

No. 18-8635

ORIGINAL

Supreme Court, U.S.
FILED

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IN THE

SUPREME COURT OF THE UNITED STATES

Case No. 17-3299

Benny L. Willis — PETITIONER
(Your Name)

vs.

Kenneth Ross et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Seventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Benny L. Willis
(Your Name)

10930 Lawrence Road
(Address)

Sumner Illinois, 6024666
(City, State, Zip Code)

Unknown
(Phone Number)

Question Presented

1. Was it a "plain error" for the appeals court to use a "criminal arrest warrant" which had been canceled, as its rationale to Affirm as Modified the "district court's" dismissal of Plaintiff's complaint case 12c1939?
2. Was it constitutional for officials of the "Illinois Department of Correction" to leave the "parole warrant" which had been "voided-Served in error" on "Aug. 24, 2007" in the computer, as if, it was an active warrant until "Jan. 26, 2010"?
3. Was it unconstitutional for the "Illinois Prisoner Review Board (IPRB)", not to give Plaintiff a "preliminary parole hearing to determine probable cause", after the issuance of a parole warrant, under state and federal law?
4. The warrant which is issued pursuant to the "United States Parole Commission" under "18 U.S.C. § 4214(b)(1)", how is it different from the "parole warrant" issued pursuant to the "Unified Code of Correction" under "730 ILCS 5/3-13-4 and 5/3-14.2"?
5. The "Final Order" announced by the "circuit court of appeals" in case, "17-3299" conflicts with its own rulings made in both, "Fahiem El, Y. Klinecar, 814 F.2d 461, 35 USLW 2582 CA7 (Ill. 1987)" and, "Luther V. Molina, 627 F.2d 71 (1980)"?
6. Would the constitutional violations which resulted from the warrant mentioned in question (2), be considered as grounds for

reversal by this Court?

7. The "final judgement" made, "Dec 20, 2018" by the Seventh Circuit Court of Appeals in case "17-3299" does it conflict with the "United States Supreme Court ruling made in, "Bell v. Hood, 327 U.S. 678, (1946), 106 S.Ct. 773, 13 A.L.R. 2d. 383, 90 L.Ed. 939"?
8. The "final order" made "Dec 20, 2018" by the "Seventh Circuit Court of Appeals" in case "17-3299" does it conflict with the "United States Supreme Court ruling made in, "Monroe v. Pape, 81 S.Ct. 473, 5 L.Ed. 2d. 492, 365 U.S. 167 (1961)"?
9. Would it be unconstitutional for Plaintiff-Appellant, to be compelled to defend the adequacy of a "parole warrant", which was issued "voided-served in error" on, "Aug. 24, 2007"?
10. The "court of appeals" order made, "Dec. 20, 2018" stated at (pg. 4, par. 1) that, "Thus, the dismissal of this state law claim should have been without prejudice, and we modify the judgement on this claim accordingly.", should Plaintiff have been given leave to amend count (a), of his "Third Amended Complaint"?
11. The "Final Order" announced, "Dec 20, 2018" by the "Seventh Circuit Court of Appeals" in case "17-3299" does it conflict with their own ruling made in, "McDonald v. Adamson, 2016 WL 6072334, F.3d. (7th Cir. 2016)"?

12. The circumstances giving rise to counts (1-3), of case no. "12c1939", stemmed from the invalid warrant left in the computer by (I Doc), as if it was an active warrant, would those counts share a common nucleus of operative facts, such that they would all be tried in one judicial proceeding?
13. Was it unconstitutional for, "Michelle Littlejohn" to sentence Appellant to fifteen (15), more months in prison, after he had already served the entire sentence set by the court in case no., "03-c8-2591901,"?
14. Was it unconstitutional for the district court to disregard Plaintiff's request made under, "Northern District of Illinois, Local Rule (83.39), Discharge of Assign Counsel on Request of Party, (Doc #151)"?
15. At what point after the parole warrant, has been issued, and, there is a criminal charge pending, wherein the parolee is being held on both, when is the parole warrant considered, executed?

List of Parties

All parties appear in the caption of the case on the cover page.

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Jurisdictional Statement

1. Jurisdiction of the District Court

Plaintiff originally commenced his civil case in the United States District Court for the Northern District of Illinois on March 16, 2012. Plaintiff, Benny L. Willis, filed a pro se complaint seeking relief under "42 U.S.C. § 1983" alleging violations of his rights under the Fourteenth Amendment to the United States Constitution. (Doc #1). Plaintiff's controlling complaint was filed on June 6, 2013 which was based on being denied the right to have a preliminary parole hearing held to determine probable cause "as required by state and federal laws. (Doc #41). The district court's subject matter jurisdiction over the complaint is proper because, it presents a federal question under "42 U.S.C. § 1983" and, the district court has original jurisdiction under "28 U.S.C. §§ 1331 and 1343 (a)(3)".

2. Jurisdiction of the Court of Appeals for the Seventh Circuit

Plaintiff-Appellant, filed his appeal on the basis that this court has jurisdiction pursuant to "28 U.S.C. § 1291" over the district court's final decision set forth in the docket entry dated "Sept. 29, 2017". (Doc #182), as to the district court's docket entry made by the honorable judge "John H. Lefkowitz" wherein the court recruits "Sherwin D. Abrams" as counsel for Plaintiff Benny L. Willis, docket entry dated "Sept. 28, 2015". (Doc #113), as to the district court's post-judgment order on the purported "Opinion-Order" on defendant's motion to dismiss, set forth in the docket entry dated May 31,

2017" (Doc. #163) wherein, the court granted Defendant's Motion to Dismiss Plaintiff's Third Amended Complaint, with prejudice as to counts (1)(2), and, with leave for Plaintiff to file a "Fourth Amended Complaint" as to count (3), which was entered on "May 2, 2017" (Doc. #169), as to the district court's post-judgment order on the purported "Motion to Alter or Amend a Judgment" filed by Plaintiff, "May 8, 2017" (Doc. #172), the court set forth its ruling denying said motion in docket entry dated "Sept. 16, 2017" (Doc. #177), as to the district court's post-judgment order on the purported "Fourth Amended Complaint", set forth in docket entry dated "Sept. 29, 2017" (Doc. #182). After which, Appellant filed his timely, "Notice of Appeal" on, "Nov. 3, 2017".

3. Jurisdiction of the United States Supreme Court

The United States Supreme Court, has jurisdiction pursuant to "28 U.S.C. § 1254(1)" to review the final order-judgment made in appeal no. "12-3299" which was rendered pursuant to the authority granted to the appeals court under "28 U.S.C. § 1291". The final order-judgment sought to be reviewed, was entered on "Dec. 20, 2018" wherein, the appeals court, "Affirmed as Modified" the district court's dismissal of Plaintiff's Third Amended Complaint, as to counts (1)(2), while granting Plaintiff leave to amend his complaint as to count (3), which was amended in a "Fourth Amended Complaint". Subsequently, that amended complaint was dismissed as well. This is Petitioner's petition for "Writ of Certiorari" which stems therefrom, and, is timely filed in accordance to "28 U.S.C. § 2101(c)".

