UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JOHN D. CARTER,
Petitioner,

v. **Case No. 21-C-0991**

DAN CROMWELL,
Respondent.

DECISION AND ORDER

John D. Carter petitions for a writ of habeas corpus under 28 U.S.C. § 2254. He challenges his conviction in Wisconsin state court, following a guilty plea, of three drug offenses.

I. BACKGROUND

The criminal charges against Carter originated with a criminal complaint filed on November 3, 2014, that charged twenty-two defendants with offenses arising out of a drug conspiracy. Carter was charged with two offenses: (1) conspiracy to commit possession with intent to deliver more than fifty grams of heroin as a second or subsequent offense, and (2) conspiracy to commit possession with intent to deliver more than forty grams of cocaine as a second or subsequent offense.

On November 5, 2014, the police executed a warrant to search Carter's residence and found more heroin and cocaine. As a result, a second criminal complaint was filed charging Carter with: (1) possession with intent to deliver more than fifty grams of heroin as a second or subsequent offense, and (2) possession with intent to deliver more than forty grams of cocaine as a second or subsequent offense.

Carter agreed to resolve both cases through plea bargaining. It is undisputed that, in exchange for his guilty pleas to the heroin conspiracy charge in the original case and the two possession-with-intent-to-deliver charges in the second case, the state would dismiss and read in the cocaine conspiracy charge and dismiss the second-or-subsequent enhancer on all offenses.

The trial court held a plea hearing on April 15, 2015. (ECF No. 11-11.) At the hearing, the prosecutor described the plea agreement and said that the state would be making a "global recommendation" for "substantial prison," with the amount left to the discretion of the court. (*Id.* at 4.) After the prosecutor described the plea agreement, the court asked defense counsel if that was a "correct statement of plea negotiations," and counsel said that it was. (*Id.* at 5.) The court then addressed Carter directly. The court went over the terms of the plea agreement and made sure that Carter understood what he was agreeing to. (*Id.* at 5–7.) During this part of the colloquy, the following exchange occurred:

> THE COURT: Upon conviction of the three felonies we've talked about that you're going to plead guilty, at sentencing the state is going to recommend for all three counts that your sentence be substantial prison, amount up to the court. Do you understand what they're going to recommend?
>
> THE DEFENDANT: Yes.

(*Id.* at 7.) The court also asked Carter whether he had any questions about the plea negotiations, and he said that he did not. (*Id.*) The court then confirmed with the parties that there were no "earlier formal plea offers that were more favorable." (*Id.*)

Later, the court asked Carter about the written plea questionnaires and waiver-of-rights forms that he had signed before the hearing. (ECF No. 11-11 at 13–16.) Although

not discussed during the hearing, the form described the plea agreement differently than how the parties described it orally. The difference was that, while the parties told the court that the state would recommend "substantial prison" with the amount left to the court's discretion, the form indicated that the state would recommend "prison" with the amount left to the court's discretion. (ECF No. 19-2 at 44 of 85.)

While accepting the pleas, the court examined Carter to establish a factual basis. With respect to the conspiracy charge, the court identified the elements of possession with intent to deliver and confirmed that Carter understood the definition of a conspiracy. (ECF No. 11-11 at 19–23.) The court asked Carter whether he intended to commit the crime of possession with intent to deliver more than 50 grams of heroin during the alleged time frame. (*Id.* at 21.) After Carter said that he did, the court remarked, "And we know that you intended that because you actually did it on a whole bunch of occasions, right?" (*Id.*) Carter again agreed. The court then confirmed that a conspiracy to commit this offense existed because Carter agreed to commit the crime with others. (*Id.* at 21–23.)

The court sentenced Carter on July 16, 2015. At the beginning of the sentencing hearing, the prosecutor reiterated the terms of the plea agreement. As she did at the plea hearing, the prosecutor described the agreement as calling for the state to make a "global recommendation" of "substantial prison" with the amount left to the discretion of the court. (ECF No. 11-12 at 4.) The court asked the defense whether the prosecutor had accurately described the agreement, and defense counsel stated that she had. (*Id.*) The prosecutor concluded her sentencing argument by urging the court to impose "substantial prison." (*Id.* at 23.)

