

U.S. DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
FILED

2019 MAR 12 P 2 10

STEPHEN C. DRIES

Case No. 18-C-0455

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

Steven Alan Magritz,
Petitioner

v.

JON E. LITSCHER,
Respondent

**MOTION FOR RELIEF, Fed. R. Civ. P.
Rule 60(b)(1) By Legal Representative**

Comes now the undersigned Legal Representative of the defendant in the state court, STEVEN ALAN MAGRITZ, aka STEVEN A MAGRITZ, aka Steven Alan Magritz, among other derivatives, and as and for relief pursuant to Fed. R. Civ. P. Rule 60(b)(1) from the Decision and Order signed by district judge Lynn Adelman on November 28, 2018, and the Judgment of the Court signed by clerk Stephen C. Dries on November 28, 2018, shows the Court as follows:

Rule 60(b)(1) provides for relief from final judgments that are the product of *mistake, inadvertence*, surprise or excusable neglect. This provision applies to errors by judicial officers as well as parties.

In Adelman's Decision and Order on November 28, 2018, Adelman, by *mistake or inadvertence*, ruled according to a *non-existence* state "law" provided to him by attorneys Schimel and O'Brien, ostensibly attorneys for respondent. Said attorneys *falsely* informed the court that since petitioner had not filed a direct appeal in the State courts, petitioner had "procedurally defaulted" and therefore

habeas corpus remedy was not available to petitioner. There is no such state law. Petitioner did not “procedurally default”. Adelman *mistakenly or inadvertently* used *non-existent* state “law” to dismiss petitioner’s habeas corpus petition. Regarding “Procedural Default”, Dkt. 16-6, Adelman stated:

Here, Magritz decided to forego his direct-appeal rights, and therefore the Wisconsin Court of Appeals’ rejection of his federal claims involved a principled application of well-established Wisconsin law.

The problem with Adelman’s statement is that it is *not true*. The record of this Court evidences the Wisconsin Court of Appeals did *not* reject petitioner’s federal claims for failure to file a direct appeal, *nor could it have relied on such a non-existent “law”*.

The applicable state law that Adelman *must* apply is:

Wisconsin Statute § 974.06:

(8) A petition for a writ of habeas corpus or an action seeking that remedy in behalf of a person who is authorized to apply for relief by motion under this section shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced the person, or that the court has denied the person relief, **unless it also appears that the remedy by motion is inadequate or ineffective** to test the legality of his or her detention. (emphasis added)

Section (8) was taken *directly* from 28 U.S.C. § 2255. The Seventh Circuit recognized this prohibition on habeas corpus would have been unconstitutional except for the “saving” clause, *Stirone v. Markley*, 345 F.2d 473, (7th Cir. 1965), to wit:

“unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his or her detention.”

The record of this court evidences egregious, unrefuted, pervasive, outrageous, *antagonistic* bias by the judge of the State court, thus habeas corpus remedy was

the only remedy available to petitioner since it “**appears that the remedy by motion is inadequate or ineffective** to test the legality of his or her detention.”

Sua sponte:

In addition to being so moved by this motion, this Court, having been Noticed of judicial *mistake or inadvertence*, has the duty and authority to *sua sponte* correct its own *mistake or inadvertence* and vacate the November 28, 2018 judgment.

Incorporated herein by reference is the Memorandum in Support of this motion, as well as the Affidavit(s), Briefs, Notices and Exhibits referenced and incorporated therein.

The capacity and standing of this Legal Representative¹ to move this court is evidenced by the attached Certificate of Existence and Registration by Steve Simon, Secretary of State of Minnesota, file number 1072311400028, and, the Certification of durable power of attorney and attorney-in-fact, and, acknowledgement and acceptance of appointment, all three documents incorporated herein by reference.

The undersigned Legal Representative moves this Court to vacate the judgment dated November 28, 2018 pursuant to Fed. R. Civ. P. Rule 60(b)(1) for mistake or inadvertence by Lynn Adelman, the judicial officer of the court.

Dated this March 12, 2019 A.D.

By: /s Legal Representative, Attorney-in-Fact, Agent

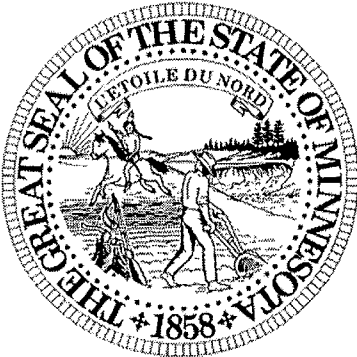
¹ See Jay M. Zitter, Who is "Legal Representative" Within Provision of Rule 60(b) of Federal Rules of Civil Procedure Permitting Court to Relieve "Party or His Legal Representative" From Final Judgment or Order, 136 A.L.R. Fed. 651 (1997 and Supp. 2009).

**Office of the Minnesota Secretary of State
Certificate of Existence and Registration**

I, Steve Simon, Secretary of State of Minnesota, do certify that: The entity listed below was filed under the chapter of Minnesota Statutes listed below with the Office of the Secretary of State on the date listed below and that this entity or filing is registered at the time this certificate has been issued.

Name: STEVEN ALAN MAGRITZ
Date Filed: 03/04/2019
File Number: 1072311400028
Minnesota Statutes, Chapter: 333
Home Jurisdiction: Minnesota

This certificate has been issued on: 03/04/2019



Steve Simon

Steve Simon
Secretary of State
State of Minnesota

**ACKNOWLEDGEMENT AND ACCEPTANCE OF APPOINTMENT OF
POWER OF ATTORNEY FOR STEVEN ALAN MAGRITZ**

I, Magritz (Surname), Steven Alan (Given Name) as Primary Attorney-in-Fact named in this Durable Power of Attorney for STEVEN ALAN MAGRITZ^{TM/SM}, Principal, attached hereto, hereby acknowledge and accept appointment as Primary Attorney-in-Fact in accordance with the foregoing instrument.

[Signature]
/s

Primary Attorney-in-Fact's Signature

March 9, 2019

Date

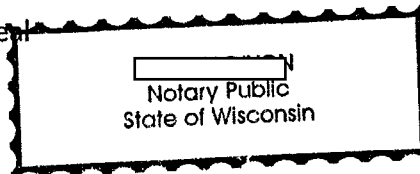
State of Wisconsin,
County of Waukesha

This instrument was acknowledged before me on March 9, 2019 by
Magritz, Steven Alan (Surname, Given Name) as Primary Attorney-in-Fact for the Principal,
STEVEN ALAN MAGRITZ^{TM/SM}.

[Signature]
/s

Notary Public Signature

seal



My commission expires: 10/09/2020