NO. 19-5673

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

DENNIS CALO PETITIONER

VS.

ANNETTE CHAMBERS-SMITH, TRAYCE THELHEIMER, RESPONDENTS,

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT OF OHIO

PETITION FOR WRIT OF CERTIORARI

DENNIS CALO, A179-579

Richland Correctional Institution

Post Office Box #8107

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QUESTION(s) PRESENTED

ARE OHIO'S COURTS PERFORMING A 'FRONT OPERATION TO SHIELD OHIO'S PAROLE BOARD AND DEPARTMENT OF REHABILITATION AND CORRECTION FROM EXPOSURE FOR CORRUPT ACTIVITIES?

WHY IS OHIO'S (STATE) AND (FEDERAL) COURTS ARE IGNORING VIOLATIONS OF THE "UNITED STATES OHIO CONSTITUTIONS DAILY", COMMITTED BY THE OHIO PAROLE BOARD FOR THOSE OFFENDERS WHO COMMITTED THEIR OFFENSE(S) BETWEEN 1-JAN-74 AND 1-JUL-96. STATE EX REL. MCCALL VS. GALL, 2016 OHIO LEXIS 3068

WHY DID HUNDREDS OF CASES OHIO'S JUDICIARY 'BLUR THE DISTINCTION' BETWEEN THE TYPE OF DISCRETION APPLICABLE TO "CLEMENCY", R.C. 2967.03, WITH THE TYPE OF DISCRETION APPLICABLE TO "PAROLE ELIGIBILITY", (OAC) 5120:1-1-02(G), TO OFFENDERS WHO'S OFFENSES WERE COMMITTED BETWEEN 1-1-74 AND 7-1-96, SEE, E.G., WAGNER V. GILLIGAN, 609 F.2D 866HN3

WHY IS OHIO'S PAROLE BOARD AUTHORITY AS APPLIED TO THE PRISON POPULATION AS A WHOLE HISTORICALLY VIA FAIRNESS AND EQUITY, AS REQUIRED BY (OAC) 5120:1-1-02(G) EFFECTIVE PRIOR TO 1-NOV-88

WHY DOES THE THIRD CIRCUIT UNITED STATES COURT OF APPEALS TREATS THIS SAME CLASS OF PRE-1996 PENNSYLVANIA OFFENDERS FAIR [MICKENS-THOMAS V. VAUGHN, 355 F.3D 294] AND THE SIXTH CIRCUIT COURT OF APPEALS TREATS OHIO'S

SAME OFFENDERS DISPROPORTIONATE AND FRAUDULENTLY.

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

IN THE

SUPREME COURT OF THE UNITED STATES

FOR A WRIT OF CERTIORARI

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

OPINIONS BELOW

The opinion of the highest state court to review the merits appears at Appendix A to the

Petition, and is reported at 2019 Ohio LEXIS 1080

JURISDICTION

The date on which the highest state court decided my case was May 23, 2019. A copy of that decision appears at Appendix A.
A timely motion for reconsideration was not filed thereafter because the Ohio Supreme Court used Ohio's Interdepartmental Delivery system to serve the decision on the Petitioner rendering his opportunity to respond with 'reconsideration' impossible. In other words, Petitioner was served the decision [Appendix A] for May 23, 2019 on May 30, 2019 preventing Petitioner form complying with the 10 rule for reconsideration.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FIRST AMENDMENT 'ACCESS TO THE COURTS'

FOURTEENTH AMENDMENT 'DUE PPROCESS AND EQUAL PROTECTION'

STATEMENT OF THE CASE

This case began in the Franklin County, Ohio's Court of Appeals, 10th District, on September 12, 2011 as an original action in mandamus known as case number 11AP-780. It is captioned as: State of Ohio ex rel. Donald Richard, et al., v. Gary Mohr, Director, of the Ohio Department of Rehabilitation and Correction (ODRC) and the Chairperson of the Ohio Parole Board (OPB). It is identified as a Petition for Writ of Mandamus, pursuant to Ohio Revised Code (ORC) Chapter 2731.et seq.

Petitioner filed this action seeking an order to compel the respondents, State of Ohio, to comply with the 1979 version of the mandatory provisions of the Ohio Administrative Code (OAC), as they existed *on date of offense,* prior to July 1, 1996, that address the 'duration' or 'potential duration' of incarceration, as required under Section (A) of Chapter 5120.021(A) of the (ORC). See, e.g., Woods v. ODRC, 2006 Ohio Misc. LEXIS 66.

The (ODRC) filed a motion to dismiss and Petitioner filed opposition thereto. The Magistrate Judge filed its 'Report and Recommendation' (R&R) arguing that Petitioner was not entitled to the *five year limit* at his initial parole eligibility hearing, and that he was not entitled to *annual hearings* thereafter as required by law, despite the fact that it is statutorily mandated under (OAC) 5120:1-1-10(B) as it existed on the date [1978] Petitioners' offenses were committed. The Magistrate even cited another prisoner *pro se* case Robinson v. Tambi, 2004 Ohio App. LEXIS 2498, from another district court where it falsely alleged Robinson was not entitled to 'annual hearings'. Turns out the 10th District Court of Appeals already had precedent case law authority, State ex rel. Blake v. Shoemaker, 1983 Ohio App. LEXIS 15594, admitting that an offender in 1983 is 'entitled to annual hearings'. At the time, Petitioner was not privy to the 10th District precedent based on this 10th District precedent , judicial decision. State ex rel. Blake v. Shoemaker, supra, [Blake II].

