

19-1196
No. _____

In The

Supreme Court of the United States

WILLIAM JOHNSON,

Petitioner

v.

COUNTY OF PAULDING, GEORGIA; BOARD OF
COMMISSIONERS FOR PAULDING COUNTY;
PAULDING COUNTY SHERIFF'S DEPARTMENT;
SHERIFF GARY GULLEDGE IN HIS OFFICIAL &
INDIVIDUAL CAPACITY OFFICER "AL"
GONZALEZ IN HIS OFFICIAL & INDIVIDUAL
CAPACITY; And MAJOR SHELIA CRATON IN
HER OFFICIAL & INDIVIDUAL CAPACITY,

Respondents

On Petition For Writ Of Certiorari to the United
States Court Of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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FILED
JAN 02 2020
OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTIONS PRESENTED FOR REVIEW

- 1. This question presented is whether a State's statute of limitations bridling the pursuit of regress for UnConstitutional and illegal pre-trial imprisonment commences 48 hours after State imprisons a pre-trial detainee, or when the State releases that pre-trial detainee from jail. U.S.C.A. 4; 42 U.S.C.A. § 1983. Manuel v. City of Joliet, 137 S.Ct. 911 (2017). Manuel v. City of Joliet, Illinois, 903 F.3d 667 (2018). The Trial Court's and Appeals Court's ruling as to such, herein, is in sharp contrast with this Supreme Court's precedent and the Seventh Circuit's precedent concerning such. Manuel and Manuel, *supra*. Herein, the Eleventh Circuit contends that the limitations clock in Georgia is controlled by Georgia and starts ticking when Georgia says it does (currently 48 hours after pre-trial detention), while this Supreme Court and the Seventh Circuit have previously ruled that the clock does not start ticking until a detainee is released from jail and free from the State's restraint so that the detainee is able and can sue his or her captors.**
- 2. The question presented is whether the testimony within an affidavit of a verified complaint supporting facts asserted in the complaint should be considered as evidence to defeat a motion for summary judgment.**
- 3. This question presented is whether a county sheriff and his jailors can share their State's cloak of Eleventh Amendment immunity for**

blatant violations of the United States Constitution as controlled by 42 U.S.C.A. § 1983.

4. This question presented is whether, in current times of electronic filings and easy access to Court Records, a Court/Judge can refuse to take Judicial Notice of its/his own Court records of a recent case over which the same Judge recently presided to justify the harsh dismissal of a poor pro se Plaintiff's Right to Jury Trial.

5. This question presented is whether a Court can demand highly strict adherence to rules and Court procedure so as to harshly dismiss a pauper pro se's (with no formal law education) complaint for minor deficiencies, rather than first taking less extreme measures such as requiring the pro se litigant to re-file the pleadings to conform to the Court's strict compliance policy.

**Proceedings Directly Related to the Case in
this Court**

In the Federal District of Northern Georgia (Rome
Division), case #:18-cv-00136-HLM, captioned:
Johnson v. County of Paulding, Georgia et al.

1. Complaint with Jury Demand: Docket #1, judgment entered on 10/31/2018;
2. First Motion to Dismiss with Brief in Support filed by all Defendants: Docket #8, judgment entered on 10/31/2018;
3. First Motion for Summary Judgment filed by all Defendants: Docket # 9, judgment entered on 10/31/2018;
4. Response in Opposition to First Motion to Dismiss: Docket # 11, judgment entered on 10/31/2018;
5. Response in Opposition to First Motion for Summary Judgment: Docket # 12, judgment entered on 10/31/2018;
6. Response to Statement of Material Facts of First Motion for Summary Judgment filed by Plaintiff: Docket # 13, judgment entered on 10/31/2018;
7. Reply Brief to Response to First Motion to Dismiss by all Defendants: Docket # 14, judgment entered on 10/31/2018;
8. Reply Brief to Response to First Motion for Summary Judgment: Docket # 15, judgment entered on 10/31/2018;
9. Notice of Appeal: Docket # 20.

In the United States Court of Appeals for the
Eleventh Circuit, case # 18-14994 captioned:
William Johnson v. Paulding County, Georgia, et al.

1. Appellant's Brief docketed on 11/30/2018, judgment rendered 7/12/2019;
2. Appellees' Brief filed on 3/15/2019, judgment rendered 7/12/2019;
3. Reply Brief filed by Appellant on 5/20/2019, judgment rendered 7/12/2019;
4. Petition for Rehearing En Banc filed by Appellant on 8/2/2019, judgment rendered 10/4/2019.

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PETITION FOR A WRIT OF CERTIORARI

William Johnson respectfully submits this Petition for a Writ of Certiorari before the Honorable Supreme Court of the United States of America. Petitioner has not proceeded pro se herein out of disrespect for the Law or disrespect for those well-educated and experienced in the Law. He does so out of necessity as he cannot afford the services of a lawyer. Petitioner prays that this Honorable Court will take into consideration that Petitioner cannot afford an attorney and has no formal education in law so as to allow him to comply perfectly will all the rules and customs of this Court. So very most often is the plight of the poor and uneducated- chained to a system of laws designed to ultimately protect the wealthy and the aristocracy. The Rights of multitudes of individuals are oppressed simply because they are poor and cannot afford a professional attorney, or because they are uneducated in Court procedure and Rules.

Petitioner further prays that this Court is able to understand how his Civil Liberties were violated so as to deliver Justice above and beyond Respondents' assertions that Petitioner's claims for Respondents' violations of his Civil Liberties should be dismissed out of respect for a strict compliance with Court Rules, Procedure, and Courtesies, which Respondents just like these customarily abuse to seek fortification and privilege from merit-based confrontation. As a pauper pro se (non-attorney) litigant cannot fairly be expected to stand "toe-to-toe" against high paid lawyers of an oppressive government entity with unlimited coffers and layers of bureaucracy and laws protecting its immunity, Petitioner prays that this Honorable Court will allow him a little more latitude than the lower Courts to present his case.

William was **illegally arrested**, without probable cause and **without warrant being issued**, and **illegally**

imprisoned pre-trial for over six months on a misdemeanor charge that would later be dismissed. Excessive bail was set that William could not afford.

Despite William repeatedly demanding a probable cause hearing, the Sheriff's jailors never (approximately six and a half months in jail) presented him before a judicial officer to verify probable cause for his arrest or certify his pre-trial detention (**essentially pre-trial punishment without Due Process and Jury Trial Demanded**). William's captors repeatedly insisted that a Uniform Traffic Citation written by their arresting officer was all that was necessary to keep him in jail until his trial.

