAUGTRY, 586 N.W.2d 63 (Ct. App. 1998).

20) Thus, there are no non-judicial remedies available to plaintiff and because he has stated a claim for which relief could be granted by this court, he asks that he be exempted from satisfying any further exhaustion requirements which, under different circumstances, would preclude him from bringing a civil action of this kind.

21) WHEREFORE, plaintiff demands judgment:

a) declaring that the defendants jointly and severly do not have the power or authority to forcibly require plaintiff, or any Wisconsin prison inmate to first sign a consent form or waiver as a precondition to voluntarily or involuntarily complying with the provisions under Wis. Stats., 165.76 and 165.77; and

b) declaring that the failure or refusal to sign such a consent form as aforementioned, in and of itself, in no way violates the provisions under Wis. Stats., 165.76 and 165.77 and

therefore, plaintiff or any Wisconsin State prison inmate cannot be subject to punishment under any rule of law for refusing to sign the type of consent form at issue on the file herein, as a pretext to voluntary or involuntary compliance with Wis. Stats., 165.76 and 165.77.

c) injunctive relief (TRO) therein temporarily nullifying the Consent For DNA Specimen Collection form, plaintiff forcibly signed, in all of its parts, thereby prohibiting the defendants from asserting any probative value or privileges to its tainted DNA collection effort during the pendency of this action.

d) injunctive relief (permanent) enjoining the named defendants from forcing plaintiff or any Wisconsin state prison inmate, under the threat of arbitrary punishments or any such punishments not authorized by law, to sign a consent form or waiver for DNA specimen collection as a precondition to compliance with Wis. Stats., 165.76 and 165.77.

e) award plaintiff his reasonable costs (actual) and any other such costs or fees this court deems plaintiff should be allowed to recover.

f) award plaintiff punitive damages for the injury to his rights under the Constitution and state law and to redress defendants flagrant disregard of same as a deterrent to future misconduct.

g) award plaintiff his reasonable attorney fees, if any incurred as a direct result of this action.

Dated this 7th day of March 2001.

Respectfully submitted



MARK ANTHONY ADELL/PLAINTIFF
OSHKOSH CORRECTIONAL INST.
BOX 3310, OSHKOSH, WI 54903

State of Wisconsin, Plaintiff

-vs-

ADELL, MARK ANTHONY, Defen

05/16/59

Defendant's Date of Birth

111309
10/14/97
MRV

TYPE OF CONVICTION (Select One)
 Sentence to Wisconsin State Prisons
 Sentence withheld, Probation Ordered
 Sentence imposed & Stayed, Probation Ordered
COURT CASE NUMBER 97CF002643

The defendant entered plea(s) of: Guilty Not Guilty No Contest

The Court Jury found the defendant guilty of the following crime(s):

CRIME(S)	WIS STATUTE(S) VIOLATED	FELONY OR MISDEMEANOR (F OR M)	CLASS (A-E)	DATE(S) CRIME COMMITTED
CT1: POSSESSION OF BURGAROUS TOOLS - PTAC	943.12 939.05	F	B	06/12/97
CT2: RECEIVING STOLEN PROPERTY - PTAC	943.34(1)(B) 939.05	F	B	06/12/97

IT IS ADJUDGED that the defendant is convicted on NOVEMBER 18, 1997 as found guilty, and:

- on NOVEMBER 18, 1997 is sentenced to prison for CT1 AND CT2: TWO (2) YEARS, EACH COUNT, CONSECUTIVE TO EACH OTHER AND CONSECUTIVE TO ANY OTHER SENTENCE.
- on is sentenced to intensive sanctions for
- on is sentenced to county jail/HOC for
- on is placed on probation for

CONDITIONS OF SENTENCE/PROBATION

Obligations (Total amounts only)

Fine

(includes jail assessments; drug assessments; penalty assessments)

Court Costs

(includes service fees; witness fees; restitution surcharge; domestic abuse fees; subpoena fees; automation fees)

*\$40.00

Attorney fees

Restitution

*TO BE DETERMINED

Other

Mandatory victim/witness surcharge(s)

felony 2 counts
misdemeanor counts

*\$140.00

Jail: To be incarcerated in the county jail/HOC for

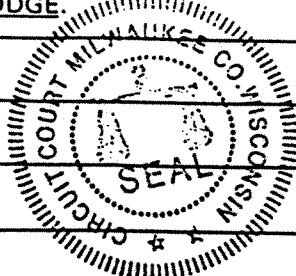
Confinement Order For Intensive Sanctions sentence only - length of term:

Miscellaneous

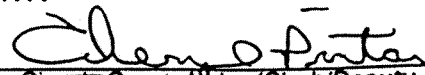
*ALL MONIES OWED ARE TO BE PAID FROM PRISON WAGES. ANY BALANCE OF RESTITUTION OWED IS TO BE PAID DURING PAROLE OR CIVIL JUDGEMENT TO BE ENTERED. ANY BALANCE OF VICTIM/WITNESS SURCHARGE AND COURT COSTS ARE TO BE PAID DURING PAROLE SERVE SIXTY (60) DAYS IN THE HOUSE OF CORRECTION, CONSECUTIVE, EACH COUNT.

IT IS ADJUDGED that days sentence credit are due pursuant to s.973.155 Wis. Stats. and shall be credited if on probation and it is revoked.

IT IS ORDERED that the Sheriff shall deliver the defendant into the custody of the Department located in the City of WAUPUN, COUNTY OF DODGE.

NAME OF JUDGE DENNIS P. MORONEY	
DISTRICT ATTORNEY IRENE PARTHUM	
DEFENSE ATTORNEY PHIL BERMAN	

BY THE COURT:


Circuit Court Judge/Clerk/Deputy Clerk

NOVEMBER 18, 1997

MA
Date Signe

EX. A

REVOCATION ORDER AND WARRANT

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS



#31313

TO THE ATTENTION OF ANY PAROLE OFFICER, PROBATION OFFICER, PEACE OFFICER OR ANY OFFICER authorized to serve criminal process and to the SUPERINTENDENT or OTHER PERSON in charge of any jail, penitentiary, lockup or other place of detention:

In the matter of:

Client Name Mark Adell (5-16-59)				Case (Client) Number 111690-A	
Status Being Revoked	Date Client Granted Status	Committing Court	County of Commitment	Court Case #	Return to Court Yes/No*
Parole	2-14-97	Cir. Br. 32	Milwaukee	F924059	No

WHEREAS, the above-named was granted the status(es) noted above,

AND WHEREAS, on April 10, 1997 the above-named violated the conditions of such status(es) as determined by the Division on October 9, 1997.

THEREFORE, in accordance with the provisions of Chapter 304 and/or Chapter 973 of the Wisconsin Statutes, it is now ordered that said probation(s), parole(s) and/or mandatory release parole(s) be and hereby is (are) revoked effective the date of this order.

YOU ARE COMMANDED, in the name of the State of Wisconsin, and this shall be your authority to execute this order to apprehend and hold said probationer/parolee for the following disposition:

X Return to the Wisconsin Dodge Correctional Institution.

Return to the above-noted Wisconsin Court(s) for sentencing pursuant to §973.10(2) or for commitment pursuant to §975.06 of the Wisconsin Statutes.

Return to the County Jail.

AND YOU, the Superintendent of said institution, are hereby authorized and directed to receive the aforesaid and keep him/her until discharged pursuant to law.

Witness my hand and the Seal of the Wisconsin Division of Hearings and Appeals at Madison, Wisconsin, this

9th day of October, 1997 .

Division of Hearings and Appeals
William Lundstrom, Assistant Administrator

Jail Credit Due # Days From Thru From June 12, 1997 until his receipt at the institution.	Period of Reincarceration (§ 53.11 (7)(a), Wis. Stats.) 1 Yrs 10 Mos 20 Days
	Amount of Good Time Forfeited Yrs Mos Days
	Is Good Time To Be Earned on Forfeited Good Time? Yes No
	Tolled Time (If applicable) Yrs Mos Days

*If yes, attach copy of findings/waiver to Court's copy of Revocation Order & Warrant

EX. B

CONSENT FOR DNA SPECIMEN COLLECTION

I, _____, Inmate Number _____ have been informed, that I am required by Wisconsin Statutes, to provide a biological specimen (oral swab) for the purpose of DNA analysis only. DNA analysis establishes a genetic profile of an individual and is used in a manner similar to finger printing. If a person refuses to provide a DNA specimen they will be charged with a Class A misdemeanor punishable by nine months in jail, a \$10,000 fine, or both.

The laboratories which receive a human biological specimen may make the data obtained from any analysis available to law enforcement agencies in connection with criminal investigations and, upon request, to any prosecutor, defense attorney or subject of the data. As required by State Statutes, laboratories shall destroy specimens obtained after analysis has been completed and the applicable court proceedings have concluded.