Table of Cited Authorities

Pages

1. Bell v. Hood, 466 S.Ct. 773, 13 A.L.R. 2d 383, 90 L.Ed. 939 (1996). (19)
2. Biddle v. Shirley, 16 F.2d 566 (1926). (29)
3. Brady v. State of Maryland, 83 S.Ct. 1194 (1963). (22)
4. Brown v. Keystone Consol., 1680 F.Supp. 1212, 1215 (N.D. Ill. 1988). (11)
5. Campbell v. Peters, 256 F.3d 693 (7th Cir. 2001). (29)
6. Cart v. DeRoberts, 117 Ill.App. 3d 587, 590 (Ill.App. 1983). (12)
7. Carter v. Agnew, no. 92C-20086, 1992 WL 170575-3 (N.D. Ill. July 16, 1992). (11)
8. County of Riverside v. McLaughlin, 500 U.S. 44, 56, 111 S.Ct. 1661, 11670, 114 L.Ed. 2d 49, 63 (1991). (28)
9. Cowper v. Nyberg, 2015 Ill. 117811 (15)
10. Doherty v. City of Chicago, 75 F.3d 318, 322 (7th Cir. 1996). (11)(12)
11. Doyle v. Elsen, 658 F.2d 512-516 (7th Cir. 1981). (12)(13)(16)(23)
12. Faheem El. v. Klinecar, 712, 717 (7th Cir. 1988). (14)(25)(26)
13. Healy v. Vaupel, 133 Ill.2d 295 (1990). (15)(18)
14. Hyser v. Reed, 318 F.2d (1963), 115 U.S. App. D.C. 254. (21)
15. King v. Walker, no. 06C 204 (Jan. 26, 2007). (4)(10)(13)(23)
16. Klopfer v. Court of Claims, 286 Ill.App. 3d 499, 221 Ill. Dec. (18)
17. Leetaru v. Bd. of Trustees of Univ. of Illinois, 2015 Ill. 117485. (15)(18)
18. Luther v. Molina, 627 F.2d 71 (1980). (26)
19. Mallory v. U.S. 77 S.Ct. 1356, 354 U.S. 449 (1959). (28)
20. McDonald v. Adamson, no. 15-1305 (7th Cir. Oct. 17, 2016). (15)(18)
21. Michealis v. Ill. Dept of Mental Health & Development Disabilities, 61 Ill. Ct. Cl. 270, 272 (2008). (19)
22. Monroe v. Pape, 81 S.Ct. 472, 5 L.Ed. 2d 492 (1961). (20)
23. Moody v. Daggett, 429 U.S. 78, 87, 89 (1976). (11)(13)(16)

24. Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed. 2d. 484 (1972). (5)(10)(14)(16)

25. People v. Allen, 71 Ill. 2d. 378 (1978). (29)

26. People v. Hall, 110 N.E. 2d. 249, 413, Ill. 615 (1953). (28)

27. People v. Majer, 131 Ill. App. 3d. 80 (1985). (29)

28. People v. Weed, 363 Ill. App. 3d. 121, 299 (Ill. Dec. 488). (28)

29. Pinzon v. Lane, 675 F. Supp. 429 (N.D. Ill. 1987). (13)(23)

30. Richman v. Sheehan, 270 F.3d 430, 441 (7th Cir. 2001). (18)

31. Salato v. Kennedy, 118 F. Supp. 3d. 1068, 1092 (N.D. Ill. 2015). (15)(18)

32. Sheehan v. Board of Trustees of Bloomsburg State College, 501 F.2d. 31 (1974). (28)

33. Tate v. Sch. Med. Transp. 809 F. 3d. 343, 346 (7th Cir. 2015). (18)

34. The Fair v. Kohler Die and Specialty Co. 228 U.S. 22, 25, 33 S.Ct. 410, 411, 57 L.Ed. 76. (28)

35. United States ex rel. Napoli v. State of New York, 379 F. Supp. 603 (E.D.N.Y. 1974). (25)(27)

36. Williams v. U.S., 341 U.S. 97 (1951), 71 S.Ct. 576, 95 L.Ed. 774 (20)

Statutes And Rules

Pages

18 U.S.C.A. § 242	(20)
18 U.S.C. § 4213 (d)	(24)
18 U.S.C. § 4214 (b)(1), (c)	(17)(24)
28 U.S.C. § 1254 (1)	
28 U.S.C. § 1331	(9)(10)(19)(28)(29)
28 U.S.C. § 1343 (a)(3)	(9)(10)(19)(28)(29)
28 U.S.C. § 1361	(9)
28 U.S.C. § 1915A	(8)
28 U.S.C. § 1915(g)	(8)
28 U.S.C. § 2101 (e)	
28 U.S.C. § 2241 (c)(3)	(5)
42 U.S.C. § 1983	(6)(8)(10)(19)(28)(29)
Fed. R. Civ. P. Rule 8 (a)(2)	(17)
Fed. R. Civ. P. Rule (b)(1), 12	(11)
Fed. R. Civ. P. Rule (b)(6), 12	(11)
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730 ILCs 5/5-5-3 (West 2006)	(29)
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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at Nonprecedential Disposition; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at Wills v. Boss et al. 12cy1939; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was Dec 20, 2018

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from state courts:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

On "Aug. 22, 2007" a "arrest warrant" was issued by the "State Attorney's office" for "Benny L. Willis" who allegedly committed (3) counts of Armed robbery, case no. "07-CF-1749". Bond on the "arrest warrant" was set at \$100,000.00. The following day, "Aug. 23, 2007" during the "warrant review" held at 9:30 a.m. in room 405, before the honorable judge "Rozak" who canceled said warrant. (Court Docket Entry - Will County Circuit Clerk, pg. (1)).

The exact same day, "Aug. 23, 2007" After fleeing from his parole agent Mr. Dumas, parolee "Benny L. Willis" was taken into custody by the "University Park" police officers, Chief G. Box #385, and Investigator Jones #416 and charged with, (1) Armed robbery, (2) warrant arrest, this was at 10:00 a.m. Unknown to parolee "Willis" (at the time), said parole warrant had been "voided - served in error" by (IDOC), though, said parole warrant remained in the computer for twenty nine (29) months, as if, it was an active warrant. (See: (13) pages of electronically stored documents; Appellant's Brief Attached Appendix).

Being that, the "parole warrant" remained in the computer, parolee "Benny L. Willis", was entitled to the procedure mandated by, "20 Ill. Adm. Code IV § 116.10.140(b)(3)", preliminary parole revocation hearing, also, the "final consent decree" had been announced earlier that year by judge "Gettleman" in, "King V. Walker, no. 06-0204", which mandated that, all parolees arrested while on parole be taken to (IDOC's) "Northern Reception Classification Center (NRCC), at Stateville Corr. Cen" within five calendar days, in order to be made aware of their rights to have a preliminary hearing held to determine probable cause which satisfies the requirements of due process as mandated by the

Supreme Court in "Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed. 2d. 484 (1972)".

While being held unconstitutionally in the "Will County Jail" and, not receiving a "preliminary hearing to determine probable cause" for neither charge, ^①criminal charge or, ^②parole proceedings, "detainee-parolee," Benny Willis filed a petition for a "Writ of Habeas Corpus." Wherein, Petitioner did not receive the minimum requirements mandated by, "28 U.S.C. § 2241(c)(3), or, Due Process under Fourteenth Amendment, U.S. Constitution." In Petitioner's request for habeas corpus relief he asserted the fact that, "Chief Justice Burger, held in, Morrissey v. Brewer, that minimal due process requirements for parole revocation include a preliminary inquiry in the nature of a preliminary hearing to determine probable cause." Instead, Petitioner was offered an unconstitutional plea-bargain that, he accepted not knowing the extent to which, it violated federal policy. (Will County Clerk-Court Docket Entry, pg. (18), March 18, 2009).

On, Jan. 26, 2010 "Appellant was returned to (I Doc's) (NRC), after serving twenty nine (29), months in "Will County Jail", thinking that his sentence under case no. "07-CF-1749" was controlling. Because, as part of his negotiated plea-agreement, he was to serve his six year sentence concurrently, with the understanding that he will drop the "habeas corpus petition." After, Willis appeared before the (IPRB) on, "March 17, 2010" he learned that the prisoner review board was requiring that he serve another fifteen (15), months on the case in which, the parole warrant was issued on, "Aug. 24, 2007" case no. "0003-CR-2591901" which was marked as being "controlling" by the (PRB).

