

ORIGINAL

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NO.

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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

EARNEST LEE LANGSTON — PETITIONER  
(Your Name)

MISSOURI BOARD OF <sup>vs.</sup>  
PROBATION AND PAROLE — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

MISSOURI COURT OF APPEALS, WESTERN DISTRICT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

EARNEST LEE LANGSTON

(Your Name)

SOUTH CENTRAL CORRECTIONAL CENTER  
255 W. HWY 32; LICKING, MO 65542

(Address)

LICKING, MO 65542

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

WHETHER THE EX POST FACTO CLAUSE OF THE CONSTITUTION, Art. 1, Sec. 9, cl. 3, IS VIOLATED WHEN A NEWLY MODIFIED STATE PAROLE REGULATION IS APPLIED.

II.

WHETHER THE PAROLE BOARD CAN RELY UPON STATUTE OF LIMITATIONS AND OTHER PROCEDURAL GROUNDS INVOLVING RES JUDICATA OR COLLATERAL ESTOPPEL WHEN FRAUD OR CONCEALMENT IS AT ISSUE.

III.

WHETHER A CONFLICT OF INTEREST EXIST BETWEEN THE APPELLATE COURTS OF MISSOURI INVOLVING ADMINISTRATIVE REVIEW OF PAROLE DECISIONS.

## **LIST OF PARTIES**

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

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:

ATTORNEY GENERAL OFFICE  
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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

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

**OPINIONS BELOW**

[ ] For cases from **federal courts**:

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

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

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

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

[ ] For cases from **state courts**:

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

[x] reported at 2019 Mo. App. LEXIS 530; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the Cole County Circuit Court court appears at Appendix B to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[x] is unpublished.

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

No petition for rehearing was timely filed in my case.

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

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

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

For cases from **state courts**:

The date on which the highest state court decided my case was April 18, 2019. A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: May 28, 2019, and a copy of the order denying rehearing appears at Appendix D.

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

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

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

PETITIONER BELIEVES HIS RIGHTS UNDER THE 5th AND 14th AMENDMENTS TO THE U.S. CONSTITUTION WAS VIOLATED BASED ON FALSE EVIDENCE PRESENTED BY THE RESPONDANT DURING A DECLARATORY JUDGMENT HEARING IN THIS CASE, WHICH DEPRIVED PETITIONER OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW.

AND, THAT THE MISSOURI BOARD OF PROBATION AND PAROLE'S NON-COMPLIANCE WITH STATE STATUTE RESULTED IN AN EX POST FACTO VIOLATION UNDER BOTH THE MISSOURI CONSTITUTION, Art. 1, Sec. 13 AND THE U.S. CONSTITUTION, art. 1, Sec. 9, Cl. 3 WHEN THE BOARD USED SECTION 558.019.4(2) RSMo (2000), (AMENDATORY PAROLE STATUTE THAT ALTERED PETITIONER'S PAROLE ELGIBILITY DATE UNDER MISSOURI PAROLE STATUTE, SECTION 217.690.4 RSMo (2000) AND MISSOURI PAROLE REGULATION, 14 CSR 80-2.010.

PETITIONER FURTHER BELIEVES HIS STATUTORY RIGHTS UNDER SECTION 536.100 AND SECTION 536.150 RSMo (2000) WAS VIOLATED WHEN HE WAS DENIED AN ADMINISTRATIVE REVIEW HEARING TO CHALLENGE THE A PRIOR DECISION BASED ON FRAUD.

## STATEMENT OF THE CASE

1. Petitioner states that in 2005 he was scheduled for a parole hearing, by the parole board, and was told that under the new 1994 Amendatory parole guidelines that he (petitioner) would not be eligible for parole until YEAR 2082, and that his next scheduled parole hearing would be YEAR 2080 (SEE ATTACHED APPENDIX F-1, F-2).

