NO. 20-5046
IN THE
UNITED STATES SUPREME COURT
OCTOBER TERM, 2020

IN RE: DANIEL H. JONES,
Petitioner

PETITION FOR EXTRAORDINARY WRIT OF PROHIBITION AND/OR WRIT OF MANDAMUS TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT AT CINCINNATI , OHIO No. 18-5601

APPLICATION FOR SINGLE JUSTICE REVIEW

BEFORE; ***Associate Justice Sonia Sotomayor*** *of the United State Supreme Court and Circuit Justice for the U.S.Sixth Circuit for the State of Ohio: [Date of denial in this Court, October 5, 2020]: Order attached. Appendix, "A" [doc.1] Sup.Ct. R.26.1(4)*

Come the Petitioner, Daniel H. Jones, pro se, pursuant to the Rules of the United State Supreme Court, Rule 22.3, to state as follows;

JURISDICTIONAL QUESTION
FOR JUSTICE'S REVIEW

1.] *Petitioner submits for the Honorable Justice Sotomayor's consideration, amplified issue(s} of Constitutional-Laws, e.g. the 5th,8th and 14th*

*Amendment where "this Court", See Appendix, [doc.1] as well as the lower Appellate Courts; Appendix "A" [docs. 4-8], have instituted, as well as affirmed an unreasonable standard of law such as "adopted" in Martin v. District of Columbia Court of Appeals; See Appendix," A [doc.1]" and contrary to Congressional Legislation as enacted under Title 28 USC § 1915(a)(1)(2) &**(4);** Appendix "A" [doc.2 & 2(a)]], creating the **"Pauperis Act",** formerly upheld in, **In Re:McDonald;** in providing the petitioner thoroughfare to be heard in this forum, however, affirming the lower court's conclusions dismissing his [civil] matter under a [non] criminal pursuit: **See 42 USC § 1983,** which distinguishes this petitioner's attempts from both the McDonald and Martin dispositions in having their/his (petitioner) issues heard "on the merit", See aalso Appendix "A" [doc.5], and consistent with this forum's Rule 24.1(h)(i).*

***2.]** Whereas, by other such Acts - State and U.S. - this petitioner is allowed to pursue "state-entities" for Injunctive, Declaratory and Monetary relief in [State] Courts, when, as here, having no other form - or courts - in which to do so. **See also 18 USC § 242, Ky. Constitution § 231** with Appendix "B" [doc. 2-4] as well as this Court's Rule 20.1. For as long practiced In the State of Kentucky, the wisdom of a Rule - or Statute - is a matter for determination by the General Assembly "alone" and not by the courts, and, in which a "binding judgment" concluding the controversy may be entered, Veith v. City of Louisville,Ky.355 S.W.2d. 295 (Ky.1962)*

***3.]** That, premised upon this material evidence, both the U.S. District Court for the (London division) eastern district of Kentucky, as well as the U.S*

Sixth Circuit for the state of Ohio See Appendix "A" [doc.7], has callously erred in affirming the lower ccourts conclusions; Appendix "A" [doc] Specifically where all U.S. Appellate Circuits are vested with ***"unlimited power"*** *in restoring the criminally accused to their right to be properly judged under the fifth amendment to the U.S. Constitution, being of itself an encroachment as previously indicated under Tenn. Constitution [Art. I & II, §§ 1 and 2.], to be interpreted in tandem with Ky. Const. §27; See also Petitioner's Original Appendices, [doc.1].with F.R.Civ.P. 62 (g) (1), additionally, review is necessary–in this court – where the state Appellate courts have applied an alarming [mis] application of laws regulating "its own Legislation" governing out-of-state inmates whose crimes are committed in this state (Kentucky); See Appendix, "A" [doc. 4, 4a,4b, and 5], having total jurisdiction an all of which have need to be settled by "this Court", 28 USC §2101(e). Other such facts dispositive to this application may be found at pp.16-20 [Petition for Extraordinary Writ of Prohibition/Mandamus] with supporting memorandum of authorities and attached appendices.*

DECLARATORY AND INJUNCTIVE QUESTION FOR JUSTICE'S REVIEW

4.] *For the Hon. Justice Sotomayor's review and consideration, this petitioner's indicia clearly shows a "remedial-cure" for the relief he now seeks; See Appendix "B" [ddoc.1],*

5.] *Specifically, the State of Kentucky provides "its own" forums for those injurious omissions callously committed by the state, and, against this petitioner's person and constitutional right to due process; See Appendix, "B" [doc. 2,3,&4], which was plainly stated by the U.S.District Court Judge for the*

London Division –Eastern District of Kentucky; See also Appendix, "B" [doc.6 p.3],however, denied this petitioner governing his Governmental Tort Liability Action – GTLA.