"See; Calculation Sheet / "March 17, 2010".

On "Sept. 20, 2010" inmate "Benny L. Willis" filed a "Petition for Mandamus" in an attempt to redress the constitutional violations he was being subjected to by the (IPRB). Said "mandamus" was totally ignored by officials of the "prisoner review board" until after Petitioner was released from prison on "April 19, 2011". Soon thereafter; on "April 25, 2011" counsel on behalf of chairman of the (IPRB), "Adam Monreal" filed a "motion to dismiss" claiming that, Petitioner's mandamus was moot because, he had been released from prison. One week later on, "May 2, 2011" the judge At "Crawford County, Second Judicial Circuit", granted defendant "motion to dismiss", Plaintiff's Amended Complaint, saying; "this cause is dismissed without prejudice case no. 10m026."

Plaintiff "Benny L. Willis" commenced civil litigation "March 16, 2012" (Doc. #1), seeking redress under title "42 U.S.C. § 1983" for the constitutional deprivations he suffered as the result of Defendants failure to comply with state and federal laws, mandated for parolees who have been taken into custody pursuant to the issuance of a "parole warrant". After Plaintiff was allowed to proceed with his "amended complaint" against, "Adam Monreal" chairman of the "prisoner review board", (Doc. #10). He propounded his, "Second Set of Interrogatories" on Defendant, wherein Plaintiff asked for the identity of the individual who issued the parole warrant for his arrest "Aug. 23, 2007". (Jan. 16, 2013. Doc. #27). Defendant response was, "an individual named "Kenneth Ross", has been identified as the issuing agent per the relevant documents". Plaintiff knowing that, "Kenneth Ross" was not authorized to issue a parole warrant, attempted to obtain a copy of said warrant, so, Plaintiff moved for, and was granted leave to file a "motion to

compel discovery", (Doc. # 62). Defendants produced documents which were not requested for by Plaintiff. Who, soon thereafter, moved for a "Judgement of Contempt of Court", against defendants on, "June 2, 2014" (Doc. # 63). The court denied said motion on "July 10, 2014" (Doc. # 66).

Plaintiff, in another attempt to obtain a copy of the parole warrant allegedly issued by "Kenneth Pross", filed a "Third Set of Interrogatories" on, "Nov. 14, 2014" (Doc. # 79). Wherein, he asked for a copy of said warrant and have it authenticated by the court before it is turned over to Plaintiff. Defendant's answered by saying, "The (IDoc) has indicated to the undersigned that it is not in possession of a paper copy of the parole warrant. Lastly, in Interrogatory no. (5) same set, Plaintiff asked for, "All documents, and electronically stored information held by the "Will County Jail", record office which pertain to Plaintiff, Benny Willis" while he was incarcerated there from, "Aug. 2007-Jan. 2010",? Defendants answered by saying, "Defendant does not have any documents responsive to Interrogatory No. 5". Defendant provided their response to Plaintiff's "third set of interrogatories" on, "Feb. 9, 2015". Being that, most of the answer were false and misleading, Plaintiff put the court on notice that he still had not received the relevant warrant requested for in the Interrogatories. The court firmly advised Defendant's counsel that, until you produce the requested documents we can not move forward. On or about, "May 21, 2015" Plaintiff received from Defendants (13), pages of documents which were electronically stored by the "Will County Jail". Among the documents

received by Plaintiff, was a copy of the parole warrant issued on "Aug 24, 2007" by, "Rick Bard, the executive designee for the Director of the (IDoc) and, Alan S. Hahn, the warrant officer for the (IDoc)". Said, (13) pages of documents establish the fact that, "Kenneth Ross", did not issue any warrant for Plaintiff's arrest. Also, said documents confirm the fact that counsel on behalf of Defendant had been providing false and misleading information to Plaintiff since "2013". (Plaintiff filed suit against several official for their malfeasance, though the court summarily dismissed it pursuant to, "28 U.S.C. § 1915A" for failure to state an actionable claim. Also, Plaintiff was given a "strike" under, "28 U.S.C. § 1915(g)", case no, "17cv8107" judge; John Z. Lee,).

Plaintiff, now in possession of the relevant "parole warrant", to substantiate his "controlling complaint" at the time, moved for leave to file a "Second Amended Complaint naming additional defendants, in compliance with, "Fed. R. Civ. P. Rule, 15(A)(2) and (c) (1)(b) (Exhibits) (Attachments) (7/2/2015) (Doc. #94)". The court, after recruiting, "Sherwin D. Abrams" as counsel to represent "Benny L. Willis" (Doc. #113), denied as moot Plaintiff's motion to file a "Second Amended Complaint on "Jan. 19, 2016" (Doc. #125).

After the district court recruited counsel to represent Plaintiff, "Benny L. Willis" in case no, "12cv939", recruited counsel "Mr. Abrams" on, "Dec. 11, 2015" (Doc. #120), filed a, "Third Amended Complaint (TAC)" on behalf of Plaintiff. The complaint was commenced pursuant to, "42 U.S.C. § 1983", for violation of Plaintiff's constitutional rights under the Due Process Clause of the Fourteenth Amendment, United States

Constitution. The district court has jurisdiction pursuant to, "28 U.S.C. § § 1331 and 1343 (A)(3)". Defendants committed all acts and omissions alleged in said complaint while acting under color of state law. The four named Defendants in counts (1) & (2) are, ① Kenneth Ross, parole supervisor, ② Rich Bard, executive designee on behalf of the Director, ③ Alan S. Hahn, warrant officer, ④ Clarence Dumas Jr., parole officer. All of whom, are employees who work for the, Illinois Department of Correction (IDOC). The basis of counts (1) & (2) were, after the issuance of a parole warrant issued by the (IDOC), Plaintiff, who was on parole at the time said warrant was issued, was entitled to a "prompt preliminary parole hearing to, determine probable cause" on the, alleged parole violations. All named defendants above were well aware of the fact that Plaintiff had rights under state and federal guidelines to such a hearing, which comport to the mandate set forth by the Supreme Court. Yet, Defendants made no efforts to assure that Plaintiff received such a hearing. Also, count (2), which realleges paragraphs (1-20) and, cites "28 U.S.C. § 1367" supplemental jurisdiction", basing count (2), from the same operative facts, as those in count (1). Count (2), further alleges that Plaintiff was denied his rights to a preliminary hearing as required by, "730 ILCS 5/3-3-9(c)" and, not receiving such a hearing denied Plaintiff his due process rights secured by "Section (2), Article (1), of the, Illinois State Constitution". Count (3), of the (TAC), realleges paragraphs (1-24), then adds "Michelle Littlejohn as a Defendant, who is employed by the, Illinois Prisoner Review Board (IPRB)". It was "Ms.

Littlejohn's", duty to compute the date that Plaintiff was to be released from prison. Such computation was to be made in accordance with "730 ILCS 5/3-3-9(A)(3)(i)(B)", which provides as follows: "(B) Except as set forth in paragraph (c), for those subject to mandatory supervised release under paragraph (d) of section 5-8-1, of this Code, the recommitment shall be for the total mandatory supervised release term, less the time elapsed between the release of the person and the commission of the violation for which mandatory supervised release is revoked. The Board may order that a prisoner serve up to one year of the sentence imposed by the court which was not served due to the accumulation of sentence credit." Lastly, it was also alleged that, "Ms. Littlejohn negligently added a year to her calculation, concerning when Plaintiff's release date would be.

