IN THE SUPREME COURT OF THE UNITED STATES

GARVESTER BRACKEN
Petitioner,

V

STATE OF MISSOURI
MISSOURI DEPARTMENT OF CORRECTIONS

CASE NO.

APPENDIX

ON PETITION FOR WRIT OF HABEAS CORPUS TO THE SUPREME COURT OF THE UNITED STATES

GARVESTER BRACKEN
MISSOURI EASTERN CORRECTIONAL CENTER
18701 OLD HIGHWAY 66
PACIFIC MISSOURI 63069
(636) 257-3322

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

January 21, 2020

Mr. Garvester Bracken
Prisoner ID #1200097
Missouri Eastern Correctional Center
18701 Old Highway 66
Pacific, MO 63069

Re: In Re Garvester Bracken
No. 18-9107

Dear Mr. Bracken:

The Court today entered the following order in the above-entitled case:

The motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* is denied.

Sincerely,

Scott S. Harris

Scott S. Harris, Clerk

TABLE OF CONTENTS

APENDIXES

TRIAL

The trial began February 28, 2011, before the Honorable Bryan L. Hettenbach, Judge of Division No. 11 of the Circuit Court of St. Louis City, State of Missouri, and a jury and one alternate juror.

Ms. Rachel Schwarzlose appeared for the State.

The defendant did not appear in person.

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS CITY, MISSOURI
22ND JUDICIAL CIRCUIT

2010 JAN 20 AM 11:15
CLERK

STATE OF MISSOURI,	)	
	)	
Appellee-Respondent,	)	Cause No. 0822-CR06710-01
	)	
vs.	)	
	)	Division No. 5
GARVESTER BRACKEN,	)	
	)	
Appellant.	)	

ENTRY OF APPEARANCE

N. Scott Rosenblum of the law firm Rosenblum, Schwartz, Rogers & Glass, P.C. enters her appearance as retained counsel on behalf of Appellant, Garvester Bracken.

Respectfully Submitted,

ROSENBLUM, SCHWARTZ,
ROGERS & GLASS, P.C.

By: _____

N. Scott Rosenblum
120 South Central Ave., Ste. 130
Clayton, MO 63105
Telephone: (314) 862-4332
Attorney for Appellant

Certificate of Service

I hereby certify that on January __, 2010, a copy of the foregoing document was sent by first-class mail, postage prepaid, to the following:

St. Louis City Circuit Attorney
Carnahan Courthouse, Room 401
1114 Market Street
St. Louis, MO 63101

Office of the Attorney General
Supreme Court Building
207 West High Street
Jefferson City, MO 65102

_____
N. Scott Rosenblum

MISSOURI CIRCUIT COURT

TWENTY-SECOND JUDICIAL CIRCUIT

(City of St. Louis)

FILED
MAR 22 2010
MARIANO V. FAVAZZA
CLERK CIRCUIT COURT
BY _____ DEPUTY

State of Missouri

VS

Garvester Brackeen

CASE NO. 0822-CR01710 DIVISION 16 3-22 2010

COURT ORDER

ENTERED
MAR 22 2010
DRH

Defendant does not qualify for services from Missouri State Public Defender System in that Defendant has retained the services of N. Scott Rosenblum to represent him on portions of this case and therefore he is with means to retain counsel and NOT indigent and NOT eligible for public defender services.

Case set for 5/10/10 on Div 16 Trial docket.

Atty for D Atty #28858

SO ORDERED

Judge

MISSOURI CIRCUIT COURT

TWENTY-SECOND JUDICIAL CIRCUIT

(City of St. Louis)

APR 29 2010

ENTERED

APR 29 2010

DRH

State of Missouri

VS

MARIANO V. FAVAZZA
CLERK, CIRCUIT COURT
BY _____ DEPUTY

Garvester Bracken

CASE NO. 0822CR00710-01 DIVISION 16 April 28, 2010

COURT ORDER

Motion to Appoint Counsel heard and denied. N. Scott Rosenblum to remain as Counsel. Parties to file a scheduling ORDER by June 11, 2010.

SO ORDERED:

Rachel D. McCracken
ACA 57269

0822-CR06710-01 ST V GARVESTER BRACKEN Security Level: 1 Public

Case Type:	CC Felony	Case Filing Date:	18-Nov-2008
Status:	Judgment CVC $68 - Other		
Disposition:	.	Disposition Date:	
OCN#:	Not on File		
Arresting Agency:	MOSPD0004		

		Release/Status Change Date	Reason
Judge	STEVEN RUSSELL OHMER (28239)		
Defendant	GARVESTER BRACKEN (BRAG*1063)		
Attorney for Defendant	N SCOTT ROSENBLUM(33390)		
Assistant Circuit Attorney	RACHEL D SCHWARZLOSE (57269)		

I certify that the above is a true copy of the original Judgment and Sentence of the court in the above cause, as it appears on record in my office.

Issued on 6/16/2011
Date

Clerk

Court Reporter Allie Baker #361

57269

40673

X Defendant refused to sign BJH

APP. 7

SENTENCING PROCEEDINGS

THURSDAY, JUNE 16, 2011

THE DEFENDANT: Your Honor, I'd like to object to these proceedings.

THE COURT: You'd like what?

THE DEFENDANT: To object to these proceedings.

THE COURT: All right.

THE DEFENDANT: On constitutionality grounds of due process.

THE COURT: All right.

THE DEFENDANT: That's all.

THE COURT: I understand.

THE COURT: All right. Mr. Bracken, is there anything you want to say before the Court pronounces sentence or judgment, sir?

THE DEFENDANT: Sure. Okay. Again, your Honor, on the grounds of violation of due process, the attorneys are not my attorneys. I think they should have told you, this Court. The prosecutor.

So the first trial itself, I did not have any benefit of counsel. This trial here I had without benefit of counsel again. These two gentlemen here -- I have the court order, all the documents that you need, if you want to do an evidentiary hearing on these matters -- were not supposed to do this case. Again, this proceeding here was supposed to have been done by Mr. Scott Rosenblum and it was a court order directed by Judge Ohmer.

THE COURT: I need to ask you how well you believe -- I need to ask you officially on the record how well you believe your lawyers in this trial have represented you.

THE DEFENDANT: They weren't my attorneys, your Honor. That's all I can say.

was never even booked on the charges that was in these proceedings, let alone on the last three proceedings. There was other proceedings beside this. There was also an ex parte order that was done. That's where I got arrested at the first time inside the courtroom.

THE COURT: So I've got your charges read to you or not read to you.

THE DEFENDANT: I never knew about these charges or these cases.

THE COURT: I've got ex parte order.

THE DEFENDANT: Ex parte order.

THE COURT: Is there anything else that you needed to meet with your lawyers about or have time to discuss with them that you didn't have time to do?

THE DEFENDANT: Again, your Honor, you keep saying they were my attorneys. They were never retained by me. That's the problem.

THE COURT: When you did meet with them, and I know that you did --

THE DEFENDANT: Sure. They came to do that.

THE COURT: -- did your lawyers answer all of your questions?

THE COURT: Did your lawyers do what you asked them to do?

THE DEFENDANT: Again, your Honor, they weren't my attorneys. But no, they did not do everything they were asked to do. There was no depositions taken or anything. In either proceeding.

THE COURT: Other than depositions, is there anything you wanted them -- is there anything you wanted them to do that they didn't do?