6.] No abuse to this system of process has been committed by this petitioner "at anytime" where he has diligently pursued his rights for more than forty-five (45) years through these courts and never, "at any point in time", being heard upon the merits of his claims, and, as thoroughly demonstrated on appeal; See Appendix,"B" [doc.5].

Sup. Ct.Rule 24.1(h)(i);

MERITORIOUS QUESTION OF LAW FOR JUSTICE'S REVIE

7.] Also being requested to be reviewed and considered by this Justice, is the long overlooked ***"smoking-gun evidence"*** *,Appendix, "C [doc.2] which "could have" not only negated the petitioner's guilt, but exonerated him as well where the method-of-examination has been accepted in all courts, Appendix,"C"[doc.3].*

8.] Because of this unconstitutional conviction (by jury trial) this petitioner has served twenty-two and one-half years on a sentence of life without parole; Appendix,"C" [ddoc.1], for a crime that clearly demonstrates his innocence, Appendix, "C" [doc.2]., simultaneously revealing the "State's awareness" as to its agents (Det. Castle & Lab Examiner – Ayers) gross negligence in handling and retrieving this evidence either for the state's prosecution or petitioner's convenience for exoneration; Appendix,"C" [doc.3].

9.] Nonetheless and because of this deliberate indifference on the part of the Commonwealth and its agents,Appendix,"B" [doc.2 & 3], this petitioner has

suffered "great-losses" ***e.g. footnoted at p.18 [Petition for Writ of Prohibition/Mandamus].***

10.] *In summarizing this petitioner's "attempts", the information now submitted will also clearly demonstrate the state of Tennessee's "encroachment" of both the U.S. and State Constitutions (Ky./Tenn.) restricting this Petitioner to its sex offender registry (s.o.r.), that is to point out – Tennessee, where – first – there exist no such stipulation, either by legislation or agreed-court- order placing this petitioner on either parole or S.O.R.(Kentucky) See in particular,* ***Appendix "C" [doc. 5,6 & 7].***

Secondly, therefore, and In this perspective, it would be a violation of Tennessee's Constitution, [Art. 1 &2, §§ I & II] which usurps the Separation of Powers Doctrine by placing this petitioner on ***"its S.O.R."****See Appendix, "C" [doc. 9 & 10]. Thirdly, an error as well for the U.S. 6th Circuit to affirm the lower courts judgment(s) in this matter, and fourth, where neither then nor currently does either Kentucky enactments require this petitioner to liable to either Tennessee's or its S.O.R.See Appendix, "C" [doc. 4, 5, and 7], more importantly, as can be distinguished by the court's conclusions in Doe v. Gwyn,, See Appendix,"C" [doc.4] . . . .Here, John Doe argues his complaint against Tennessee's Expo Facto provision as being in violation of his right to be excluded from the S.O.R., however and totally contrary to this petitioner's position, which is a claim and violation of Tennessee's Separation of Doctrines Act encroaching upon Kentucky's legislation and jurisdiction prohibiting the use of their S.O.R's that makes the difference in application., now requiring this*

Supreme Court intervention in aiding the lower Sixth Circuit in countermanding its error and decision affirming the judgments of the lower courts; Appendix, "C" odoc.8] see also [doc. 9 & 10]; Appendix,"C". Additionally, that this application is forwarded in good-faith and "not "for delay.

Respectfully submitted,

Daniel H. Jones, Petitioner, pro se
Turney Center Industrial Complex
1499 R.W. Moore Memorial Hwy.
Only, Tennessee. 37140-4050.

SWORN DECLARATION OF OATH

I declare under penalty of perjury that the foregoing is true and correct. And executed on this 21st day of October 2020.