On the conspiracy charge, the court sentenced Carter to 15 years' initial confinement and 15 years' extended supervision. (*Id.* at 45.) On each of the charges of possession with intent to deliver, the court sentenced Carter to 5 years' initial confinement and 10 years' extended supervision. (*Id.* at 46.) The court ordered the sentences to run consecutively to each other, so the total sentence was 25 years' initial confinement and 35 years' extended supervision.

Carter filed a motion for postconviction relief in the trial court in which he sought to withdraw his pleas. He raised four grounds for relief. First, he alleged that the state breached the plea agreement by recommending "substantial prison" rather than just "prison," and that trial counsel was ineffective in failing to object to this breach. Second, he alleged that trial counsel was ineffective because he failed to advise him that the prosecution would recommend "substantial prison" rather than "prison." Third, Carter argued that trial counsel was ineffective in failing to move to dismiss the conspiracy charge before Carter pleaded guilty to it. Finally, Carter argued that the trial court erred in finding a factual basis for the plea to the conspiracy charge. Carter's third and fourth arguments were based on his belief that there was no basis to allege or find that he was part of a drug conspiracy rather than just a buyer-seller relationship with his buyer. The trial court denied the postconviction motion without holding an evidentiary hearing.

Carter appealed to the Wisconsin Court of Appeals and raised the same four arguments. The court of appeals affirmed. With respect to Carter's claim of ineffective assistance based on breach of the plea agreement, the court first determined that Carter had not alleged facts in his motion indicating that the state agreed to recommend "prison" rather than "substantial prison." The court noted that the plea questionnaire, which stated

that the recommendation was for "prison," was completed by Carter's trial attorney, and that the prosecutor consistently described the recommendation as "substantial prison." The court thus determined that Carter had not alleged sufficient facts to show that the prosecutor breached the plea agreement. Relatedly, the court determined that Carter's counsel could not have performed deficiently by failing to object to a nonexistent breach. As for Carter's claim that trial counsel performed deficiently by failing to properly advise him about the recommendation, the court determined that Carter had not alleged enough facts to show prejudice. The court recognized that, in the context of a guilty plea, a defendant shows prejudice by showing a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. Carter did allege that, had he known that the recommendation was for substantial prison, he would have rejected the offer. However, the court determined that this allegation was conclusory because Carter did not explain why he was willing to accept an offer in which the state would recommend prison but not one in which the state would recommend substantial prison, and because Carter did not explain why he would have rejected an offer for substantial prison on three counts and insisted on going to trial on four counts. The court ultimately denied relief on this claim because his conclusory allegation of prejudice did not satisfy Wisconsin's pleading standard for postconviction motions as set forth in cases such as *State v. Allen*, 274 Wis. 2d 568 (2004).

With respect to Carter's arguments on the conspiracy charge, the court stressed that the charged conspiracy involved a conspiracy to commit the crime of possession with intent to deliver, not conspiracy to deliver. In the court's view, this meant that the state needed to establish only that Carter agreed with his buyer that the buyer would possess

the purchased drug with the intent to deliver it to third parties. The state did not need to establish that Carter entered into an agreement with the buyer to sell drugs to third parties or that Carter was involved in a drug conspiracy that extended beyond his relationship with the buyer. Here, the court determined that the large quantity of drugs that Carter sold to his buyer was sufficient to give rise to an inference that he agreed that his buyer would possess the drugs with the intent to deliver them to others. For these reasons, the court determined that a motion to dismiss the conspiracy charge would not have succeeded, and that trial counsel could not have been ineffective in failing to bring such a motion. Relatedly, the court noted that Carter admitted during the plea colloquy that he conspired with others, and it found that this admission, combined with the facts alleged in the criminal complaint, established a factual basis for the guilty plea.

After the Wisconsin Court of Appeals affirmed, Carter sought review by the Wisconsin Supreme Court, which was denied. Carter then filed his federal habeas petition and raised the same four claims that he exhausted in state court. The parties have filed briefs on the merits of the petition, which I address below.

II. DISCUSSION

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") applies to a habeas petition filed by a person in custody pursuant to a judgment of a state court. *See* 28 U.S.C. § 2254. It contains a deferential standard of review that prevents a federal court from granting the writ with respect to any claim that was adjudicated on the merits in state court unless the petitioner shows that the adjudication of the claim resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law as determined by the Supreme Court of the United States or was based on

an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. *Id.* § 2254(d). If the state court did not adjudicate the claim on the merits, the court reviews the claim de novo. *Cone v. Bell*, 556 U.S. 449, 472 (2009).