2. Petitioner then filed an action in the Cole County Circuit Court, seeking Declaratory Judgment relief, where the Board argued that: a) any sentence consecutive to a Life sentence is non-paroleable b) that a Life sentence has no end and therefore petitioner would never be able to start his consecutive sentence

3. The Board also stated in their argument, that under the new amendatory parole statute, Section 558.019.4(2) RSMo (2000) they would apply that statute's 75-year Rule, i.e., any consecutive sentences that total more than 75-years would be calculated as 75-years for the purpose of parole calculation.

a) Petitioner appealed that decision, Langston v. Missouri Bd. of Prob. and Parole, 391 SW3d 473 (Mo. App. 2012), relying upon Wolfe v. Dept. of Corrections, 199 SW3d 219 (Mo. App. 2006) wherein the Missouri Appellate Court disagreed with the Board's assertion that . . . any sentence consecutive to a Life sentence should be calculated as 75-years.

b) Wolfe, was serving Life, plus a consecutive 10-year sentence. The appellate court stated that once Wolfe had completed the 85% mandatory minimum ( $2\frac{1}{2}$  years) of his Life sentence, that:

"Theoretically Wolfe would be eligible for parole after  $2\frac{1}{2}$  years"

STATEMENT OF CASE (CONT.):

4. Petitioner states that the Court was correct in deciding the Wolfe case, because under Mozee v. Bd. of Prob. & Parole, 401 SW3d 500 (Mo. App. 2013) the appellate court stated: "The Rulemaking authority under Section 217.690.4 RSMo is the parole statute itself, that gives a Life sentence a definite number."

- a) The definite number for a Life sentence is 30-years, calculated as 85% (25½ years), under the amendatory statute.
- b) The definite number for a Life sentence prior to 1994, was 50-years calculated as (0% or 15-years) (40% or 20 years).

PETITIONER IS CLAIMING ABUSE OF THE  
BOARD'S DISCRETION

5. In 2005 petitioner had already served 15-years of his Life sentence, but was required to serve 20-years before becoming eligible for parole consideration, which is 40% of a Life sentence if you are a prior offender.

- a) Under Missouri parole laws, multiple sentences are calculated as a single sentence (or, single Life sentence): ". . . the minimum term for parole shall be calculated by adding the minimum term for parole eligibility for each consecutive sentence, except the minimum term for parole eligibility shall not exceed the minimum term for parole eligibility of an ordinary Life sentence." Section 217.690.4 RSMo (APPENDIX F-3).
- b) Also see (APPENDIX "F-4"), Missouri Parolebook Year 1992, 2001 and 2005 where offenders serving multiple Life sentences, or sentences totaling 45-years or more, are calculated as 45-years, or the minimum term for parole eligibility shall not exceed that of an ordinary Life sentence.

Petition Is Also Claiming Fraud

6. Wolfe v. Dept of Corrections, *Supra*, was decided in 2005 or 2006 because the parole board determinied that Wolfe would not be eligible for parole until his 70th birthday; Wolfe was only serving an ordinary Life sentence, plus a consecutive 10-year sentence.

a) Petitioner points out that the same method used in calculating Wolfe's parole eligibility, was used to calculate petitioner's parole eligibility. The fraud comes in because at the time petitioner's declaratory judgment action0 petitioner did not know that the Missouri Appellate Court had already told the Board that they had misinterpreted the statute in calculating Wolfe's parole eligibility (APPENDIX "A-1") and that "theoretically Wolfe becomes parole eligible on the Life sentence after 25½ years."

b) Even on appeal, the Board argued that they had followed the statute in reaching a parole eligibility date of 2082; petitioner also raised an equal protection claim, because at the time when petitioner filed for Declaratory Judgment relief, offender James Gant, serving Life plus consecutive sentences totalling 198 years, Gant was being released on parole after serving 35 years (APPENDIX F-7) and Serl Lee Dunn had already been released on parole on his consecutive sentences of 150-years (APPENDIX "F-8").

The Board Then Changed Their Argument

7. The Board then convinced the Cole County Circuit Court that petitioner was arguing that he had a due process right or some type of liberty interest to parole-- which was fraud on the court, because that was not the argument or claim petitioner presented.

a) The trial court then allowed the Respondant/Asst Atty General to draft a PROPOSED JUDGMENT, which the court signed off on denying declaratory judgment relief in this case (said Judgment tainted petitioner's appeal).