A person whose DNA analysis data has been included in the data bank may request expungement on the grounds that his or her conviction has been reversed, set aside or vacated.

I HEREBY CONSENT TO HAVE A DNA SPECIMEN DRAWN

_____ INMATE SIGNATURE	_____ INMATE NUMBER	_____ DATE SIGNED
_____ WITNESS SIGNATURE		_____ DATE SIGNED

SPECIMEN DRAWN _____
DATE _____ TIME _____

SPECIMEN DRAWN BY _____
HEALTH CARE PROVIDER

Inmate, _____, Inmate Number _____ has been given a direct order and has refused to sign a consent to have a DNA specimen drawn.

_____ WITNESS SIGNATURE	_____ DATE SIGNED
----------------------------	----------------------

EX. C



WISCONSIN DNA DATABASE

SAMPLE INFORMATION SHEET

Wisconsin DNA Databank
1578 South 11th Street
Milwaukee, WI 53204-2860
(414) 382-7500

Affix Bar-Code Label Here

Note: The information recorded here will be used to verify the identity of the person being sampled. Please fill in the blanks as completely as possible.

Subject Information (Please Print)

Last Name: _____

First Name: _____

Full Middle Name: _____

Date of Birth: ____ / ____ / ____

State Identification Number: WI- _____

Department of Corrections Client Number: _____

Sex
 Male
 Female

Race
 Caucasian
 Hispanic/Latino
 African/American
 Asian
 Native American
 Other _____

Collection Information (Please Print)

Sample Type: Buccal (Oral) Swabs Blood

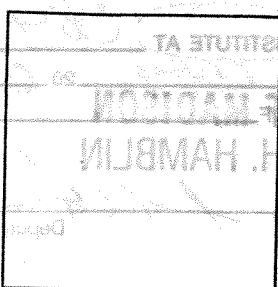
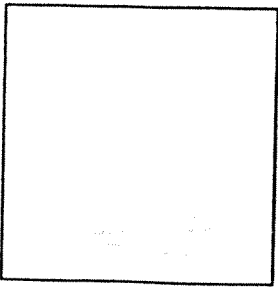
Date of Collection: ____ / ____ / 20____ Collected by: _____

Collecting Agency: _____

Agency Contact Person: _____ Phone: (____) ____ - ____

Subject Fingerprints

Take one impression of the subject's right index finger in each of the boxes below and in each of the boxes provided on the swab envelopes in the collection kit.



**For Databank Use Only
DO NOT WRITE IN THIS BOX**

Sample #: _____

Date Received: _____

Entered By: _____

EX. D

Dave -

Thanks for the
copy. Thought you
might want it back -
save some copying!

Roger
Cowles office

MAY 31 2001

Mr. Quinn Johnson
WHITEVILLE CORRECTIONAL FACILITY
P.O. Box 679
Whiteville, TN 38075

May 18, 2001

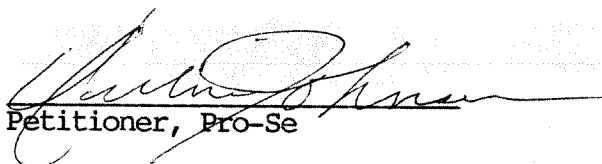
HONORABLE WILLIAM M. ATKINSON
Trial Court Judge
P.O. Box 23600
Brown County Courthouse
Green Bay, WI 54305-3600

Dear Sir,

Please find enclosed one(1) original and one(1) copy of the Petitioner's Petition for Writ of Certiorari, memorandum in support of petitioner's affidavit of indigency, affidavit of indigency, and motion for production of documents to be included in the return, with exhibits attached to writ. A copy of the same is being forwarded as of this day too:

JOINT COMMITTEE OF REVIEW OF ADMINISTRATIVE RULES
State Capital, South
P.O. Box 7882
Madison, WI 53708-7882

Respectfully Submitted,


Petitioner, Pro-Se

cc:three/file

STATE EX REL, QUINN JOHNSON
Petitioner,

V.

Case No. _____

DEIRDRE MORGAN, CHAIRPERSON
WISCONSIN PAROLE COMMISSION
Respondent.

MOTION FOR PRODUCTION OF DOCUMENTS TO BE
INCLUDED IN THE RETURN.

COMES NOW the Petitioner proceeding herein, Pro-Se with his motion for an Order that the Respondent include a certified copy of any rule, policy or memo in their possession directing that all drug offenders shall not be released or receive a discretionary parole grant. In support of this motion, Petitioner respectfully states:

(1). Petitioner alleged in his Petition for Writ of Certiorari that the Respondents considered a new rule or policy directing that no discretionary paroles shall be granted to drug offenders, when the decision was made to deny him parole.