Additionally, despite being obstructed from doing so by the Sheriff's jailors, William was able to successfully file a Petition for Federal Habeas Corpus in the Rome Division of the Federal Northern District of Georgia (same presiding Judge as Judge that dismissed his Complaint in the Trial Court concerning his claims referenced herein). Upon the Federal District Court requiring the jail to answer William's Habeas Corpus Petition, the jail finally released him.

Because of Respondents' intentional unconstitutional actions, William, a single Dad, lost his business, lost his state contractor's license, lost nearly everything he owned, could not care for his daughter who had to support herself, and missed his daughter's high school graduation while imprisoned for over six months pre-trial. Because William had been made a pauper due to the Respondents' actions, he was never able afford an attorney to represent him, and after almost two years from being released from jail and nearly one year after his misdemeanor charge was dismissed, he was finally able to salvage enough time and save enough money to file suit pro se against the Respondent Defendants.

The United States' Constitution was written to protect its citizens against the tyranny of government

entities with police states and unlimited coffers. It provides for a means by which the Judicial Branch is able to protect individuals from the Legislatures' and Executors' oppression of Civil Liberties.

Constitutional Law is very clear that police do not have the authority to keep individuals jailed more than 48 hours without Judicial endorsement. Keeping an individual in jail pre-trial for more than six months (whether lawful or not) on a misdemeanor charge is an excessive abuse of power and should never be allowed, as it destroys an individual's livelihood and life (especially when individual is never found guilty of the misdemeanor).

As the Federal District of Northern Georgia and this Court's Eleventh Circuit of Appeals endorses such behavior, in sharp contrast to the Seventh Circuit and this Honorable Court's rulings, this case at bar is of such importance so as to justify this Honorable Court's intervention to ensure **uniformity in the Law among all Federal Judicial Districts, uphold this Court's precedents, and protect Civil Liberties that require police to deliver all individuals before a judicial officer to authorize pre-trial imprisonment beyond 48 hours.**

OPINIONS BELOW

The Federal District of Northern Georgia (Rome Division), case #:18-cv-00136-HLM, entered judgment granting Respondents' First Motion to Dismiss on October 31st, 2018. (Pet.App. 1a). The Federal District of Northern Georgia (Rome Division), case #:18-cv-00136-HLM, entered judgment granting Respondents' First Motion for Summary Judgment and dismissing Petitioner's Complaint on October 31st, 2018. (Pet.App. 14a). The Eleventh Circuit Court of Appeals denied Petitioner's Appeal (Pet.App. 31a), case # 18-14994, on July 12th, 2019 and

denied Petitioner's Petition for Rehearing En Banc on October 4th, 2019. (Pet.App. 38a).

JURISDICTION

The Eleventh Circuit Court of Appeals entered judgment dismissing Petitioner's Appeal on July 12th, 2019. Petitioner's timely filed Petition for Rehearing En Banc was denied on October 4th, 2019. Time for filing a petition herein expires after January 2nd, 2020.

This Court has jurisdiction under 28 U.S. Code § 1254 and U.S. Supreme Court Rules 10(a) and 10(c). More particularly, herein, the Eleventh Circuit Court of Appeals has entered decisions in conflict with important Federal decisions of and precedents set by the Seventh Circuit Court of Appeals and this Supreme Court, which demands this Court's intervention.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

While state law supplies limitations period for pretrial detainees' § 1983 actions alleging that unlawful pretrial detention beyond start of legal process violates the Fourth Amendment, Federal Law defines when the claim accrues for limitations purposes. U.S. Const. Amend. 4; 42 U.S.C.A. § 1983. Manuel v. City of Joliet, 137 S.Ct. 911 (2017). Manuel v. City of Joliet, Illinois, 903 F.3d 667 (2018).

In every case of an arrest without a warrant, the person arresting shall, without delay, convey the offender before the most convenient judicial officer authorized to receive an affidavit and issue a warrant.... No such imprisonment shall be legal beyond a reasonable time allowed for this purpose; and any person who is not

brought before such judicial officer within 48 hours of arrest shall be released. O.C.G.A. § 17-4-62.

In addition to the discrete state function previously mentioned, this case at bar presents issues that are not consistent with Federal Constitutional character to extend sovereign immunity. An individual who is arrested without a warrant is entitled to have a judicial officer make a determination of probable cause within a prompt period after the arrest; if prompt judicial determination of probable cause is not made, then an extended deprivation of liberty following a warrantless arrest constitutes deprivation of liberty without due process of law. U.S.C.A. 5, 14. Please see Lambert v McFarland, 612 F.Supp. 1252, United States District Court, N.D. Georgia, Atlanta Division (1985) citing Gerstein vs. Pugh, 420 U.S. 103 [95 S.Ct. 854, 43 L.Ed.2d 54] (1975).

Government bodies which are not protected by Eleventh Amendment immunity may be sued under § 1983 in state court, even if state laws would purport to extend sovereign immunity to all government bodies within the state. Howlett By and Through Howlett v. Rose, 496 U.S. 356, 110 S. Ct. 2430, 110 L. Ed. 2d 332, 60 Ed. Law Rep. 358 (1990).

The Federal Civil Rights Acts, 42 U.S.C.A. §§ 1981-1988, provide the statutory basis for federal police abuse actions against state or local police officers. Of these statutes, § 1983 (the Civil Rights Act of 1871) is the most frequently invoked, particularly since the decision in Monroe v. Pape, 365 U.S. 167, 81 S. Ct. 473, 5 L. Ed. 2d 492 (1961).

42 U.S.C.A. § 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of

any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. In *Monroe*, the Court identified three main purposes envisioned by the Congress that enacted the statute: (1) "to override certain kinds of state laws"; (2) to provide "a remedy where state law was inadequate"; and (3) to provide "a federal remedy where the state remedy, though adequate in theory, was not available in practice." *Monroe*, 365 U.S. at 172-83.

The Supreme Court has set forth an expansive construction of § 1983, emphasizing the intention of Congress to create a broad federal remedy for violations of constitutional rights. The Court held that action "under color of" state law was not confined to action authorized by state law, but could include conduct of government officials that was contrary to state law. Furthermore, the Court made clear that the availability of a state remedy did not affect a plaintiff's right to seek redress in the first instance in federal court under § 1983. *Monroe*, 365 U.S. at 180.