Carter's claims involve ineffective assistance of counsel. To establish a Sixth Amendment claim of ineffective assistance of counsel, he must show that his counsel performed deficiently and that he suffered prejudice as a result. *Strickland v. Washington*, 466 U.S. 668, 687–94 (1984). To establish deficient performance, Carter must demonstrate that counsel's representation fell below an objective standard of reasonableness as measured by prevailing professional norms. *Id.* at 687. This requires showing that counsel made errors so serious that he was not functioning as the "counsel" guaranteed by the Sixth Amendment. *Id.* To establish prejudice, Carter must show that there is a reasonable probability that, but for counsel's deficient performance, the result of the proceeding would have been different. *Id.* at 694. In the plea-bargaining context, the prejudice prong is satisfied if "there is a reasonable probability that, but for counsel's errors, the [petitioner] would not have pleaded guilty and would have insisted on going to trial." *Lafler v. Cooper*, 566 U.S. 156, 163 (2012).

A. Ineffective Assistance in Plea Bargaining

Carter's first two claims allege ineffective assistance with respect to his guilty plea. His first claim alleges that counsel was ineffective in failing to object when the prosecutor recommended "substantial prison" rather than "prison." The Wisconsin Court of Appeals adjudicated this claim on the merits, and therefore the standard of review in 28 U.S.C. § 2254(d) applies.

The Wisconsin Court of Appeals rejected this claim on the ground that the record "demonstrated the agreement was for the State to recommend substantial prison," and that counsel could not have been ineffective in failing to object to a nonexistent breach. (ECF No. 11-8 at 34 of 45.) Carter takes issue with the court's factual determination that no breach occurred. He contends that because the plea questionnaire described the recommendation as just "prison," and because he alleged in his postconviction motion that he was prepared to testify that he understood the agreement as calling for the prosecutor to recommend "prison," the state courts erred in finding, without holding an evidentiary hearing, that the agreement was for the state to recommend substantial prison. To succeed on his argument, Carter must show that the Wisconsin Court of Appeals unreasonably determined that the plea agreement included a recommendation for substantial prison. *See* 28 U.S.C. § 2254(d)(2).

Carter has not carried this burden. At both the plea hearing and the sentencing, the prosecutor consistently stated that the plea agreement called for the state to recommend substantial prison, and the court confirmed that the prosecutor's statements were accurate with both defense counsel and Carter himself. The only evidence that contradicts this fact is the plea questionnaire, on which defense counsel wrote that the agreement was for the prosecutor to recommend "prison." But, as the Wisconsin Court of Appeals reasoned, the fact that defense counsel wrote "prison" on the form does not imply that the prosecutor agreed to that recommendation. And given that the state repeatedly said in open court that the recommendation would be "substantial prison" and neither defense counsel nor Carter indicated that this was not the parties' agreement, it was reasonable for the court of appeals to conclude that the agreed-upon recommendation

was for substantial prison. Thus, the court's adjudication of Carter's first claim of ineffective assistance was not based on an unreasonable determination of the facts.

Carter's second claim of ineffective assistance is that trial counsel erred by failing to adequately advise him that the agreement was to recommend substantial prison rather than prison. Here, Carter points out that he alleged in his postconviction motion that, if called to testify at a hearing, he would testify that he understood the agreement as calling for the prosecutor to recommend "prison." The Wisconsin Court of Appeals rejected this claim on the ground that Carter had not adequately pleaded in his postconviction motion that he suffered prejudice from counsel's allegedly deficient advice. The court recognized that, under federal law, a showing of prejudice based on counsel's error in plea bargaining requires proof that there is a reasonable probability that, but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial. The court also acknowledged that Carter had pleaded that, had he known that the recommendation would be for substantial prison, he would not have accepted the state's offer. But the court determined that this allegation was "conclusory" because Carter did not explain "why" he would have rejected the offer. (ECF No. 11-8 at 34 of 45.) Respondent contends that the court of appeals thus rejected this claim based on a state procedural rule—the pleading standard set forth in *State v. Allen*, 274 Wis. 2d 568 (2004)—and that therefore the claim is procedurally defaulted.