## REASONS FOR GRANTING THE PETITION

Petitioner states that the reason for granting the petition, is simple: the Board unlawfully altered petitioner's parole eligibility date from 2005 to 2082, which caused petitioner to suffer a violation of the Constitutional prohibition against the enactment of Ex Post Facto laws, because the Board, in denying parole consideration to petitioner, relied upon RSMo 558.019.4(2), a statute that retrospectively increased petitioner's punishment in violation of the U.S. Constitution, art. 1, sec. 9, cl. 1 and Mo. Constitutional, art. 1, sec. 13.

### I.

A) Parole guidelines, or parole provisions which alters the Board's level of discretion, may rise to an ex post facto violation, if such provisions were applied retroactively and was not not procedural, *Garner v. Jones*, 120 S.Ct. 1362 (2000).

QUESTION: WHETHER AN AMENDATORY PAROLE STATUTE, UNDER SECTION SECTION 558.019.4(2) RSMo (2005) IS SUBSTANTIVE IN IT'S OPERATION, OR PROCEDURAL.

### II.

B) Petitioner believes he was entitled to a hearing on his claim of non-compliance with State statute, and fraud upon the court. Because under, *Cooper*, 1993 Mo. App. LEXIS 293, the Mo. Board of Probation and Parole is an administrative agency, and is therefore subject to the terms of Section 217.670.3 RSMo. See also: *Howard v. Armontrout*, 729 SW2d 547 (Mo. App. 1987)(dismissal was improper where inmate did not receive proper administrative hearing).

C) Mo. Administrative Procedure provides for two type of cases, contested and non-contested cases). A contested case is a pro-

ceeding before an agency in which legal rights, duties, or privileges are required by law to be determined, after a hearing. Section 536.010.4 RSMo. The law requiring a hearing includes any ordinance, statute or Constitutional provision that mandates a hearing, McCoy v. Caldwell, 145 SW3d 427 (Mo. banc 2004); therefore, petitioner was correct in seeking judicial review under Sectios 536.100 and 536.150 RSMo as a contested or non-contested case, because the Board's action was not a lawful exercise of discretion under Sec. 536.150.1 RSMo.

D) Petitioner sought an evidentiary hearing and made an offer of proof to support his allegations as set forth in the petition.

536.140.3 RSMo authorizes a reviewing court to re-weigh the evidence presented by the Board, or against the Board, in exercise of the Board's administrative discretion, Morton v. Brenner, 842 SW2d 538, 540 (Mo. banc 1992); therefore petitioner was entitled to a hearing concerning the Board's non-compliance with State parole statute (Sec. 217.690.4 RSMo), and to re-weigh any evidence that was fraudulent.

E) In Missouri, the litigant is entitled to<sup>challenge</sup> the governmental agency decision in a contested or non-contested case, Furlong, 189 SW3d 157, 165 (Mo. banc 2006) and 14 CSR 80-2.010(7)(A)(10)(A) which provides for administrative review.

QUESTION: WHETHER THE STATE ATTORNEY GENERAL FALSELY REPRESENTED THE BOARD'S CASE (IN A PRIOR ACTION) BY OFFERING EVIDENCE THE BOARD KNEW TO BE FALSE, AND SUPPRESSED EVIDENCE HAVING POTENTIAL EVIDENTIARY VALUE, IN VIOLATION OF NAPUE V. ILLINOIS, 360 U.S. 264 (1959) AND BEISLY V. PERIGO, 469 SW3d 434 (Mo. 2015).

III.

F) Petitioner states the Mo. Attorney General misrepresented the facts in this case, during a Declaratory Judgment proceeding (APPENDIX B-1).

i) In Missouri, all claims against the Board is filed in Cole County, 19th Judicial Circuit, where the main office of the parole board is headquartered ii) it has been the practice of the Judges in the 19th Judicial Circuit to not allow pro se prisoners to compel the state attorney general to file material records needed as evidence by petitioner, and as such, certain evidence is suppressed

G) Further, pro se prisoners are - never allowed to attend status hearings, or the prison's video courtroom

i) All status hearings in the 19th Judicial Circuit are Ex Parte meetings between the Judge and Asst Atty General, where no transcript or recordings are made at these status hearings, after which the Judge directs the state attorney general to file a Proposed Judgment ii) when the Proposed Judgments are filed, the state attorney general re-characterizes the claims, creates and manufactures procedural bars, and falsifies evidence creating the so-called procedural bars iii) or, simply argue the claim is not cognizable.