District Court Order-Statement (Doc. #125)

On "January 19, 2016" the honorable judge, "Joan H. Lefkow" issued an "order-statement" wherein, the court stated that, "Plaintiff alleges that all the Defendant parole officers knew Plaintiff had not received a preliminary hearing but took no steps to ensure one was scheduled. (Doc. #121 at 2). The Third Amended Complaint states colorable claims and may proceed against the Defendants listed therein. See, 28 U.S.C. § 1915A, see also, Morrissey v. Brewer, 408 U.S. 471, 484-88 (1972); King v. Walker No. 06-cv-204 (N.D. Ill. Jan. 26, 2007) (Gottelman, J.)."

Defendants Motion To Dismiss For Failure To State A Claim-Lack Subject Matter Jurisdiction (Doc. #137).

On, "March 15, 2016" counsel on behalf of Defendants, "Terry Lu" filed a, "motion to dismiss for failure to state a claim and lack of Subject matter jurisdiction". Claiming inter alia, that the "Fed. R. Civ. P. Rule, 12(b)(1)", permits a court to dismiss a claim for lack of Subject-matter jurisdiction. The standard of review for a "12(b)(6)", motion to dismiss for failure to state a claim and the standard of review for a, "12(b)(1)", motion to dismiss for lack of subject matter jurisdiction share similarities. See; *Carter V. Agnew*, no. 92-c-80086, 1992 WL 170575-3 (N.D. Ill. July 16, 1992) citing, *Brown V. Key-Stone Consol. Indus. Inc.*, 680 F. Supp. 1212, 1215 (N.D. Ill. 1988) (Defendant motion to dismiss at pg. 3 of 9). Defendant challenge the fact that, "Plaintiff claims he was denied a preliminary parole revocation hearing in violation of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution". Also; "Procedural due process claims require a two step analysis. The first step requires us to determine whether the plaintiff has been deprived of a protected interest, the second requires a determination of what process is due." *Doherty V. City of Chicago*, 75 F.3d 318, 322 (7th Cir. 1996). "Due Process the Supreme Court has repeatedly written, is a flexible concept that varies with the particular situation." *Id.* at 323 (citations omitted). The mere issuance of a parole violator warrant does not deprive an individual of any constitutionally protected rights, it is the act of taking an individual into custody as a parole violator, by execution of the warrant, which triggers the due process right to a preliminary parole revocation hearing. See; *Moody V. Daggett*, 429 U.S. 78, 87, 89 (1976). When a parolee is taken into custody in connection with other criminal activity, the

parolee is not entitled to an immediate hearing. See; *id.* at 86. The law draws a distinction between the loss of liberty of a parole violator resulting from the execution of a parole violation warrant, and the loss of liberty of a parole violator as a result of other causes. See also; *Dorley v. Elser*, 658 F.2d 512, 515-516 (7th Cir. 1981). To adequately plead a procedural due process claim, "where state law remedies exist, a plaintiff must either avail herself of the remedies guaranteed by state law or demonstrate that the available remedies are inadequate." *Doherty*, 75 F.3d at 323.

In Count II of his Third Amended Complaint Plaintiff alleges a procedural due process claim. Plaintiff claims he was denied a preliminary parole revocation hearing in violation of due process of law under Section (2) of article (1), of the Illinois Constitution. (Doc. 121 par. 21-24). The Illinois Appellate Courts have adopted the same analysis used in "*Moody*", in determining that due process protection are not triggered by the mere issuance of a parole violation warrant, but by the act of taking a parolee into custody upon execution of the parole violation warrant. See, *Cart v. DeRobertis*, 117 Ill. App. 3d 587, 590-591 (Ill. App. Ct. 1983). Accordingly, Count II of Plaintiff's Third Amended Complaint (Doc. 121) should be dismissed for failure to state a claim. (Defendant's motion to dismiss at pg. 6 of 9).

Plaintiff Appellant, will address Count III, later in the argument because he was given leave to amend count (3), of his "Third Amended Complaint (TAC)".

"Response by Benny L. Willis" in Opposition to motion to Dismiss for Failure to State a Claim, Lack of Subject Matter

Jurisdiction", (Doc. # 146).

On "May 19, 2016" counsel on behalf of Plaintiff, "Mr. Sherwin D. Abrams" filed a response in opposition to Defendant's motion to dismiss, (Doc. # 137). "Mr. Abrams" made the contention that, neither case relied on by Defendant's counsel, "Moody V. Daggett, 429 U.S. 78 (1976) and, Doyle V. Elser, 658 F.2d. 512 (7th Cir. 1981)", are applicable to Plaintiff's case because, of the fact that both, Petitioners in "Moody and Doyle", were seeking "prompt parole revocation hearing", while our issue was, whether "Willis" was entitled to a "preliminary hearing to determine whether there was probable cause to find that he had violated the conditions of his parole". In support of Plaintiff's right to have such preliminary hearing counsel cited, "Pinzon V. Lane, 675 F. Supp. 429 (N.D. Ill. 1987) which held: "Parolees were entitled to preliminary injunction against state failure to afford parolees arrested under new criminal charges with opportunity for preliminary parole revocation hearing, "within reasonable time following arrest", both Constitution and Illinois law mandated hearing, U.S.C.A. Const. Amend. (14); Ill. S.H.A. ch. 38. § 1003-3-9 (c)". Plaintiff next reference to, "King V. Walker, No. 06c204 (Jan. 26, 2007), final consent decree, where judge "Gettleman, details the procedure to be followed after a parolee has been arrested while on parole, "The transfer of any Parole Violator shall be completed so that the Parole Violator is sent to, and custody is accepted by the, Illinois Department of Corrections at the Northern Reception and Classification Center at Stateville Correction Center, within five calendar days of service of a parole violation warrant. This schedule shall provide that the Parole Violator receives adequate

Notice of his right to a preliminary parole revocation, which shall be held by the Illinois Prisoner Review Board within (10) business days of imprisonment pursuant to the execution of a parole violation warrant. Both, "Pinzon and King" premise stem from, "Morrissey v. Brewer, 408 U.S. 471 (1972)" where the Supreme Court held that parolee arrested for an alleged violation of parole is entitled to a preliminary hearing to determine whether there is probable cause to believe that he in fact violated the conditions of his parole. The Supreme Court did not condition a parolee's right to a preliminary hearing on whether the parolee was arrested on a new criminal charge or for some other alleged parole violation.

Though, defendant's motion to dismiss, never responded to the bail issue, which was denied to Plaintiff due to the parole hold warrant that was pending against him. Counsel on behalf of Plaintiff asserted the "court of appeals" ruling made in, "Fahem El. v. Klinear, 712, 717 (7th Cir. 1988)". Thus, when Willis, was arrested on a charge of armed robbery, an otherwise bailable offense, he was not permitted to post bail pending a hearing on revocation of his parole. The first step in that proceeding, a preliminary hearing is mandated by "Morrissey", and is enshrined in Illinois statutes and administrative rules. As noted in paragraph (23) of the (TAC), "730 ILCS 5/3-3-9(c)" the Agents failed to comply with that statute, nor did they comply with, "20 Ill. Admin. Code Section 110.140 (b) Preliminary Hearing".

