Scott McCallum
Governor

Jon E. Litscher
Secretary

Dodge Correctional Institution
Contract Monitoring Unit
1 West Lincoln Street
Post Office Box 661
Waupun, WI 53963-0661
Telephone (920) 324-5577

State of Wisconsin
Department of Corrections

May 3, 2001

Quinn Johnson #042706
Whiteville Correctional Facility
P.O. Box 679
Whiteville, TN 38075

RE: PED Date

Dear Mr. Johnson,

I checked with the Parole Commissioner regarding any change of your Parole Eligibility Date relative to your sentence credit. The dates were noted and the response given was that your last defer of 48 months will stand, and your PED (2/12/2004) will not change. Given the fact that your MR date is 12/14/2008, the defer and subsequent PED is reasonable.

Sincerely,

Bethany Vande Kolk

Bethany Vande Kolk
Offender Records Assistant 2
DCI Contract Monitoring Unit Records

Attachment - B

Attorneys argue over tax stamp ruling

Hearing focuses on how to apply decision affecting convicted drug dealers

BY DAVID DOEGE
of the Journal Sentinel staff

Hundreds of drug dealers imprisoned for failing to buy state drug tax stamps could go free because the state Supreme Court ruled the stamps unconstitutional, a prosecutor opposing an inmate's release said Wednesday.

But the court did not specify that its ruling should be applied retroactively, Assistant District Attorney Patrick J. Kenney argued before Milwaukee County Circuit Judge Maxine A. White.

Kenney made his point at a hearing for Luppta Vela, a state prison inmate petitioning for release on the grounds that the law under which she was convicted was overturned.

Retrospective application of the ruling could free more than 700 men and women from prison, probation or parole, Kenney said. In a prospective application of the law — a view Kenney endorsed — the ruling would affect only people involved in drug trafficking cases since the Supreme Court acted.

The high court ruled, 4-3, last month that the law requiring drug dealers to buy tax stamps was passed to track down dealers in violation of their state constitutional right against self-incrimination.

The law required dealers to buy the tax stamps depending on the drug quantities they had, but prosecutors could not use records from the sale of stamps to track down the dealers.

Although the court overturned the law, it did not specify how its ruling should be applied to the cases of people convicted under it in the past several years.

"I think they (the justices) would have expressly provided for retroactivity if that was their intent," Kenney said.

Vela, 33, is serving a 15-month prison sentence under the tax stamp law. Her attorney, Jerome Pogodzinski, filed a motion asking that White use the Supreme Court ruling as a basis for releasing Vela.

Kenney told White that Vela was one of 343 people convicted under the law in Milwaukee County alone. In Vela's case and many others, prosecutors used the law in good faith to negotiate plea agreements that resulted in reduced drug charges for defendants, Kenney said.

"There isn't any suggestion that the law was misused in this case," Kenney argued.

White decided not to rule on Vela's motion Wednesday because Vela was not present. She rescheduled a hearing on the matter for next month.

Other people convicted under the law are expected to file motions similar to Vela's in circuit courts in the months ahead. The application issue is expected to eventually work its way back to the Supreme Court, but it is not clear how circuit or appellate courts will rule in the meantime.

Maria Stephens, the Director of the SPD Appellate Division at (414) 227-4891, Jack Schairer, the First Assistant in the SPD Madison Appellate office, at (608) 266-3440, or Bill Tyroler, the First Assistant in the SPD Milwaukee Appellate office, at (414) 227-4805, for suggestions. ■

DRUG-DEALER NO-PAROLE RULE

The Department of Corrections ("DOC"), reacting to a Joint Finance Committee Directive, refuses to exercise its discretion to parole "drug dealers" (those convicted of Possession of Controlled Substance with Intent to Deliver or Delivery of Controlled Substance). These inmates will not be released on parole until they reach their mandatory release ("MR") date. An inmate reaches eligibility for discretionary parole ("PED," parole eligibility date) after serving 1/4 of the sentence, and reaches MR after serving 2/3 of the sentence. Deferral of parole to MR therefore involves a considerable amount of additional prison time.

How should attorneys respond to this development? Trial attorneys must inform their clients of the no early parole policy, even if it skews the client away from a plea decision that would otherwise be in his or her best interest. The attorney must also be prepared to give accurate information about this policy to the sentencing judge, in the hope it will be regarded as a mitigating factor.