THE DEFENDANT: They didn't take depositions of all the available witnesses within the state of Missouri.

THE COURT: Anything else?

THE DEFENDANT: Under Article I, Section

.3 of the Missouri State Constitution. They
ln't do that. I never was read any of the -- let
e see. That was -- the first -- I never even knew
iat the charges were, period. Never knew it.

THE COURT: All right.

THE DEFENDANT: Never knew it. Never seen
ie police report. Never seen it. Now you talking
bout two different sets of attorneys. I never seen
iem at both setting. That's the big problem. This
iformation was given to these two attorneys because
ney was supposed to be actually co-chairing with
lr. Scott Rosenblum. Again, this was a court order
hat I'm not going to violate it because it's
llegal to do that. Judge Ohmer signed the order
iimself. She was there.

THE COURT: She being the prosecutor?

THE DEFENDANT: I believe her name is
Schwarzlose. She was there. There's a lot of
things going on besides that. And it's getting
wider and wider. There's an elephant in the room
here, your Honor.

THE COURT: When you did meet with these
gentlemen, did they fully explain your rights to
you?

THE DEFENDANT: As far as the trial

proceedings?

THE COURT: Yes, sir.

THE DEFENDANT: No. I'm getting bits and
pieces, like I'm getting here with you today.

THE COURT: Other than what you've told me
about, do you have any complaints about Mr. Sison or
Mr. Selig?

THE DEFENDANT: They weren't my attorneys.
That's all I can say.

THE COURT: All right. And do you think
that they did a good job for you?

THE DEFENDANT: It doesn't matter. How can
you convict a man, your Honor -- let me put this
there for you. How can you convict someone who had
an alibi who was proven in the first trial? There's
things from that first trial that you don't know
about. But maybe if you read the trial records, it
will come to you. There's a lot of things she held
from you. She held a lot of information, a lot of
evidence information. There's no doubt. It's in
the records. It's not me just speaking this. Like
right now, this is open court. There is people here
who was supposed to have been testifying for me.

This is another problem I'm having here. I
have not seen due process since this whole thing

began. Ms. Schwarzlose even asked my former wife if
you -- your Honor, I believe you need to talk to my
wife and let her tell you who was all involved with
what she was doing. Again, I wasn't here. It was
even proved. And there was major problems inside of
the jury pool in the first proceeding.

The attorney in the first one, again same
thing as this one, was not retained by me and was
not my attorney. Judge Moriarty herself, she
invaded my due process. They were not my attorneys.
He was not -- and neither did I hire him or neither
did I get anyone from the city to do it. Neither
was Mr. Bailey. See, now you bring in other people
that have no need to be in this, because now it's
getting to a point where it's ridiculous. It's on
the record.

Everyone -- my first trial, I had more than
forty people probably sitting out there. Now I have
all those people witness to everything I'm saying
that happened in that trial. And they gonna tell
you everything that I did and say about the
prosecutor here. And you want to find out, it's
gonna get wider and wider, your Honor, for no
reason, due to the prosecution. That's it. All I
can do is just tell you and hopefully you'll say

maybe we'll have an evidentiary hearing on it and
let me prove myself in the court again with the
documents and with testifying.

All my alibi witnesses was never contacted.
Again, the whole defense was alibi. Documents
disappeared. Right now you probably couldn't go
into the files right now and find the documents that
I'm talking to you about now. There was ones again
with forged signatures of judicial court officers
here. Some of these judge here didn't sign that.
That wasn't their signature at the bottom. It only
could have came from the prosecution office. It's
gonna get deeper and deeper and deeper if this thing
keep going like this. I'm not afraid of it, because
I know the law's gonna take care of what it have to
take care of. But this is gonna be bigger than
this, because of what the prosecution did.

It's not nothing that most of these guys
did. They did the wrong thing by actually
proceeding to trial and not telling the Court that
hey, we're not Mr. Bracken's legal representation in
this. No one said anything. They just assumed that
I wasn't gonna bring it up. I brought it up to the
judge the first time. She didn't do anything about
it. I told her Mr. Bailey is not my attorney. She

as in her first petition.

THE COURT: And then you would do what?

THE DEFENDANT: We'll go from there.

THE COURT: And what does that mean go from there?

THE DEFENDANT: I believe you did this once before, Judge. You interfered with my counsel of choice at the trial, didn't you?

THE COURT: Well --

THE DEFENDANT: When those -- when that information came forward to you that those guys weren't my attorney and you had a full out blown trial.

THE COURT: We did.

THE DEFENDANT: Without my attorney who was retained. That's on the record. You're the one who went and proceeded forward and had the motions -- denied most of the motions that was filed. I made oral arguments on the record, asked for an evidentiary hearing to prove those issues that we had raised back then. You had not made no judgment or ruling on any of them.

My wife -- this trial was based on perjury all along. And you have a criminal activities that took place inside of it with members inside of this organization. The record is sure of this. The first proceeding's gonna tell the story. This is the same thing I told you at first.

You have an obligation, as well as I am as a

citizen of the United States, to bring this forward under your oath of office, sir. So I have no idea what these proceedings are and you have no jurisdiction at this proceeding. And you are also aware of it. Yes, sir.

THE COURT: Let me ask you just the most fundamental thing.

THE DEFENDANT: Yes, sir. Sure.

THE COURT: I've asked you if you will be sworn by my clerk.

THE DEFENDANT: No.

THE COURT: So far you've refused to do that. Are you telling me that you will not do that? I just need to be clear.

THE DEFENDANT: I'm not going to be sworn at all. These are illegal proceedings.

THE COURT: All right. You believe the proceeding here that I've got in front of me is illegal?

THE DEFENDANT: I believe you don't have any jurisdiction, yes.

THE COURT: Have you ever represented yourself in a courtroom?

THE DEFENDANT: Never. I've never been in trouble before with the law. I am on the other side.

THE COURT: And the written motion that you have filed with this court, where do you think you're going with

that?

THE DEFENDANT: Two years ago.

THE COURT: The written motion I have in this matter, where are we going with that?

THE DEFENDANT: Yes, that was almost two years ago.

THE COURT: Where are we going with that?

THE DEFENDANT: You're the judge.

THE COURT: What do you want to do with it?

THE DEFENDANT: You're the judge.

THE COURT: When I call your motion for hearing, if I do that today, I tell you, Mr. Bracken, you are ready -- I am ready to listen, ready to proceed with your motion --

THE DEFENDANT: You're the judge.

THE COURT: -- what do you do then?

THE DEFENDANT: I still said I have not been represented by my counsel from the first time till now. And that was due to interference by the courts. Not my attorneys. They're still retained.

THE COURT: On your motion pending before me, do you know what the standard or the burden of proof is to prove that motion?

THE DEFENDANT: I have no idea. I know that you don't have jurisdiction in this matter. That, I do know.

record is already there. That can't change.

THE COURT: Ms. Harvey, anything to add?

MS. HARVEY: Mr. Bracken, we're here today on a motion that I filed, and I am asking you -- we spoke earlier -- whether or not, regardless of your challenges to the jurisdictional issues and all that --

THE DEFENDANT: Yes, that's number one.

MS. HARVEY: We can deal with that at a later date. But are you willing to have me represent you as your attorney on this Rule 29.15, regardless of whether or not you think the judge has jurisdiction, whether or not this is all legal, but just in terms of us moving forward, would you allow me to represent you on your 29.15 motion?

