

**U.S. District Court  
Western District of Wisconsin (Madison)  
CIVIL DOCKET FOR CASE #: 3:16-cv-00047-bbc**

Homelsey, Charles v. Dittman, Michael  
Assigned to: District Judge Barbara B. Crabb  
Referred to: Magistrate Judge Stephen L. Crocker  
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 01/20/2016  
Date Terminated: 02/24/2017  
Jury Demand: None  
Nature of Suit: 530 Habeas Corpus  
(General)  
Jurisdiction: Federal Question

**Petitioner**

**Charles J. Homelsey aka Charles J.  
Mayberry**  
*also known as*  
Charles J. Mayberry

represented by **Charles J. Homelsey aka Charles J.  
Mayberry**  
#248435-A  
Columbia Correctional Institution  
2925 Columbia Drive  
P.O. Box 900  
Portage, WI 53901-0900  
PRO SE

**Reed W. Cornia**  
Cornia Law, LLC  
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(608) 242-0096  
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*TERMINATED: 03/24/2017*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

V.

**Respondent****Michael Dittman**

represented by **Gregory M. Weber**  
Wisconsin Department of Justice  
P.O. Box 7857  
Madison, WI 53707  
608-266-3935  
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Email: [federalordersca@doj.state.wi.us](mailto:federalordersca@doj.state.wi.us)  
*TERMINATED: 03/28/2016*  
*LEAD ATTORNEY*

**Daniel J. O'Brien**  
Wisconsin Department of Justice  
17 W. Main Street  
P.O. Box 7857  
Madison, WI 53707-7857  
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*ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text

01/20/2016	<u>1</u>	Petition for Writ of Habeas Corpus – State, filed by Charles J. Homelsey. (Case non–randomly assigned to District Judge Barbara B. Crabb.) (Attachments: # <u>1</u> Exhibit 1 – Judgement of Conviction, # <u>2</u> Exhibit 2 – Wis. Appeals Ct. decision, 7/21/11, # <u>3</u> Exhibit 3 – 12–cv–835–bbc decision, 1/7/13, # <u>4</u> Exhibit 4 – Medical alert, # <u>5</u> Exhibit 5 – Motion hearing transcripts, 08cf958, # <u>6</u> Exhibit 6 – Order, 08cf958, # <u>7</u> Exhibit 7 – Jury trial p.m. transcripts, 11/6/08, # <u>8</u> Exhibit 8 – Competency hearing transcripts, 1/2/99, # <u>9</u> Exhibit 9 – Wis. Ct. of Appeals decision, 2/12/15, # <u>10</u> Exhibit 10 – Wis. Supreme Ct. denial, 11/4/15, # <u>11</u> Exhibit 11 – Robert Starr affidavit, 1/13/09, # <u>12</u> Exhibit 12 – Notice of judge assignment, 08cf958, # <u>13</u> Exhibit 13 – Legal action letter, and 92cv–587–s Oskar McMillian order, # <u>14</u> Cover Letter, # <u>15</u> Envelope) (jef) (Entered: 01/20/2016)
01/20/2016	<u>2</u>	Letter regarding the filing fee from Charles Mayberry aka Charles Homelsey. (Attachments: # <u>1</u> Disbursement request, # <u>2</u> Envelope) (jef),(ps) (Entered: 01/21/2016)