Under the procedural-default doctrine, merits review of a habeas claim is foreclosed if the relevant state court's disposition of the claim rests on a state law ground that is adequate and independent of the merits of the federal claim. *Triplett v. McDermott*, 996 F.3d 825, 829 (7th Cir. 2021). The ground is adequate if it is "firmly established and

regularly followed as of the time when the procedural default occurred." *Id.* (quoting *Richardson v. Lemke*, 745 F.3d 258, 271 (7th Cir. 2014)). It is independent of federal law if it does not depend on the merits of the petitioner's claim. *Id.* By contrast, "if it 'fairly appears' that the state court rested its decision primarily on federal law or is interwoven therewith, a federal court may review the federal question unless the state court's opinion contains a 'plain statement' that its decision rests on state grounds." *Id.* (quoting *Richardson*, 745 F.3d at 269).

In the present case, the alleged independent and adequate state ground is the pleading standard for postconviction motions set forth by the Wisconsin courts in cases such as *State v. Allen*. Under this standard, the motion must allege sufficient facts, which, if true, would entitle the defendant to relief. *Allen*, 274 Wis. 2d at 585 n.7 (citing *State v. Bentley*, 201 Wis. 2d 303, 310 (1996)). Postconviction motions sufficient to meet this standard should "allege the five 'w's' and one 'h'; that is, who, what, where, when, why, and how." *Id.* at 585. In prior opinions, I found that the *Allen* pleading standard is not "independent" of federal law because, to apply it to a federal claim, a state court must apply principles of federal law. That is so, I reasoned, because federal law determines whether the pleaded facts, if proved true at a hearing, would entitle the defendant to relief. *See Walker v. Pollard*, No. 18-C-0147, 2019 WL 136694, at *5–6 (E.D. Wis. Jan. 8, 2019). Since I issued these opinions, however, the Seventh Circuit has repeatedly found that the *Allen* pleading standard qualifies as an independent and adequate state ground even though it requires the state court to examine the "substance" of the federal claim. *Whyte v. Winkleski*, 34 F.4th 617, 628 & n.6 (7th Cir. 2022); *see also Wilson v. Cromwell*, __ F.4th __, 2023 WL 355104, at *6–7 (7th Cir. 2023); *Garcia v. Cromwell*, 28 F.4th 764,

774–75 (7th Cir. 2022); *Triplett*, 996 F.3d at 829–30. Because I am bound by these cases, I must conclude that the Wisconsin Court of Appeals' disposition of Carter's second ineffective-assistance claim rested on an independent and adequate state ground.

Indeed, the Seventh Circuit has found the Wisconsin Court of Appeals' reliance on *Allen* to be an independent and adequate state ground in circumstances highly similar to this case. In *Triplett v. McDermott*, the defendant pleaded guilty and then filed a postconviction motion in which he sought to withdraw the plea based on trial counsel's allegedly deficient advice about the plea. 996 F.3d at 827–28. In the postconviction motion, the defendant alleged that, had he known that counsel's advice was incorrect, "he would have gone to trial rather than plead[] guilty." *Id.* at 828. The trial court denied the postconviction motion without holding a hearing, and the Wisconsin Court of Appeals affirmed on the ground that the defendant had not adequately alleged that that he was prejudiced by his counsel's ineffectiveness. *Id.* The court acknowledged that the defendant "averred generally that he would not have pleaded guilty had he known" that his counsel's advice was inaccurate, but it determined that the motion was deficient under *Allen* because it did not "allege any specific, objective facts which supported" his general assertion that he would have rejected the plea offer. *Id.* The Seventh Circuit held that this application of the *Allen* pleading rule was an independent and adequate state ground, and that therefore the petitioner had procedurally defaulted his claim. *Id.* at 829–31.

Like in *Triplett*, in the present case the Wisconsin Court of Appeals rejected Carter's claim that he was prejudiced by his counsel's deficient advice about the plea on the ground that Carter had only averred generally that he would not have pleaded guilty had counsel advised him that the state would recommend "substantial prison." Citing

Allen, the court specifically noted Carter's failure to explain why he would have rejected the offer based on the difference between "prison" and "substantial prison" and why he would have insisted on going to trial on four counts when the plea offer would have limited his sentencing exposure to three. (ECF No. 11-8 at 34 of 45.) Thus, under *Triplett*, I must find that petitioner procedurally defaulted this claim.[1]