THE DEFENDANT: Again, if there is no jurisdiction, there's no legal proceedings.

MS. HARVEY: Well, again, we'll get to that issue at another time. But right now we're before the Court on the matter --

THE DEFENDANT: I think the judge makes that determination, correct?

MS. HARVEY: And if he determines right now that we have jurisdiction --

THE DEFENDANT: We have to do what he says.

MS. HARVEY: -- then we'll have to proceed.

THE DEFENDANT: Yes, exactly.

Q He didn't see them. Okay. Did you tell the police officer that you was sexually assaulted?

A No.

Q Okay. You just told him you were physically assaulted, correct?

A I didn't tell the police officer I was physically assaulted. I tried to show the bruises.

Q Did you tell that detective that you indicated to the officer who visited your home on April 1st that you was physically and sexually abused by Mr. Bracken?

A I never told him that I was physically and sexually abused. I told him I had bruises.

Q Okay.

THE COURT: Let's clarify something. We know that you told -- you've testified that you told the

that day. In terms of was it the hearing date or the date of the petition?

THE COURT: Be specific on the date.

MR. BAILEY: Okay.

BY MR. BAILEY:

Q The judge asked -- Judge Clark asked you on the date that you wrote down on this restraining order, March 23rd to March 27th?

THE COURT: Excuse me, what date did Judge Clark initially examine Miss Mosley?

MR. BAILEY: I'm sorry, Your Honor, on April 9.

BY MR. BAILEY:

Q The day you went to file for the restraining order did Judge Clark ask you a series of questions?

A I don't believe I spoke with judge -- that judge until later on in April. Maybe the 22nd or 23rd of April.

Q Okay. So on April 23rd is that the day you filed for the full protection order?

A That was the date that the hearing was set for, yes.

Q Is that the same date Mr. Bracken came and got arrested?

A Yes.

Q And he was sitting in the court that date, correct?
A Yeah.
Q Did Judge Clark ask you a series of questions in front of him?
A Yes.
Q He asked you whether or not you received any medical attention for your injuries?
A Yes.
Q What did you say?
A No.
Q All right. He asked you did you have any visible injuries. What did you say?
A Yes.
Q You sure about that?
A Yes.
Q Okay. He asked whether or not you filed the report with the police?
A I'm sorry, when you said visible, do you mean visible to me or visible to anyone else to see?
Q His exact question to you was "Did you have any visible injuries?" What did you say to him?
A No.
Q Okay. He also asked you did you file a complaint with the Police Department about the alleged

incident. What did you answer?
A I did not.
Q You did not answer. Okay. You sure about that?
A I didn't say I did not answer. I did not file a complaint. If he asked me that question then I answered no, I did not.
Q He also asked you that day whether or not you had took pictures of your injuries. What did you say?
A No, I did not.
Q So on this restraining order you have different dates compared to the dates that the prosecutor -- that you're alleging these incidents happened on, correct?
A I always said the last week of March.
Q Okay. Let me move on. April 9 is when you filed for the petition. April 10, do you recall that day?
A The next day -- I'm not sure of these dates, but the next day after I filed --
Q The petition?
A Yes.
Q Okay. Did you go down to the St. Louis Police Department?
A I don't remember what day I went.

A Yes, it is, but it would not refresh my memory

enough. It was over a year ago, sir.

Q Do you recall seeing the defendant there that day?

A No.

Q Do you recall speaking with a Sarah Bracken that particular day?

A No.

Q Do you recall anything at that house that particular day?

A I don't recall anything from the call at all.

Q That's fine. Did you make a report that day?

A No, I did not.

Q This document also describes some type of domestic disturbance, correct?

A Yes.

Q And you went there around 7:10 p.m., correct?

A We did not show up there till 7:53. The call came in at 7:10.

Q Okay. When you left there did you have to give a summary back to your supervisor?

A No.

Q Did you have to give a summary of what happened once you left there? Did you have to make a report of anything when you left there?

A No.

nd

of

MR. BAILEY: Your Honor, I'm trying to establish I think he did recall.

THE COURT: He said he didn't recall, Bobby. You asked him that at least a dozen times. You're beating a dead horse.

MR. BAILEY: I'm going to move on. I'm going to ask him whether or not he made an arrest that day.

THE COURT: At that location?

MR. BAILEY: Yes.

THE COURT: Very well.

(Proceedings returned to open court.)

THE COURT: Go ahead.

BY MR. BAILEY:

Q Officer, on April 1st, 2008, when you were dispatched to 1368 Blackstone, do you recall making an arrest that day?

A No.

Q If a crime would have been broken that day and you had knowledge of it would you have made the arrest?

MS. SCHWARZLOSE: Objection, Your Honor.

THE COURT: Overruled.

THE WITNESS: If a crime --

BY MR. BAILEY:

Q If a crime would have been broken that day at 1368 Blackstone would you have made an arrest?

A If it was told to me, yes.

MR. BAILEY: Thank you.

THE COURT: Any recross?

MS. SCHWARZLOSE: No, Your Honor.

THE COURT: Thank you, Officer. You may step down. Next witness.

MR. BAILEY: Your Honor, the defendant would

MS. SCHWARZLOSE: It's because, like you said, it's a computer printout from dispatch.
THE COURT: I can't hear you.
MS. SCHWARZLOSE: It's a computer printout from dispatch and not something this officer generated.
MR. BAILEY: It's still done in their regular course of business.
THE COURT: He doesn't generate that, Bobby. He's a police officer. You can ask him if he generates that and he's going to say the dispatch officer, or the computer room, or whatever. I don't know who generates it. If it's a complaint it's generated by somebody else and that's it. He can't answer this from personal knowledge. Go ahead.
(Proceedings returned to open court.)
BY MR. BAILEY:
Q So, Officer, on April 1st you were dispatched to 1368 Blackstone, correct?
A Yes.
Q Was you accompanied with anyone?
A Was I accompanied with anyone? Yes, sir. It would be my partner.
Q You said that you don't recall speaking to anyone?
A No, I don't recall the call at all.

Q In your ordinary day of business if you were dispatched to a particular location and you spoke to someone would you normally make some type of report of it?
MS. SCHWARZLOSE: I object to the speculative nature and hypothetical question.
THE COURT: Overruled.
BY MR. BAILEY:
Q Would you have made a report?
A I don't understand what you're asking.
Q If you were dispatched to a location and you were to talk to someone at that location would you have had to make a report of it?
A Of what? What would -- I don't understand.
Q Hypothetical question.
A If a crime was committed?
Q Yes. Yes.
A If they reported a crime to us then, yes, I would have to write a report.
Q Okay. March, I mean April 1st, 2008, when you were dispatched to 1368 Blackstone was a crime reported to you?
A No.
Q Okay. You went to that location though?
A Yes.

Q But you don't recall talking to anyone?
A No, I do not recall it.
Q How long did you stay at that location?
A I would have to look here.
Q Would you please look at it?
A Approximately, three minutes.
Q Approximately stayed there three minutes. When you got to that location what exactly did you do, if you recall?
A I don't recall.
Q Did you get out of the car?
A I'm sure.
THE COURT: Let's move on.
THE WITNESS: I don't recall.
BY MR. BAILEY:
Q But this call, this call came from dispatch?
A Yes.
Q Okay. And did you talk to the dispatcher when the call came in?
A Did I talk to them? They just dispatch us and all we pretty much say is clear.
Q What was the essence of the dispatch? What was the subject of the dispatch?
A What is the call giving?
Q Yes.