Lastly, counsel on behalf of Plaintiff addressed "Ms. Littlejohn's" immunity claim stating, "Ms. Littlejohn" argues

that, Willis Action Against her is really an action against the State of Illinois. She claims that Illinois sovereign immunity protects her from suit in this court and that Willis should instead sue her in the court of claims. "Ms. Littlejohn" fails to cite any case that suggest that no action would be against her. In fact, the Illinois Supreme court has held that such an action does lie. "Cowper V. Nyberg, 2015 IL 117811". Ms. Littlejohn, cites "Healy V. Varpel, 133 Ill. 2d, 295 (1990)", for the proposition that Willis claim against her belongs in the Illinois court of claims (Icc). What distinguishes Healy from Willis case is that Willis alleges a constitutional violation, not just an ordinary tort claim. The distinction was recognized in "Salata V. Kennedy, 118 F. Supp. 3d, 1068, 1092 (N.D. Ill. 2015)". Judge Leinweber, citing, "Leetaru V. Bd. of Trustees of Univ. of Illinois, 2015 IL 117485", held that, when the claim at issue involves a constitutional violation, the (Icc) does not have exclusive jurisdiction, even when the plaintiff seeks damages.

"Plaintiff's Motion for Leave to Cite Additional Authority"

While the court was considering Defendant's motion to dismiss on, "Oct. 18, 2016" counsel on behalf of Plaintiff filed a "motion for leave to cite Additional Authority. In Opposition To Defendant's Motion To Dismiss Third Amended Complaint". Stating that, "In, McDonald V. Adamson, no. 15-1305 (October 17, 2016), the Seventh Circuit, speaking of the Illinois court of claims, held as follows: 'It lacks jurisdiction to consider claims based upon a federal statute or the federal or state constitutions'. At page (4). The McDonald case is direct support for the plaintiff's position

that Count (3), of the (TAC), should not be dismissed.

"The District Court's Opinion-Order, (Doc. # 1163)".

On, "March 31, 2017" the honorable judge "Joan H. Leikow" in her, "opinion-order", granted Defendant's motion, (Doc. # 137), with prejudice as to counts (1) and (2), and, without prejudice as to count (3), giving Plaintiff leave to file a, "Fourth Amended Complaint" as to count (3). The court in its "Analysis" though, it mentioned the stare decisis precedence enunciated by the "Supreme Court" in, "Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed. 2d. 484 (1972)", it did not make a determination based on that precedence. The preliminary hearing mandated by Morrissey is one that protects the rights of all citizens throughout these United States of America. As oppose to, making such a determination, the court based its "opinion-order" from, "Moody v. Daggett, 429 U.S. 78, 97 S.Ct. 274, 50 L.Ed. 2d. 236 (1976) and, Doyle v. Elser, 658 F.2d. 512, 515-16 (7th Cir. 1981), relying on the claim made in Doyle to compare Lillie's situation to, stating at page (516), "There, a federal parolee was arrested on a new criminal charge and was not able to make bail because, the Parole Commission issued a parole violation warrant. He remained in custody until his conviction on the new charge. He claimed a due process right to an early parole revocation hearing because, the warrant prevented him from being released on bail".

"Plaintiff's Motion made under, "Fed. R. Civ. P. Rule, 59(e)".

Plaintiff, in an attempt to clarify the contentions made in his (Third Amended Complaint) filed on, "April 28, 2017" (Doc. # 172), a motion under, "Fed. R. Civ. P. Rule 59(e), Alter or Amend a Judgement" wherein, he cited to federal guidelines in support of his contentions that he was denied due process of law under, said federal guidelines. See; Plaintiff's motion under rule 59(e), par. (8)(14) and, (15).

"The District Court, Order-Statement (Doc. # 177)".

The court in its "order and statement made, Sept. 6, 2017" denying Plaintiff's motion under 59(e) stated at pg. (3), "Finally, Willis continue to rely on federal statutes and rules governing parole revocation.

Those laws do not apply to parole revocation proceedings held before Illinois authorities". How is it possible for the court to use, "18 U.S.C. § 4214" as grounds to dismiss Plaintiff's (TAC) but, Plaintiff can not use it to show the distinction between the two warrants, the other being, "730 ILCS 5/3-13.4 and 5/3-14.2"?

"Plaintiff's Fourth Amended Complaint (Doc. # 169)".

Plaintiff, in compliance with the court's "Opinion-Order" made, March 31, 2017 (Doc. # 163), filed a "fourth amended complaint as to, count (3) of his (TAC), attached thereto, is a 'Statement of Facts/Memorandum of Law', which clarified everything Plaintiff went through from, "Aug. 23, 2007" until the day he was released from prison, "April 19, 2011". Plaintiff's 'fourth amended complaint', was commenced under title, "42 U.S.C. § 1983" because, the Defendant involved, "Michelle Littlejohn", committed the acts and omissions alleged in the complaint, while acting under color of state law. Also, "Jurisdiction and Venue", were properly pled under "28 U.S.C. §§ 1331 and 1343(a)(3)" for, the controversy involved exceeds that of, \$ 10,000, giving the court subject matter jurisdiction over the case. Plaintiff contends that, he met the requirements under "Fed. R. Civ. P. Rule 8(a)(2)", "A short and plain statement of the claim showing that the pleader is entitled to relief. The court's, "Sept. 29, 2017", "order and statement" made at pg. (4)(5) stating that, "The court has already given Willis an opportunity to submit a pro se amended complaint after allowing his former counsel to withdraw and flagging the Eighth Amendment's requirements for him. As Willis is attempting to assert claims that do not implicate the

Constitution, further amendment would be futile. See, *Tate v. Sch. Med. Transp.*, 809 F.3d. 343, 346 (7th Cir. 2015) (noting that courts generally "should give a litigant, especially a pro se litigant, an opportunity to amend his complaint.... unless it is certain from the face of the complaint that any amendment would be futile or otherwise unwarranted"). Plaintiff, does not recall such an opportunity being extended to him. However, the court appeared to be more concerned with turning Plaintiff's "fourth amended complaint" into a "state tort" which, has to be brought in the, Illinois Court of Claims, see, *Pichman v. Sheahan*, 270 F.3d. 430, 441 (7th Cir. 2001), see also, "*Healy v. Vaupel*, 549 N.E.2d. 1240, 1247, 133 Ill.2d. 295, 140 Ill. Dec. 3168 (1990)". Though, Plaintiff's counsel rebutted "*Healy*" in our motion in opposition, (Doc. #146), also, the motion to cite additional authority cited, "*McDonald v. Adamson*" the court in its, "order-statement" made "Sept. 29, 2017" never made a ruling, as to, which cases have precedence.

Plaintiff's motion, in opposition (Doc. #146) stated at pg. (4), "Ms. Littlejohn, cites *Healy v. Vaupel*, 133 Ill.2d. 295 (1990) for the proposition that Willis' claim against her belongs in the Illinois court of claims (ICC). What distinguishes *Healy* from Willis' case is that Willis alleges a constitutional violation, not just an ordinary tort claim. The distinction was recognized in, "*Sakita v. Kennedy*", 118 F. Supp. 3d. 1068, 1092 (N.D. Ill. 2015). Judge, "Leinenweber" citing, *Leetaru v. Bd. of Trustees of Univ. of Illinois* 2015 IL 117485, held that, when the claim at issue involves a constitutional violation, the (ICC) does not have exclusive jurisdiction, even when the plaintiff seeks damages. The court ignored "*Leetaru*" as well as, the (7th Cir. 2016) ruling in, *McDonald v. Adamson*, F.3d. 2016 WL 6072334, holding that, The Illinois Court of Claims "is not a court within the meaning of Article VI, of the Illinois Constitution of 1970". *Klopper v. Court of Claims*, 286 Ill. App. 3d. 499, 221 Ill. Dec.

