

(Rev. 12/2004)

July 15, 2010 3:54 PM

TRACEY CORDES, CLERK

U.S. DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN

BY CR / SCANNED BY AD 7-16

25 USC 1303

**PETITION UNDER 28 USC § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY  
Tribal Custody**

**1:10-cv-00676**

Janet T. Neff - U.S. District Judge

Ellen S. Carmody - U.S. Magistrate Judge

United States District Court	District <u>GRandRapids MI</u>
Name (under which you were convicted): <u>Charles H Anderson</u>	Docket or Case No.: <u>2009-000316-CR</u>
Place of Confinement: <u>Antrim County Jail</u>	Prisoner No.: <u>458061</u>
Name of Petitioner (include name under which convicted) <u>Charles H Anderson</u>	Name of Respondent (authorized person having custody) v. <u>THE GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS Tribal Court</u>
The Attorney General of the State of: <u>MICHIGAN</u>	

**PETITION**

1. (a) Name and location of court that entered the judgment of conviction you are challenging: THE GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS tribal court  
2605 West Bayshore Drive Peshawbestown, MI 49682  
(b) Criminal docket or case number: 2009-000316-CR
2. Date of judgment of conviction: 10-20-09
3. Identify all counts and crimes for which you were convicted and sentenced in this case:  
1st Domestic Violence GTBC 311(B)
4. Length of sentence for each count or crime for which you were convicted in this case:  
365 days 49 days credit
5. (a) What was your plea?  
Not guilty   
Guilty   
Nolo contendere (no contest)

Charles H Anderson  
Antrim County Jail  
PO Box 568  
BELAIRE, MI 49615

Clerk, US, District Court  
399 Federal Bldg.  
110 MICHigan st NW  
GRAND Rapids MI 49503

## Petitioner Grounds

**Ground ONE:** Time Petitioner got sentenced past the allowed time any tribal court can sentence a tribal member on tribal land according to federal law arrested 2-18-09 sentenced 10-20-09 365 days 49 days credit out date 8-31-2010 clearly past 365 days that an indian tribal court can sentence anyone to sentencing OCT 20, 2009 Lawyer James Apres objected to the sentence given by Judge Holly Thompson apres said you cant give my client more than 365 days its against the law He gets credit for all the time served prior to today you sentence him past 365 days your saying this is a Felony this is no Felony anything past a year and a day is a Felony this is no Felony Its against tribal law it just against the law He has to get all credit prior to sentencing Judge Holly Thompson stated "I dont care I just want to see him locked up as long as I can" Petitioner was very suprized Judge said that. Petitioner asked to speak on his behalf Judge said no your lawyer said enough

Petitioner at an prior Court date Aug 4, 2009 for a motion to dismiss for violating the 120 day rule then tribal court chief ~~Judge~~ Judge Wilson Bratt denied motion to dismiss but ordered all credit in jail & prison be given to Petitioner to excuse the delay Judge Bratt said it was the law that you get credit for all the time served in jail and prison

The Judgement of sentence was Faxed to the MDOC Oct 22, 2009 it was all inaccurate there was nothing on the Judgement that was said on record there is no actual court document of what happened at sentencing

Petitioner was given a bond but no PR bond was ever given or signed by Petitioner or court proceeding there just was always Felony hold out of tribal court in the MDOC preventing Petitioner from getting released from prison

Petitioner filed motions to correct the sentence given and the errors made on the judgement and the lawyer appointed to these motions filed his motions but tribal court refuses to hear petitioners motions

and tribal court refuses to give transcripts in this case to prove his case so lawyer said file this writ to federal court petitioner was sent back to prison for violating pro for this charge and was reposed but couldn't be released do to felony hold at of tribal court so pro date was extended by the MDOC until the outcome of hold this charge this charge wasn't no Felony or was there any PR bond there was no reason given by Judge Holly Thompson of why I didn't get my jail credit prior to sentencing other than she saying "I don't care I just want to see him locked up as long as I can" to lawyer objection Federal law says no Indian <sup>tribe</sup> can give more than 365 days in no event and tribal, state laws both give credit while awaiting trial and sentencing even then Chief Judge Wilson broff said it was the law Aug 4, 2009 Petitioner believes there lot more facts to ground one but is not trained in law petitioner seeks relief to Ground one Tribal Court is violating Petitioner rights and don't care they do this to a lot of tribal members nobody does anything tho Petitioner needs help from this Federal court