Since the early 1990's Ohio's Courts have engaged in 'Unity in Effort' to distort the truth about the distinction between offenders who committed their offenses before July 1, 1996 and offenders who committed their offense after July 1, 1996 whom are entitled to 'parole eligibility' under the laws as they existed on date of their offenses. The Parole Board are simply distorting the application of (OAC) 5120:1-1-07 and 5120:1-1-08 to the before July 1, 1996 offenders, and applying the newly crafted 2003 version which was made mandatory by adding shall to its language, and provided it with the (OAC) statutory code number (OAC) 5120:1-1-07(A) and 5120:1-1-07(B), using these new regulations to conceal the illegal sentencing imposed on these offenders to make it appear that their conduct is legitimate when it is expressly fraudulent. See Nelson v. Mohr, 2013 Ohio App. LEXIS 4742(Nelson's offenses occurred in 1987). See also State v. Nelson, 1989 Ohio App. LEXIS 908).

The same occurs when Ohio's Courts make conclusions about the claim that the Ohio's Parole Board is a pure discretionary Board. Wagner v. Gilligan, 609 F.2d 866 (where it is claimed that ORC 2967.03 makes the Board a pure discretionary Board). However, ORC 2967.03 governs discretion used exclusively when making clemency determinations after a 'Clemency Application ' are filed.

With respect to 'parole eligibility' discretion, the Board is to be guided only by the 1979 version of ORC 5120.01, that endows, inter alia, the *mandatory* administrative code regulation 5120:1-1-02(A) through (G). The version applicable to the Petitioner, and scores of others, that provides discretion at 'parole eligibility' is the version depicted in the case Inmates of Orient v. OSAPA, 1991 U.S. App. LEXIS 4822 HN7-8 ("Decision making involves the exercise of discretion. Unlimited discretion is to be eliminated. Necessary discretion is to be structured. ***. Fairness and equity shall be the standard by which inmates, releases, staff and the public are to be treated. Ohio Admin. Code § 5120:1-1-02(G).)"

Multiple court decisions in Ohio have systematically 'blurred the distinction' between these two independent, distinct, different and separate, types of parole board discretion and caused confusion in these decisions since, as

early as Wagner v. Gilligan, 1979 U.S. App. LEXIS 10355HN-3. Simply put, ORC 2967.03 'clemency discretion', and 5120:1-1-02(G) 'parole eligibility discretion' are two distinct types of discretion. (OAC) 5120:1-1-02(G) can only be used upon the completion of the minimum sentence, at parole eligibility, under ORC 2967.13. see ORC 2967.021

The Court adopted the Magistrate's Report and Recommendation (R&R) and denied the writ, and the matter was appealed to the Ohio Supreme Court where the Court followed the lead of the 10th District to deny the writ [2013 Ohio LEXIS 928], despite the fact, that Ohio's 10th District Court of Appeals, already had precedent case law authority wherein the Court stated: "While relator is entitled to annual hearings ***." Blake II]. Petitioner was unaware of [Blake II], and was unable to argue against the lies, and the intentional fraud on, and by, the Court by the Magistrate.

When Petitioner discovered [Blake II] in 2018, he filed a [second] motion for relief from judgment on August 22, 2018, but his earlier 'relief from judgment' motion was not based on [Blake II], because he had no knowledge of it until 2018. However, the Magistrate, and certainly the panel hearing the case, were well-aware of [Blake II]. Nonetheless, the Court denied Petitioner's motion six (6) days later on August 28, 2018 and falsely claimed that the earlier motion had been based on [Blake II]. The 2003 motion was based on (OAC) Rule 5120:1-1-10(B), as it existed on date of Petitioner's offense where the Magistrate donned blinders to the mandatory factors of 5120:1-1-10 (the same *administrative rule* addressed in Blake I and Blake II.

The court did not permit respondent [state of Ohio] to file a response to the August 22, 2018 motion. Rather the court intervened to prevent the state from mentioning any reason why [Blake I or Blake II] were not mentioned in the 2012 Magistrate's (R&R). On May 23, 2019, the Ohio Supreme Court came to the rescue of the State of Ohio and dismissed the appeal based on the false application of a res- judicata finding, although it was the Magistrate who

concealed {Blake I and Blake II] to begin with, in 2012, and the court of appeals ignored its own precedents [Blake I and Blake II] as well.

Petitioner now submits his Petition for Writ of Certiorari because the state of Ohio's Parole Board are violating the constitutional rights of thousands of prisoners and their family members via the intentional false imprisonment 'by design', to conceal a long string of felonies committed daily against this class of prisoner. In other words, Ohio's Courts are 'running a front operation for the Ohio Parole Board'.