876, 676 N.E. 2d. 1679, 683 (1997). It lacks jurisdiction to consider claims based upon a federal statute or the federal or state constitution. *Michaelis v. Ill. Dept of Mental Health & Development Disabilities*, 61 Ill. Ct. Cl. 270, 272 (2008). Therefore, it is not a "court of competent jurisdiction" under Illinois preclusion law. Plaintiff's "fourth amended complaint" alleged an "Eighth Amendment" violation, under the "United States Constitution", also, a section (2), of Article (1), violation under the State of Illinois Constitution. The court did not mention either, nor did, the court in its "order and statement" made dismissing Plaintiff's "fourth amended complaint" mention the, (7th Cir.), ruling made in "McDonald", despite the doctrine of "stare decisis or, vertical stare decisis". Which is why, this Court's supervisory power, is required to make such determinations, which will provide guidelines for the district and appeals courts to adhere to when confronted with similar issues in the future.

"Argument"

Plaintiff on, "Dec. 11, 2015" filed a "Third Amended Complaint (TAC)" under, "42 U.S.C. § 1983, for violations of his constitutional rights under the "Due Process Clause of the Fourteenth Amendment". The court has jurisdiction pursuant to, "28 U.S.C. §§ 1331 and 1343 (a) (3)". Plaintiff's decision to commence civil litigation under such laws and statutes are authorized by the Supreme Court in, *Bell v. Hood*, 66 S. Ct. 773, 13 A.L.R. 2d. 383, 90 L. Ed. 939 (1946), holding; It cannot be doubted therefore that it was the pleader's purpose to make violation of these constitutional provisions the basis of this suit. Before deciding that there is no jurisdiction, the district court must look to the way the complaint is drawn to see if it is drawn so as to claim a right to recover under the Constitution and laws of the United States. For to that extent "the party who brings a suit is

master to decide what law he will rely upon, and does determine whether he will bring a "suit arising under the (constitution or laws) of the United States by his declaration or bill". The Fair v. Kohler Die and Specialty Co. 228 U.S. 22, 25, 33 S. Ct. 410, 411, 57 L. Ed. 716". The Defendants named in count (1-3), were all working for the "Illinois Department of Correction (IDOC)", when they committed the acts and omissions complained of. "Williams v. U.S., 341 U.S. 97 (1951), 71 S. Ct. 576, 95 L. Ed. 774, Under the statute providing for punishment of whoever under "color of law" willfully subjects ANY inhabitant of state to deprivation of rights privileges or immunities secured by constitution and laws of United States, quoted phrase includes misuse of power possessed by virtue of state law and made possible only because wrongdoer is clothed with authority of state law. "18 U.S.C.A. § 242". See also, Monroe v. Pape, 81 S. Ct. 472, 5 L. Ed. 2d. 492 (1961), "Congress has power to enforce Fourteenth Amendment against those who carry badge of authority of a state and represent it in some capacity whether they act in accordance with their authority or misuse it. U.S.C.A. Const. Amend. 14."

On "Aug. 24, 2007" the "Illinois Department of Corrections (IDOC)", issued a "no bond parole warrant" pursuant to the authority granted to it under the "Unified Code of Correction, "730 ILCS 5/3-13-4 and, 5/3-14-2". Said, warrant consisted of three pages, ① warrant cover sheet, ② warrant, ③ receipt for warrant, which contained a warrant number of, "C1070826". This, "no bond parole warrant" is extremely material because, it is the cause of each constitutional deprivation, Plaintiff-Appellant, suffered, because, it was left in the computer, as if, it was an active warrant. Though, this parole warrant was issued on, "Aug. 24, 2007" the exact same day, "Aug. 24, 2007" it was, "voided-served in error" because, defendants "Rick Bard, the executive designee on behalf of the Director

for (IDOC) and, Alan S. Hahn, the warrant officer for (IDOC)" issued it without having first received a "Parole Violation Report (PVR)" to support their reasons for issuing a "parole warrant". This is a requirement mandated by federal guidelines, citing, "Hyser v. Reed, 318 F.2d (1963), 115 U.S. App. D.C. 254, Congress had a dual purpose in setting up a statutory provision for the issuance of an Administrative Arrest Warrant for parolees, ① provide a means to retake the parolee and pursue inquiry into the alleged revocation, and, ② provide minimum safeguards for the parolee. The Board recognized this in its regulations making the issuance of a warrant depend upon the existence of "satisfactory evidence". Parole Board Directive No. 1, § 2.35, 27 Fed. Reg. 8490 (Aug. 24, 1962)".

On "Aug. 28, 2007" defendants, Clarence Dumas Jr. parole officer, and, Kenneth Ross, Supervisor both, by their signatures, faxed to the (IDOC), a three page "Parole Violation Report (PVR)" afterwards, they received the exact same "parole warrant" as the one issued on, "Aug. 24, 2007" with one exception, this warrant had no "warrant cover sheet" attached to it because, (IDOC) officials thought that, parolee "Benny Willis", had already been returned to "Stateville's" (NAC) as indicated on the "Warrant Inquiry". However, Willis was being held on the no bond warrant in, "Will County Jail" as required by the, Warrant Cover Sheet, issued on "Aug. 24, 2007". Unlike the first warrant issued, "Aug. 24, 2007" the warrant issued on "Aug. 28, 2007" was signed by "Vincent P."? on "Aug. 30, 2007". The document signed is the "Receipt for Warrant" which says most importantly, "I, Vincent P., an employee of Will County Sheriff and in receipt of Illinois Department of Correction's Warrant, # CZ 08261 and, certify that the subject described above is in custody at this facility". The, "Receipt for Warrant" being signed and faxed back to (IDOC), establishes the fact that parolee, "Benny Willis" was in custody pursuant to the executed parole warrant issued by defen-

dents on, "Aug. 28, 2007". Black's Law Dictionary, defines executed as such;
 ① Executed: (Of a document) that has been signed, ② That has been done, given, or performed. Plaintiff Appellant contends that, the two warrants issued by (IDOC), during the month of "Aug. 2007" against parolee Willis are very material issues, which requires this Court's supervisory power, in order to, resolve this dispute. Appellant feels that (IDOC), withheld the information about the warrant issued on, "Aug. 28, 2007" intentionally, because, the "Warrant Inquiry (IDocs-000005)", does not contain any information about the warrant issued "Aug. 28, 2007" which could be construed as a violation under, "Brady v. State of Maryland, 83 S.Ct. 1194 (1963) [3]". We now hold that suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to the guilt or punishment, irrespective of the good faith of the prosecution."

Furthermore; "Def. Motion To Dismiss, (Doc # 13) at pg. 4 of 9), saying; The mere issuance of a parole violation warrant does not deprive an individual of any constitutionally protected rights; it is the act of taking an individual into custody as a parole violator, by execution of the warrant, which triggers the due process right to a preliminary parole revocation hearing."

Plaintiff Appellant, contends that, once authorities met the requirements on the "Receipt of Warrant", he is in custody by execution of the warrant. The warrant itself is issued pursuant to the, Unified Code of Correction, "730 ILCS 5/3-13-4 and, 5/3-14-2, under 730 ILCS 5/3-13-4, Rule And Sanction par. (c), "An order certified by the Director, Assistant Director, or the Supervisor of the Apprehension Unit, or a person duly designated by him or her, with the Seal of the Department of Correction attached and directed to all sheriffs, coroners, police officers, or to any particular correctional official. Such order shall be executed the same as criminal process". Once

Shreff, Vincent P.?" completed his duty by faxing the "Receipt for Warrant" back to (IDOC), it was their responsibility to see to it that parolee Willis, was returned to (NBC), within five (5), calendar days as mandated by the final consent decree announced by judge "Gettleman" in, "King v. Walker, no. 81-204, stating that; The transfer of any Parole Violator shall be completed so that the Parole Violator is sent to, and custody is accepted by the Illinois Department of Correction, at the, Northern Reception and Classification Center at, Joliet Correctional Center, within five calendar days of service of a parole violation warrant. This schedule shall provide that the Parole Violator receives adequate notice of his rights to a preliminary parole revocation, which shall be held by the Illinois Prisoner Review Board within (10) business days of imprisonment pursuant to the execution of a parole violation warrant". Judge, "Gettleman's" final consent decree, coincides with the final consent decree announced in, "Pinzon v. Lane, 675 F. Supp. 429 (N.D. Ill. 1987), which mentions the requirements under, "20 Ill. Adm. Code IV §1610.140(b)(3)". See; "Appellants Brief at pg. (19)". The district court's rulings in case, "12C1939" conflicts with both final consent decrees, because, the court did not consider this case law when it was presented by Plaintiff. Instead, the court adopted defendants rationale about "Doyle v. Elser, which does not befit Appellants situation.

