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July 22, 2022

The Honorable James D. Peterson
United States Chief District Judge
United States District Court
for the Western District of Wisconsin
120 N. Henry Street
Madison, Wisconsin 53703

Re: *Joshua Gehde v. Christopher Buesgen*, No. 21-cv-809-jdp

Dear Chief Judge Peterson:

Today, we are filing an amended habeas petition on behalf of Joshua Gehde, a federal habeas petitioner who was wrongfully convicted of first-degree reckless homicide. Mr. Gehde was convicted of murdering his girlfriend's two-year old daughter, Sophia, and sentenced to serve twenty years' initial confinement. He maintains that he is actually innocent. In light of the numerous additional claims that the amended petition raises, we are submitting this letter to outline the next steps that we anticipate in this case.

This case came to FDSW with one fully exhausted claim. In post-conviction proceedings and on direct appeal, Mr. Gehde argued that his trial counsel performed deficiently by presenting conflicting theories of defense. Mr. Gehde's had two trial attorneys. Unfortunately, they failed to prepare and coordinate with one another – the communication and coordination was so poor that neither knew their theory of the case, even as opening statements began. This led to a critical misstatement to the jury about what the evidence would show. The defense promised that the jury would learn Sophia died from choking, but the defense team then elicited *different* testimony from its own experts. This broken promise crippled the defense's credibility on *the* critical question in the case: how did Sophia die? As a result, the jury had no reason to believe the defense's claim that Mr. Gehde did not kill Sophia. Appellate counsel fully exhausted this claim in state court, and Mr. Gehde pursued this claim in his original *pro se* habeas petition.

FEDERAL DEFENDER SERVICES
OF WISCONSIN, INC.

July 22, 2022

Page -2-

FDSW has been involved in this case since only mid-May 2022. The case file is extensive, but our review thus far leads us to believe that Mr. Gehde has many meritorious post-conviction claims beyond the one claim just described. In fact, there are ten additional grounds for relief in the amended petition, for a total of eleven different claims. They are as follows:

<i>Ground</i>	<i>Description</i>
1	Ineffective assistance of trial counsel – presentation of inconsistent defense theories on Sophia’s cause of death
2	Ineffective assistance of trial counsel – failure to call a favorable witness at trial
3	Ineffective assistance of trial counsel – failure to request funds to have physical evidence, including but not limited to the dura and brain tissue samples, tested and analyzed
4	Ineffective assistance of trial counsel – failure to investigate, consult with, and hire other necessary experts
5	<i>Brady</i> violation – failure to disclose professional misconduct of lead Detective Maya Krajcinovic
6	<i>Brady</i> violation and ineffective assistance of trial counsel – State’s failure to disclose that Christopher Beverly had recanted his story and trial counsels’ failure to move to exclude Beverly as a witness
7	Ineffective assistance of appellate counsel – failure to appeal ineffective-assistance-of-trial-counsel claim arising from trial counsel’s failure to call a favorable defense witness
8	Ineffective assistance of appellate counsel – failure to bring an ineffective-assistance-of-trial-counsel claim arising from trial counsel’s failure to request funds to have physical evidence tested and analyzed
9	Ineffective assistance of appellate counsel – failure to bring an ineffective-assistance-of-trial-counsel claim arising from failure to investigate, consult with, and hire other necessary experts
10	Ineffective assistance of appellate counsel – failure to investigate and bring a <i>Brady</i> claim re Detective Maya Krajcinovic’s professional misconduct
11	Ineffective assistance of appellate counsel – failure to investigate and bring a <i>Brady</i> claim re Beverly’s recanted story and an ineffective-assistance-of-trial-counsel claim arising from failure to move to exclude Beverly as a witness

FEDERAL DEFENDER SERVICES
OF WISCONSIN, INC.

July 22, 2022

Page -3-

As detailed in the chart above, the new claims include *Brady* claims, *Strickland* claims against trial counsel, and *Strickland* claims against appellate counsel. FDSW is raising all claims for which it has a good faith basis at this point in its investigation so that it can preserve them for potential federal habeas review, once exhausted.

As a result, the Court now is presented with a mixed habeas petition, which complicates the procedural path of this case. The ten new claims must be exhausted in state court following further investigation by Mr. Gehde's habeas team. Mr. Gehde also has other potentially viable claims – such as newly discovered evidence concerning Dr. Barbara Knox, the lead expert witness for the State in this case – that he must investigate and raise in state court at the same time.¹ Simply put, the case is complex, and the investigation will take substantial energy and time. We anticipate that it most likely will take six to eight months to complete our investigation and file a motion in state court.

Accordingly, we have requested that this Court administratively stay proceedings so that Mr. Gehde can return to state court to exhaust his cognizable federal claims. To ensure that the case continues to move forward, we propose that this Court order Mr. Gehde's habeas team to file a status report with this Court in six months – on January 23, 2023 – and provide an update on the status of its investigation and a date by which it anticipates filing a motion in state court.

Thank you for your attention to this matter.

Respectfully,

/s/ Jessica Arden Ettinger
Jessica Arden Ettinger

Associate Federal Defender

¹ See Brenda Wintrode, *A controversial doctor. A disputed abuse diagnosis. Two convicted Wisconsin men say they are innocent.*, WISCONSINWATCH, Apr. 30, 2022, <https://tinyurl.com/mv2hnaw9>; see also Michelle Theriault Boots, *Two Alaska families file federal lawsuit against embattled child abuse doctor, Providence alleging child abuse misdiagnoses*, ANCHORAGE DAILY NEWS, July 14, 2022, <https://tinyurl.com/45ttmebj>; Brenda Wintrode & Michelle Theriault Boots, *Mass exodus at Alaska child abuse clinic as former Wisconsin doctor accused of bullying and misdiagnoses*, WISCONSINWATCH/ANCHORAGE DAILY NEWS, Nov. 16, 2021, <https://tinyurl.com/mrw6f9ew>.