ARGUMENT AND LAW
ARE OHIO'S COURTS SHIELDING PAROLE OFFICIALS FROM EXPOSURE FOR DECADES OF CORRUPTION AND VIOLATING THE CONSTITUTIONAL RIGHTS OF ITS PRISONERS WHO'S OFFENSES WERE COMMITTED PRIOR TO JULY 1, 1996

II. OHIO'S (STATE) AND (FEDERAL) COURTS ARE IGNORING VIOLATIONS OF THE "UNITED STATES OHIO CONSTITUTIONS DAILY", COMMITTED BY THE OHIO PAROLE BOARD FOR THOSE OFFENDERS WHO COMMITTED THEIR OFFENSE(S) BETWEEN 1-JAN-74 AND 1-JUL-96. STATE EX REL. MCCALL VS. GALL, 2016 OHIO LEXIS 3068

In 1995, the Franklin County Court of Appeals found in: State ex rel. Wallace v. Ghee, 1995 Ohio App. LEXIS 1833 ("the adult parole authority cannot ignore the mandatory provisions of the administrative code)". Meaning if the (OAC) contain the mandatory predicate 'shall' the (ODRC) and (OPB) are 'statutorily constrained' from straying outside of a particular (OAC).

The United States Supreme Court encourages prisoners to comb through regulations in search of mandatory language on which to base entitlements to various state-conferred privileges". Sandin v. Connor, (1972), 505 U.S. 472. But in Ohio, no Court follows the law when it comes to cases that involve pro se

prisoners who committed offenses between 1974 and July 1, 1996 challenging the (OPB) where the (OPB) that exceeds every statutory limit in place, prior to July 1, 1996, for this particular offender.

The particular (OAC) governing 'duration' or 'potential duration' of incarceration is the 1979 version of (OAC) 5120:1-1-10(A), (B) and (C), and 5120:1-1-20(D)(1). It is pertinent to note that this particular (OAC) [5120:1-1-10(B)] was re-written and enacted on March 16, 1998, removing the sentencing limits of the parole board at all hearings, and has been retroactively applied illegally to all prisoners whose offense occurred prior to March 16, 1998. Not the version in effect on the date of the offense as required by law. The correct version for all inmates whose offenses' were committed prior to 1-Jul-96 is found in [Blake I and Blake II]. In fact, the imposition of the mandatory 'annual hearings' were removed from the statutory law on 1-Nov-88, as it existed before 1-Nov-88 applies to the Petitioner, but is being ignored by the respondents for some ulterior reason appearing criminal..

(OAC) 5120:1-1-02(A) through (G) also controls the 'parole eligibility' of these Pre March 16, 1998 offenders, and they provide 'statutory regulations' that mandates that the parole board shall treat all of the Pre March 16, 1998 offenders equally, but despite the existence of (ORC) 5120.021(A), several provisions of (OAC) 5120:1-1-02(A) through (G), and (OAC) 5120:1-1-07 are described in the positive case authority, see Inmates of Orient v. OSAPA, 1991 U.S. App. LEXIS 4822 HN7-8. More specific, for decades Ohio's case law decisions have been 'blurring the distinction' between 'clemency discretion' under ORC 2967.03, and 'parole eligibility discretion' under (OAC) 5120:1-1-02(G), since as early as 1979.

III. IN HUNDREDS OF CASES OHIO'S JUDICIARY ARE 'BLURRING THE DISTINCTION' BETWEENTHE TYPE OF DISCRETION APPLICABLE TO "CLEMENCY", R.C. 2967.03, WITH THE TYPE OF DISCRETION APPLICABLE AT "PAROLE ELIGIBILITY", (OAC)5120:1-1-02(G), TO OFFENDERS WHO'S OFFENSES WERE COMMITTED BETWEEN 1-1-74 AND 7-1-96, SEE, E.G., WAGNER V. GILLIGAN, 609 F.2D 866HN3

With regard to discretion under (ORC) § 2967.03, as illustrated in Wagner v. Gilligan, supra, the Plaintiff did not file a 'clemency' and thus, discretion under 'clemency' was inapplicable to 'parole eligibility' claims. Discretion at parole eligibility is statutorily constrained by (OAC) 5120:1-1-02(G), and provides, in pertinent part:

> "Decision making involves the exercise of discretion. Unlimited discretion is to be eliminated. Necessary discretion is to be structured.
> ***. Fairness and equity shall be the standard by which inmates, releasees, staff and the public are treated."

At some point in the early 1990's the state of Ohio ceased to follow the appropriate parole release regulation applicable to the inmates defined in ORC 5120.021(A) and ORC 2967.021. Ohio's Department of Rehabilitation and Correction (ODRC) ignored the 'statutory constraints' contained in the 1979 version of (OAC) 5120:1-1-10(B) to the ORC 5120.021(A) offenders, and imposed illegal parole board sentences exceeding the limit of five (5) years [Blake I], at the initial hearing, and the entitlement to 'annual hearings' [Blake II] thereafter, that is also mandated in (OAC) 5120:1-1-10(B), eff. 1979. To this day the ODRC are illegally confining these ORC 5120.021(A) inmates without no authority, justification, or jurisdiction whatsoever. Wardens are maintaining custody of these prisoners illegally.