H) Several pro se litigants have challenged this type conduct, specifically in cases like Charron v. Nixon, infra, where he contended the Judges in the 19th Judicial Circuit illegally delegates it's judicial functions, by adopting the fraudulent Judgments drafted by counsel for the State, 318 SW3d 740, 744 (Mo. App. 2010) wherein the appellate court stated that the trial court did not

err in adopting the State's proposed judgment. In *skillicorn v. State*, 22 SW3d 678, 690 (Mo. banc 2000) the appellate court stated that it is a common practice in Missouri for the trial court to adopt the State's Proposed Judgment, as long as the court, after independent reflection, concurs with the Proposed Findings and Conclusions.

I) Petitioner points out, that what the appellate court failed to consider, was that in all cases coming out of the 19th Judicial Circuit, not once for the past 10-years or more has a Judge in that Circuit failed to adopt the State's proposal.

**WHETHER STATUTE OF LIMITATION, COLLATERAL ESTOPPEL, OR RES JUDICATE**

**WHETHER STATUTE OF LIMITATION, COLLATERAL ESTOPPEL, OR RES JUDICATA CAN BE USED AS A DEFENSE AGAINST INTENTIONAL FRAUD OR CONCEALMENT**

**IV.**

In Missouri, limitation periods are tolled based on "materially and willfully misrepresentation" of revelent imformation. The doctrine of equitable estoppel tolls the limitation period in cases where a party engaged in misrepresentation or concealment or other misconduct, *Owens v. Okure*, 488 U.S. 235. 243-50(1989)(rejecting the use of statute of limitations for intentional tort).

For Collateral Estoppel to apply, the party being estopped must have had a full and fair opportunity to litigate in prior case, *Allen v. McCurry*, 101 S.Ct. 411 (1980).

In a more recent case, of a Judge in a different Judicial Circuit that didn't adopt the state attorney general proposal stating that a petitioner's claim was not cognizable in habeas corpus; the Judge granted relief stating it was, and the appellate court agreed, stating that atty general's argument was untenable, *State ex rel. Smith v. Hayes*, 2019 Mo. App. LEXIS 252

V.

Judge Hayes failed to adopt the Asst Atty General's proposal that the habeas action was not cognizable; had the case been tried in the 19th Judicial Circuit, those Judges would have agreed with the Asst. Atty General.

Petitioner further points out that there is no procedural bar, because petitioner sufficiently raised his claim to comply with State-law, even though the trial court adopted the Respondent's Proposed Judgment that petitioner had not complied with State-law, under laws governing administrative review.

And, that due to the Asst Atty General's falsely representing the Board, and matters relating to fraud and concealment, pursuing further State remedies in this case would be futile by the court applying State law that limited the ability of petitioner on the new issue of fraudulent concealment.

2010 JUDGMENT OF COLE COUNTY CIRCUIT COURT

APPENDIX F-10 is a copy of that Judgment calculating petitioner's sentences under Section 558.019.4(2) RSMo 75-Year Rule.

APPENDIX "F" is a September, 2018 newspaper clipping where a member of the parole Board said Reginald Clemons would be eligible for Parole, on his 5-consecutive Life sentences in the YEAR 2020.

Mathematically Correct

Each of CLEMMON'S Life sentences are calculated as 30-years, i.e., he must serve 85% of 30-years (which is  $25\frac{1}{2}$  or  $27\frac{1}{2}$  years). Clemmon's parole eligibility will be calculated on a single Life sentence, the same argument petitioner made-- that all his consecutive sentences added together can not exceed the calculation of a Life sentence.

The Asst Atty General asked the Cole County Judge to enter a Judgment stating that sentences in Missouri is not calculated in this matter, please see (APPENDIX "E") where the Board and Asst Atty General went outside the calculation of State law and calculated petitioner's parole eligibility date as being YEAR 2082, which is an Equal Protection violation because CLEMMON'S eligibility date is YEAR 2020 and his crimes occurred the same year as petitioner.

APPENDIX "F" newspaper clipping was an interview of Gary Brix, a- parole board spokesperson, totally disputing the Board's argument in this case, and basically admitting the Board committed fraud. END

#### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Ernest Lee Langston

Date: August 2, 2019