No person shall "be deprived of life, liberty, or property, without due process of law". U.S.C.A. 5. In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved. U.S.C.A 7. No state shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws". U.S.C.A. 14. Pleadings must be construed so as to do justice. Federal Rule of Civil Procedure 8(e) CONSTRUING PLEADINGS.

Due Process afforded by Georgia Statutory and Constitutional Law involved herein is enumerated as follows in the next two paragraphs. All pleadings shall be so construed as to do substantial justice. O.C.G.A. 9-11-8 (f) Construction of pleadings. "No person shall be deprived

of life, liberty, or property except by due process of law." Article 1, § 1, ¶ I- Life, liberty, and property: Constitution of the State of Georgia. "Protection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws." Article 1, § 1, ¶ II- Constitution of the State of Georgia.

"The right to trial by jury shall remain inviolate". Article 1, § 1, ¶ XI- Right to Trial by Jury: Constitution of the State of Georgia. "No person shall be deprived of the right to prosecute or defend, either in person or by an attorney, that person's own cause in any of the courts of this state." Article 1 § 1, ¶ XII- Right to the Courts: Constitution of the State of Georgia.

Plaintiff has been denied his Constitutional Rights guaranteed according to the following Amendments to the United States Constitution: first amendment (freedom to petition the government for redress), fourth amendment (freedom from unreasonable searches and seizures), fifth amendment (right to due process, from self-incrimination, and from double jeopardy), sixth amendment (right to confront accusers and obtain witnesses), eighth amendment (right not to be subjected to cruel and unusual punishment or have affordable bail set), and fourteenth amendment (right to due process and right to life, liberty and property).

Plaintiff has been illegally arrested without probable cause and without warrant issued, jailed pre-trial for over six months on a misdemeanor charge (a charge that would later be dismissed), denied his 4th Amendment Right to be taken before a Judge who would verify probable cause for arrest for his arrest and determine whether pre-trial detention for his misdemeanor charge was justified, and charged for a misdemeanor he never committed (in violation of both State and Federal Law).

STATEMENT OF THE CASE

The facts and presentation of this case will show that Petitioner's over six-month pre-trial detention, for a single misdemeanor charge that was later dismissed, was unconstitutional (pre-trial punishment). Compliance with Constitutional, Federal, and State Law requiring for Petitioner to be presented before a Judicial Officer for verification of probable cause and the necessity of pre-trial detention (Judicial oversight) would have prevented this.

Essentially, Petitioner was:

1. denied his Right to petition for a governmental redress of his grievances (denial of judicial hearing to determine validity of pre-trial detention); U.S.C.A. 1;
2. denied his Right to be free from unreasonable search and seizure (arrest and six-month pre-trial detention without warrant or judicial sanction); U.S.C.A. 4;
3. deprived of life, liberty, or property, without due process of law (six-month pre-trial detention/pre-trial punishment with no Due Process for Jury Trial and State/Federal Laws guaranteeing Judicial approval of such; loss of life, livelihood, liberty and property while in jail); U.S.C.A. 5 and 14;
4. deprived of the trial process Constitutionally guaranteed prior to six-month pre-trial imprisonment; U.S.C.A. 6;
5. deprived of Right to Jury Trial for controversy exceeding twenty dollars in values (dismissal of Petitioner's claims herein); U.S.C.A. 7;
6. deprived of Right against excessive bail (Petitioner kept in jail pre-trial for

misdemeanor charge for more than six months where he could not afford the bail); U.S.C.A. 8;

Proceedings Below

Petitioner filed his Complaint in the Northern District of Georgia (Rome Division) on June 5, 2018. (case #18-cv-00136-HLM, Docket 1). On September 20th, 2018, Respondents filed their First Motions to Dismiss and for Summary Judgment. (Dockets 8 and 9). On October 31st, 2018, the Trial Court dismissed all of Petitioner's claims asserting that Petitioner (Dockets 16, 17, 18):

1. did not file the claims within the applicable Statute of Limitations,
2. did not present a single piece of evidence before the Court to withstand summary judgment (both the Trial Court and Appeals failed to acknowledge that Petitioner filed a verified complaint with affidavit of certified testimony supporting the facts named in his complaint, along with many other pieces of evidence presented in additional pleadings),
3. could not pierce Respondents' cloak of Eleventh Amendment immunity,
4. was barred by the Heck Doctrine from pursuing his claims,
5. failed to follow Court Procedures and Rules,
6. and could not expect the Court to take judicial notice of its own Court records.

On November 30th, 2018, Petitioner filed Notice of Appeal (Docket 20).

Petitioner's Appeal was docketed in the Eleventh Circuit Court of Appeals on November, 30th, 2018, case # 18-14994. Respondents' Appellee Brief was filed on March

15th, 2019. Petitioner filed his Reply Brief on May 22nd, 2019. The Appeals Court rubber-stamped and affirmed the Trial Court's decision on July 12th, 2019. Petitioner's Petition for Rehearing En Banc was denied on October 4th, 2019.

Facts of the Case

Record citations are included in Petitioner-Appellant's Appendix filed in with Appeal Court on March 6th, 2019, case # 18-14994. The record citations will be referenced, for example, as follows: "R.1, AP 7" would represent page 7 of the Appellant's Appendix (AP-Appellant's Appendix page number) as scanned by this Appeals Court's Clerk into its electronic record. "R.1" represents Document 1 in the Trial Court's docket as listed and identified in the index of Appellant's Appendix. So, "R.1, AP 7" is page 1 of the Plaintiff-Appellant's Complaint in the District Court, which is listed in the index of Appellant's Appendix as document R.1 and found on page 7 of Appellant's Appendix as scanned by this Appeal Court Clerk's.

Plaintiff states that Sergeant Gonzalez of the Paulding County Sheriff's Office illegally arrested him on January 28th, 2016 and charged him with DUI, said DUI charge being dismissed on June 6th, 2017. R.1, AP 13-14, 24; R.12, AP 72. (Please see Exhibit "B", R.1, AP 24.) Plaintiff was never given a copy of the Uniform Traffic Citation (UTC) for the illegal arrest until May 24th, 2016 after having obtained an Order from a Federal Judge of the Trial/Habeas Court commanding Defendants to give him that (below). R.12, AP 72.