While Petitioner had no knowledge of the case State ex rel. Blake v. Shoemaker, 1982 Ohio App. LEXIS 12491 [Blake I], and State ex rel. Blake v. Shoemaker,1983 Ohio App. LEXIS 15594 [Blake II], until 2018, the 10th District Magistrate Judge rendered a 'report and recommendation' (R&R) in 2012 fraudulently claiming that 'annual hearings' were not an entitlement, and cited to the unreported case Robinson v. Tambi, 2004 Ohio App. LEXIS 2498. Robinson v. Tambi, supra, a 'law of the case' decision inapplicable to Petitioner.

Unable to demonstrate that the magistrate committed 'fraud upon the court' by deliberately misrepresenting the state of existing law, especially precedent case law right out of the 10th District demonstrating that the Magistrate's use of *Tambi*, *supra*, was intentional fraud. It wasn't until 2018 that Petitioner discovered the existence of [Blake I and [Blake II] supra, and discovered the Magistrates' fraud and filed a Civil Rule 60(B)(5) Motion on August 22, 2018.

In Blake I, the 10th District overruled the motion to dismiss filed by the State of Ohio because it was not clear from the record that the State gave its reasons in writing why Blake's first hearing exceeded the five year limit. (OAC) 5120:1-1-10(B). In Blake II, the 10th District Ohio Court of Appeals stated: "While relator is entitled to annual parole hearings if he has been denied release at a second hearing, ***." Here, it is clear, the magistrate perpetrated fraud on the Court by ignoring the 10th District's own precedent and admitted that all parole hearings have mandatory limits for those who's offense were committed prior to 1-Nov-88 before (OAC) 5120:1-1-10(B) was first amended [effective 1-Nov-88] removing any reference to the mandatory annual hearings provision. In fact, in order to comply with 'equal protection of the law', all inmates were to be treated with fairness and equity via the 'customary practice and procedure' applied historically to the prison population as a whole. Meaning, all inmates were released at time of eligibility, or at the half time of the first parole board sentence not to exceed the constraints of [Blake I]'s five year limit, and nothing could stop parole from being granted to any prisoner at half-time or after serving the full five year continuance, except for a serious conduct record. Programming was not a requirement for the grant of parole. That is what is meant in Inmates of Orient, supra, at HN7-8 (where it reads: "***Necessary discretion is to be structured ***"). OAC 5120:1-1-02(G).

Notwithstanding the fact that the state of Ohio is violating Ohio and the United States Constitutions daily [2016 Ohio LEXIS 3068], Petitioner has never had a parole hearing that ended within the confines of the five year limit, or the annual hearings limits, as required by law, and by the 'statutory constraints' in effect on the date [1978] of the offense(s). In fact, Petitioner has had six (6)

parole hearings, and the 'first hearing' resulted in more than five years being imposed, or the 'annual hearings' limits, at any hearing after the initial hearing. In fact, as required by law [(OAC) 5120:1-1-20(D)(1)], as it existed on the date Petitioner's offenses were committed in 1978, the Board ignored it as well. In other words, Petitioner was entitled to 'half-time review' no later than thirty (30) months after receiving the 1999 initial hearing. (copy of (OAC) 5120:1-1-20(D)(1)).

Between 1974 and 1996 Ohio's 'parole eligible' prisoners were paroled or furloughed more than 85% of the time via the 'customarily applied practice and procedures' upon the prison population as a whole no matter the 'nature of the offense' [(OAC) 5120:1-1-07 and 5120:1-1-08],except for good cause shown in writing. Blake I and Blake II, supra. (OAC) 5120:1-1-10(B).

IV.

OHIO'S PAROLE BOARD AUTHORITY DO NOT APPLY TO THE PRISON POPULATION AS A WHOLE HISTORICALLY VIA FAIRNESS AND EQUITY, AS REQUIRED BY (OAC) 5120:1-1-02(G) EFFECTIVE PRIOR TO 1-NOV-88. SEE ORC § 5120.01

In Ohio, prior to 1-Nov-88, when criminal convictees, like Petitioner, and scores of others, are sentenced to 'indeterminate sentencing', meaning a 'minimum' and 'maximum', prior to 1-Nov-88; 13-Sep-93; and 1-Jul-96, the number of years accessed does not mean that convictee will remain in prison for that entire maximum sentence, such as '15 full years to life' as is the sentence for Petitioner Calo, because (ORC) 5120.01, as it existed on the date [1978] of commission of the offenses, controls 'parole eligibility' sentencing limits, once the 'minimum' portion of said sentence is fully served, as found in Blake I and Blake II, supra. These limits were enacted to prevent discrimination or illegal conduct by the parole board. Or to permit any sentence to be secretly concerted, by the parole board, into life without parole. However, prisoners like Petitioner have been unlawfully incarcerated for decades without authority by ignoring the laws

that apply. More specifically, no prisoner could be discriminated against when it comes to parole eligibility and fair and equal treatment.