02/08/2016	<u>3</u>	ORDER on ifp request: Petitioner to submit \$5 fee or motion for ifp/Trust Fund Account Statement by 2/26/2016. Signed by Magistrate Judge Peter A. Oppeneer on 2/8/2016. (jef),(ps) (Entered: 02/08/2016)
02/16/2016		Filing fee received: \$5.00, receipt number 34690025236. (nlm),(ps) (Entered: 02/17/2016)
03/15/2016	<u>4</u>	Order to Show Cause Issued. Materials served on WI Department of Justice pursuant to informal service agreement.  Petitioner's claims that the state courts erred in rejecting his request for a new trial based upon newly–discovered evidence (Ground One) and in declining to appoint him counsel at his post–conviction hearing (Ground Four) are DISMISSED for failure to state a constitutional claim. Petitioner's motion for the appointment of counsel is DEFERRED until after the state files its answer. Not later than April 15, 2016, petitioner must submit a six–month trust fund account statement so that the court may make a determination regarding his financial eligibility for appointed counsel. Signed by District Judge Barbara B. Crabb on 3/15/2016. (jef),(ps) (Entered: 03/15/2016)
03/17/2016	<u>5</u>	Acceptance of Service by DOJ on behalf of Respondent Michael Dittman. (Weber, Gregory),(ps) (Entered: 03/17/2016)
03/17/2016	<u>6</u>	Notice that for the remainder of this lawsuit petitioner need only send a copy of his filings in this case to the court pursuant to an informal service agreement with the Wisconsin Department of Justice. (elc),(ps) (Entered: 03/17/2016)
03/25/2016	<u>7</u>	Notice of Appearance filed by Daniel J. O'Brien for Respondent Michael Dittman, (Attachments: # <u>1</u> Certificate of Service) (O'Brien, Daniel),(ps) Modified on 3/27/2016. (lak) (Entered: 03/25/2016)
03/28/2016	<u>8</u>	Prisoner Trust Fund Account Statement / Motion for Counsel by Petitioner Charles J. Homelsey. (Attachments: # <u>1</u> Average 6–month balance and deposits, # <u>2</u> Envelope) (jef),(ps) (Entered: 03/28/2016)
04/14/2016	<u>9</u>	<b>MOTION TO DISMISS</b> by Respondent Michael Dittman, (Attachments: # <u>1</u> Certificate of Service) (O'Brien, Daniel),(ps) (Entered: 04/14/2016)
04/14/2016	<u>10</u>	Brief in Support of <u>9</u> Motion to Dismiss <i>With Attached Exhibits A–J</i> by Respondent Michael Dittman (Attachments: # <u>1</u> Exhibit A – Wisconsin Court of Appeals' Decision dated July 21, 2011, affirming the circuit court's judgment and order in State v. Charles J. Homesley, a/k/a Charles J. Mayberry, Appeal No. 2010AP2013–CR, # <u>2</u> Exhibit B – Wisconsin Supreme Court Order dated December 5, 2011, denying