Appointed appellate attorneys have several options to challenge the policy.

I. Motion to modify sentence.

A. New factor. *State v. Michels*, 150 Wis. 2d 94, 99, 441 N.W.2d 278 (Ct. App. 1989) ("a 'new factor' must be an event or development which frustrates the purpose of the original sentence.... —something which strikes at the very purpose for the sentence selected by the trial court."). *It is very unlikely that a sentencing judge will say that this no parole policy strikes at the very heart of the basis for the sentence*—in other words, that the judge actually meant for the defendant to be paroled prior to MR. However, if at sentencing the judge explicitly took into account the presumed parole eligibility date, then the motion's chance for success improves. *Compare State v. Kutchera*, 69 Wis. 2d 534, 552-53, 234 N.W.2d 750 (1975) (upholding reduction of sentence which had been based on explicit misconstruction of parole eligibility) *with State v. Franklin*, 148 Wis. 2d 1, 14-15, 434 N.W.2d 609 (1988) ("a change in parole policy cannot be relevant to sentencing unless parole policy was *actually* considered by the circuit court"; and impliedly limiting *Kutchera* to instances where "the circuit court *did* expressly discuss parole policy when making its sentencing decision.").

B. *"Kluck"*—type species of new factor. *State v. Kluck*, 200 Wis. 2d 837, ___ N.W.2d ___ (Ct. App. 1996), *review pending* (unlike felony defendant, misdemeanant can raise post-sentencing rehabilitation to support sentence reduction because rehabilitated felon has recourse to parole system, misdemeanant does not). The argument here would be that since the parole board has abdicated its responsibility, a drug defendant is effectively in the same position as a misdemeanant, hence should be allowed to adduce *the sorts of things that traditionally don't qualify as new factors.*

C. *Harsh and excessive sentence. State v. Krueger*, 119 Wis. 2d 327, 335-38, 351 N.W.2d 738 (Ct. App. 1984). A new factor is *not* the only basis for a sentence modification. If the judge decides that he or she gave too much weight to one factor in the face of other contravening considerations—e.g., the refusal to acknowledge rehabilitation through parole—then that judge can reduce the sentence.

II. Motion to withdraw plea (which assumes, of course, both a guilty plea and no pre-plea advice to the defendant about the parole policy).

A. *See generally, State v. Bentley*, 201 Wis. 2d 303, ___ N.W.2d ___ (1996) which, though an ineffective assistance of counsel case, contains a relevant discussion about how misunderstanding parole eligibility may affect plea-voluntariness.

B. Refusal to grant pre-MR parole converts every drug-dealer sentence in effect from a 1/4- to 2/3-mandatory minimum sentence. A defendant might argue, therefore, a lack of "understanding of... the potential punishment," a necessary ingredient of a guilty plea. Section 971.08(1), Stats. (But keep in mind that parolability is ordinarily considered a "collateral consequence," so the argument will have to be that the parole policy in effect creates a mandatory minimum sentence, something that is a direct consequence of a plea.

Motions for sentence modification or plea withdrawal are part of the direct appeal appointment if filed within the Rule 809.30, Stats., time limits. An appointment to litigate these motions outside the Rule 809.30 time limits must be approved in advance by the State Public Defender. *See* sec. 977.05(4)(j), Stats. We understand that the Wisconsin Civil Liberties Union may be litigating this issue. ■

KNOCK AND ANNOUNCE RULE MAY STILL EXIST IN DRUG CASES

by Randy Paulson, Assistant State Public Defender

The United States Supreme Court recently granted the certiorari petition filed by Madison attorney David R. Karpe to review the Wisconsin Supreme Court's decision in *State v. Richards*, 201 Wis. 2d 839, 549 N.W.2d 218 (1996), *cert. granted sub nom. Steiner Richards v. State of Wisconsin*, No. 96-5955 (U.S. Sup. Ct.) ___ U.S. ___ (January 3, 1997). The High Court's action calls into question both *Richards* and an earlier decision, *State v. Stevens*, 181 Wis. 2d 410, 425, 511 N.W.2d 591 (1994).

Essentially, the Supreme Court's action means that the "rule of announcement" in search warrant cases—which requires that executing officers knock on the door of a residence, announce their identity and purpose, and give the occupants a reasonable time to open the door before the officers are permitted to break it down—may still be alive in drug cases, despite the Wisconsin decisions.