In fact, in Ohio and nearly in all states and most jurisdictions in the world, prior to 1-Nov-88; 13-Sep-93, and 1-Jul-96, had a parole system where all prisoners are 'oriented toward release' [Inmates of Orient v. OSAPA, supra), and conditionally released into society under varying levels of supervision after meeting a particular parole eligibility, and suitability requirements. See, e.g., the 1979 version of (OAC) 5120:1-1-02(B). In other words, once the minimum sentence, and all the limited time periods of parole board sentencing has elapsed, Ohio, prior to 1-Nov-88 with regard to Petitioner, have mandatory maximum, minimum statutory sentencing laws built-in to its paroling imprisonment periods regardless of the length of the maximum [life] sentence imposed. These built-in predicates are the same as those pointed to in this Court's Sandin v. Connor, 515 U.S. 472 (1972) decision: "***By shifting the focus of the liberty interest inquiry to one based on the language of a particular regulation, *** the Court encouraged prisoners to comb regulations in search of mandatory language on which to base entitlements to various state-conferred privileges." In Ohio, it doesn't matter what prisoner *pro-se* litigants say about mandatory language in its parole releasing statutes, no Ohio Court is willing or able to put an end to this malicious activity by the (ODRC) and (OPB).

This type of mandatory language is found in many of the regulations mentioned in Inmate of Orient v. OSAPA, 1991 U.S. App. LEXIS 4822, and they remain positive authority, and in full force and effect to this very day for offenders who's offenses occurred before July 1, 1996. But, no Court is following this case, or any other authority applicable to these facts and circumstances. Such as, Woods v. ODRC, 2006 Ohio Misc. LEXIS 66 (where Ohio Law defines (ORC) 5120.021(A), including (OAC) 5120:1-1-10(B) eff. 1979. In other words, Ohio's penal codes [i.e., administrative rules (AR)] has parole eligibility sentencing limits built into its paroling laws pursuant to (ORC) 5120.01's authority, as it existed from 1-Jan-79 through 1-Nov-88; from 1-Nov-88 through 13-Sep-93; and from 13-Sep-93 through 1-Jul-96. Meaning, between these dates, and after 1-Jul-96 R.C.

5120.01 possessed separate and different interpretation, independent, and distinct from each other – all dependant on the date of the offense(s). Ohio has dumped all of these offenders into the same mixing bowl with all parole eligibility offenders whose offenses are committed after 1-Jul-96 to date.

Ohio's penal code, Administrative Rules (AR), has a 'built-in' parole board sentence limit of no more than 'five (5) years' at the time of initial hearing, and mandatory 'annual hearings' built-in with mandatory 'furlough release consideration at some point long before the maximum sentence' expires. However, as brought to the attention of the Ohio Supreme Court below, but ignored, these built-in (AR) are applicable to cases with extremely lengthy 'minimum' sentences, some of which are 1,554 years, as in the case of State of Ohio v. Ronald Shelton, 1991 Ohio App. LEXIS 3144 where (ORC) 2941.41(E)(3) reduced Shelton's parole eligibility hearing to nine (9) years six (6) months via this self-executing sentencing statute in effect on the dates Shelton's offenses were committed. Despite this existing law, Mr. Shelton never received a 'parole eligible' hearing, and on September 25, 2018 he jumped to his death from the roof of the Grafton Correctional Institution (GCI). Shelton was on an active mental health case load, but was ignored.

The long and illegal parole board sentencing imposed on all inmates whose offenses were committed prior to 1-Nov-88 are intended only to provide the parole board with an 'appearance of legitimacy' to their illegal conduct that have resulted in not only the wrongful imprisonment of scores of Ohio prisoners, but also Ohio's Court in making bogus decisions in cases involving these prisoners and the 1998 'Ohio Parole Board GUIDELINES' described in Layne v. OAPA, 2002 Ohio LEXIS 3054 and others. Guidelines were used to defraud inmates into believing that they can be held forever. These bogus GUIDELINES were used to defraud inmates, at their first, and all successive hearings, to falsely believe that the (OPB) could exceed the judicially defined limits of a parole board sentence [Blakely v. Washington, 72 U.S.L.W. 4546 (2004)] defined in [Blake I] and [Blake II].

Between 1974 and July 1, 1996 [ORC 5120.021(A)] Ohio did away with 'Life imprisonment' for cases known today as 'Aggravated Murder', R.C. 2903.01, as long as they do not call for the death penalty, as such sentence existed prior to 1-Jan-74 in [felony murder] cases when the only avenue for release was through 'clemency, ORC 2967.03, and ORC 2967.07. See, also, ORC 2967.021. In other words, Ohio abrogated 'natural life' sentences on 1-Jan-74, and opted for a 'parole eligibility' scheme designed to be 'fair' and 'equitable', and with 'unlimited discretion exercises to be eliminated' under the pre-1-Nov-88 version of (OAC) 5120:1-1-02(G), and OAC Rule 5120:1-1-02(D)'s mandatory requirement to "orient all parole eligible' Ohio prisoners toward release".