(2). Even though such rule or policy was considered by Respondents in rendering decisions in applications for early parole by drug offenders, no such document are made part of the official record of the hearing.

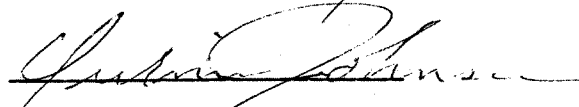
(3). The Petitioner is requesting that the Court take Judicial notice of the document pursuant to §. 942.01, Wis Stats., in the Certiorari proceedings that will be heard by the Court in this case.

CONCLUSION.

WHEREFORE, Petitioner respectfully moves this Honorable Court to GRANT THIS MOTION AND ORDER THAT ANY DOCUMENTS USED BY THE Respondents described herein as either a rule, policy or memo, directing that all persons confined by the Department of Corrections and convicted of a drug offense shall not be granted a discretionary parole and be required to serve the Maximum release date of the sentence imposed.

Respectfully Submitted,

Dated this 18 day of May 2001.


Petitioner, Pro-Se

WHITEVILLE CORRECTIONAL FACILITY

P.O. Box 679

Whiteville, TN 38075.

STATE EX REL, QUINN JOHNSON
Whiteville Correctional Facility
P.O. Box 679
Whiteville, TN 38075

Petitioner,

V.

Case No. _____
Code No. 30707.

DEIRDRE MORGAN, CHAIRPERSON
Wisconsin Parole Commission
2701 International Lane. Suite 201
Madison, WI 53704.

Respondent.

PETITION FOR WRIT OF CERTIORARI.

NOW COMES the Petitioner proceeding herein pro-se, pursuant to Art. 4 Sec. 7 & 8 of the Wisconsin Constitution and Ch. 781 of the Wisconsin Statute, with his Petition for Writ of Certiorari. In support of this petition, it is respectfully stated:

1. At all times relevant to this action, Petitioner was a State of Wisconsin prisoner being confined at the WHITEVILLE CORRECTIONAL FACILITY, (W.C.F.), located at 1440 Union Spring Rd., P.O. Box 679, Whiteville, TN 38075.
2. At all times relevant to this action, Respondent Dierdre Morgan was the chairperson of the Wisconsin Parole Commission, whose address is: 2701 International Lane, Suite 201, Madison, WI 53704.
3. At all times relevant to this action, when a Administrative Statute is being challenged, Joint Committee of Review of Administrative Rules, State Capital, Sotuh, P.O.Box 7882, Madison, WI 53708-7882.

4. On June 28, 1994, Petitioner was convicted in the Brown County circuit court of possession of a controlled substance, cocaine. Contrary to §. 161.41 Wis Stats. Petitioner was sentenced to a term os 22½ years to be served consecutive with a 13 year parole violation sentence. No sentence credit was awarded.

5. With no sentence credit awarded and a combined sentence totaling 35½ years, Petitioner's maximum release date (M.R.), was set at 1/29/2012, and his parole eligibility date was set at 2/12/200.

6. On 2/8/2000, Petitioner appeared before the parole commissioner via telephone from W.C.F. and at that hearing the Commissioner found Petitioner had satisfactory Institutional conduct; satisfactory participation in recommended programs; and a workable parole plan. However, the Commissioner found that I had not served a sufficient amount of time in custody and that I posed an unreasonable risk to the community:

The Commissioner based her determination that Petitioner posed an unreasonable risk to the community, on the incorrect fact that Petitioner was released on discretionary parole and was revoked within that same month of 1998. This is /was error. Petitioner has never been released on this sentence to a discretionary parole, then revoked.

7. The parole Commissioner then orally informed petitioner of her recommendation to deny parole and der reconsideration for 48 months.

8. On 2/8/2000, the Chairperson Deirdre Morgan agreed with the Commissioner recommendation to deny parole and defer reconsideration for 48 months.

9. On June 26, 2000, Petitioner was awarded his three(3) years and two(2) months of jail credit.

The 3½ years served on the sentence was not reflected in the record, nor in Petitioner's M.R. date. Once this time had been credited toward the sentence, Petitioner's M.R. date was recalculated and changed to 12/14/08.