The United States Supreme Court earlier held that the "common-law 'knock and announce' rule forms a part of the reasonableness inquiry under the Fourth Amendment." *Wilson v. Arkansas*, ___ U.S. ___, 115 S.Ct. ___, 131 L.Ed.2d 976, 979 (1995). *Stevens*, which preceded *Wilson v. Arkansas*, had held in arguable conflict that the rule could be dispensed with in drug cases because exigent circumstances inherently exist in those cases. However, the court in *Stevens* had expressed uncertainty whether the rule was of constitutional

See Practice Notes, Page 22

MAY 3 1 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

MAY 3 1 2001

STATE OF WISCONSIN | CIRCUIT COURT CIVIL DIV. | BROWN COUNTY

STATE EX REL, QUINN JOHNSON,
Petitioner,

V. Case No._____

DEIRDRE MORGAN, CHAIRPERSON
Wisconsin Parole Commission,
Respondent(s).

MEMORANDUM IN SUPPORT OF PETITIONER'S AFFIDAVIT OF INDIGENCY

NOW COMES, the Petitioner, Quinn Johnson, an inmate at the WHITEVILLE CORRECTIONAL FACILITY, in Whiteville, Tennessee by contract with the Wisconsin Department of Corrections.

Petitioner, is attempting to file a Petition For Writ of Certiorari without being required to pay filing fees.

Petitioner Quinn Johnson, is not a "Prisoner," as defined in Sec. 801.02(7)(a), Stats. The definition of "Prisoner" is provided in Sec. 801.02(7)(a), Stats., which states that "Prisoner" means any person who is incarcerated, imprisoned or otherwise detained in a Correctional Institution or who is arrested or detained by a law enforcement officer." The term "Correctional Institution" is defined as follows in Sec. 801.02(7)(a)1, Wisconsin Stats.,:

> "Correctional Institution" means any State or Local Facility that incarcerates or detains any adult accused of, charged with, convicted of, or sentenced for any crime. A Correctional Institution includes a Type 1 Prison, as defined in §.301.01 (5), a Type 2 Prison, as defined in §. 301.01(6), a county Jail and a house Corrections."

Wherefore, Petitioner herein pray that this Court will Grant leave in this particular case.

Dated this 18 day of May, 2001 A.D.

Respectfully Submitted by:

Petitioner, Pro Se.

MAY 3 1 2001

STATE OF WISCONSIN | CIRCUIT COURT CIVIL DIV. | BROWN COUNTY

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.

Submitted By:

QUINN JOHNSON
Petitioner, Pro-Se.

CIRCUIT COURT

STATE OF WISCONSIN | CIVIL DIV. | BROWN COUNTY

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 OF WISCONSIN | CIRCUIT COURT CIVIL DIV. | BROWN COUNTY

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 $22\frac{1}{2}$ 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 $35\frac{1}{2}$ 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 imcorrect 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 $3\frac{1}{2}$ 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 re-calculated 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 $3\frac{1}{2}$ 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, Petitoner 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 condidered 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 criterian 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 achievment 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 $3\frac{1}{2}$ 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.

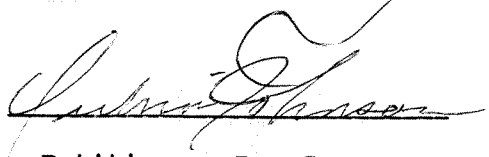
(g). Respondent did not follow their own rules when making the decision to defer reconsideration of his parole for 48 months.

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.

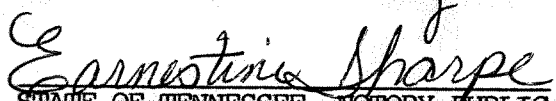
Respectfully Submitted,

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.



STATE OF TENNESSEE, NOTORY PUBLIC,
My Commission expire 11-19-03.

STATE OF WISCONSIN, CIRCUIT COURT, BROWN COUNTY

For Official Use

Please Print or Type

STATE EX REL, QUINN JOHNSON

-vs-

DEIRDRE MORGAN, CHAIRPERSON
WISCONSIN PAROLE COMMISSION.