Ohio's parole release regulations, for the most part, remained in context from 1979 through 1996 with exception of the silent amendment to (OAC) 5120:1-1-10(B) occurring on November 1, 1988 'structurally removing the entitlement to 'annual hearings' for those offenders whose offense was committed on or after November 1, 1988. For all other offenders who committed their offense(s) before November 1, 1988, the parole board to this very day and remain obligated to continue applying only the version of the (OAC) in effect on date of offense. However, for some ulterior motive, Ohio's parole board have dumped all offenders in to one bowl no matter when their offense occurred, and changed some of the (OAC) regulations extending the limits [Blake I] and [Blake II] already in place --- and it appears strongly that Ohio's parole board are not being 'supervised or trained' on their employment description, or their Employee standards of Conduct, forbidding them from committing felonies against the class of inmates, like the Petitioner, whose offense occurred prior to November 1, 1988. This despite the fact, that Ohio's legislature enacted ORC 5120.021(A) on July 1, 1996 --- and Ohio's Judiciary defined ORC 5120.021(A) in Ridenour v. Wilkinson, 2007 Ohio App. LEXIS 5238, and Woods v. ODRC, 2006 Ohio Misc. LEXIS 66 when inmates improperly attempted to use ORC 5120.021(A) to challenge Ohio's inmate medical co-pay, and ORC 5120.021(A) addresses only the 'duration' or 'potential duration' of incarceration not medical co-pay.

Ohio again amended OAC 5120:1-1-10(B) on March 16, 1998 to make the limit between parole hearings never ending, literally turning a 'parole eligible' sentence into 'life without parole'. The parole board began to treat all offenders disproportionately depending upon ones 'race', 'appearance', looks, or even the color of ones skin. Or, in cases where a prosecutor or judge may not want someone paroled simply because they did something corrupt in the prosecution to wrongfully imprison the otherwise parole eligible inmate. See, e.g., the offender in State v. Richard, 1991 Ohio App. LEXIS 5772, or Ohio Supreme Court case number 2010-0968; 2010 Ohio LEXIS 1734; or State v. Richard, 2014 Ohio App. LEXIS 4768 (where the court in a DNA Testing case, without a final-appealable order, pressed on to render a judgment in conflict with State v. Stanley, 2013 Ohio App. LEXIS 241, and Civil Rule 58(B)). Ohio refuses to cease committing crimes against its citizens.

Despite the existence of [Blake I and Blake II], supra, the Ohio Parole Board (OPB) in the early 1990's issued continuances exceeding the limit between parole hearings, and in some cases by as much as 35 years. The (OPB) also deprived all inmates of their entitlement to 'half-time review hearings', pursuant to (OAC) 5120:1-1-20(D)(1) (where all parole eligible offenders were required to be treated through practice and procedure customarily and historically the same as the prison population as a whole). This practice is supposed to be applied today on all offenders whose offenses were committed prior to July 1, 1996. But, the Ohio Parole Board refuses to follow Ohio law, and Ohio's judiciary refuses to require the courts to adhere to the Constitutions.

This conduct by Ohio also ignores the case Inmates of Orient v. OSAPA, 1991 U.S. App. LEXIS 4822 (where it was noted by the district court that the Plaintiffs "have committed crimes that are particularly reprehensible because they have served their minimum sentence as required by law, they have paid their debt to society."). This appears to be in conflict with what the (OPB) are doing to this class of offenders.

Petitioner also points out, that on the date of the offense, in his case, (OAC) 5120:1-1-07 and 5120:1-1-08 contained no mandatory language, such as 'shall'. At some time in 2003, the state of Ohio enacted (OAC) 5120:1-1-07(A), (B), where 'shall' was enacted therein. In every decision sheet issued by the (OPB) [without their signature] the parole board asserts: "The mandatory factors contained in AR 5120:1-1-07 were considered". Parole is denied on this very authority alone, along with some trumped excuse as to way parole was denied. In some cases, the (OPB) would conclude that the offender participated in no programming, but when Ohio's pre July 1, 1996 offenders committed their offense(s), program participation was not a requirement for parole, it was only designed to permit an offender to earn good time credit toward an earlier parole eligibility consideration date. The (OPB) used this same excuse time after time after time and after on the same offender. More or less using the inapplicable (OAC) to hide their corrupt motive for violating the laws governing parole eligibility in Ohio for all pre July 1, 1996 offenders. This targets some inmates and allows the (OPB) to, inter alia, discriminate against whomever they so choose. See, e.g, Nelson v. Mohr, 2013 Ohio App. LEXIS 4247 (wherein OAC 5120:1-1-07(A),(B) were applied to the case when Nelson's offenses occurred in1987). For example, the parole board granted parole after 25 years to the infamous car bomber Ronald Carabbia who blew up Clevelander Danny Greene in 1977. State v. Carabbia, 1988 Ohio App. LEXIS 613. Carabbia was paroled in 2002. For the Board to continue denying any prisoner parole whom are entitled to the limits of Blake I and Blake II is malicious and illegal sentencing because in Ohio prior to 1996 'life does not mean life' for any offender. The parole board remains required to treat the entire prison population via practices, and procedures, that are historically and customarily applied. In fact, the parole board is 'duty bound' to "orient all inmates toward release". Inmates of Orient, supra HN8. The parole board does whatever they want and are shielded by Ohio's Judiciary.