Daniel H. Jones, Petitioner, pro se

CERTIFICATION

I do hereby certify, that, a true and correct copy of the petitioner's Application for Single Justice's Review was placed in this Institution's mail box on this 21st, day of October, 2020, to the clerk of the United States Supreme Court, located at 1 First Street, N.E. Washington, D.C. 20543 by depositing it in the U.S.Mail, postage to the Clerk, Scott S. Harris, and to the Tennessee State Attorney General, Herbert H. Slatery,III, located at the Office of the Attorney General, 301 6th Ave.North, P.O. Box 20207, Nashville, Tennessee. 37202-020.

Respectfully submitted

Daniel H. Jones, Petitioner, pro se
Turney Center Industrial Complex
1499 R.W.Moore Memorial Hwy.
Only, Tennessee. 37140-4050

NO. 20-5046
IN THE
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IN RE: DANIEL H. JONES,
Petitioner

PETITION FOR EXTRAORDINARY WRIT OF PROHIBITION AND/OR WRIT OF MANDAMUS TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT AT CINCINNATI , OHIO No. 18-5601

JURISDICTIONAL QUESTION FOR REVIEW

APPENDIX-A:

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 5, 2020

Mr. Daniel Henderson Jones
Prisoner ID 443638
Turney Center Industrial Complex
1499 R.W. Moore Memorial Highway
Only, TN 37140

Re: In Re Daniel H. Jones
No. 20-5045

Dear Mr. Jones:

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 and/or prohibition is dismissed. See Rule 39.8. As the petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

Sincerely,

Scott S. Harris

Scott S. Harris, Clerk

APPENDIX-12 DOC. 1

Effective: April 26, 1996

28 U.S.C.A. § 1915

§ 1915. Proceedings in forma pauperis

Currentness

(a)(1) Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

(2) A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.

(3) An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b)(1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of--

(A) the average monthly deposits to the prisoner's account; or

(B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

(2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds $10 until the filing fees are paid.

(3) In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.

(4) In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

Appendix - K
Doc. 2

Effective: October 19, 1996

42 U.S.C.A. § 1983

§ 1983. Civil action for deprivation of rights

Currentness

<Notes of Decisions for 42 USCA § 1983 are displayed in six separate documents. Notes of Decisions for subdivisions I to IX are contained in this document. For additional Notes of Decisions, see 42 § 1983, ante.>

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

CREDIT(S)

(R.S. § 1979; Pub.L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284; Pub.L. 104-317, Title III, § 309(c), Oct. 19, 1996, 110 Stat. 3853.)

Appendix-17
Doc. 2-A

WESTLAW

§ 1343. Civil rights and elective franchise
United States Code Annotated Title 28. Judiciary and Judicial Procedure (Approx. 2 pages)

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part IV. Jurisdiction and Venue (Refs & Annos)
Chapter 85. District Courts; Jurisdiction (Refs & Annos)

28 U.S.C.A. § 1343

§ 1343. Civil rights and elective franchise

Currentness

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

(b) For purposes of this section--

(1) the District of Columbia shall be considered to be a State; and

(2) any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 932; Sept. 3, 1954, c. 1263, § 42, 68 Stat. 1241; Pub.L. 85-315, Part III, § 121, Sept. 9, 1957, 71 Stat. 637; Pub.L. 96-170, § 2, Dec. 29, 1979, 93 Stat. 1284.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1948 Acts. Based on Title 28, U.S.C., 1940 ed., § 41(12), (13), and (14) (Mar. 3, 1911, c. 231, § 24, pars. 12, 13, 14, 36 Stat. 1092).
Words "civil action" were substituted for "suits," "suits at law or in equity" in view of Rule 2 of the Federal Rules of Civil Procedure.
Numerous changes were made in arrangement and phraseology.
1954 Acts. Senate Report No. 2498, see 1954 U.S. Code Cong. and Adm. News, p. 3991.
1957 Acts. House Report No. 291, see 1957 U.S. Code Cong. and Adm. News, p. 1966.
1979 Acts. House Report No. 96-548, see 1979 U.S. Code Cong. and Adm. News, p. 2609.

Amendments

1979 Amendments. Subsec. (a). Pub.L. 96-170, § 2(1), designated existing provisions as subsec. (a).
Subsec. (b). Pub.L. 96-170, § 2(2), added subsec. (b).
1957 Amendments. Catchline. Pub.L. 85-315 inserted "and elective franchise".
Par. (4). Pub.L. 85-315 added par. (4).
1954 Amendments. Pars. (1), (2). Act Sept. 3, 1954 substituted "section 1985 of Title 42" for "section 47 of Title 8" in pars. (1) and (2).