Ground two: Right to speedy trial was Violated arrested 2-18-09 trial 9-30-09 9-28-09 Last minute arguments were heard then tribal prosecutor Sara brubaker stated on record "I don't have the evidence to take mr anderson to trial nor was I gonna really take him to trial any way for this charge" Petitioner was charged with 3<sup>rd</sup> OFFense domestic Violence I always new I was Just 1<sup>st</sup> time offender and wouldn't go to trial But Judge Holly Thompson state "well were here we might as well take him to trial on 1<sup>st</sup> OFFense or domestic violence I was charged with 3<sup>rd</sup> OFFense not 1<sup>st</sup> OFFense all that time in Jail and prosecutor says that no matter what it shouldn't take that long in misandry

cases under 1 year petitioner got over charged in tribal court petitioner had 2 prior convictions in state court but they were well over 10 years old I had no prior convictions on tribal land

However June 17, 2009 defense council filed his motion to dismiss based on the violation of the 120 day rule Aug 4, 2009 then Judge Wilson D. Brett denied the motion to dismiss but provided an ethical alternative of full credit to excuse the delay trial was set for June 30, 2009 my lawyer was working against me I told him not to put motions in lets just go to trial tribal court thinks petitioner knows his rights dont know his rights or file a Petition of writ of habeas Corpus with Federal court the victim made a deal with prosecutor brubaker said If you testify for me I'll give him time served so she did but prosecutor went against her word I new enough to no I could only be convicted of 1st OFFence this whole case is just mind blowing I think Prosecutor brubaker was against me because she was a state prosecutor for Leelanau county and she took me to trial for a Jail fight but she lost she made a circus out of that case tribal court does what they want

Ground three: right to Jury trial violated Petitioner had right to be tried for what he was charged with that didnt happen see ground two they could at least took me to trial for 3rd OFFence and asked the Jury IF they couldnt find me guilty could they find me guilty on a lesser charge that wasnt done

Ground four: Petitioner has been denied to be present at his court dates in person or for his motions I was there at trial and sentencing the but nothing else Im being held in this Jail in antrim county

But tribal court wont bring me to my court dates tribal court refuses to

Ground five: I wasnt given the right to appeal my conviction and sentence Judge Holly Thompson never said I had the right after my sentencing to appeal

Ground six: The Judgement of sentence is inaccurate all whats on the Judgement is not said on record by Judge Thompson or is there anything or court document of what happened on sentencing date only Court transcripts

Ground seven: Tribal court refuse to give Petitioner his court transcripts needed to prove his case I Filed for being indigent lawyer Filed for transcripts but has been denied

Ground Eight: Petitioner originally filed motions to amend Judgement of sentence back in Nov 9, 2009 and rebuttal 12-22-09 and lawyer has Filed his motions but tribal court refuses to here motions

Ground Nine: Petitioner never saw or spoke with pre sentence investigator to give his pre sentence report

Ground ten: Petitioner has had his Constitutional Rights as a tribal member violated by this court

Petitioner asks for relief from this court I'm not trained in law I gave some Grounds I hope for relief

date 7-14-2010

Signed Charles Johnson

(b) If you entered a guilty plea to one count or charge, and a not guilty plea to another count or charge, give details:

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6. If you went to trial, what kind of trial did you have? (Check one)

(a) Jury   
(b) Judge only

7. Did you testify at the trial? Yes  No

8. Did you file a direct appeal to the Michigan Court of Appeals from the judgment of conviction? Yes  No

9. If you did appeal, answer the following:

(a) Date you filed: \_\_\_\_\_  
*Tribal Court Case  
dont have all these state court remedies*  
(b) Docket or case number: \_\_\_\_\_  
(c) Result: \_\_\_\_\_  
(d) Date of result: \_\_\_\_\_  
(e) Grounds raised: \_\_\_\_\_  
  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Please submit, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.**

(g) Did you seek further review of the decision on appeal by the Michigan Supreme Court? Yes  No

If yes, answer the following:

(1) Date you filed: \_\_\_\_\_  
(2) Docket or case number: \_\_\_\_\_  
(3) Result: \_\_\_\_\_  
(4) Date of result: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Please submit, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.**

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes  No

If yes, answer the following:

*Tribal court case*

(1) Date you filed: \_\_\_\_\_

(2) Docket or case number: \_\_\_\_\_

(3) Result: \_\_\_\_\_

(4) Date of result: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. Did you file a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules with respect to the judgment of conviction and sentence? Yes  No  *tribal court case*

11. If your answer to 10 was "yes," give the following information:

(a) (1) Date you filed: \_\_\_\_\_

(2) Name of court: \_\_\_\_\_

(3) Docket or case number: \_\_\_\_\_

(4) Grounds raised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(5) Did you receive a hearing where evidence was given on your motion? Yes  No

(6) Result: \_\_\_\_\_

(6) Date of result: \_\_\_\_\_

**Please submit, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.**

(b) If you sought further review of the decision in the Michigan Court of Appeals, please answer the following:

(1) Date you filed: \_\_\_\_\_

(2) Docket or case number: \_\_\_\_\_

(3) Result: \_\_\_\_\_

(4) Date of result: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Please submit, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.**

(c) If you sought further review of the decision in the Michigan Supreme Court, please answer the following:

(1) Date you filed: \_\_\_\_\_

(2) Docket or case number: \_\_\_\_\_

(3) Result: \_\_\_\_\_

(4) Date of result: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Please submit, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.**

12. Other than a direct appeal or a motion for relief from judgment, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal? Yes  No

13. If your answer to 12 was "yes," give the following information: [Attach additional sheets of paper, if necessary, to answer the following for each petition, application, or motion you filed.]

(a) (1) Date you filed: \_\_\_\_\_

(2) Name of court: \_\_\_\_\_

(2) Docket or case number: \_\_\_\_\_

(3) Nature of the proceeding: \_\_\_\_\_

(4) Grounds raised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(5) Did you receive a hearing where evidence was given on your motion? Yes  No

(6) Result: \_\_\_\_\_

(7) Date of result: \_\_\_\_\_

**Please submit, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.**

(b) Did you appeal to the highest court having jurisdiction the result of action taken on any petition, application or motion?  
Yes  No

If yes, please provide the following:

(1) Date you filed: \_\_\_\_\_

(2) Name of court: \_\_\_\_\_

(3) Result: \_\_\_\_\_

(4) Date of result and case number: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Please submit, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.**

(c) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**CAUTION: To proceed in the federal court, you must ordinarily first exhaust your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.**

**GROUND ONE:** \_\_\_\_\_

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.): \_\_\_\_\_

**(b) Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes  No

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? Yes  No

(2) If your answer to Question (d)(1) is "Yes," state:

Date motion was filed: \_\_\_\_\_

Name and location of the court where the motion was filed:

Docket or case number: \_\_\_\_\_

Result (attach a copy of the court's opinion and order, if available): \_\_\_\_\_

Date of result: \_\_\_\_\_

(3) Did you receive a hearing on your motion? Yes  No

(4) Did you appeal from the denial of your motion? Yes  No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? Yes  No

If yes, answer the following:

Date you filed: \_\_\_\_\_

Name and location of court: \_\_\_\_\_

Docket or case number: \_\_\_\_\_

Result (attach a copy of the court's opinion and order, if available) : \_\_\_\_\_

\_\_\_\_\_  
Date of result: \_\_\_\_\_

(d) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(e) If you did not exhaust your state remedies on Ground One, explain why: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**GROUND TWO:** \_\_\_\_\_

\_\_\_\_\_  
(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes  No

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? Yes  No

(2) If your answer to Question (d)(1) is "Yes," state:

Date motion was filed: \_\_\_\_\_

Name and location of the court where the motion was filed: \_\_\_\_\_  
\_\_\_\_\_

Docket or case number: \_\_\_\_\_

Result (attach a copy of the court's opinion and order, if available): \_\_\_\_\_  
\_\_\_\_\_

Date of result: \_\_\_\_\_

(3) Did you receive a hearing on your motion? Yes  No

(4) Did you appeal from the denial of your motion? Yes  No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? Yes  No

If yes, answer the following:

Date you filed: \_\_\_\_\_

Name and location of court: \_\_\_\_\_

Docket or case number: \_\_\_\_\_

Result (attach a copy of the court's opinion and order, if available): \_\_\_\_\_  
\_\_\_\_\_