Although Carter has procedurally defaulted his second ineffective-assistance claim, I could review its merits if he established cause for the default and resulting prejudice. *Triplett*, 996 F.3d at 831. But Carter has made no attempt to demonstrate cause. Moreover, Carter could not show prejudice because, on the merits, it is clear that the Wisconsin Court of Appeals did not violate federal law by rejecting his claim without a hearing. The key defect in Carter's claim is that, during the plea colloquy, the trial judge asked Carter whether he understood that the plea agreement called for the prosecutor to make a recommendation of substantial prison, and Carter said that he did. (ECF No. 11-

[1] In my view, the decision of the Wisconsin Court of Appeals qualified as an adjudication of the merits of petitioner's claim of ineffective assistance of counsel. The court essentially determined, as a matter of fact, that Carter had not shown that he was prejudiced by his counsel's deficient advice. Although this determination involved the state's pleading standards, it was not independent of federal law because the court's ultimate conclusion was that Carter had not met his burden to show prejudice under *Strickland*. Note that calling this a procedural default implies that it is impossible for a Wisconsin court to reject a federal claim that has insufficient factual support on the merits: whenever a defendant cannot allege facts that would entitle him to relief on the claim, then the court will dismiss the claim for failure to allege sufficient facts, and the dismissal will be deemed to be based on a state procedural rule rather than on the merits. This is contrary to the usual rule that a dismissal based on insufficient factual allegations qualifies as a decision on the merits. *See, e.g., Taha v. Int'l Bhd. Of Teamsters*, 947 F.3d 464, 472 (7th Cir. 2020) (dismissal for failure to allege plausible claim is an adjudication on the merits). But again, because I am bound by the Seventh Circuit's contrary view on this matter, I must find Carter's claim procedurally defaulted.

11 at 7.) Thus, Carter's current claim that he understood the agreement as involving a recommendation of "prison" contradicts his testimony at the plea hearing. Courts generally refuse to grant a criminal defendant a hearing on a motion to withdraw a plea when the defendant intends to contradict a statement he made during the plea colloquy. *See United States v. Peterson*, 414 F.3d 825, 826–27 (7th Cir. 2005); *United States v. Stewart*, 198 F.3d 984, 986 (7th Cir. 1999); *see also Higgason v. Clark*, 984 F.2d 203, 208 (7th Cir. 1993) (explaining that one purpose of a plea colloquy is to prevent "subsequent litigation in which the defendant denies knowing some vital bit of information").

There is an exception to this rule that applies when the defendant supplies "a compelling explanation for the contradiction." *Peterson*, 414 F.3d at 827. In his habeas brief, Carter states that because his attorney advised him that the recommendation would be for "prison" and that this is what the plea questionnaire said, he did not realize "what exactly was being said in court" when the prosecutor and the court used the phrase "substantial prison." (ECF No. 19 at 26.) This is not a compelling explanation. The prosecutor and the court stated multiple times in Carter's presence that the recommendation would be for "substantial prison," and the court directly asked Carter in no uncertain terms whether he understood that if he pleaded guilty the prosecutor would recommend "substantial prison." If, as Carter now claims, the difference between "prison" and "substantial prison" made such a difference to him that he would have rejected the plea over it, then surely Carter would have realized that the court said "substantial prison" rather than just "prison." Thus, Carter is bound by his testimony at the plea hearing and

cannot now claim that he would have rejected the plea offer if his counsel had advised him that the prosecutor would recommend substantial prison.

B. Claims Involving Conspiracy Charge

Carter's two remaining claims involve the charge alleging conspiracy to commit possession with intent to deliver heroin. First, he contends that trial counsel was ineffective in failing to move to dismiss this charge prior to when Carter entered a plea of guilty to it. Second, he contends that the trial court failed to establish a factual basis for his guilty plea to this charge. The Constitution does not require a state court to establish a factual basis for a plea, but many states, as a matter of state law, require their judges to elicit factual support for guilty pleas. *See Higgason*, 984 F.2d at 207–08. Because a state's accepting a guilty plea without establishing a factual basis does not violate federal law, Carter's second challenge to the plea agreement is not cognizable on federal review. *See Arnold v. Dittmann*, 901 F.3d 830, 835 n.3 (7th Cir. 2018) (errors of state law are not cognizable on habeas review). Accordingly, I focus on the ineffective-assistance claim. However, I note that, because the factual-basis claim turns on the same material facts and arguments as the ineffective-assistance claim, the analysis of each claim would be substantially the same. Because the Wisconsin Court of Appeals decided the ineffective-assistance claim based on counsel's failure to move to dismiss the conspiracy charge on the merits, the standard of review in § 2254(d) applies.