10. On April 21, 2001, Petitioner submitted a request for reconsideration of parole or a "new parole" hearing based on the incorrect information in the record that Petitioner had been granted a discretionary parole and was revoked in 1998. And "new evidence" that Petitioner had served 3½ years longer than the original parole commissioner was aware of and that time had now been credited toward the sentence.

11. On May 3, 2001, Petitioner received an answer to his request from a Bethany Vande Kolk, Contract Monitoring Unit, Dodge Correctional Institution, 1 West Lincond St. Waupun, WI 53963, indicating that the information has been noted and discussed with the parole commissioner, and that a decision has been made that the 48 month defer will stand. She further noted that given Petitioner's M.R. date is 12/14/2008, "the defer and subsequent parole eligibility date (PED) [is reasonable]".

There was no mention of the factual error concerning a early release and reincarceration for a parole violation in 1998.

12. The parole commission allows for no administrative appeal of its actions. Thus, there is no adequate remedy alternative to application for Writ of Certiorari.

13. In 1997, the Secretary of the Wisconsin Department of Corrections (W.D.O.C.), issued a "new rule" directing the parole Commission not to grant early parole to any and all drug offenders and that they will be required to serve the entire mandatory maximum release date of their sentence.

14. Upon information and belief, this "new rule" was applied to the Petitioner by the Respondents when the decision was rendered to deny him parole.

15. This "new rule" have never been properly promulgated and enacted through the Laws of Chapter 227 of the Wisconsin Statutes.

16. At the time of Petitioner's parole hearing, the Respondents did not give Petitioner any notice that such a rule or policy would be considered in his application for an early release on parole.

17. Petitioner's offense is for possession of a controlled substance with intent to deliver, which classifies him as a drug offender within the meaning of the new rule.

18. At the time of Petitioner's conviction and sentence no such rule or policy was in effect and Petitioner expected that if he fulfilled all his program needs and satisfied all the other required criterion established by the W.D.O.C., he would be considered for an early release on parole.

19. Under the plain language of the new rule Petitioner would not be released on a early parole no matter what he accomplished or achievement made during his incarceration.

20. In the following proceedings, Petitioner allege his is entitled to relief on the following grounds:

(a). Respondent's decision to deny him early

parole based on the fact he had not served a sufficient amount of time was arbitrary and unreasonable, representing his will rather than his judgment.

(b). The respondent's decision to deny Petitioner a new parole hearing based upon new and highly relevant evidence, was arbitrary and unreasonable representing their will rather than their judgment.

(c). Respondents decision to deny Petitioner a new parole hearing based on a change in his sentence of a 3½ year reduction, was contrary to their own rules and regulations.

(d). There was insufficient evidence to support the Respondents decision to defer reconsideration of Petitioner's parole for 48 months.

(e). The retroactive application of a new rule or policy denying early parole to drug offenders, violated Petitioner's Substantive Due Process Rights.

(f). Respondent's decision to deny a new parole hearing based upon new and highly relevant evidence violated the Petitioner's procedural Due Process Rights.

(g). Respondent did not follow their own rules when making the decision to defer reconsideration of his parole for 48 months.

CONCLUSION.

WHEREFORE, Petitioner respectfully pray this Honorable Court to GRANT this Petition for the issuance of a Writ of Certiorari to bring up for review the parole hearing proceedings held above by the Respondents and that, upon the return of the writ, issue an ORDER THAT THE DECISION OF THE Respondents be REVERSED and ruled null and void, and FURTHER issue a DECREE that the retroactive application of a rule or policy which denies drug offenders early parole is Unconstitutional both on its face and as applied to the Petitioner.

Respectfully Submitted,

Dated this 18th day of May 2001.



Petitioner, Pro-Se
WHITEVILLE CORRECTIONAL FACILITY
P.O. Box 679
Whiteville, TN 38075

Sworn and Subscribed to before me
Dated this 18th day of May 2001.

Ernestine Sharpe
STATE OF TENNESSEE, NOTARY PUBLIC,
My Commission expire 11-19-03.

STATE OF WISCONSIN, CIRCUIT COURT, BROWN COUNTY

Please Print or Type

PRISONER'S PETITION FOR WAIVER OF FEES/COSTS AFFIDAVIT OF INDIGENCY

STATE EX REL, QUINN JOHNSON

-vs-

DEIRDRE MORGAN, CHAIRPERSON WISCONSIN PAROLE COMMISSION.

Case No. _____

(The prisoner must provide the following to the Clerk of Court at the time of filing:

- The original and one copy of this affidavit and attachments.
Sufficient copies of the pleadings for potential service on all named defendants.)