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

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.
   - Attached is the original Wisconsin Department of Justice certification (form JD-SL-22 containing the raised seal) dated within 30 days of the date of this petition concerning the number of appeals, writs of error, actions or special proceedings dismissed by a state or federal court.
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 ☑ 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 ☑ am ☐ am not employed. Name of employer: CCA-Whiteville - Pod Worker
6. I earn $ 41.00 gross ☐ weekly. ☐ every two weeks. ☐ twice monthly. ☑ 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: ..... $ _____
   - ☐ other: _____ ..... $ _____
8. I have the following cash assets:
   - ☐ savings accounts: ..... $ _____
   - ☐ checking accounts: ..... $ _____
   - ☐ 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
☐ Child Support	$	$
☐ Restitution	$	$
☐ Fines/Costs	$	$
☐ 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 Shaw
Notary Public, State of ~~Wisconsin~~ IN
My commission expires: 11-19-03

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

Signature

May 18, 2001
Date

CV-438, 1/99

§814.29 Wisconsin Statutes

AUTHORIZATION TO WITHHOLD MONEY FROM ACCOUNTS

I, Quinn Johnson 42706

(Print Plaintiff's Name) (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 | CIRCUIT BRANCH # VIII | BROWN COUNTY

STATE OF WISCONSIN Plaintiff -VS- QUINN JOHNSON, Defendant Defendants DOB 1/04/54	AMENDED TYPE OF CONVICTION INCARCERATION - WSP COURT CASE NUMBER 91CF00233

The defendant entered plea(s) of: ___ GUILTY ___ NOT GUILTY X NO CONTEST
The COURT found the defendant guilty of the following crime(s):

CNT	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 Due 0/00/00	$	1,000.00
CRIME/VICTIM SURCHARGE Due 0/00/00	$	50.00
COURT COSTS / MISC. FEES Due 0/00/00	$	1,630.00
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. MONELLS

BY THE COURT:
Patricia Marquardt
XXXXXXXXXXXXXXXXXXXXXXXXXXXX/Deputy Clerk
6/27/94
Date

FILED
JUN 30 1994
CLERK OF COURTS
BROWN COUNTY, WI

A. Ap 102

DEPARTMENT OF CORRECTIONS
PAROLE COMMISSION
DOC-1208A (Rev. 12/97)

WISCONSIN
Wisconsin Statutes
Chapter 304

PAROLE COMMISSION ACTION

OFFENDER NAME	DOC NUMBER	INSTITUTION	AGENT AREA NUMBER
JOHNSON, QUINN	042706	CCAW	40508

ACTION TAKEN	NEW PED	ELIGIBLE ON OR AFTER	PAROLE COMMISSION CHAIRPERSON ☒	DATE ACTION TAKEN
D-48	2/12/2004	N/A		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,

vs.

QUINN JOHNSON, 042706

Defendant.

ORDER

Case No. 91-CF-233

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:

/s/ 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

DEPARTMENT OF CORRECTIONS
Division of Adult Institutions
DOC-192 (Rev. 11/99)

WISCONSIN

NOTIFICATION OF SENTENCE DATA

OFFENDER NAME	DOC NUMBER	INSTITUTION	DATE PREPARED
JOHNSON, Quinn	042706	CCAW/cmu/ls	03/20/2001

MANDATORY RELEASE DATE	MAXIMUM DISCHARGE DATE	PAROLE ELIGIBILTY DATE *
12/14/2008	08/29/2023	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: Tolled 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

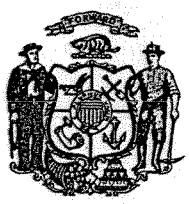
96-11-30 - MR #1 per comp for Rev of 7.31.91
2.0 + EMR (60)
97-01-30 - Adj MR #1
11-10-14 + 2/3 #2 - GT - 15.0.0 - 3-) 16 = 11-10-14
2008-12-14 = MR #2
7.2.15 + LTS #1 - EMR 7-4-15 - 2.0 = 7-2-15
2016-02-29 = MAX #1
7.6.0 + 1/3 #2
2023-08-29 = MAX #2

P40 remains 2-12-2004

Johnson. Quinn # 042706-1 KP 3-20-2001
QR

Scott McCallum
Governor

Jon E. Litscher
Secretary



Dodge Correctional Institution
Contract Monitoring Unit
1 West Lincoln Street
Post Office Box 661
Waupun, WI 53963-0661
Telephone (920) 324-5577

State of Wisconsin
Department of Corrections

May 3, 2001

Quinn Johnson #042706
Whiteville Correctional Facility
P.O. Box 679
Whiteville, TN 38075

RE: PED Date

Dear Mr. Johnson,

I checked with the Parole Commissioner regarding any change of your Parole Eligibility Date relative to your sentence credit. The dates were noted and the response given was that your last defer of 48 months will stand, and your PED (2/12/2004) will not change. Given the fact that your MR date is 12/14/2008, the defer and subsequent PED is reasonable.