THE THIRD CIRCUIT UNITED STATES COURT OF APPEALS TREATS THE SAME CLASSOF PRE-1996 PENNSYLVANIA OFFENDERS FAIR IN MICKEN-THOMAS V. VAUGHN, 355 F.3D 294, AND THE SIXTH

CIRCUIT COURT OF APPEALS TREATS OHIO'S SAME OFFENDERS DISPROPORTIONATE AND FRAUDULENTLY.

In the commonwealth of Pennsylvania, the 3rd Circuit United States Court of Appeals ordered the parole board to provide a new parole hearing and to use only the pre-1996 regulations. Micken-Thomas v. Vaughn, 321 F.3d 374, and 355 F. 3d 294. The Court concluded, for the most part, that prior to 1996, the parole board was not concerned with the 'nature of the offense', nor, with whether or not a parole candidate participated in programming and other classes. The Court finally had to order the release of the offender within seven (7) days because the Pennsylvania Parole Board used the wrong criteria on the pre-1996 offender. Micken-Thomas was granted a conditional writ of habeas corpus and released on parole. If only Ohio had a judiciary like the Third Circuit.

In Ohio, it appears that because, the parole board, have been hiding corruption and Ohio's Courts have been concealing it in cases where unskilled, and untrained, pro se inmates try to challenge the conduct, but are not skilled in the law, are crafting bogus decisions. For example, in the case of Michael Swihart v. Richard, 2017 U.S. Dist. LEXIS 32202, Attorney David Axelrod, apparently committing a robbery on Mr. Swihart, purposely sabotaged the case. In fact Swihart is not the only inmate who has been taken to the cleaners, and not the only case, where Ohio attorneys and Ohio Attorneys General have engaged in pattern of corrupt activity to create and craft bogus case law authorities for use to prevent the pro se inmate from navigating the judicial playing field.

For example, in Wilkinson v. Dotson, 2005 U.S. LEXIS 2204, attorneys Douglas R. Cole, John Q. Lewis and Alan E. Untereiner, came to the this Court and was not completely honest with this Court about the true and accurate account of what is truly going on in the state of Ohio with regard to the prisoners described as ORC 5120.021(A) and ORC 2967.021 offenders. In other words, these attorneys all failed to explain to this Court that ORC 5120.01 is controlling as to the 'duration' or 'potential duration' of incarceration after one becomes 'parole eligible' in Ohio under ORC 2967.13. Meaning whatever 'parole releasing

regulations' that are signed into law, and is in existence on the 'date of the offense' applies to the 'duration' or 'potential duration' of that prisoners' parole considerations. This includes, but is not limited to, Ohio Admin. Rule (AR) 5120:1-1-07 and 5120:1-1-08 as they existed on date of offense. These (AR)'s were not mandatory, but in 2003 Ohio implemented a new version of [5120:1-1-07(A) and (B)] making it mandatory by adding shall to it, and retroactively apply it unlawfully to all offenders upon whom a court imposed a term of imprisonment long before 2003.

In another case, Michaels v. Ghee, 2006 U.S. LEXIS 3873, attorney Norman Sirak, was permitted by the state of Ohio's Courts to rip-off thousands of Ohio prisoners and their families out of more than $700,000. And, to carry on a fabrication in Ohio's federal courts. Sirak deliberately argued against 1998 Ohio Parole Board GUIDELINES [identified in Layne v. Ohio, 2002 Ohio LEXIS 3054] rather than the appropriate challenge under ORC 5120.01 and ORC 5120.021(A).

Ohio's judiciary always alludes that Ohio's Parole Board is a discretionary board under ORC 2967.03. However, it only has 'pure discretion' when an 'Application for Clemency' is filed, not when one becomes eligible for parole naturally. See (OAC) 5120:1-1-02(G) Inmates of Orient, 1991 U.S. App. LEXIS 4822. Because of the near 25 years of corruption, the Ohio Parole Board and Ohio's Wardens have been unlawfully detaining a certain class of Ohio citizens who just happened to have committed their offense(s) prior to July 1, 1996. Ohio has no judicial protection of prisoners' Constitutional Rights, against stealthy encroachment by Ohio's agencies, the Attorney General, Public Defender, or (ODRC).

A direct appeal to the Ohio Supreme Court resulted in no compliance with the law and a complete decision that dictates that the Courts are 'running a front operation' for the Ohio Department of Rehabilitation and Correction (ODRC), and Ohio Parole Board (OPB). NO JUSTICE!!!