Under oath I state that:

- 1. I am unable to pay the costs of this action, special proceeding or appeal or to give security for those costs, and request waiver of those costs because of poverty.
2. I have not had three or more appeals, writs of error, actions or special proceedings dismissed by a state or federal court for any of the reasons listed in §802.05(3)(b)1-4, Wisconsin Statutes.
3. I have attached and incorporated into this affidavit:
The original pleading in this matter.
[If this proceeding is related to prison or jail conditions]: Written documentation of exhaustion of all available administrative remedies, including copies of all written materials:
I provided to the administrative agency as part of the administrative proceeding;
the administrative agency provided to me related to the administrative proceeding; and,
included as part of any administrative appeal.
A certified copy of my prison trust fund account for the six months preceding the date of this petition.
My authorization to the agency having custody of my prison trust fund account (on DOC form 1930 provided by the Wisconsin Department of Corrections), to forward payments from my account to the clerk of court each time the amount in the account exceeds \$10, until the costs and fees are paid in full.

4. I [] have [X] have not committed an offense on or after September 1, 1998. (An offense is defined in §165.83(1)(c), Wisconsin Statutes, as an act which is a felony, misdemeanor, or violation of a city, county, village, or town ordinance.

5. I [X] am [] am not employed. Name of employer: CCA-Whiteville - Pod Worker

6. I earn \$ 41.00 gross [] weekly. [] every two weeks. [] twice monthly. [X] monthly.

7. I have received or been entitled to receive money from the following sources within the past 12 months (list total amount):

- [] pension, annuities or life insurance payments: \$
[] disability or worker's compensation payments: \$
[] gifts, loans or inheritances: \$
[] rent payments, interest or dividends: \$
[] business, profession or self employment: \$
[X] other: \$

8. I have the following cash assets:

- [X] savings accounts: \$
[] checking accounts: \$
[X] cash: \$
[] money owed me: \$
[] any other cash assets: \$

Original: Clerk of Circuit Court

Continued on Page 2

9. I have the following other assets (list value):

- real estate: \$ _____
- stocks, bonds, securities and financial instruments: \$ _____
- automobiles: \$ _____
- computers, audio-visual equipment, other personal property: \$ _____
- jewelry, antiques, objects of art or other valuable property: \$ _____

10. I have not transferred any funds or other assets in the past 12 months except as follows (describe any transfers):

11. I have not assigned my rights to any funds or other assets since first incarcerated except as follows (describe any assignments):

12. I have the following legal obligations:

Obligation	Amount Actually Paid Per Month	Amount Actually Paid in Last Six Months
<input type="checkbox"/> Child Support	\$ _____	\$ _____
<input type="checkbox"/> Restitution	\$ _____	\$ _____
<input type="checkbox"/> Fines/Costs	\$ _____	\$ _____
<input type="checkbox"/> Other:	\$ _____	\$ _____

13. My spouse is is not employed. Name of employer: not known to me

14. My spouse earns \$ not known gross weekly every two weeks twice monthly monthly.

15. My spouse receives monthly income totaling the amount of \$ not known to me from:

Pension Social Security Unemployment compensation

Disability Student loans/grants Other: _____

16. I have the following miscellaneous expenses: Stamps, and legal writing material,
and hygiene supply.

Subscribed and sworn to before me

on May 18, 2001

Earnestine Sharp
Notary Public, State of Wisconsin

My commission expires: 11-19-03

I understand that if my financial situation changes,
to I must notify the court immediately.

[Signature]
Signature

May 18, 2001
Date

AUTHORIZATION TO WITHHOLD MONEY FROM ACCOUNTS

I, Quinn Johnson
(Print Plaintiff's Name)

42706

(I.D. Number, e.g. DOC No.)

wish to commence a lawsuit described as follows:

DEIRDRE MORGAN, CHAIRPERSON
WISCONSIN PAROLE COMMISSION

Name(s) of defendant(s)

Name of court (e.g. Circuit Court for Dodge County)

Petition For Writ of Certiorari

Subject of the lawsuit (e.g. disciplinary ticket #)

If the court permits me to commence this lawsuit, by my signature below I authorize the agency having custody of my prison trust fund account to forward payments from my account to the clerk of court each time the amount in the account exceeds \$10 until the costs and fees are paid in full.

Quinn Johnson
(Signature of Plaintiff)

May 18, 2001
(Date)

CUSTODIAN:

Give inmate a copy after he or she signs it.