The next day, following the illegal arrest, a judge issued an invalid and unconstitutional warrant which was not based on any evidence or on an affidavit of any individual having personal knowledge of anything

supporting probable cause for an arrest of Plaintiff. Appellees' Exhibit 1. The probation warrant was merely a warrant piggy-backed upon the illegal arrest made by Sergeant Gonzalez, probable cause for said arrest never having been verified by a judicial officer. Gonzalez's arrest was secured by a UTC, merely a citation handwritten by the police officer, not a warrant. There was never a "probable cause determination" made by a judicial officer.

The probation warrant was simply based on the testimony of Plaintiff's probation officer that Plaintiff was arrested. No evidence or basis of "probable cause" to support a warrant for the arrest of Plaintiff was presented before the probation judge. Nothing supporting "probable cause" for Plaintiff's arrest or pre-trial detention was documented within the "four corners" of the warrant issued by the probation judge. R.12, AP 72-73.

Plaintiff was kept in jail for over 6 months solely on the basis of a UTC, for which probable cause was never determined by a judge. Please see affidavit, dated July 20th, 2016, of Defendant Major Shelia Craton (Plaintiff's Exhibit "C", R.12, AP 91-92), the Jail Administrator of the Paulding County Jail.

In her affidavit, under paragraph 6, Major Craton States:

"On May 24, 2016, and in response to the May 19, 2016 order of the United States Magistrate Judge, I delivered a copy of Mr. Johnson's DUI citation to Mr. Johnson because that DUI arrest is the sole basis for Mr. Johnson's current detention in the Paulding County Detention Center. Mr. Johnson refused to accept the citation. I did not provide Mr. Johnson with a copy of the Spalding County probation warrant because that warrant is not the basis for Mr. Johnson's current detention in the Paulding

County Detention Center. Had I understood the Order to also require production of the Spalding County probation violation warrant, I would have provided a copy of it to Mr. Johnson at that time." R.12, AP 91-92.

Please see the probation warrant, Appellees' Exhibit 1. This document is nothing more than a conclusory statement by Plaintiff's probation officer, Anita Jones, that Plaintiff had committed a crime. Within the "four corners" of the warrant is presented no testimony or evidence whatsoever showing probable cause of a crime to issue a warrant for arrest. R.12, AP 73.

Essentially, Plaintiff served time for a probation revocation prior to being afforded the opportunity for a probation revocation hearing (probable cause determination) according to the Due Process of the Laws of Georgia. Because of the actions/inactions of the individual Defendants and other police Defendants herein and because of excessive bail being set, Defendant was not able to meet bail to be able to be released from the Paulding County jail so that he could be afforded a probation revocation hearing (probable cause determination). Just prior to having to answer a Federal Habeas Corpus Action in the Rome Federal Court (same as Trial Court herein), on August 9th, 2016, the Paulding County Jail released Plaintiff on a signature bond (no bail amount required). R.12, AP 74.

Major Sheila Craton and employees of the Paulding County Sheriff insisted that Plaintiff was being held under the color of a Uniform Traffic Citation, Summons, and Accusation of the Paulding County Sheriff's Department (UTC). Please see Plaintiff's Exhibit "A". R.1, AP 23. Plaintiff repeatedly insisted he could not be held more than 48 hours on merely a UTC and demanded that he be presented a warrant authorizing his pre-trial detention or

afforded a probable cause hearing. The Sheriff's employees insisted that Plaintiff was being held on the UTC and that he was not entitled to a probable cause determination before a judicial officer or entitled to be given a copy of any warrant. R.12, AP 74.

Petitioner humbly asks that the Court take judicial notice of and review case # 4:16-cv-57-HLM, a Habeas Corpus action filed by Plaintiff in the Rome District Court, which presents plenty of evidence on record to withstand these Defendant's first motion for summary judgment. This whole case are pleadings, documented in the same Trail Court herein, that were served upon the Respondents alerting them to the facts that they were violating Petitioner's Constitutional Rights.

Specifically, Plaintiff requests that the Court review, in detail, his Brief in Support of Petition for Writ of Habeas Corpus filed in said case in the Trial Court on August 1st, 2016 as document # 27. This document lists, in detail, the Constitutional violations of the Defendants while they imprisoned Plaintiff pre-trial for over six months (a misdemeanor charge that would later be dismissed). Additionally, Plaintiff relies on his RESPONSE TO DEFENDANTS' STATEMENT OF UNDISPUTED MATERIAL FACTS filed in the District Court, along with his Complaint, Brief in Support of this pleading, and other pleadings filed herein. R.12, AP 75.

On January 28th, 2016, the night of the illegal arrest for DUI, Petitioner passed the breath test on the machine at the Paulding County Jail. Yet, Plaintiff was still charged with DUI for allegedly refusing to also take a blood test. Because Plaintiff knew that he passed the breath test, he made numerous requests to have a probable cause hearing before a judge to view the police video showing where Plaintiff was tested. All requests were denied. Despite Plaintiff asserting his 6th Amendment Brady Rights to exculpatory evidence and filing a Brady motion for such,

said police video Plaintiff requested was erased by the Paulding County Sheriff's Department, which admitted that it had done this. The Paulding County District Attorney was in possession of the Brady Motion served by Plaintiff nearly a month before the jail erased the exculpatory video. R.12, AP 74-75.

Respondents made many inaccurate statements in the Trial and Appeals Courts. Plaintiff was not driving under the influence at the time he was arrested and never alleged this. (This is a blatant lie.) That charge was dismissed and is nothing more than an accusation. (Please see Exhibit "B", R.1, AP 24.) (Petitioner's head lights went out on his truck. So, he parked the truck, and decided to sleep until daylight the next morning. No police officer saw Petitioner drive anywhere.)

One is presumed innocent until proven guilty through Due Process of Law. This assertion by Appellees is a belief, not a fact, which is exactly why Appellant was entitled to probable cause verification by a judicial officer independent of an executive actor.

Appellant was never convicted of DUI! In fact, the charge was dismissed. Appellant's probation officer alleged that Appellant violated a condition of his probation, namely "Do not violate the laws of any governmental unit." Appellant was never afforded a probable cause hearing/determination of such by an independent judicial officer. Thus, he sat in the Paulding County jail for over six months because he could not afford to post bond for the DUI "charge".