A I'll have to look at this. It tells me exactly what it is. Call to 1368 Blackstone to retrieve belongings. Caller will be occupying a black Buick.
Q When you got there you said you saw no one?
A I don't recall.
Q You don't recall anything?
A I don't recall.
Q Is there anything on here that would refresh your memory whether or not you recall?
A No. No.
MR. BAILEY: Thank you. No further questions.

STATE OF

IN THE CIRCUIT COURT OF 22ND JUDICIAL CIRCUIT ~~COUNTY~~, MISSOURI

0822-CR06710-01

Judge or Division: 11	Case Number: 0822-CR6710
Full Name of Movant: GARVESTER BRACKEN 1122-CC10123	Judge Bryan Hellmbach Div-11 Disp Date-3-3-11 Bond Date-6-16-11 Court Reporter-Alice Baker 29,18
State of Missouri, Respondent	(Date File Stamp)

Instructions- Read Carefully

In order for this motion to receive consideration by the Circuit Court, it shall be in writing (legibly handwritten or typewritten), signed by the movant, and it shall set forth in concise form the answers to each applicable question. If necessary, movant may furnish an answer to a particular question on the reverse side of the page or an additional blank page. Movant shall make it clear to which question any such continued answer refers.

This motion must be filed in the Circuit Court which imposed sentence.

The movant is required to include in this motion every claim known to him for vacating, setting aside or correcting the conviction and sentence or it will be waived or abandoned. Be sure to include every claim.

Movant should exercise care to assure that all answers are true and correct.

If the movant is taken in forma pauperis, it shall include an affidavit setting forth information that establishes that movant will be unable to pay costs of the proceedings. When the motion is completed, the original and two copies shall be mailed to the Clerk of the Circuit Court from which to movant was sentenced.

Motion to Vacate, Set Aside or Correct the Judgment or Sentence

1. Place of detention: Eastern Reception Diagnostic Correction Center
   2727 Highway K
   ~~BONNE TERRE, MO 63628~~

2. Name and location of court which imposed sentence: 22ND JUDICIAL CIRCUIT
   10 NORTH TUCKER
   St. Louis, MO. 63101

3. The case number and the offense or offenses for which sentence was imposed:
   Case No. 0822-CR6710

4. (a) The date upon which sentence was imposed and the terms of the sentence:
   APRIL 16, 2011

   (b) The date upon which you were delivered to the custody of the department of corrections to serve the sentence you wish to challenge.
   APRIL 22, 2011

2011 OCT 14 PM 12:

ENTERED
OCT 14 2011
EAV

5. Check whether a finding of guilty was made:

(a) After a plea of guilty _____ (b) After a plea of not guilty ✓

6. Did you appeal from the judgment of conviction? NO

7. If you answered "yes" to (6), list

(a) the name of the court to which you appealed"

N/A

(b) the result in such court and the date of such result:

N/A

(c) the date the appellate court's mandate issued:

N/A

8. State concisely all the claims known to you for vacating, setting aside or correcting your conviction and sentence:

(a) DEFENDANT WAS DENIED AND DEPRIVED DUE PROCESS

(b) FALSE TESTIMONY AND EVIDENCE ADMITTED

(c) JURY RENDERED AN INCONSISTENT VERDICT

9. State concisely and in the same order the facts supporting each of the claims set out in (8), and the names and addresses of the witnesses or other evidence upon which you intend to rely to prove such facts:

(a) WHEN TRIAL JUDGE PROCEEDED TO TRIAL ABSENT THE PRESENCE OF THE DEFENDANT AND HIS ATTORNEY IN VIOLATION OF UNITED STATES 6th and 14th AMENDMENTS; MISSOURI CONSTITUTION, ARTICLE I, SECTIONS 10 AND 18(a); MISSOURI SUPREME COURT RULE 31.02 and 31.03; and REVISED STATUTE of MISSOURI 546.030.

(b) STATE WAS ALLOWED TO INTRODUCE FALSE TESTIMONY AND EVIDENCE TO INFLAME JURY DELIBERATION AND TO SECURE A WRONGFUL CONVICTION WAS PREJUDICE TO DEFENSE

15. Were you represented by an attorney at any time during the course of

(a) your preliminary hearing? NO

(b) your arraignment and plea? NO

(c) your trial, if any? NO

(d) your sentencing? NO

(e) your appeal, if any, from the judgment of conviction or the imposition of sentence?

(f) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

16. If you answered "yes" to one or more of part (15), list

(a) the name and address of each attorney who represented you

i. N/A

ii. N/A

iii. N/A

(b) the proceedings at which each such attorney represented you

i. N/A

ii. N/A

iii. N/A

17. Are you now under sentence from any other court that you have not challenged? YES

18. If you are seeking leave to proceed in forma pauperis, have you completed the sworn affidavit setting forth the required information (see instructions, page 1 of this form)?

I, Garvester Bracken, movant in this case, state by subscribing to this petition; that I know the contents thereof; that the above information is, to the best of my knowledge, true and correct; that I have listed every claim known to me for vacating, setting aside or correcting the conviction and sentence attacked in this motion; and that I understand that I waive any claim for relief known to me that I have not listed in this motion.

G. RK.

Signature of Movant

IN THE UNITED STATES COURT OF APPEALS
EIGHTH CIRCUIT

GARVESTER BRACKEN,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 18-2571
	)	
JEFFERY NORMAN,	)	
	)	
Respondent.	)	

ENTRY OF APPEARANCE AND SUBSTITUTION OF COUNSEL

Comes now Caroline M. Coulter, Assistant Attorney General, State of Missouri, and enters her appearance for Respondent in the above-captioned case. Assistant Attorney General Stephen D. Hawke is no longer assigned to this matter and requests permission to withdraw.

Respectfully submitted,

Joshua D. Hawley
Attorney General

/s/Caroline M. Coulter
CAROLINE M. COULTER
Assistant Attorney General
Missouri Bar No. 60044

P.O. Box 899
Jefferson City, MO 65102
(573) 751-3321
(573) 751-3825 FAX
caroline.coulter@ago.mo.gov

Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was electronically filed by using the CM/ECF system. I further certify that some of the participants in the case may not be CM/ECF users, in those instances, I have mailed the foregoing document postage prepaid, this 24 day of October, 2018, to:

Garvester Bracken, #1200097
South Central Correctional Center
255 West Highway 32
Licking, MO 65542

\s\ *Caroline M. Coulter*
CAROLINE M. COULTER
Assistant Attorney General

IN THE SUPREME COURT OF THE UNITED STATES

GARVESTER BRACKEN
Petitioner,

v

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
Respondent.