When suit is filed and served, enter court case number here:

A COPY OF THIS FORM MUST ACCOMPANY CIRCUIT COURT FORM CV-438 or CV-440, PRISONER'S AFFIDAVIT OF INDIGENCY

STATE OF WISCONSIN
-VS-

Plaintiff

Defendant

AMENDED

TYPE OF CONVICTION

QUINN JOHNSON,

Defendants DOB 1/04/54

INCARCERATION - WSP

COURT CASE NUMBER 91CF00255

The defendant entered plea(s) of: GUILTY NOT GUILTY X NO CONTEST

The COURT found the defendant guilty of the following crime(s):

CRIME(S)	WIS STATUTE(S) VIOLATED	FELONY OR MISDEMEANOR (F OR M)	CLASS (A-E)	DATE(S) CRIME COMMITTED
1 POSS WITH INTENT TO DEL	161.41(1M)(C)	FE		5/29/91

(THIS CASE WAS APPEALED AND WAS REVERSED AND CAUSE REMANDED)

IT IS ADJUDGED that the defendant is convicted on 9/10/91 as found guilty and:

- X on 6/27/94 is sentenced to prison for 22 YEARS, 6 months
- on is sentenced to intensive sanctions for
- on is sentenced to county jail for
- on is placed on probation for

CONDITIONS OF SENTENCE/PROBATION

Obligations:(Total amounts only)

FINE / FORFEITURE	\$ 1,000.00
Due 0/00/00	
FINE/VICTIM SURCHARGE	\$ 50.00
Due 0/00/00	
COURT COSTS / MISC. FEES	\$ 1,630.00
Due 0/00/00	
TOTAL	\$ 3,680.00

JAIL: to be incarcerated in the county jail

CONFINEMENT ORDER FOR intensive sanctions only-length of term

Miscellaneous
SENTENCE AMENDED
PRISON SENTENCE TO RUN CONSECUTIVE TO CURRENT SENTENCE
FINE AND COSTS DUE 2 YEARS AFTER RELEASE FROM PRISON

IT IS ADJUDGED that _____ days sentence credit are due pursuant to s.973.155 Wis. Stats. and shall be credited if on probation and it is revoked.

IT IS ORDERED that the Sheriff shall deliver the defendant into the custody of the Department located in the City of WAUPUN Wisconsin.

NAME OF JUDGE
WILLIAM ATKINSON

DISTRICT ATTORNEY
JOHN ZAKOWSKI

DEFENSE ATTORNEY
C. F. MONTELLS

F I L E D

JUN 30 1994

BY THE COURT:

Patricia Messinger

XXXXXXXXXXXXXXXXXXXXXXXXXXXX/Deputy Clerk

6/27/94

Date

PAROLE COMMISSION ACTION

OFFENDER NAME JOHNSON, QUINN		DOC NUMBER 042706	INSTITUTION CCAW	AGENT AREA NUMBER 40508
ACTION TAKEN D-48	NEW PED 2/12/2004	ELIGIBLE ON OR AFTER N/A	PAROLE COMMISSION CHAIRPERSON <input checked="" type="checkbox"/>	DATE ACTION TAKEN 2/8/2000

TIME

Has served sufficient time so that release would not depreciate the seriousness of the offense
 Not served sufficient time

Documentation **5TH INCARCERATION P.V.(MULTIPLE ARMED ROBBERIES) NEW DRUG OFFENSE**

INSTITUTION CONDUCT

Has been satisfactory Marred by multiple minor reports of misconduct
 Has been unsatisfactory noting major misconduct

Documentation

PARTICIPATION IN RECOMMENDED PROGRAM(S) Satisfactory Unsatisfactory
 Documentation **DOMESTIC VIOLENCE COUNSELING HAS NOT BEEN AVAILABLE.**

PAROLE PLAN

Workable, but will need Agent's verification Vague - will need further development

Documentation **RESIDENCE WITH WIFE**

RISK TO THE COMMUNITY Unreasonable risk No reasonable risk
 Documentation **INMATE REOFFENDED WITH DRUG DEALING WITHIN A FEW MONTHS FROM HIS
 LAST RELEASE FROM PRISON. DIFFICULT TO RELEASE GIVEN HIS ATROCIOUS CRIMINAL HISTORY.**

RECOMMENDED CONDITIONS OF PAROLE GRANT:

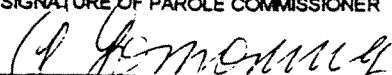
THIS DEFERRAL REQUIRES THE APPROVAL OF THE CHAIRPERSON OF THE PAROLE COMMISSION AND IS NOT FINAL UNTIL HE HAS APPROVED IT.