The district court's, March 31, 2017 "opinion and order, at pg (5)", relying on the ruling made in, "Doyle v. Elser, 1058 F.2d. 512 (7th Cir. 1981)". Where, "Doyle" was arrested on "both state and federal charges, after the state charge was dropped against Doyle, on April 24, 1978" he was convicted on the federal charge of transporting stolen checks and was sentenced to serve five years in prison. He began serving his sentence on that day, having spent four months in pretrial custody". At some time after his 1978 conviction, the Parole Commission lodged the violation warrant

as a detainer against Doyle in the federal prison where he was incarcerated. Thereafter, in February 1980, Doyle petitioned the Parole Commission requesting that credit for the four months he spent in pretrial custody be applied to the time remaining on his 1973 sentence.

Thus far, what distinguishes Appellant's case from that of petitioner Doyle, ① Appellant was not arrested in another state while on parole, ② Appellant after his arrest on "Aug. 23, 2007" was not charged with both state and federal offenses, ③ after Appellant was convicted and returned to prison, there was not a violation warrant lodged against him as a detainer, ④ After being sent back to prison, Appellant did not file a petition attempting to have his (877) days of pretrial detention deducted from his parole time left to serve.

The detainer, which was lodged against Doyle by the Parole Commission under, "18 U.S.C. § 4214 (c)", which requires a parolee who has been summoned or retaken by warrant, shall receive a revocation hearing within ninety days of the date of retaking. Paragraph (b)(1), "Such detainer shall be reviewed by the Commission within one hundred and eighty days of notification to the Commission of placement".

What distinguishes Appellant's case from Doyle is, no such requirements were extended to Willis at any time during his incarceration for (29), months in the "Will County Jail". Neither, "18 U.S.C. §§ 4213 or, 4214", contain's language about the parole warrant having to be executed for a parolee to have a preliminary hearing. However, "18 U.S.C. § 4213 (d)", says; Any officer of any Federal penal or correctional institute or any Federal officer authorized to serve criminal process within the United States to whom a warrant issued under this section is delivered, shall execute such warrant by taking such parolee and returning him to the custody of the regional commissioner, or the custody of the Attorney General, if

the Commission shall so direct."

Though, Defendant's motion to dismiss nor, the Seventh Circuit Court of Appeals, discussed the bail or Plaintiff's rights thereto, under the eighth amendment. The court in its, "opinion and order" announced on "March 31, 2017" at pg. 4-5, "Filling in the blanks in the complaint, the court infers for purposes of this decision that soon after Willis was arrested for the aggregated robbery, police determined that he was on parole and notified (IDoc), and the defendant parole Authorities caused issuance of a warrant for arrest. But because, Willis was already in custody for the robbery charge, they held onto the warrant while that charge awaited disposition. Since Willis alleges that he was denied bail because of the warrant, the fact of his being a parolee must have been made known to the judge who considered his request for bail. Willis contends that defendants violated his due process right by issuing the warrant because, the issuance regardless of whether it was executed, made it impossible for him to post bail."

Plaintiff-Appellant, contends that his rights to be considered for bail was addressed thoroughly by the, Seventh Circuit Court of Appeals in, "Faheem El V. Klinecar, 814 F.2d. 461, C.A.7 (Ill), 1987, Faheem El's complaint is not that he has an absolute right to be released or that the Board incorrectly exercised its discretion in refusing to release him, but rather that he was not given any consideration for conditional release. Illinois concedes that, pursuant to Illinois law, the Board exercised no discretion in his or any other arrested parolee's case. Therefore," United States ex rel Napoli V. State of New York, 379 F. Supp. 603 (E.D.N.Y. 1974), is apt to the present case. It held: The blanket policy of the State Board of Parole holding all suspected violators in custody, until full determination of state criminal charges, is a way of doing injustice wholesale. The federal constitution at least requires that every parole violator be treated as an individual and not denied bail as a matter of policy." The "Faheem"

court concluded by saying; "In our view the Due Process Clause of the Fourteenth Amendment requires that arrested parolees be considered for conditional release pending further revocation proceedings. Therefore, we vacate the stay the district court imposed on its order of preliminary injunctive relief in favor of the plaintiff class. The district court should enter summary judgement on the conditional-release issue in favor of the plaintiff class and issue an injunction requiring, Illinois to provide all parolees arrested on new criminal charges individualized consideration for conditional release within five days of their arrest and detention." The district court's "Opinion-Orders" in their entirety, issued in case no. "12C1939" conflict with the Seventh Circuit ruling made in "Fahem El. V. Klinecar". Also, the "final order" made "Dec. 20, 2018" in Appellant's appeal, "17-3299" by the Appeals Court conflict with both, "Fahem El. V. Klinecar" and "Luther V. Molina, 627 F.2d. 71 (1980), stating that, If a parolee is alleged to have violated his parole the Commission under section 4213, may either summon the parolee to a Section 4214, revocation hearing or issue a warrant and retake the parolee. See; 28 C.F.R. Section 2.44. Of course, the question of release arises only when the Commission elects to retake and incarcerate the parolee. See; 28 C.F.R. Section 2.49(d). Section 4214 (A) (1)(A), provides that the parolee is entitled to a "preliminary hearing... without unnecessary delay; to determine if there is probable cause to believe that he has violated a condition of his parole." The Appeals court "final order" conflict with both cited cases because they did not address this case law when it was presented to them in, "Appellant's Brief, pg. 24 to 25". They instead, focused their attention on the, "criminal arrest warrant" which was issue on "Aug. 22, 2007" then, said warrant was, "canceled" the next day, "Aug. 23, 2007" by judge "Rozak", see Court Docket Entry, Will County, pg. (1), hereto attached as Appendix (G).

Furthermore, the "Appeals court" final order, stated at pg. (3), par. (1), "Finally, the judge dismissed the proposed Eighth Amendment claim against Littlejohn because, Willis had not alleged that Littlejohn wrongly calculated his release date with deliberate indifference". That assertion conflicts with what was actually written in Plaintiff's relief section of his "Fourth Amended Complaint", which alleged that; "Ms. Michelle Littlejohn" who, while acting under color of state law, violated Plaintiff's due process rights under State/Federal law by her "Deliberate Indifference", toward Plaintiff's right to be released from prison in accordance to the sentence set by judge". Though, worded differently, an allegation of "Deliberate Indifference", should be weighed by the truthfulness of the contention, not by how the allegation is phrased. Lastly, the district court's statement made at page (5) "March 31, 2017" "Willis's theory suggest that if he had been provided the hearing, there would have been a finding of no probable cause for the parole violation warrant; and he would have been admitted to bail". Said statement conflicts with the court's announcement made in, "U.S. ex rel. Napoli V. State of N.Y. 379 F. Supp. 603 (1974), which held; A parolee should not be held in custody indefinitely pending a violation hearing. If there is necessary delay in bringing a parolee to trial on a new charge, and the trial court approves his release on bail, deferral of the parole violation hearing and holding him in custody is equivalent to presuming him guilty".