Case No. 18-9107

ON PETITION FOR WRIT OF MANDAMUS TO THE SUPREME COURT OF THE UNITED STATES

FROM THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

GARVESTER BRACKEN
MISSOURI EASTERN CORRECTIONAL CENTER
18701 OLD HIGHWAY 66
PACIFIC MISSOURI 63069

IN THE SUPREME COURT OF THE UNITED STATES

GARVESTER BRACKEN Petitioner,	)	
v	)	Case No. 18-9107
UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT THE HONORABLE JUDGE SHEPHERD, JUDGE WOLLMAN, JUDGE GRASZ, JUDGE Respondents.	)	

ON PETITION FOR WRIT OF MANDAMUS TO THE SUPREME COURT OF THE UNITED STATES

FROM THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

GARVESTER BRACKEN
MISSOURI EASTERN CORRECTIONAL CENTER
18701 OLD HIGHWAY 66
PACIFIC MISSOURI 63069

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

May 2, 2019

Mr. Garvester Bracken
Prisoner ID #1200097
Missouri Eastern Correctional Center
18701 Old Highway 66
Pacific, MO 63069

Re: In Re Garvester Bracken, Petitioner
No. 18-9107

Dear Mr. Bracken:

The petition for a writ of mandamus in the above entitled case was filed on April 25, 2019 and placed on the docket May 2, 2019 as No. 18-9107.

A form is enclosed for notifying opposing counsel that the case was docketed.

Sincerely,

Scott S. Harris, Clerk

by

Susan Frimpong
Case Analyst

Enclosures

TABLE OF CONTENTS

APPENDIX

QUESTIONS PRESENTED

THE QUESTION IS WHETHER AFTER THE UNITED STATES COURT OF APPEALS THE DISTRICT COURT AND THE STATE SUPREME COURT REFUSES TO EXERCISE JURISDICTION WHICH THEY HAD TO HEAR AND DECIDE A PETITION FOR WRIT OF HABEAS CORPUS REGARDING A JURISDICTIONAL CHALLENGE AND LEGALITY OF A COMMITMENT IS IT APPROPRIATE FOR THIS COURT TO ISSUE MANDAMUS UPON AN APPLICATION FILED TO THE SUPREME COURT AS A MATTER OF LAW.

EX PARTE NEWMAN
81 U.S. 152 (1871)

PARTIES

GARVESTER BRACKEN
MISSOURI EASTERN CORRECTIONAL CENTER
18701 OLD HIGHWAY 66
PACIFIC MISSOURI 63069

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT THE HONORABLE JUDGES SHEPHERD, WOLLMAN, AND GRASZ, THOMAS F. EAGLETON, US COURTHOUSE, 111 S. 10TH ST., ST. LOUIS MISSOURI, 63102

TABLE OF AUTHORITIES

CONSTITUTIONAL PROVISION

FIRST AMENDMENT

Congress shall make no law...abridging the freedom of speech...and to petition the government for a redress of grievances.

STATUTORY PROVISIONS

28 U.S.C. 1651

The Supreme Court and all courts establish by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and prinicples of law.

28 U.S.C. 2241

Writs of habeas corpus may be granted by the Supreme Court any Justice thereof, the district courts, and any circuit court judge within their respective jurisdiction....

28 U.S.C. 2243

A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted.....

28 U.S.C. 2254

The Supreme Court, a judge thereof a circuit judge or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a state court on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

TABLE OF AUTHORITIES

PROVISIONS

APPENDIX 34

JURISDICTIONAL STATEMENT

THIS COURT HAS JURIDICTION TO ISSUE WRITS OF MANDAMUS PURSUANT TO ARTICLE III OF THE CONSTITUTION OF THE UNITED STATES AND TITLE 28 UNITED STATES CODE SECTION 1651.

THIS COURT MAY EXERCISE EITHER ITS ORIGINAL OR APPELLATE JURISDICTION TO ISSUE MANDAMUS TO COMPEL DEFENDANTS TO COMPLY WITH ESTABLISHED FEDERAL LAW.

AS ANNOUNCED IN EX PARTE CRANE, 30 U. S. 190, 193 (1831), "A MANDAMUS TO AN OFFICER IS HELD TO BE EXERCISE OF ORIGINAL JURISDICTION, BUT A MANDAMUS TO AN INFERIOR COURT OF THE UNITED STATES, IS IN THE NATURE OF APPELLATE JURISDICTION."

OPINION BELOW

THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT ENTERED A JUDGMENT AGAINST PETITIONER TO REVIEW A PETITION FOR WRIT OF HABEAS CORPUS WHICH HE IS ENTITLED TO AS A MATTER OF LAW. THE COURT RECHARACTERIZED HIS ORIGINAL HABEAS CORPUS APPLICATION AS A CERTIFICATE OF APPEALABILITY WHICH WAS DENIED ON JANUARY 2, 2019, UNDER NO. 18-2571. (SEE APP. 1)

APPEMDIX 36

STATEMENT OF FACTS

1. On May 21, 2018, a petition for writ of habeas corpus was filed in the United States Court of Appeals for the Eighth Circuit the docket sheet indicates that the habeas corpus application was docketed on July 25, 2018, and assigned to case number 18-2571 on the court of appeals docket. (See General Docket Eighth Circuit Court of Appeals - App. 1).

2. The indisputable fact pursuant to 28 U.S.C. 2243, directs the Court to either "award the writ or issue an order directing the respondent to show cause why the writ should not be granted" it also required that " the writ or order to show cause...shall be returned within three days, unless for good cause additional time not exceeding twenty days. (See Copy of Statute 28 U.S.C. 2243- App. 2)

3. It is made plain by the statutory requirement the hearing judge or judges are required to grant the application in the alternative order respondent to show cause, if the latter, respondent's return on the merits was due by July 28, 2018 or no later than August 13, 2018, if an extension of time was granted.

4. By refusing to comply with and satisfy the statutory requirement under 28 U.S.C. 2243, issuance of mandamus is appropriate and warranted in accordance with 28 U.S.C. 1651 as a matter of law because petitioner has no other legal remedy to avail himself.

STATEMENT OF CASE

Before this Court is a case where the courts below refused to exercise jurisdiction which they had to hear and decide a petition for writ of habeas corpus which petitioner is entitled to as a matter of law. Petitioner is being held in custody in violation of the United States Constitution and the laws of the United States and there is no other legal remedy to redress his grievance other than by a writ of mandamus issued by this Supreme Court or a Justice thereof.

Ex Parte Newman
81 U.S. 152 (1871)

ARGUMENT

As a matter of law the United States Supreme Court is fully authorized to issue writs of mandamus by the Judiciary Act of 1789, as well as Title 28 United States Code Section 1651. As announced by the Supreme Court in Ex Parte Newman the court declared, "Power to issue mandamus to any court appointed under the authority of the United States was given to the Supreme Court by the thirteenth section of the Judiciary Act, in cases warranted by the principles and usages of law." See Ex Parte Newman, 81 US 152, 165 (1871).

Moreover, Section 28 U.S.C. 1651 (a) provides, "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate, in aid of their respective jurisdiction aggreeable to the usages and principle of law." As a matter of law writs of mandamus is appropriate because, the writ compels the performance of a duty required by law within specificity. "A writ of mandamus is appropriate where the right claimed is just and established by positive law and the duty required to be performed is clear and specific, and there is no other adequate remedy." See Kendall v. United States, 37 US 524, 614 (1838). Furthermore,as announced in Ex Parte Rowland, 104 US 604, 612 (1888), "More, cannot be required of a public officer by mandamus than the law has made it his duty to do. The object of the writ is to enforce the performance of an existing duty. "Where the proper construction of a statute is clear, the duty of an officer called upon to act under it...may be compelled by mandamus." See Miguel v McCarl, 291 US 442, 452 (1934).