THERE IS NO ADMINISTRATIVE APPEAL OF THIS DECISION. INMATE HAS A PMR.

REQUESTS

- Pre-parole investigation
- Interstate Compact
- Offense description
- ECRB Evaluation
- Clinical Reports from Clinical Service
- No-action/review by Parole Commission Chairperson

For Office Use Only	
DCC/IS to DCC _____	SYSTEM _____
DAI to DCC/DS _____	PENS _____
DCC _____	29 _____
OUT-OF-STATE _____	DNA _____
MRR _____	ECRB _____
DETAINER _____	LIST _____

SIGNATURE OF PAROLE COMMISSIONER


DISTRIBUTION: Copy - Institution; Copy - CRU; Copy - Offender; Copy - Agent

40508

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH VIII

BROWN COUNTY

STATE OF WISCONSIN,

Plaintiff,

ORDER

vs.

Case No. 91-CF-233

QUINN JOHNSON, 042706

Defendant.

IT IS HEREBY ORDERED that the Defendant be given credit for all days inclusive from May 29, 1991, to June 29, 1994. These days represent incarceration for the same offense prior to the original conviction being vacated and the Defendant being re-sentenced after new trial.

Dated this 26th day of June, 2000.

BY THE COURT:

15/ William M. Atkinson
William M. Atkinson
Circuit Judge

c: Quinn Johnson #42706
Whiteville Correctional Facility
P.O. Box 679
Whiteville, TN 38075
District Attorney
Wisconsin Department of Corrections

COPY

NOTIFICATION OF SENTENCE DATA

OFFENDER NAME JOHNSON, Quinn	DOC NUMBER 042706	INSTITUTION CCA W/cmu/ls	DATE PREPARED 03/20/2001
MANDATORY RELEASE DATE 12/14/2008	MAXIMUM DISCHARGE DATE 08/29/2023	PAROLE ELIGIBILITY DATE * Remains 02/12/2004	
TRUTH - IN - SENTENCING EXTENDED SUPERVISION DATE	TRUTH - IN - SENTENCING MAXIMUM DISCHARGE DATE		

REASON FOR CHANGE

- New Sentence/Also Sentence:
County: _____ Case # _____
Offense: _____ Governs Yes No
Sentence: _____
- Presumptive MR – WI SS 302.11 Requires release ONLY after review by the Parole Commission: MR is NOT MANDATORY

- Revocation:
- | Case # | Period of Reincarceration Ordered: | years | months | days |
|--------|------------------------------------|-------|--------|------|
| Case # | Period of Reincarceration Ordered: | years | months | days |
| Case # | Period of Reincarceration Ordered: | years | months | days |
| Case # | Period of Reincarceration Ordered: | years | months | days |
| Case # | Period of Reincarceration Ordered: | years | months | days |

- MR Extension:
- Truth – In – Sentencing Extension: _____ Conduct/Violation Report # _____
- Disciplinary Extension: _____ Conduct/Violation Report # _____
- Dates In Segregation Status: _____
- Segregation Extension: _____

- Escape Date: _____ Apprehension Date: _____ Tolloed Time: _____

- Other – Specify Change: Per Order dated 06/26/2000 Case No. 91CF233 was amended to reflect 1,126 days jail credit.
Release dates above govern.
Inmate is currently housed at Whiteville Correctional Facility, Whiteville, TN.

* In no case may parole consideration occur less than 60 days following reception or return to the institution. DOC 330.04
DISTRIBUTION: Original - Record Office; Copy - Social Service; Copy – Security; Copy - Central Records Unit; Copy - Offender; Copy – Agent #

1) J279

2) 91CF233 22 YRS 6 MOS CS less 1126 days

96-11-30 - MR #1 per comp for Rev of 7-31-91
2-0 + EMR (60)

97-01-30 - Adj MR #1

11-10-14 + 2/3 #2 -CJT $\frac{15.0.0-}{-3.1.16-}$
11-10-14

2008-12-14 - MR #2

7-2-15 + LTS #1 - EMR $\frac{7-4.15-}{-2.0-}$
7-2-15

2016-02-29 - MAX #1

7-6-0 + 1/3 #2

2023-08-29 - MAX #2

Pro remains 2-12-2004

Johnson, Quinn # 042706-A KF 3-30-2001
CR