Sincerely,

Bethany Vande Kolk

Bethany Vande Kolk
Offender Records Assistant 2
DCI Contract Monitoring Unit Records

Marla Stephens, the Director of the SPD Appellate Division at (414) 227-4891, Jack Schairer, the First Assistant in the SPD Madison Appellate office, at (608) 266-3440, or Bill Tyroler, the First Assistant in the SPD Milwaukee Appellate office, at (414) 227-4805, for suggestions. ■

DRUG-DEALER NO-PAROLE RULE

The Department of Corrections ("DOC"), reacting to a Joint Finance Committee Directive, refuses to exercise its discretion to parole "drug dealers" (those convicted of Possession of Controlled Substance with Intent to Deliver or Delivery of Controlled Substance). These inmates will not be released on parole until they reach their mandatory release ("MR") date. An inmate reaches eligibility for discretionary parole ("PED," parole eligibility date) after serving 1/4 of the sentence, and reaches MR after serving 2/3 of the sentence. Deferral of parole to MR therefore involves a considerable amount of additional prison time.

How should attorneys respond to this development? Trial attorneys *must* inform their clients of the no early parole policy, even if it skews the client away from a plea decision that would otherwise be in his or her best interest. The attorney must also be prepared to give accurate information about this policy to the sentencing judge, in the hope it will be regarded as a mitigating factor.

Appointed appellate attorneys have several options to challenge the policy.

I. Motion to modify sentence.

A. New factor. *State v. Michels*, 150 Wis. 2d 94. 99. 441 N.W.2d 278 (Ct. App. 1989) ("a 'new factor' must be an event or development which frustrates the purpose of the original sentence.... —something which strikes at the very purpose for the sentence selected by the trial court."). It is *very* unlikely that a sentencing judge will say that this no parole policy strikes at the very heart of the basis for the sentence—in other words, that the judge actually meant for the defendant to be paroled prior to MR. However, if at sentencing the judge explicitly took into account the presumed parole eligibility date, then the motion's chance for success improves. *Compare State v. Kutchera*, 69 Wis. 2d 534, 552-53, 234 N.W.2d 750 (1975) (upholding reduction of sentence which had been based on explicit misconstruction of parole eligibility) *with State v. Franklin*, 148 Wis. 2d 1, 14-15, 434 N.W.2d 609 (1988) ("a change in parole policy cannot be relevant to sentencing unless parole policy was *actually* considered by the circuit court"; and impliedly limiting *Kutchera* to instances where "the circuit court *did* expressly discuss parole policy when making its sentencing decision.").

B. "*Kluck*"—type species of new factor. *State v. Kluck*, 200 Wis. 2d 837, __ N.W.2d __ (Ct. App. 1996), *review pending* (unlike felony defendant, misdemeanant can raise post-sentencing rehabilitation to support sentence reduction because rehabilitated felon has recourse to parole system, misdemeanant does not). The argument here would be that since the parole board has abdicated its responsibility, a drug defendant is effectively in the same position as a misdemeanant, hence should be allowed to adduce the sorts of things that traditionally don't qualify as new factors.

C. Harsh and excessive sentence. *State v. Krueger*, 119 Wis. 2d 327, 335-38, 351 N.W.2d 738 (Ct. App. 1984). A new factor is *not* the only basis for a sentence modification. If the judge decides that he or she gave too much weight to one factor in the face of other contravening considerations—e.g., the refusal to acknowledge rehabilitation through parole—then that judge can reduce the sentence.

II. Motion to withdraw plea (which assumes, of course, both a guilty plea and no pre-plea advice to the defendant about the parole policy).

A. *See generally, State v. Bentley*, 201 Wis. 2d 303, __ N.W.2d __ (1996) which, though an ineffective assistance of counsel case, contains a relevant discussion about how misunderstanding parole eligibility may affect plea-voluntariness.