Nothing less is required as to satisfy the statutory written expressed language otherwise. "Where the statute's language is plain the sole function of the court is to enforce it, according to its term. See Caminetti v. United States, 242 U.S. 470,485 (1917).

SUPREME COURT TO ISSUE MANDAMUS

To a further extent mandamus is appropriate where a court having jurisdiction over a controversy or case brought in proper form and substance it must exercise its jurisdiction and judicial powers as prescribed by law. It is settled law and has been long recognized by the Supreme Court that "Applications for a mandamus are warranted where the subordinate court having jurisdiction, refuses to hear and decide the controversy or where such a court refuse to enter judgment or decree in a case. See Ex Parte Newman, 81 US 152, 156 (1871); and "The writ of mandamus has traditionally been used in the federal court only to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is, its duty to do so." See Allied Chemical Corps v Daiflon, 449 US 33, 35 (1980).

The Supreme Court decision handed down in Chisholm v Georgia, 2 US 419 (1793), the court held that if the respondent 'either fails to appear or answer an order to show cause when directed would result in a default judgment for failing to comply with established law. In Johnson v Rodgers 917 F2d 1283, the Court of Appeals for the Tenth Circuit by mandamus directed the respondent a judge to hear and decide a petition for writ of habeas corpus which remained dormant for an unreasonable amount of time 'fourteen months without any actions taken. This court held that "petitioner had established a clear and indisputable right was shown and petitioner was without any alternative remedy.

FEDERAL COURT'S AUTHORITY TO GRANT HABEAS CORPUS

In this respect Section 28 U.S.C. 2241 and 28 U.S.C. 2254, authorizes federal courts to grant writs of habeas corpus which is controlled by statutes. "If the law confers the power to render a judgment or decree than the court has jurisdiction." See Rhode Island v. Massachusetts, 37 US 657, 718 (1838).

In Preiser v. Rodriguez, 411 US 475, 484 (1973), the court made clear that, " It is clear, not only for the language of 2241 and 2254, but also from the common-law history of the writ, that essence of habeas corpus is an attack by a person in custody upon the legality of that custody and that the traditional function of the writ is to secure release from illegal custody." Under federal law the writ of habeas corpus shall be disposed of as set forth pursuant to 28 U.S.C. 2243 as a matter of law. " Federal courts are authorized under 28 U.S.C. 2243, to dispose of the matter as law and justice require." See Hilton v. Brunskill, 481 US 770, 775 (1987).

Section 28 U.S.C. 2243 provides, "A court, justice or judge entertaining an application for a writ of habeas corpus shall set forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted...The writ or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days... The person to whom the writ of order is directed shall make a return certifying the true cause of the detention.

It is clear and understood that section 28 U.S.C. 2243, instructs the court to treat the writ in one of two ways, that is, either it may grant the writ or direct the respondent to show cause for not granting it.

Courts of the United States are mandated to hear and decide controversies and cases as a matter of law. It is settled law that "It is emphatically the province and duty of the judicial department to say what the law is." See Marbury v. Madison, 5 US 137 (1803). Petitioner is entitled to have redress in Courts of the United States as it is his guaranteed constitutional right by the First Amendment to the United States Constitution.

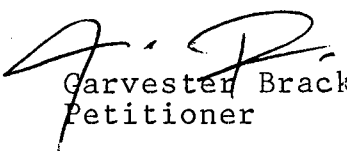
Prior history reveal the petitioner filed an application for a writ of habeas corpus in the United States Court of Appeals for the Eighth Circuit, Bracken v. State of Missouri, 18-2571, (2018), after the State highest court declined to exercise its jurisdiction that it had to decide a federal question of law which involved a court's jurisdiction and the constitutionality of his commitment. Bracken v. State of Missouri, SC93689, (2013), all of which refused to exercise their jurisdiction which they had to determine a constitutional question of law , by passing upon a question concerning of a court and to inquire into the validity of the commitment. There is no question that petitioner has been deprived and denied of his constitutional right to have the opportunity to redress as well as deprived and denied adequate remedy under the usage of law warranting this Court to issue mandamus in the interest of justice.

As the Supreme Court has declared that " Applications for a mandamus are warranted where the subordinate court having jurisdiction refuses to hear and decide a controversy or where such a court, refuses to enter judgment or decree in a case." See Ex Parte Newman, 81 US 152, 156 (1871).

CONCLUSION

For the reasons stated and by the Court's refusal to perform its lawful duty as prescribed by law in accordance with Section 28 U.S.C. 2243 and relevant statutes in the disposition of petitioner's habeas corpus application and predisposing of his application without complying with its governing statutes and without reaching the merits is inconsistent with as well as contrary to established law and the Constitution of the United States. Mandamus should be granted.

Respectfully Submitted



Garvester Bracken
Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a copy f the foregoing was mailed from the Missouri Eastern Correctional Center, 18701 Old Highway 66, Pacific Missouri 63069, to:

United States Attorney General Office
Department of Justice
950 Pennsylvania Ave Rm 5616
Washington D.C. 20543-0001

Clerk of the Supreme Court
One First Street N. E.
Washington D. C. 20543-0001

Garvester Bracken
Petitioner

State of Missouri

County of Franklin

Subscribed and sworn before me this 29 day of March 2019.

My Commission Expires 3-8-20

Notary Public

THERESA L. HILL
Notary Public - Notary Seal
State of Missouri
Commissioned for Jefferson County
My Commission Expires: March 08, 2020
Commission Number: 16740516

APPENDIX 44

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 18-2571

Garvester Bracken

Petitioner - Appellant

v.

Jeffery Norman

Respondent - Appellee

Appeal from U.S. District Court for the Eastern District of Missouri - St. Louis
(4:18-cv-00828-JAR)

JUDGMENT

Before SHEPHERD, WOLLMAN and GRASZ, Circuit Judges.

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed.

January 02, 2019

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

APPENDIX 1

APPENDIX 45

General Docket
Eighth Circuit Court of Appeals

Court of Appeals Docket #: 18-2571 **Docketed:** 07/25/2018
Nature of Suit: 3530 Habeas Corpus
Garvester Bracken v. Jeffery Norman
Appeal From: U.S. District Court for the Eastern District of Missouri - St. Louis
Fee Status: In Forma Pauperis

Case Type Information:
1) Prisoner
2) State
3) Habeas Corpus

Originating Court Information:
District: 0865-4 : 4:18-cv-00828-JAR
Trial Judge: John A. Ross, U.S. District Judge
Date Filed: 05/25/2018

Date Order/Judgment:	Date NOA Filed:	Date Rec'd COA:
06/27/2018	07/23/2018	07/24/2018

Prior Cases:
None

Current Cases:
None

Garvester Bracken (State Prisoner: 1200097) Petitioner - Appellant	Garvester Bracken [NTC Pro Se] SOUTH CENTRAL CORRECTIONAL CENTER 255 W. Highway 32 Licking, MO 65542-9069
v.	
Jeffery Norman Respondent - Appellee	Stephen David Hawke, Assistant Attorney General Direct: 573-751-8432 [COR NTC Asst. Atty General] ATTORNEY GENERAL'S OFFICE 221 W. High Street Jefferson City, MO 65101

Garvester Bracken

Petitioner - Appellant

APPENDIX 2

v.