By the time Petitioner was able to attend a probation revocation hearing (probable cause verification), he had served the maximum amount of jail time that could have been awarded for any alleged probation violation (his probation being revoked in full-eleven months with a 2 for 1 by the jail, making his maximum sentence less than 6 months). Thus, due to the

Respondents' violations of Petitioner's Rights as stipulated herein, the Respondents quashed any opportunity Petitioner could have had to prove there was no probable cause to support a probation violation. Therefore, any Right Petitioner had to contest the imprisonment for an alleged probation violation was rendered moot due to the actions of the Respondents. Essentially, Petitioner spent over six months in jail (a misdemeanor charge) pretrial to adjudication of the DUI charge and alleged probation violation.

Appellees' footnote 1 on page 3 of its Appellees' Brief is also a lie. Plaintiff did dispute many facts alleged by Appellees' statement of facts in the Trial Court. Please see Appellant's Response to Defendants' Statement of Undisputed Material Facts in the Trial Court. R.13, AP 93-95.

REASONS FOR GRANTING THE PETITION

1. **Whether a State's statute of limitations bridling the pursuit of regress for unconstitutional and illegal pre-trial imprisonment commences 48 hours after State imprisons a pre-trial detainee, or when the State releases that pre-trial detainee from jail.** U.S. Const. Amend. 4; 42 U.S.C.A. § 1983. *Manuel v. City of Joliet*, 137 S.Ct. 911 (2017). *Manuel v. City of Joliet*, Illinois, 903 F.3d 667 (2018). The Trial Court's and Appeals Court's ruling as to such, herein, is in sharp contrast with this Supreme Court's precedent and the Seventh Circuit's precedent concerning such. Manuel and Manuel, *supra*. Herein, the Eleventh Circuit contends that the

limitations clock in Georgia is controlled by Georgia and starts ticking when Georgia says it does (currently 48 hours after pre-trial detention), while this Supreme Court and the Seventh Circuit have previously ruled that the clock does not start ticking until a detainee is released from jail and free from the State's restraint so that the detainee is able to and can sue his or her captors.

Respondents', the Trial Court's, and the Appeal Court's portrayal of Manuel v. City of Joliet, Illinois, 903 F.3d 667 (2018), is wrong. Manuel, *supra* is specifically quoted:

"When a wrong is ongoing rather than discrete, the period of limitations does not commence until the wrong ends... Notice that we speak of a continuing wrong, not of continuing harm; once the wrong ends, the claim accrues even if that wrong has caused a lingering injury... The problem is the wrongful custody. "[T]here is no such thing as a constitutional right not to be prosecuted without probable cause." *Serino v. Hensley*, 735 F.3d 588, 593 (7th Cir. 2013). But there is a constitutional right not to be held in custody without probable cause. Because the wrong is the detention rather than the existence of criminal charges, the period of limitations also should depend on the dates of the detention.

The wrong of detention without probable cause continues for the duration of the detention. That's the principal reason why the claim accrues when the detention

ends. (The parties have debated whether a need to prove malice affects the claim's accrual. But after the Supreme Court's decision this is a plain-vanilla Fourth Amendment claim, and analysis under that provision is objective.)"

Plaintiff was kept in jail pre-trial for his misdemeanor DUI "accusation" for over six months with no probable cause determination ever being made by the Courts. Plaintiff was illegally arrested on January 28th, 2016. No judicial probable cause determination was ever made, despite Plaintiff's numerous requests for such, his numerous filings in Probate and Superior Courts of Paulding County, and numerous filings for Habeas Corpus relief in the same Federal Court where the Complaint was filed herein. Plaintiff was not released from jail until August 9th, 2016. Plaintiff's DUI charge was dismissed on June 6th, 2017. Plaintiff filed this suit on June 5th, 2018.

Respondents "cannot have their cake and eat it also." On the one hand, they claim that the Heck Doctrine bars Petitioner from filing his claims. Heck v. Humphrey, 512 U.S. 477, 114 S.Ct. 2364 (1994). On the other hand, they allow for no tolling for the statute of limitations while Petitioner had to wait for his unfounded DUI charge to be dismissed. Plaintiff's DUI charge was dismissed on June 6th, 2017. Plaintiff filed this suit on June 5th, 2018, which is less than one year after his DUI charge was dismissed.

Petitioner's probation officer alleged that he committed a crime simply because he was arrested. The alleged probation violation is for committing a crime, which Petitioner never did because the charge was finally dismissed much later. Please see the probation accusation that alleges Petitioner violated a condition of his probation, namely "Do not violate the laws of any governmental unit."

The Sheriff Respondents (Paulding County Sheriff Department, Sheriff Gary Gulledge, Officer Al Gonzalez, Major Shelia Craton) held Petitioner in jail for six and half months pre-trial. Despite his many requests for a probable cause hearing, Petitioner was never taken before a Judicial Officer for probable cause verification and Judicial authorization of his pre-trial detention.

In the meantime, despite Petitioner having filed Brady Motions in the Paulding County Probate Court and in the Paulding County Superior Court, exculpatory evidence disproving any possible probable cause for Petitioner's arrest was destroyed. The Sheriff Respondents destroyed video evidence of Petitioner taking the breath test at the Sheriff's Department one month after Petitioner filed his Brady motion and motion for probable cause hearing in the Superior Court of Paulding County. Petitioner passed the breath test. This exculpatory evidence would have shown a Judicial Officer that there was no probable cause for Petitioner's arrest or pre-trial detention.

Respondents are "missing the boat". There are two separate claims, one for illegal arrest and one for illegal pre-trial detention. Because Petitioner was never taken before a judicial officer for probable cause verification for the entire time he was held pre-trial in jail, he could not be released from the Paulding County Jail so that he could be transported to Spalding County for a probation revocation hearing (judicial verification of probable cause). The probation warrant piggy-backed the DUI arrest. Within the "four corners" of the probation warrant, no evidence is named to support probable cause for a DUI arrest. This information must be recorded within the warrant, or the warrant is invalid on its own face. No probable cause was ever verified.

The ongoing "wrong" was the fact that Respondents continued to deny Petitioner his 4th Amendment Right to

be presented before a judicial officer for probable cause verification. Petitioner was kept in pre-trial detention so long that it rendered "moot" any opportunity Petitioner could have had to make any meaningful rebuttal to the accusation of the probation violation. By the time Petitioner was released from pre-trial detention, his probation had already run its course in the form of full revocation.