The court assuming that, probable cause would have been automatically found if parolee Willis would have been given a "preliminary parole hearing" upon his initial arrest, "Aug. 23, 2007" id at pg. (6). Not receiving a "preliminary hearing" on the question of probable cause for both charges Willis was being held on, new charge and revocation proceedings, was the premise of Petitioner's "Writ of Habeas Corpus" being filed on, "March 18, 2009" (Will County Docket Entry, pg. (18)), wherein

he contended that, "A preliminary hearing was scheduled but, was never held, in violation of an Illinois Statute which requires one arrested without a warrant to be taken before a magistrate without unnecessary delay. And allegedly coerced, was not admissible (citing) *People v. Hall*, 110 N.E. 2d. 249, 413, 111.1015 (1953). Also citing; *Mallory v. U.S.*, 77 S.Ct. 1356, 354 U.S. 449 (1959). The requirements of Rule 5(a), paragraph (c), preliminary examination (citing), *People v. Wead*, 363, 111 App. 3d. 121, 299 (111 Dec 488), court held that, "Any significant pretrial restraint of liberty requires a determination of probable cause made by a judicial officer either before or promptly after arrest. (citing), *County of Riverside v. MacLaughlin*, 500 U.S. 44, 56, 111 S.Ct. 1661, 1670, 114 L.Ed. 2d. 49, 163 (1991), court held promptness requirement of *Gestein* requires probable cause determination within 48 hours of warrantless arrest; 725 ILCS 5/109-1(A) (West 2002), a person arrested with or without a warrant shall be taken without unnecessary delay before the nearest and most accessible judge in that county". Therefore, A finding of "probable cause" was not going to be automatically found!

Plaintiff on, April 24, 2017 (Doc. 169), filed his "Fourth Amended Complaint" as to count (3), of his (TAC), which was brought pursuant to, "28 U.S.C. §§ 1331, 1343(A)(3), and, 42 U.S.C. § 1983". The relief Plaintiff requested was, \$50,000 also, compensatory and, punitive damages were requested for being subjected to "Cruel and unusual punishment", in violation of the, "Eighth Amendment, U.S. Constitution and, Section (2), of Article (1), State of Illinois Constitution". Which were appropriately pled (citing), "*Shehan v. Board of Trustees of Bloomsburg State College*, 501 F.2d. 31 (1974), *Shehan* asserts jurisdiction under 28 U.S.C. § 1331 and under 28 U.S.C. § 1343 (3)(4), and the Civil Rights Acts. The jurisdictional amount requisite to support jurisdiction under § 1331 is pleaded, and the claim

for recovery in excess of \$10,000, clearly is not frivolous. Jurisdiction over the individual defendants is clear both under §1331 and under §1343 and 42 U.S.C. §1983. Because the requisite jurisdictional amount for §1331 is pleaded, the fact that the College is not a "person" within the meaning of 42 U.S.C. §1983 is not significant. Also, the courts language in *Campbell v. Peters*, 256 F.3d. 695 (7th Cir. 2001), is apt for Appellant's argument, it held; "Campbell contends that he has shown that it was clearly established that incarcerating a prisoner beyond the termination of his sentence without penological justification violates the Eighth Amendment as cruel and unusual punishment. At a general level this proposition may be true, although the courts that have recognized this problem have been careful to note that the extended incarceration must also be the product of deliberate indifference before a constitutional violation, as opposed to an error of state law, is implicated." *Mo. Littlejohn* requiring Appellant to serve (15) more months in prison on the (2003 CB-2591961) case was totally UN-constitutional because, such a sentence is not authorized by state law, see, Unified Code of Correction (code), (730 ILCS 5/1-11, et. Seq. West 2006) A sentence is defined as the "disposition imposed by the court on a convicted defendant" (730 ILCS 5/15-1-19, West 2006). The pronouncement of a sentence is the judicial act that conforms to the judgement of the court. *People v. Allen*, 71 Ill. 2d. 378 (1978). A sentence imposed by the court in a criminal case must be authorized by law. *People v. Majer*, 131 Ill. App. 3d. 80 (1985). The disposition available to courts include probation, conditional discharge and, a term of imprisonment. (730 ILCS 5/5-5-3, West 2006). See; Statement of Facts - Memorandum of Law, par. (8)-(13), attached to Fourth Amended Complaint. See also; *Biddle v. Shirley*, 16 F. 2d. 566 (1926). The "mittimus" after conviction is a final process for carrying into effect the

"judgement of the court and cannot vary or contradict the judgement on which it is based." Appellant contends that, his assertion of an "Eighth Amendment violation under the United State Constitution", is controlled by the Supremacy Clause. Therefore, he should have been allowed to proceed on the merits of his claim in the district court who has federal question jurisdiction. This Court's supervisory power is respectfully requested to resolve this dispute? For, "Mr. Littlejohn's" actions clearly violate well established State and Federal laws, which hope-fully entitles Petitioner to this Court's discretionary review.

The, Seventh Circuit Court of Appeals, rendered its final order-judgement, in Appeal No. "17-3299" on "Dec. 20, 2018". Wherein, the Appeals court, Affirmed as Modified, the district court's dismissal of Plaintiff's "third amended complaint as to, courts (1)(2), as well as, Plaintiff's "fourth amended complaint as to, court (3). In doing so, the appeals court mainly based their decisions from the "criminal arrest warrant" which had been "canceled" by, Will County, judge "Prozak". The appeals court referred to said warrant in its order-judgement several times, ① (Court's order at pg. (2), par. (2)) "he was arrested and detained in jail on a criminal warrant for armed robbery", ② (pg. (3), par. (1)) "The judge denied that motion because, the assumption was irrelevant; regardless of the timeline, the armed robbery warrant, rendered the arrest and pretrial detention lawful", ③ (pg. (3), par. (3)) "Willis too, was validly in jail for armed robbery while he awaited his parole-revocation hearing because, his criminal warrant for armed robbery justified his pretrial detention", ④ (pg. (4), par. (3)). The judge did not abuse her discretion in denying the motion, she correctly concluded that regardless of when the Department of Correction learned about Willis's armed robbery warrant, The existence of that warrant meant Willis was validly arrested

and detained".

Conclusion

Being as Such; Petitioner contends that he has pointed to facts, which have occurred throughout his case, "Benny L. Willis v. Kenneth Ross et al, case no. 12c1939" that confers the United States Supreme Court, supervisory power. In order, to bring about a lawful resolution between the parties, because the issues in controversy present conflicting interest, which, at some time or another, all states will be confronted with. The three warrants discussed by Petitioner in the instant request for a "Writ of Certiorari", requires this Court's scrutiny in determining was it in accordance with the law, for the "appeals court" to retrieve a canceled warrant then, use it in their "final order" made in appeal no. 17-3299, the warrant which was canceled by judge "Rozak" on "Aug. 23, 2007". ② The warrant issued "Aug. 24, 2007" though, "voided-served in error" did the (IDoc), purposely, leave said warrant in the computer, knowing that it will prevent parolee Willis from receiving due process of law, under state and federal guidelines. ③ What about the parole warrant issued on "Aug. 28, 2007" which actually was the only valid warrant among the three, but, since Defendants never mentioned it throughout litigation for over seven years, does that qualify as a violation under "Fed. R. Civ. P. Rule 60(b)(3)" or, can it be construed as a "void judgement"? Because, (IDoc's 000005-Warrant Inquiry), contains no information about the parole warrant issued on "Aug. 28, 2007". Therefore, Petitioner, wholeheartedly prays that this Court will grant his petition for "Writ of Certiorari".