		<p>petition for review in State v. Homesley, Appeal No. 2010AP2013–CR,  # <u>3</u> Exhibit C – Wisconsin Court of Appeals' Opinion and Order dated February 12, 2015, summarily affirming the circuit court's order in State v. Charles J. Homelsey, a/k/a Charles J. Mayberry, Appeal No. 2013AP2451,  # <u>4</u> Exhibit D – Wisconsin Supreme Court Order dated November 4, 2015, denying petition for review in State v. Homelsey, Appeal No. 2013AP2451,  # <u>5</u> Exhibit E – Excerpt from Index of Record, dated June 21, 2010, in State v. Charles J. Homesley, Dane County Circuit Court Case No. 2008CF958,  # <u>6</u> Exhibit F – Wisconsin Circuit Court Access docket in State v. Charles J. Homesley, Dane County Circuit Court Case No. 2008CF958,  # <u>7</u> Exhibit G – U.S. District Court for the Western District of Wisconsin Order dated January 7, 2013, dismissing Homesley's habeas petition and denying a certificate of appealability in Charles J. Homesley, a/k/a Charles Mayberry v. Michael Meisner and Hazel Brown, Case No. 12–cv–835–bbc,  # <u>8</u> Exhibit H – U.S. District Court for the Western District of Wisconsin Order dated March 26, 2013, denying Homesley's motion for relief under Fed. R. Civ. P. 60, in Charles J. Homesley, a/k/a Charles Mayberry v. Michael Meisner and Hazel Brown, Case No. 12–cv–835–bbc,  # <u>9</u> Exhibit I – Wisconsin Supreme Court Order dated August 3, 2012, denying the motion to reconsider its December 5, 2011, order in State v. Homesley, Appeal No. 2010AP2013–CR,  # <u>10</u> Exhibit J – Order denying motion for reconsideration, dated November 1, 2013, in State v. Charles Homesly, Dane County Circuit Court Case No. 08CF958,  # <u>11</u> Certificate of Service) (O'Brien, Daniel),(ps) (Entered: 04/14/2016)</p>
04/14/2016		Set Briefing Deadlines as to <u>9</u> MOTION TO DISMISS . Petitioner's Brief in Opposition due 5/4/2016. Respondent's Brief in Reply due 5/16/2016. (nln),(ps) (Entered: 04/14/2016)
04/18/2016	<u>11</u>	Prisoner Trust Fund Account Statement by Petitioner Charles J. Homelsey aka Charles J. Mayberry. (Attachments: # <u>1</u> Cover Letter, # <u>2</u> Envelope) (jef),(ps) (Entered: 04/18/2016)
04/18/2016	<u>12</u>	Letter to Judge Crabb regarding recent actions by CCI officials by Petitioner Charles J. Homelsey aka Charles J. Mayberry. (Attachments: # <u>1</u> Envelope) (jef),(ps) (Entered: 04/18/2016)
04/20/2016	<u>13</u>	ORDER denying as moot petitioner's <u>12</u> motion. Signed by District Judge Barbara B. Crabb on 4/20/2016. (jef),(ps) (Entered: 04/20/2016)
05/06/2016	<u>14</u>	Motion for evidentiary hearing into continuing harassment of mentally disabled prisoner needed legal assistance to respond to motion to dismiss by Petitioner Charles J. Homelsey aka Charles J. Mayberry. (Attachments: # <u>1</u> Attach. 1 – Interview/information request, # <u>2</u> Attach. 2 – Interview/information request, # <u>3</u> Attach. 3 – Inmate re–classification report, # <u>4</u> Attach. 4 – Letter and order re: Oscar McMillian, # <u>5</u> Cover Letter, # <u>6</u> Envelope) (jef),(ps) Modified on 5/16/2016 (jef). (Entered: 05/06/2016)
05/06/2016		Disregard briefing; motion incomplete. Briefing will be re–set upon receipt of page 3 of dkt. <u>14</u> motion. (jef). (Entered: 05/06/2016)
05/06/2016	<u>15</u>	Letter from Clerk's Office regarding missing page 3 of dkt. <u>14</u> motion from petitioner. (jef),(ps) (Entered: 05/06/2016)
05/16/2016	<u>16</u>	Motion for evidentiary hearing into continuing harassment of mentally disabled prisoner needed legal assistance to respond to motion to dismiss by Petitioner Charles J. Homelsey aka Charles J. Mayberry. (Attachments: # <u>1</u> Attach. 1 – Interview/information request, # <u>2</u> Attach. 2 – Interview/information request, # <u>3</u> Attach. 3 – Inmate re–classification report, # <u>4</u> Attach. 4 – Letter and order re: Oscar McMillian, # <u>5</u> Cover letter to Judge Crabb, # <u>6</u> Cover letter to Clerk, # <u>7</u> Envelope) (jef),(ps) Same as dkt. <u>14</u> but with page 3 included. (jef) (Entered: 05/16/2016)