APPENDIX 46

Jeffery Norman

TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE
PART VI. PARTICULAR PROCEEDINGS
CHAPTER 153. HABEAS CORPUS

Go to the United States Code Service Archive Directory

28 USCS § 2243

§ 2243. Issuance of writ; return; hearing; decision

A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.

The writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.

The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.

When the writ or order is returned a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed.

Unless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained.

The applicant or the person detained may, under oath, deny any of the facts set forth in the return or allege any other material facts.

The return and all suggestions made against it may be amended, by leave of court, before or after being filed.

The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.

History:

(June 25, 1948, ch 646, 62 Stat. 965.)

History; Ancillary Laws and Directives:

Prior law and revision

APPENDIX 3
APPENDIX 47

Based on title 28, U.S.C., 1940 ed., §§ 455, 456, 457, 458, 459, 460, and 461 (R.S. §§ 755-761).

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

GARVESTER BRACKEN
_____ — PETITIONER
(Your Name)

UNITED STATES COURT OF APPEALS
SHEPHERD, JUDGE
WOLLMAN, JUDGE
GRASZ, JUDGE
VS.

_____ — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis.*

Please check the appropriate boxes:

☒ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

STATE SUPREME COURT STATE COURT OF APPEALS STATE CIRCUIT COURT

UNITED STATES DISTRICT COURT UNITED STATES SUPREME COURT

☐ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

☐ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☐ The appointment was made under the following provision of law: _____

_____, or

☐ a copy of the order of appointment is appended.

_____
(Signature)

APPENDIX 4

AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

I, GARVESTER BRACKEN, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	**Average monthly amount during the past 12 months**		**Amount expected next month**	
	You	Spouse	You	Spouse
Employment	$ 0	$ 0	$ 0	$ 0
Self-employment	$ 0	$ 0	$ 0	$ 0
Income from real property (such as rental income)	$ 0	$ 0	$ 0	$ 0
Interest and dividends	$ 0	$ 0	$ 0	$ 0
Gifts	$ 0	$ 0	$ 0	$ 0
Alimony	$ 0	$ 0	$ 0	$ 0
Child Support	$ 0	$ 0	$ 0	$ 0
Retirement (such as social security, pensions, annuities, insurance)	$ 0	$ 0	$ 0	$ 0
Disability (such as social security, insurance payments)	$ 0	$ 0	$ 0	$ 0
Unemployment payments	$ 0	$ 0	$ 0	$ 0
Public-assistance (such as welfare)	$ 0	$ 0	$ 0	$ 0
Other (specify): _____	$ 0	$ 0	$ 0	$ 0
Total monthly income:	$ 0	$ 0	$ 0	$ 0

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
NONE			
			$
			$
			$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
NONE			
			$
			$
			$

4. How much cash do you and your spouse have? $_____
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
NONE			
		$	$
		$	$
		$	$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home NOT APPLICABLE
Value _____

☐ Other real estate
Value _____

☐ Motor Vehicle #1
Year, make & model NOT APPLICABLE
Value _____

☐ Motor Vehicle #2
Year, make & model NOT APPLICABLE
Value _____

☐ Other assets
Description NONE
Value _____

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
NONE	$_____	$_____
_____	$_____	$_____
_____	$_____	$_____

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
NONE	_____	_____
_____	_____	_____
_____	_____	_____

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

NOT APPLICABLE

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home) Are real estate taxes included? ☐ Yes ☐ No Is property insurance included? ☐ Yes ☐ No	$ 0	$ 0
Utilities (electricity, heating fuel, water, sewer, and telephone)	$ 0	$ 0
Home maintenance (repairs and upkeep)	$ 0	$ 0
Food	$ 0	$ 0
Clothing	$ 0	$ 0
Laundry and dry-cleaning	$ 0	$ 0
Medical and dental expenses	$ 0	$ 0

	You	Your spouse
Transportation (not including motor vehicle payments)	$ 0	$ 0
Recreation, entertainment, newspapers, magazines, etc.	$ 0	$ 0
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	$ 0	$ 0
Life	$ 0	$ 0
Health	$ 0	$ 0
Motor Vehicle	$ 0	$ 0
Other: _____	$ 0	$ 0
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	$ 0	$ 0
Installment payments		
Motor Vehicle	$ 0	$ 0
Credit card(s)	$ 0	$ 0
Department store(s)	$ 0	$ 0
Other: _____	$ 0	$ 0
Alimony, maintenance, and support paid to others	$ 0	$ 0
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$ 0	$ 0
Other (specify): _____	$ 0	$ 0
Total monthly expenses:	$ 0	$ 0

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☒ No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☒ No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:
NOT APPLICABLE

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☒ No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:
NOT APPLICABLE

12. Provide any other information that will help explain why you cannot pay the costs of this case.
NOT APPLICABLE

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: APRIL 22, 2019

APPENDIX 54

APPENDIX 9

(Signature)

Supreme Court of the United States

Garvester Bracken
(Petitioner)

v. No. 18-9107

(Respondent)

To Solicitor General of the United States
Room 5614, Department of Justice, 950
Pennsylvania Ave., N.W. Washington
DC 20530-0001 Counsel for Respondent:

NOTICE IS HEREBY GIVEN that a petition for writ of mandamus in the above-entitled case was filed in the Supreme Court of the United States on April 25, 2019, and placed on the docket May 2, 2019.

Beginning November 13, 2017, parties represented by counsel must submit filings through the Supreme Court's electronic filing system. Paper remains the official form of filing, and electronic filing is in addition to the existing paper submission requirement. Attorneys must register for the system in advance, and the registration process may take several days. Further information about the system can be found at https://www.supremecourt.gov/filingandrules/electronicfiling.aspx.

Mr. Garvester Bracken
Missouri Eastern Correctional Center
18701 Old Highway 66
Pacific, MO 63069

NOTE: This notice is for notification purposes only, and neither the original nor a copy should be filed in the Supreme Court.

WAIVER

Supreme Court of the United States

No. 18-9107
The Honorable Judge
Shepherd, Wollam, Grasz

Garvester Bracken (Petitioner) v. _____ (Respondent)

I DO NOT INTEND TO FILE A RESPONSE to the petition for a writ of certiorari unless one is requested by the Court.

Please check the appropriate boxes:

☐ Please enter my appearance as Counsel of Record for all respondents.

☐ There are multiple respondents, and I do not represent all respondents. Please enter my appearance as Counsel of Record for the following respondent(s):

_____

_____

☐ I am a member of the Bar of the Supreme Court of the United States.

☐ I am not presently a member of the Bar of this Court. Should a response be requested, the response will be filed by a Bar member.

Signature _____

Date: _____

(Type or print) Name _____
☐ Mr. ☐ Ms. ☐ Mrs. ☐ Miss

Firm _____

Address _____

City & State _____ Zip _____

Phone _____

SEND A COPY OF THIS FORM TO PETITIONER'S COUNSEL OR TO PETITIONER IF *PRO SE*. PLEASE INDICATE BELOW THE NAME(S) OF THE RECIPIENT(S) OF A COPY OF THIS FORM. NO ADDITIONAL CERTIFICATE OF SERVICE IS REQUIRED.

Cc:

~~38~~ 56

APPENDIX 56

Obtain status of case on the docket. By phone at 202-479-3034 or via the internet at http://www.supremecourtus.gov. Have the Supreme Court docket number available.