B. Refusal to grant pre-MR parole converts every drug-dealer sentence in effect from a 1/4- to 2/3-mandatory minimum sentence. A defendant might argue, therefore, a lack of "understanding of... the potential punishment," a necessary ingredient of a guilty plea. Section 971.08(1), Stats. (But keep in mind that parolability is ordinarily considered a "collateral consequence," so the argument will have to be that the parole policy in effect creates a mandatory minimum sentence, something that is a direct consequence of a plea.

Motions for sentence modification or plea withdrawal are part of the direct appeal appointment if filed within the Rule 809.30, Stats., time limits. An appointment to litigate these motions outside the Rule 809.30 time limits must be approved in advance by the State Public Defender. *See* sec. 977.05(4)(j), Stats. We understand that the Wisconsin Civil Liberties Union may be litigating this issue. ■

KNOCK AND ANNOUNCE RULE MAY STILL EXIST IN DRUG CASES

by Randy Paulson, Assistant State Public Defender

The United States Supreme Court recently granted the certiorari petition filed by Madison attorney David R. Karpe to review the Wisconsin Supreme Court's decision in *State v. Richards*, 201 Wis. 2d 839, 549 N.W.2d 218 (1996), *cert. granted sub nom. Steiney Richards v. State of Wisconsin*, No. 96-5955 (U.S. Sup. Ct.) __ U.S. __ (January 3, 1997). The High Court's action calls into question both *Richards* and an earlier decision, *State v. Stevens*, 181 Wis. 2d 410, 425, 511 N.W.2d 591 (1994).

Essentially, the Supreme Court's action means that the "rule of announcement" in search warrant cases—which requires that executing officers knock on the door of a residence, announce their identity and purpose, and give the occupants a reasonable time to open the door before the officers are permitted to break it down—may still be alive in drug cases, despite the Wisconsin decisions.

The United States Supreme Court earlier held that the "common-law 'knock and announce' rule forms a part of the reasonableness inquiry under the Fourth Amendment." *Wilson v. Arkansas*, __ U.S. __, 115 S.Ct. __, 131 L. Ed. 2d 976, 979 (1995). *Stevens*, which preceded *Wilson v. Arkansas*, had held in arguable conflict that the rule could be dispensed with in drug cases because exigent circumstances inherently exist in those cases. However, the court in *Stevens* had expressed uncertainty whether the rule was of constitutional

See Practice Notes, Page 22

Attorneys argue over tax stamp ruling

Hearing focuses on how to apply decision affecting convicted drug dealers

By David Doege
of the Journal Sentinel staff

Hundreds of drug dealers imprisoned for failing to buy state drug tax stamps could go free because the state Supreme Court ruled the stamps unconstitutional, a prosecutor opposing an inmate's release said Wednesday.

But the court did not specify that its ruling should be applied retroactively, Assistant District Attorney Patrick J. Kenney argued before Milwaukee County Circuit Judge Maxine A. White.

Kenney made his point at a hearing for Luppa Vela, a state prison inmate petitioning for release on the grounds that the law under which she was convicted was overturned.

Retrospective application of the ruling could free more than 700 men and women from prison, probation or parole, Kenney said. In a prospective application of the law — a view Kenney endorsed — the ruling would affect only people involved in drug trafficking cases since the Supreme Court acted.

The high court ruled, 4-3, last month that the law requiring drug dealers to buy tax stamps was passed to track down dealers in violation of their state constitutional right against self-incrimination.

The law required dealers to buy the tax stamps depending on the drug quantities they had, but prosecutors could not use records from the sale of stamps to track down the dealers.

Although the court overturned the law, it did not specify how its ruling should be applied to the cases of people convicted under it in the past several years.

"I think they (the justices) would have expressly provided for retroactivity if that was their intent," Kenney said.

Vela, 33, is serving a 15-month prison sentence under the tax stamp law. Her attorney, Jerome Pogodzinski, filed a motion asking that White use the Supreme Court ruling as a basis for releasing Vela.

Kenney told White that Vela was one of 343 people convicted under the law in Milwaukee County alone. In Vela's case and many others, prosecutors used the law in good faith to negotiate plea agreements that resulted in reduced drug charges for defendants, Kenney said.

"There isn't any suggestion that the law was misused in this case," Kenney argued.

White decided not to rule on Vela's motion Wednesday because Vela was not present. She rescheduled a hearing on the matter for next month.

Other people convicted under the law are expected to file motions similar to Vela's in circuit courts in the months ahead. The application issue is expected to eventually work its way back to the Supreme Court, but it is not clear how circuit or appellate courts will rule in the meantime.