		05/16/2016)
05/16/2016		Set Briefing Deadlines as to <u>16</u> Motion for evidentiary hearing into continuing harassment of mentally disabled prisoner needed legal assistance to respond to motion to dismiss. Respondent's Brief in Opposition due 5/23/2016. Petitioner's Brief in Reply due 6/2/2016. (jef),(ps) (Entered: 05/16/2016)
05/19/2016	<u>17</u>	Brief in Opposition by Respondent Michael Dittman re: <u>16</u> Motion for Hearing, filed by Charles J. Homelsey aka Charles J. Mayberry, (Attachments: # <u>1</u> Certificate of Service) (O'Brien, Daniel),(ps) Modified on 5/19/2016. (lak) (Entered: 05/19/2016)
06/08/2016	<u>18</u>	Brief in Reply by Petitioner Charles J. Homelsey aka Charles J. Mayberry in Support of <u>16</u> Motion for Hearing. (Attachments: # <u>1</u> Attach. 1 – Milwaukee Journal Sentinel Article, A travesty at DOC, # <u>2</u> Attach. 2 – USA Today Article, Justices' ruling favors disabled, # <u>3</u> Attach. 3 – Adult Conduct Report, # <u>4</u> Attach. 4 – Letter from Mr. Oscar B. McMillian to Ms. Cathy Jess dated 4/10/16, # <u>5</u> Attach. 5 – Letter from Mr. Oscar B. McMillian to Mr. Jon Litscher dated 3/09/16, # <u>6</u> Attach. 6 – Letter from Administrator James R. Schwochert to Oscar McMillian dated 4/20/16, # <u>7</u> Attach. 7 – Letter from Assistant Administrator Marc W. Clements to Oscar McMillian dated 4/12/16, # <u>8</u> Attach. 8 – Appeal of Adjustment Committee of Hearing Officer's Decision, # <u>9</u> Attach. 9 – Interview/Information Request dated 5/29/16, # <u>10</u> Cover Letter, # <u>11</u> Envelope) (nln),(ps) (Entered: 06/08/2016)
06/14/2016	<u>19</u>	ORDER granting request by petitioner Charles Homelsey a/ka Charles Mayberry for assistance in recruiting counsel. Petitioner's "motion for an evidentiary hearing into continuing harassment," dkt. # <u>16</u> , is DENIED as moot. All remaining deadlines are STRICKEN pending recruitment of counsel for plaintiff. If I find counsel willing to represent plaintiff, I will advise the parties of that fact and set a new schedule. Signed by District Judge Barbara B. Crabb on 6/14/2016. (jef),(ps) (Entered: 06/14/2016)
06/16/2016	<u>20</u>	ORDER that the parties may have until July 1, 2016, to confer and then inform the court whether respondent Michael Dittman will renew his motion to dismiss and, if so, what the appropriate briefing schedule should be. If the parties cannot agree on a proposed schedule, each party should submit his own proposal, along with his reasons for choosing that schedule. If the parties do not respond by July 1, 2016, I will direct respondent to file an answer to the petition and set a schedule for briefing the merits of the petition. Signed by District Judge Barbara B. Crabb on 6/16/2016. (jef),(ps) (Entered: 06/16/2016)
06/28/2016	<u>21</u>	Response re: <u>20</u> Order by Respondent Michael Dittman. (O'Brien, Daniel),(ps) (Entered: 06/28/2016)
07/29/2016	<u>22</u>	Copy of letter written by Leonardo Juarez on behalf of petitioner Charles J. Homelsey aka Charles J. Mayberry addressed to Attorney Reed Cornia requesting status update. (Attachments: # <u>1</u> Envelope) (nln),(ps) (Entered: 07/29/2016)
08/26/2016	<u>23</u>	<b>MOTION TO DISMISS</b> by Respondent Michael Dittman. (O'Brien, Daniel),(ps) (Entered: 08/26/2016)
08/26/2016	<u>24</u>	Supplemental Brief in Support of <u>23</u> Motion to Dismiss by Respondent Michael Dittman (Attachments: # <u>1</u> Exhibit A – COA Brief of Plaintiff–Respondent Dated 4–25–14, with Unredacted Exhibits) (O'Brien, Daniel),(ps) Modified on 8/28/2016. (lak) (Entered: 08/26/2016)
08/26/2016		Set Briefing Deadlines as to <u>23</u> MOTION TO DISMISS . Petitioner's Brief in Opposition due 10/11/2016. Respondent's Brief in Reply due 10/26/2016. (nln),(ps) (Entered: 08/26/2016)
10/11/2016	<u>25</u>	Motion for Extension of Time <i>to file Response Brief</i> by Petitioner Charles J. Homelsey aka Charles J. Mayberry. Motions referred to Magistrate Judge Stephen L. Crocker. (Cornia, Reed),(ps) (Entered: 10/11/2016)