Petitioner demonstrated repeatedly in the Trial and Appeals Court that his DUI charge was dismissed. The underlying accusation for the alleged probation violation was that Petitioner allegedly committed the crime of DUI, which he did not. The DUI charge was finally dismissed nearly one year after Petitioner's probation sentence had run its course.

Quoting Heck, *supra*: "Thus when a state prisoner seeks damage in a § 1983 suit, the district court must consider whether a judgement in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated."

The single alleged crime for both offenses (an actual crime and a probation violation for committing a crime) was invalidated on June 6th, 2017, nearly one year prior to Petitioner filing his Complaint on June 5th, 2017. Therefore, since the accusation for committing DUI was formally dismissed, according to Heck, *supra*, this Petitioner should be permitted to proceed with his § 1983 claims herein. Petitioner was never convicted of any crime. So, there was no verdict to overturn. Additionally, the Heck doctrine only precludes false arrest claims for convictions of crimes related to the false arrest. It sets no precedent for an illegal pre-trial detention claim, especially when such results in no conviction whatsoever.

According to Manuel, supra, the statute of limitations for Plaintiff's illegal pre-trial detention claims expired two years after he was released from pre-trial custody, which was on August 9th, 2018, over two months after he filed this suit on June 5th, 2018. Hence, Plaintiff's claims herein are not time-barred.

Appellees contention that Appellant pleaded guilty to DUI is false. Please see Exhibit "B". R.1, AP 24. A probation violation is not equivalent to conviction of a separate crime. Probation revocation hearings are summary in nature, and a defendant is not afforded the same rights he has at a genuine trial for a crime. Additionally, probation revocation hearings utilize the preponderance of evidence standard, not "beyond reasonable doubt standard".

Furthermore, Appellant was never afforded a probable cause determination in the probation adjudication either. The Judge simply, without observing any evidence supporting probable cause for an arrest, issued a warrant based on "faxed" testimony from the probation officer that Appellant had been arrested. Often, probable cause and strict adherence to the 4th Amendment is not required when arresting for a probation violation in Georgia.

As already explained, Appellant was kept in jail pretrial for over six months, which was longer than any jail sentence that could have been imposed by the probation violation. In other words, Appellant's right to contest his probable cause for arrest and probation violation accusation (in Spalding County, GA) was rendered moot by the fact that he spent the maximum amount of time in jail for the alleged probation violation prior to having a chance to contest it. Worth noting is the fact that Appellant was not allowed to consult with an attorney when his probation officer demanded that he sign the "paperwork"

if he wanted to be released from jail (having already served the maximum jail time for a full revocation).

The Heck precedent is inapplicable to this case at bar. Appellant's claim herein is not a collateral attack on his probation revocation conviction. Appellant is contesting the fact that he was not afforded the right to judicial determination of probable cause for his arrest for DUI, not a probation violation. The Respondents' arrest and pretrial detention of Appellant at the Paulding County Jail was for the DUI adjudication in Paulding County, as attested to above by Appellee Craton, not for a probation violation. This pre-trial detention had to be substantiated by probable cause that Appellant was actually driving under the influence of alcohol. (No police officer ever saw Petitioner driving.) This was never verified by a judicial officer. The probation warrant showed that Appellant was arrested, but it does not verify probable cause supporting that arrest or warranting pretrial detention for the DUI charge.

Consequently, Appellant was detained in jail pretrial for six months where he could not timely contest his probation accusation, rendering his ability to do so moot since he had already been incarcerated for the maximum amount of punishment he could have received for a probation revocation. Appellee Craton admitted under oath, on July 20th, 2016, shortly before Appellant was released from the Paulding County Jail, that: "I did not provide Mr. Johnson with a copy of the Spalding County probation warrant because that warrant is not the basis for Mr. Johnson's current detention in the Paulding County Detention Center." R.12, AP 73.

Appellees' application of Cobb v. Fla., 293 F. App'x 708 (11th Cir. 2008) is flawed. Cobb, *supra*. quoted: "In reviewing the dismissal of a complaint under the 28 U.S.C. § 1915A(b)(1), this court accepts allegations in the complaint as true, and **pro se pleadings are liberally**

construed. *Brown v. Johnson*, 387 F.3d 1344, 1350 (11th Cir.2004)... [A] plaintiff may proceed under § 1983 when "the plaintiff's action, even if successful, will not demonstrate the invalidity of any outstanding criminal judgment against the plaintiff ... in the absence of some other bar to the suit." *Id.* at 487, 114 S.Ct. at 2372–73; see *Hughes v. Lott*, 350 F.3d 1157, 1160 (11th Cir.2003) (explaining that "an illegal search or arrest may be followed by a valid conviction, [and therefore] a successful § 1983 action for Fourth Amendment search and seizure violations does not necessarily imply the invalidity of a conviction.").

The Defendants and Trial Court attempt to put "the cart before the horse" with their McLaughlin analysis. The probation warrant was based on the illegal arrest for DUI. There was no determination of probable cause by a judicial officer. This was simply a warrant application faxed from Plaintiff's probation officer to a Judge for his signature. The probation officer had no knowledge and witnessed nothing concerning the alleged DUI incident. She simply received notification of Plaintiff's arrest and applied for a warrant.

Probable cause for a DUI is not documented within the "four corners" of the warrant application. This warrant application was in no way a "judicial determination of probable cause". Additionally, a basic 4th Amendment analysis renders the probation invalid on its face. It makes no mention whatsoever of any evidence, within its "four corners," that would support probable cause for a DUI arrest. A police officer can arrest anyone. However, to obtain a warrant supporting his arrest, he must present evidence of probable cause for an arrest. In this case at bar no one has ever presented evidence before a Judge to support probable cause for this Defendant's arrest or pre-trial detention.

2. Whether the testimony within an affidavit of a verified complaint supporting facts asserted in the complaint should be considered as evidence to defeat a motion for summary judgment.

The facts stated in Petitioner's Complaint were verified in his attached affidavit and should have been counted as evidence to withstand summary judgment by the Trial Judge.

3. Whether a county sheriff and his jailors can share their State's cloak of Eleventh Amendment immunity for blatant violations of the United States Constitution as controlled by 42 U.S.C.A. § 1983.

Petitioner states in his Appeal Record that his argument herein is essentially the same argument he made in the District Court, which Respondents responded thereto in the District Court. R.11, AP 60-64. As Petitioner argued in the District Court, Georgia Law is explicit as to what the Sheriff and his employees are supposed to do with respect as to bringing detainees before a judicial officer to verify probable cause for an arrest and continued detention.