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

October 7, 2019

Mr. Garvester Bracken
Prisoner ID #1200097
Missouri Eastern Correctional Center
18701 Old Highway 66
Pacific, MO 63069

Re: In Re Garvester Bracken
No. 18-9107

Dear Mr. Bracken:

The Court today entered the following order in the above-entitled case:

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of mandamus is dismissed. See Rule 39.8.

Sincerely,

Scott S. Harris

Scott S. Harris, Clerk

IN THE SUPREME COURT OF THE UNITED STATES

GARVESTER BRACKEN
Petitioner,

v

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
Respondent.

Case No: 18-9107

ON PETITION FOR REHEARING TO THE
SUPREME COURT OF THE UNITED STATES

FOR UNITED STATES COURT OF APPEALS
EIGHTH CIRCUIT

GARVESTER BRACKEN
MISSOURI EASTERN CORRECTIONAL CENTER
18701 OLD HIGHWAY 66
PACIFIC MISSOURI 63069
(636) 257-3322

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JURISDICTIONAL STATEMENT

This court has jurisdiction to grant and issue this petition for rehearing pursuant to Article III of the United States Constitution, 28 U.S.C. 1651 and Rule 44.

c APPENDIX 61

CERTIFICATE OF GOOD FAITH

I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented and adjudicated.

APPENDIX 62

STATEMENT OF CASE

The right to have redress in courts incorporates the right to petition "in forma pauperis" as an indigent person. Applying the "three strike rule" regarding state petitioners being granted "in forma pauperis" status would foreclose a state petitioner's access to the federal courts as would violate the First and Fourteenth Amendments. For example, if a state circuit court, court of appeals, and supreme court grants petitioner the right to proceed in forma pauperis the three strike rule would end all access to have a state action reviewed by a federal court, even if a federal question of law was necessary to decide a case or controversy in dispute, in such case would be repugnant to the Constitution and laws of the United States.

Case in point, the Supreme Court declared that "The right to access to courts for redress of wrongs is an aspect of the First Amendment right to petition...the petition clause protects the right of individuals to appeal to courts...for resolution of legal disputes." See Borough of Duryea v. Guarnieri, 564 U.S. 131 (2010).

APPENDIX 63

ARGUMENT

As a matter of law it must be first noted that a writ of mandamus to this Supreme Court of the United States does not ask the Court to adjudicate the merits of a pleading but rather ask the Court to exercise within its supervisory capacity over lower courts when called for. In the case Dickerson v. United States the Court made clear that "the Supreme Court of the United States has supervisory authority over the federal courts. See Dickerson, 530 U.S. 428, 437 (2000).

As is here the court deciding to deny in forma pauperis the basis for which the petition for writ of mandamus was dismissed without cause is contrary to and would be in violation of the Constitution and the laws of the United States. "A violation is not simply an act or conduct, it is an act or conduct that is contrary to law." See Richardson v. United States, 526 U.S. 813, 818 (1999)

GROUND ONE

Section 28 U.S.C. 1915(g) states "in no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has on three or more occasions, while detained in any facility brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted."

Case in point it is settled law as announced in the case of Duke v. Turner, 204 U.S. 623, 631 (1907) that "a proceeding in mandamus is not a civil action," therefore making the requirements under section 28 U.S.C. 1915(g) inoperable in this instance. To

another point, the Courts below which granted in forma pauperis did not give an opinion and does not give rise or cause to draw inference on the grounds of frivolousness or maliciousness and should not be misconstrued otherwise if not stated in their conclusions therefore it cannot be considered as a "strike" against petitioner as a matter of law. The Supreme Court further announced that "In 1892, Congress enacted the informa pauperis (IFP) statute, now codified at 28 U.S.C. 1915 to ensure that indigent litigants have meaningful access to the federal courts. See Bruce v Samuels, 136 S. Ct. 627, 630 (2016); "that statute is intended to guarantee that no citizen shall be denied an opportunity to commence, prosecute, or defend an action, civil or criminal in any Court of the United States solely because his poverty makes it impossible for him to pay or secure the cost. See Adkins v Dupont de Nemours & Co., 335 U.S. 331, 342 (1948).

The Court's conclusion reveals no plausible explanation or legal reasoning for its decision. In the ordinary course of legal proceedings it is the duty of the Court to explain its decision in order to bind the parties subject to be reviewed by a higher courts. Merely claiming that frivolousness or maliciousness exits in itself is not enough it must be a prima facie showing on the record spoken of to a legal certainty which is not the case here. Finally, it was made clear that "mandamus is a remedy to compel any person, corporation, public functionary, or tribunal to perform a duty required by law, where the duty sought to be enforced is clear and indisputable, and the party seeking relief has no other legal remedy." See Riggs v. Johnson, 173 U.S. 166, 193 (1867).

GROUND TWO

The court rejected granting "in forma pauperis" on a petition for writ of mandamus citing Rule 39.8, frivolous or malicious grounds for reaching its decision, however, did not state any content found to be supportive for its decision. See Rule 39.8.

First, on the ground that the writ of mandamus is frivolous fails because the facts averred in the petition are fully supported on the face of the record and documentary evidence appended to which the law is to be applied to as briefed. There is no evidence that the writ of mandamus filed contained any textual or written language rising to the level of frivolousness. "The frivolousness standard authorizing sua sponte dismissal of an "in forma pauperis complaint" only if the petitioner cannot make any rational argument in law or fact which would entitle him or her to relief." See Neitzke v. Williams 490 U.S. 319, 323 (1989).

As to the first point the frivolous standard has not been met and petitioner should be allowed to proceed "in forma pauperis" status as a matter of law.

Second, on the ground that the writ of mandamus contained within malicious material fails because the writ is based on constitutional grounds which constitutes a deprivation of a legal right. The court points to no part of the writ of mandamus filed in support of its contentions made warranting dismissal.

CONCLUSION

It is therefore appropriate for this court to grant "in forma pauperis" status and issue mandamus in the interest of justice.

APPENDIX 66

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed from the Missouri Eastern Correctional Center (Mailroom) 18701 Old Highway 66 Pacific Missouri 63069 to:

Supreme Court of the United States
Office of the Clerk
Washington DC 20543-0001

State of Missouri

A. R.
Bracken, Garvester

County of

Subscribed and sworn to me this 31 day of October 2019.

My Commission Expires: _____

KEITH A. WATSON
Notary Public - Notary Seal
State of Missouri
Commissioned for St. Charles County
My Commission Expires: May 16, 2020
Commission Number: 04379355

K. A. Watson
Notary Public

State of Missouri
County of St. Peters

This record was signed before mon on October 31st 2019.

APPENDIX 67

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed from the Missouri Eastern Correctional Center 18701 Old Highway 66, Pacific Missouri 63069.

United States Attorney General Office
Department of Justice
905 Pennsylvania Ave Rm 5616
Washington D.C. 20543-0001

Clerk of the Supreme Court
One First Street N.E.
Washington D.C. 20543-0001

Garvester Bracken

State of Missouri

County of

Subscribed and sworn before me this 27 day of November 2019.

My Commission Expires: 6-27-23

Notary Public

Signed 11-27-19

JACOB BAKER
Notary Public - Notary Seal
State of Missouri
Commissioned for St. Louis County
My Commission Expires: June 27, 2023
Commission Number: 19754114

APPENDIX 68