Date of result: \_\_\_\_\_

**(d) Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: \_\_\_\_\_  
\_\_\_\_\_

**(e) If you did not exhaust your state remedies on Ground Two, explain why:** \_\_\_\_\_  
\_\_\_\_\_

**GROUND THREE:** \_\_\_\_\_

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim): \_\_\_\_\_

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**(b) Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes  No

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

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**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? Yes  No

(2) If your answer to Question (d)(1) is "Yes," state:

Date motion was filed: \_\_\_\_\_

Name and location of the court where the motion was filed: \_\_\_\_\_

Docket or case number: \_\_\_\_\_

(3) Did you receive a hearing on your motion? Yes  No

(4) Did you appeal from the denial of your motion? Yes  No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? Yes  No

If yes, answer the following:

Date you filed: \_\_\_\_\_

Name and location of court: \_\_\_\_\_

Docket or case number: \_\_\_\_\_

Result (attach a copy of the court's opinion and order, if available) : \_\_\_\_\_

Date of result: \_\_\_\_\_

(d) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: \_\_\_\_\_

\_\_\_\_\_

(e) If you did not exhaust your state remedies on Ground Three, explain why: \_\_\_\_\_

\_\_\_\_\_

**GROUND FOUR:** \_\_\_\_\_

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim): \_\_\_\_\_

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\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(b) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes  No

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? Yes  No

(2) If your answer to Question (d)(1) is "Yes," state:

Date motion was filed: \_\_\_\_\_

Name and location of the court where the motion was filed: \_\_\_\_\_  
\_\_\_\_\_

Docket or case number: \_\_\_\_\_

Result (attach a copy of the court's opinion and order, if available): \_\_\_\_\_  
\_\_\_\_\_

Date of result: \_\_\_\_\_

(3) Did you receive a hearing on your motion? Yes  No

(4) Did you appeal from the denial of your motion? Yes  No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? Yes  No

If yes, answer the following:

Date you filed: \_\_\_\_\_

Name and location of court: \_\_\_\_\_

Docket or case number: \_\_\_\_\_

Result (attach a copy of the court's opinion and order, if available): \_\_\_\_\_  
\_\_\_\_\_

Date of result: \_\_\_\_\_

**(d) Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: \_\_\_\_\_  
\_\_\_\_\_

**(e) If you did not exhaust your state remedies on Ground Four, explain why:** \_\_\_\_\_  
\_\_\_\_\_

15. Have you previously filed any type of petition, application or motion in a federal court regarding the conviction that you challenge in this petition? Yes  No

If "Yes," state the date of filing, the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available:

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16. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, as to the judgment you are challenging? Yes  No

If "Yes," state the date of filing, the name and location of the court, the docket or case number, the type of proceeding, and the issues raised:

Filed motion 11-9-09 to appeal Conviction and sentence and motion to amend

Judgement of sentence 11-9-09 2009-000316-CR GTB Tribal court

Filed Motion to get time while awaiting sentencing got arrested 2-18-09  
Sentenced 10-20-09 sat 240 days and only got credit 49 days motions still  
haven't been heard by GTB tribal Court yet

17. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: James Aprea 511 Depot View Drive, Ste. 21  
Traverse City, MI 49686

(b) At arraignment and plea: James Aprea

(c) At trial: James Aprea

(d) At sentencing: James Aprea

(e) On appeal: \_\_\_\_\_

(f) In any post-conviction proceeding: \_\_\_\_\_  
\_\_\_\_\_

(g) On appeal from any adverse ruling in a post-conviction proceeding: \_\_\_\_\_  
\_\_\_\_\_

18. Do you have any future sentence to serve after you complete the sentence imposed by the judgment you are challenging?  
Yes  No

(a) If so, give the name and location of court which imposed the sentence to be served in the future: \_\_\_\_\_  
\_\_\_\_\_

(b) Give the date the other sentence was imposed: \_\_\_\_\_

(c) Give the length of the above sentence: \_\_\_\_\_

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future?  
Yes  No

19. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.\*

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\*The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
  - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
  - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
  - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
  - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant him or her the relief to which he may be entitled in this proceeding.

I declare under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on 7-14-2010 (month, date, year).

Charles Johnson  
Signature of Petitioner

7-14-2010  
Date

\_\_\_\_\_  
Signature of Attorney (if any)

If the person signing is not petitioner or an attorney, state relationship to petitioner and explain why petitioner is not signing this petition. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_