In every case of an arrest without a warrant, the person arresting shall, without delay, convey the offender before the most convenient judicial officer authorized to receive an affidavit and issue a warrant.... No such imprisonment shall be legal beyond a reasonable time allowed for this purpose; and any person who is not brought before such judicial officer within 48 hours of arrest shall be released. O.C.G.A. § 17-4-62. U.S.C.A. 4. Manuel v. City of Joliet, 137 S.Ct. 911 (2017). Manuel v. City of Joliet, Illinois, 903 F.3d 667 (2018).

Petitioner had stated in many times in his pleadings that he filed motion for probable cause hearing in the Paulding County Probate Court and Paulding County Superior Court. Additionally, he filed Petition for Writ of Habeas Corpus concerning his illegal pre-trial detention in the same Rome Court in front of the same Judge. Respondents were notified and served with all copies served in the Federal District Court. Respondents were notified multiple times that they were violating Plaintiff's 4th Amendment Rights. Yet, they intentionally continued to do so.

The police Respondents herein chose to usurp unlawful authority not granted to them by the State of Georgia. Hence, they cannot benefit from being cloaked with State immunity, along with the State, for actions not authorized and endorsed by the State of Georgia. It would never be within Constitutional Character for the State of Georgia to deny a U.S. citizen his or her 4th Amendment Rights. Clearly, the Respondents intentionally violated Georgia Law and Federal Constitutional Law. Hence, they should not be allowed to be cloaked in State Eleventh Amendment immunity.

While state law supplies limitations period for pretrial detainees' § 1983 actions alleging that unlawful pretrial detention beyond start of legal process violates the Fourth Amendment, Federal Law defines when the claim accrues for limitations purposes. U.S. Const. Amend. 4; 42 U.S.C.A. § 1983. Manuel v. City of Joliet, 137 S.Ct. 911 (2017). Manuel v. City of Joliet, Illinois, 903 F.3d 667 (2018).

In every case of an arrest without a warrant, the person arresting shall, without delay, convey the offender before the most convenient judicial officer authorized to receive an affidavit and issue a warrant.... No such imprisonment shall be legal beyond a reasonable time allowed for this purpose; and any person who is not

brought before such judicial officer within 48 hours of arrest shall be released. O.C.G.A. § 17-4-62.

In addition to the discrete state function previously mentioned, this case at bar presents issues that are not consistent with Federal Constitutional character to extend sovereign immunity. An individual who is arrested without a warrant is entitled to have a judicial officer make a determination of probable cause within a prompt period after the arrest; if prompt judicial determination of probable cause is not made, then an extended deprivation of liberty following a warrantless arrest constitutes deprivation of liberty without due process of law. U.S.C.A. 5, 14. Please see Lambert v McFarland, 612 F.Supp. 1252, United States District Court, N.D. Georgia, Atlanta Division (1985) citing Gerstein vs. Pugh, 420 U.S. 103 [95 S.Ct. 854, 43 L.Ed.2d 54] (1975).

Government bodies which are not protected by Eleventh Amendment immunity may be sued under § 1983 in state court, even if state laws would purport to extend sovereign immunity to all government bodies within the state. Howlett By and Through Howlett v. Rose, 496 U.S. 356, 110 S. Ct. 2430, 110 L. Ed. 2d 332, 60 Ed. Law Rep. 358 (1990).

The Federal Civil Rights Acts, 42 U.S.C.A. §§ 1981-1988, provide the statutory basis for federal police abuse actions against state or local police officers. Of these statutes, § 1983 (the Civil Rights Act of 1871) is the most frequently invoked, particularly since the decision in Monroe v. Pape, 365 U.S. 167, 81 S. Ct. 473, 5 L. Ed. 2d 492 (1961).

42 U.S.C.A. § 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of

any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. In *Monroe*, the Court identified three main purposes envisioned by the Congress that enacted the statute: (1) "to override certain kinds of state laws"; (2) to provide "a remedy where state law was inadequate"; and (3) to provide "a federal remedy where the state remedy, though adequate in theory, was not available in practice." *Monroe*, 365 U.S. at 172-83.

The Supreme Court has set forth an expansive construction of § 1983, emphasizing the intention of Congress to create a broad federal remedy for violations of constitutional rights. The Court held that action "under color of" state law was not confined to action authorized by state law, but could include conduct of government officials that was contrary to state law. Furthermore, the Court made clear that the availability of a state remedy did not affect a plaintiff's right to seek redress in the first instance in federal court under § 1983. *Monroe*, 365 U.S. at 180.

No person shall "be deprived of life, liberty, or property, without due process of law". U.S.C.A. 5. In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved. U.S.C.A 7. No state shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws". U.S.C.A. 14. Pleadings must be construed so as to do justice. Federal Rule of Civil Procedure 8(e) CONSTRUING PLEADINGS.

Due Process afforded by Georgia Statutory and Constitutional Law involved herein is enumerated as follows in the next two paragraphs. All pleadings shall be so construed as to do substantial justice. O.C.G.A. 9-11-8 (f) Construction of pleadings. "No person shall be deprived

of life, liberty, or property except by due process of law." Article 1, § 1, ¶ I- Life, liberty, and property: Constitution of the State of Georgia. "Protection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws." Article 1, § 1, ¶ II- Constitution of the State of Georgia.

"The right to trial by jury shall remain inviolate". Article 1, § 1, ¶ XI- Right to Trial by Jury: Constitution of the State of Georgia. "No person shall be deprived of the right to prosecute or defend, either in person or by an attorney, that person's own cause in any of the courts of this state." Article 1 § 1, ¶ XII- Right to the Courts: Constitution of the State of Georgia.

- 4. Whether, in current times of electronic filings and easy access to Court Records, a Court/Judge can refuse to take Judicial Notice of its/his own Court records of a recent case over which the same Judge recently presided to justify the harsh dismissal of a pro se Plaintiff's Right to Jury Trial.**

"The purpose of modern pleading is to facilitate determination of the truth... Our CPA is patterned after the Federal Rules... "The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of a pleading is to facilitate a proper decision on the merits."... All pleadings shall be so construed as to do substantial justice... Rule 15 is one of the most important of the rules that deal with pleadings. It re-emphasizes and assists in attaining the

objective of the rules on pleadings: that pleadings are not an end in themselves, but are only a means to the proper presentation of a case; that at all times they are to assist, not deter, the disposition of litigation on the merits. McDonough Const. Co. v. McLendon Elec. Co., 242 Ga. 510, 250 S.E.2d 424 (1978). O.C.G.A. 9-11-8 (f).