REASONS FOR GRANTING THE PETITION

U.S. Jurisprudence generally strives to avoid, inter alia, the appearance of impropriety. This practice apparently does not apply to the system of Ohio's Courts or its Parole Board. The acts are reminiscent of the ancient Star Chamber of England. Ohio Parole Board (OPB) hearings are not recorded because they are violating their own 'statutory constraints' applicable to all offenders, pursuant to Ohio Revised Code (ORC) §5120.01, as it existed and address the 'duration' or 'potential duration' of incarceration for those offenders upon whom a court imposed a term of imprisonment prior to July 1, 1996 for offenses committed before to July 1, 1996. Woods v. ODRC, 2006 Ohio Misc. LEXIS 66. (ORC) § 5120.021(A); State v. Rush, 1998 Ohio LEXIS 2219. See, also, State v. Cobb, 2005 Ohio App. LEXIS 458. (ORC) § 2967.021. It fact, Ohio Parole Board decision sheets are not signed by anyone to authorize action taken, because the (OPB) are aware that they committing crimes against its prisoners daily in violation of the United States and Ohio Constitutions.

In 1886, this Court held: "***Courts has a duty to protect the Constitutional Rights of its citizens against the stealthy encroachment thereon". Boyd v. United States, 116 U.S. 735. This includes the State of Ohio's 'federal' and 'state' Courts in all cases, including those cases challenging the authority of the Ohio Department of Rehabilitation and Correction (ODRC), and all of its agencies, its officers, and employees, including, but not limited to, the Ohio Adult Parole Authority (OAPA), and the Ohio Parole Board (OPB)'

Since as early as, at least, 1972, this Court has held that prisoner pro se complaints are held to less stringent standards than formal pleadings drafted by lawyers". Haines v. Kerner, 1972 U.S. LEXIS 99; 404 U.S. 519-520. In Ohio, this authority is treated as a joke.

Since as early, as at least, 1979, the United States Court of Appeals, Sixth Circuit, has mistakenly held that (ORC) 2967.03provides the (OPB) with broad discretion in parole matters. However, since then all Ohio Courts has 'blurred the distinction' between 'clemency discretion' [(ORC) 2967.03] and 'parole eligibility discretion' [(OAC) 5120:1-1-02(G)] at time of 'parole eligibility', (ORC) 2967.13.

This (OAC) is authorized under the authority vested in the (ODRC) Director under (ORC) 5120.01, to sign into law the 'mandatory' provisions of the Ohio Administrative Code (OAC), also known as (a.k.a.) Ohio Administrative Regulations (OAR) Chapter 5120:1. In 1979, the (ODRC) enacted the (OAR) and implemented particular 'Parole Releasing Rules' (PRR) that remain in full effect and force for all prisoners who committed their offense prior to 1-Nov-87; 1-Nov-88; 13-Sep-93; and 1-Jul-96. (ORC) 2967.03 continues to be misplaced by Ohio's Courts to this very day falsely portraying, that Ohio's Parole system is purely discretionary. See, e.g., continued exaggerated positioning by the Ohio Attorney General (OAG) in the bogus case Nelson v. Mohr, 2013 Ohio App. LEXIS 4742 (where pre-1996 version of R.C. 2967.03 and Admin. Rule 5120:1-1-07 are misplaced). R.C. 2967.03 applies only to clemency application filed, not 'parole eligibility', R.C. 2967.13 Admin. Rule 5120:1-1-02(G)'s discretion as illustrated in Inmates of Orient v. OSAPA, 1991 U.S. App. LEXIS 4822 HN7-8. In fact, not only is discretionary regulation illustrated in Orient, supra, so too is (ORC) §2967.03, but the Sixth Circuit U.S. Court of Appeals, however, failed to define or clarify either one of them when they had the perfect opportunity to do so, and would have eliminated or avoided years of misrepresenting the true level of discretion the (OPB) are vested with in R.C. 2967.13 proceedings.

Simply put, (ORC) § 2967.03 and (ORC) § 2967.13 discretion has been deliberately blurred by Ohio's Judiciary, its attorneys, and its executive offices, like the Ohio Attorney General (OAG) and Ohio Public Defender (OPD). See, e.g. Layne v. OAPA, 2002 Ohio LEXIS 3054; Ankrom v. Hageman, 2005 Ohio App. LEXIS 1480; and Hall v. Hageman, Franklin C.P. No. 05CV5954. See, also, Hall v. Hageman, Franklin C.P. No. 05CV5954.

The merits of this case applies equally to thousands of Ohio Prisoners whose offenses were committed between the date January 1, 1974 and July 1, 1996. The damages committed by respondents were committed against the prisoners and their families whose being deprived of their relationships with their family members held illegally by the Ohio parole Board. Thousands of children were forced to grow up without their fathers and mothers, without justification or any authority whatsoever. These matters were brought to this Court in an earlier action [U.S. Supreme Court Case No. 15-6914. However, the Clerk of

Courts dismissed the case and thus-far, have allowed the State of Ohio to get away with multiple civil rights violations, constitutional rights violations, and to commit multiple felony and misdemeanor offenses. The only remedy to these matters is to accept this case and address this outrageous misconduct.

CONCLUSION

For good shown, Petitioner respectfully requests that this Court accept and hear this matter in the interest of justice, and compliant with 'Equal Justice Under Law'. The petition for a writ of certiorari should be granted.

Respectfully submitted,

Dennis Cole

Date August 12, 2019