Carter's challenge to the conspiracy charge turns on his belief that, under Wisconsin law, he could not be charged with or convicted of a conspiracy when there were no allegations or evidence indicating that he was involved in a drug conspiracy that extended beyond his relationship with the buyer. This argument is based on a Wisconsin

case recognizing that evidence that the defendant sold drugs to a single buyer is generally insufficient to establish that the defendant was part of a conspiracy with the buyer to deliver drugs to third parties. *See State v. Cavallari*, 214 Wis. 2d 42, 49 (Ct. App. 1997) (discussing *State v. Smith*, 189 Wis. 2d 496 (1995)). In rejecting this claim on the merits, the Wisconsin Court of Appeals determined that the rule of *Cavallari* did not apply when, as in this case, the charge alleged conspiracy to commit possession with intent to deliver (rather than conspiracy to deliver) and thus was limited to a conspiracy between the buyer and the seller that the buyer would possess the drugs with the intent to deliver them to third parties. (ECF No. 11-8 at 37–38 of 45.) The court then determined that "the sale of a large quantity of drugs would support an inference that the seller intended that the buyer possess the drugs with intent to deliver, and that the seller entered into an agreement with the buyer for the buyer to commit that crime." (*Id.* at 38 of 45.) Finally, the court noted that the criminal complaint alleged that, during the relevant timeframe, Carter supplied his buyer with 250 grams of heroin, enough for "between 5,000 and 12,500 individual hits," and that therefore the complaint's allegations were sufficient to support the conspiracy charge. (*Id.*) The court ultimately concluded that any motion to dismiss the conspiracy charge would have failed, and that therefore counsel could not have been ineffective "for failing to pursue a meritless motion." (*Id.*) [2]

The Wisconsin Court of Appeals' determination that the sale of a large quantity of drugs to a buyer supports a charge of conspiracy to commit possession with intent to deliver was a determination on a matter of state law. The court was essentially identifying

[2] For similar reasons, the court found that there was a factual basis for Carter's guilty plea. (ECF No. 11-8 at 39 of 45.)

the parameters of the crime of conspiracy to commit possession with intent to deliver under Wisconsin law. *See* ECF No. 11-8 at 36 of 45 (discussing Wisconsin statutes and jury instructions that apply to conspiracy charges).[3] A federal court may not disagree with a state court's resolution of an issue of state law. *Miller v. Zatecky*, 820 F.3d 275, 277 (7th Cir. 2016). Thus, when a state court determines that any motion raising a state-law issue would have been futile, and that therefore counsel was not ineffective in failing to bring the motion, the federal court is bound by that conclusion. *See Harper v. Brown*, 865 F.3d 857, 859 (7th Cir. 2017) (holding that federal habeas court may not question a state court's resolution of a question of state law that is embedded within its analysis of a *Strickland* claim). Because the Wisconsin Court of Appeals determined as a matter of Wisconsin law that a motion to dismiss the conspiracy charge would have failed, it follows that the court's determination that counsel was not ineffective in failing to bring such a motion comported with *Strickland*. *See, e.g., Stone v. Farley*, 86 F.3d 712, 717 (7th Cir. 1996) ("Failure to raise a losing argument, whether at trial or on appeal, does not constitute ineffective assistance of counsel.").

III. CONCLUSION

For the reasons stated, **IT IS ORDERED** that the petition for a writ of habeas corpus is **DENIED**. The Clerk of Court shall enter final judgment. Pursuant to Rule 11 of the Rules Governing § 2254 Cases, I find that the petitioner has not made the showing

[3] Although the court also cited a federal conspiracy case, it did so only because Carter had cited it for its persuasive value. (ECF No. 11-8 at 37 of 45.) The court was not deciding a question of federal conspiracy law. *See State v. Routon*, 304 Wis. 2d 480, 496 n.10 (Ct. App. 2007) (noting that federal conspiracy cases are not binding on Wisconsin courts but are cited for their persuasive value).

required by 28 U.S.C. § 2253(c)(2), and therefore I will not issue a certificate of appealability.

Dated at Milwaukee, Wisconsin, this 8th day of February, 2023.

/s/Lynn Adelman
LYNN ADELMAN
United States District Judge