As Thomas Jefferson explained, "that [w]e all know that permanent judges acquire an esprit de corps; that, being known, they are liable to be tempted by bribery; that they are misled by favor, by relationship, by a spirit of party, by a devotion to the executive or legislative; that it is better to leave a cause to the decision of cross and pile than to that of a judge biased to one side; and that the opinion of twelve honest jurymen gives still a better hope of right than cross and pile does." Wikipedia.

Quoting Thomas Jefferson, "I consider trial by jury as the only anchor yet devised by man, by which a government can be held to the principles of its constitution."

The Trial Judge in this case was also Petitioner's Habeas Corpus Judge concerning these same issues in the same District Court of Rome. This Judge was well aware of what was transpiring at the Paulding County Jail when Petitioner sought Habeas Corpus Relief in his Federal Courtroom. Additionally, the Respondents were involved in what was happening at the Paulding County Jail. Petitioner served copies on the Respondents of everything he filed in the Habeas Court after his Petition was docketed. Additionally, Respondents were required to

respond to Petitioner's filings in the Habeas/Trial Court. This concept that neither the Judge or the Respondents were presented with evidence of what happened in the Paulding County is patently false.

It would have only taken the Judge 10 seconds to type the case number Petitioner provided in his computer to refresh his memory. Petitioner also informed this same Judge about his Rights to a Judicial hearing verifying probable cause for his arrest during the Habeas Corpus proceedings, and he did nothing. These Federal Court Pleadings, in the same District Court, were clear evidence of Petitioner clearly notifying everyone of what his Rights were to the Judicial verification of probable cause for his arrest and pre-trial detention.

The Trial Judges' actions herein to dismiss this pro se litigant's claims were extreme. If he did not want to take the ten seconds to punch the case number in his computer, all that he had to do was inform Petitioner of such, and Petitioner would have gladly printed the voluminous copies filed in that case and dropped them off on his desk. A more appropriate measure would have been for the Judge to order Petitioner to make copies of the records instead denying the request to Judicially Notice the record and dismissing Petitioner's claims altogether. This was not fair at all!

Plaintiff's First Amendment and other Claims are clearly documented in the Trial Court's pleadings and in the Habeas Corpus action filed by Plaintiff in the same Court. Plaintiff humbly asks that this Honorable Court take judicial notice of and review case # 4:16-cv-57-HLM, a Habeas Corpus action filed by Plaintiff in the District Court, which presents plenty of evidence on record to withstand these Defendant's first motions for summary judgment and to dismiss. R.14, AP 65-66.

Specifically, Plaintiff requested that the Court review, in detail, his Brief in Support of Petition for Writ of

Habeas Corpus filed in said case in that Court on August 1st 2016 as document # 27. This document lists in detail the Constitutional violations of the Defendants while they imprisoned Plaintiff pre-trial for over six months (a misdemeanor charge that would later be dismissed).

Herein, Plaintiff was imprisoned administratively and pre-emptively to jury trials. He needlessly spent over six months in jail pre-trial, thereby missing his daughter's high school graduation and losing his business, along with nearly everything he had. This is wrong. In this country, one is supposed to be innocent until proven guilty, not vice versa. Probable Cause verification by judicial officers is a sacred right that cannot be foregone.

"The primary purpose of the Trial by Jury in America was to protect the public from corrupt or aristocratic judges: The impartial administration of justice, which secures both our persons and our properties, is the great end of civil society." Senator Richard Henry Lee quoted.

5. Whether a Court can demand highly strict adherence to rules and Court procedure so as to harshly dismiss a pauper pro se's (with no formal law education) complaint for minor deficiencies, rather than first taking less extreme measures such as requiring the pro se litigant to re-file the pleadings to conform to the Court's strict compliance policy.

"The purpose of modern pleading is to facilitate determination of the truth... Our CPA is patterned after the Federal Rules... "The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the

purpose of a pleading is to facilitate a proper decision on the merits."... All pleadings shall be so construed as to do substantial justice... Rule 15 is one of the most important of the rules that deal with pleadings. It re-emphasizes and assists in attaining the objective of the rules on pleadings: that pleadings are not an end in themselves, but are only a means to the proper presentation of a case; that at all times they are to assist, not deter, the disposition of litigation on the merits. McDonough Const. Co. v. McLendon Elec. Co., 242 Ga. 510, 250 S.E.2d 424 (1978). O.C.G.A. 9-11-8 (f).

No person shall "be deprived of life, liberty, or property, without due process of law". U.S.C.A. 5. In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved. U.S.C.A 7. No state shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws". U.S.C.A. 14. Pleadings must be construed so as to do justice. Federal Rule of Civil Procedure 8(e) CONSTRUING PLEADINGS.

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The Trial Court's dismissal of Petitioner's Complaint simply because he did not strictly follow one of its Local Rules was too extreme. Petitioner failed to cite the record but did dispute nearly all of the Defendants' statement of material facts. So, the Trial Court accepted all of the Defendants' material facts asserted as true and ignored all of this Plaintiff's denials of such.

The authority cited by the Trial Court supporting this extreme measure is not analogous to this case at bar. Therein the pro se plaintiff's asserted facts were accepted by the Court even though the plaintiff did not comply with a local rule. That Trial Court did not dismiss that plaintiff's complaint because she failed to follow a local rule, but, instead, analyzed the facts she asserted improperly to determine that the new evidence she presented improperly did not rise a level supporting her claims. Moss v. City of Atlanta Fire Dep't, Civil Action File No. 1:14-CV-014-WSD-AJB, 2016 WL 5539682, at *4 (N.D. Ga. Apr. 26, 2016).

It would have been more appropriate for the Trial Court herein to require this pro se Plaintiff, with very little litigation experience and no formal legal education, to refile his pleading so that it complied with the Court's Local Rule. Dismissing an individual's Right to Jury Trial because of a minor violation of a Court Rule is a measure too extreme to take and is unconstitutional. While it is true that pro se litigants are required to comply with

procedural rules, a Judge is not required to dismiss a pro se plaintiff's Complaint when he fails to do so.

CONCLUSION

Accordingly, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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