10/12/2016	26	** TEXT ONLY ORDER ** ORDER granting <u>25</u> Motion for Extension of Time. Petitioner's Brief in Opposition due 10/25/2016. Respondent's Brief in Reply due 11/9/2016. Signed by Magistrate Judge Stephen L. Crocker on 10/12/2016. (nlm),(ps) (Entered: 10/12/2016)
10/25/2016	<u>27</u>	Second Motion for Extension of Time <i>to File Reply Brief</i> by Petitioner Charles J. Homelsey aka Charles J. Mayberry. Motions referred to Magistrate Judge Stephen L. Crocker. (Cornia, Reed),(ps) (Entered: 10/25/2016)
10/25/2016	28	** TEXT ONLY ORDER ** ORDER granting <u>27</u> Motion for Extension of Time. Petitioner's Brief in Opposition due 10/27/2016. Respondent's Brief in Reply due 11/14/2016. Signed by Magistrate Judge Stephen L. Crocker on 10/25/2016. (nlm),(ps) Modified docket text on 10/25/2016 (nlm). (Entered: 10/25/2016)
10/27/2016	<u>29</u>	Brief in Opposition by Petitioner Charles J. Homelsey aka Charles J. Mayberry re: <u>23</u> Motion to Dismiss filed by Michael Dittman. (Cornia, Reed),(ps) Modified on 10/28/2016: Attachment B is unredacted. (lak) Modified on 11/3/2016: Two e-mails sent to counsel re: refiling. (lak) (Entered: 10/27/2016)
11/11/2016	<u>30</u>	Disregard. See <u>31</u> . Modified on 11/15/2016. (lak) (Entered: 11/11/2016)
11/14/2016	<u>31</u>	Brief in Reply by Respondent Michael Dittman in Support of <u>23</u> Motion to Dismiss, (Attachments: # <u>1</u> Exhibit A – Westlaw Summary of Carpenter v. Douma, No. 15–1688) (O'Brien, Daniel),(ps) Modified on 11/15/2016. (lak) (Entered: 11/14/2016)
01/20/2017	<u>32</u>	Letter Requesting Status Update and Docket Sheet by Petitioner Charles J. Homelsey aka Charles J. Mayberry. (Attachments: # <u>1</u> Envelope) (elc),(ps) (Entered: 01/20/2017)
01/20/2017	<u>33</u>	Letter from clerk's office in response to <u>32</u> Letter Requesting Status Update and Docket Sheet. (elc),(ps) (Entered: 01/20/2017)
02/24/2017	<u>34</u>	ORDER granting respondent's <u>23</u> motion to dismiss and dismissing petitioner's <u>1</u> petition for a writ of habeas corpus. Signed by District Judge Barbara B. Crabb on 2/24/2017. (jef),(ps) (Entered: 02/24/2017)
02/24/2017	<u>35</u>	JUDGMENT entered granting respondent Michael Dittman's motion to dismiss and dismissing the case. Signed by Peter A. Oppeneer, Clerk of Court on 2/24/2017. (jef),(ps) (Entered: 02/24/2017)
03/24/2017	<u>36</u>	NOTICE OF APPEAL by Petitioner Charles J. Homelsey aka Charles J. Mayberry as to <u>34</u> Order, <u>35</u> Judgment. In forma pauperis requested. Docketing Statement filed. (Attachments: # <u>1</u> Docketing Statement, # <u>2</u> Cover Letter, # <u>3</u> Envelope) (jef),(ps) (Entered: 03/24/2017)
03/24/2017	<u>37</u>	Motion for Certificate of Appealability by Petitioner Charles J. Homelsey aka Charles J. Mayberry. (jef),(ps) (Entered: 03/24/2017)
03/24/2017	<u>38</u>	Appeal Information Packet. (jef),(ps) (Entered: 03/24/2017)