Appendix - 17
DOC. 2B

WESTLAW

Ky Const § 115 Right of appeal; procedure
Baldwin's Kentucky Revised Statutes Annotated Constitution of Kentucky *(Approx. 2 pages)*

Baldwin's Kentucky Revised Statutes Annotated
Constitution of Kentucky
the Judicial Department
Appellate Policy; Rule-Making Power

KY Const § 115

Ky Const § 115 Right of appeal; procedure

Currentness

In all cases, civil and criminal, there shall be allowed as a matter of right at least one appeal to another court, except that the Commonwealth may not appeal from a judgment of acquittal in a criminal case, other than for the purpose of securing a certification of law, and the General Assembly may prescribe that there shall be no appeal from that portion of a judgment dissolving a marriage. Procedural rules shall provide for expeditious and inexpensive appeals. Appeals shall be upon the record and not by trial de novo.

Credits

HISTORY: 1974 c 84, § 1, adopted eff. 1-1-76

Editors' Notes

HISTORICAL AND STATUTORY NOTES

Note: Former Ky Const § 115 repeal and reenactment proposed by 1974 c 84, § 1, adopted eff. 1-1-76; adopted eff. 9-28-1891.

Notes of Decisions (71)

Const § 115, KY Const § 115
Current through the end of the 2017 regular session

End of Document

(2.)

COMMONWEALTH OF KENTUCKY
26TH JUDICIAL DISTRICT
HARLAN CIRCUIT COURT

RE: F-1611-A

ENTERED IN MY OFFICE THIS
30 DAY OF Aug 17
WENDY FLANARY, CLERK BY: ____ D.C.

DANIEL H. JONES, PLAINTIFF,

VS.

COMMONWEALTH OF KENTUCKY, DEFENDANT

SUMMARY ORDER OVERRULING PLAINTIFF'S MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

KRS 453.190 only allows "a poor person residing in this state" to proceed in forma pauperis. Plaintiff is a state inmate in Tennessee; accordingly, his motion is **OVERRULED,** and the Clerk is directed to return the submitted materials to him with filing.

This 29 day of August 2017.

Kent Hendrickson, Judge
Harlan Circuit Court

Distribution:

Daniel H. Jones #443638 [✓]
Turney Center Industrial Complex
1499 R.W. Moore HWY
Only, Tennessee 37140-4050

APPENDIX-17
Doc. 4

HARLAN CIRCUIT COURT
NO. F-1611A

COMMONWEALTH OF KENTUCKY

VS: INDICTMENT

KRS _____
for

_____

_____

_____

_____

_____
Defendants

Presented in Open Court by the Foreman of the Grand Jury in the Presence of the Grand Jury, this the 7 day of Mar 19 75

Mary Lou Coldiron
Clerk, Harlan Circuit Court.

Bail is fixed upon this indictment in the amount of $ 10,000.00

Warrant/Summons to be issued upon this indictment.

_____
Judge, Harlan Circuit Court.

Appendix A-12
Doc. 479

HARLAN CIRCUIT COURT

CRIMINAL ACTION NO. F/M. F-1611A

MARCH Term 19 75

COMMONWEALTH OF KENTUCKY..... Plaintiff

VS: INDICTMENT, KRS 435.090 ; RAPE

DANIEL HENDERSON JONES ..... Defendants

THE GRAND JURY CHARGES:

On or about the 27th day of December, 1974, in Harlan County, Kentucky, near Lynch, the defendant, DANIEL HENDERSON JONES, raped SHARON DIANE HATFIELD, a female over the age of twelve, contrary to the provisions of KRS 435.090.

Appendix-R
Doc. 46

AGAINST THE PEACE AND DIGNITY OF THE COMMONWEALTH OF KENTUCKY.

A TRUE BILL

Edward M Fowler
Foreman.

12-0

WITNESSES:

Name	Address
Det. Danny Castle, KSP	
Sharon Diane Hatfield, [redacted]	Benham, Kentucky

Commonwealth Of Kentucky

Court of Appeals

NO. 2017-CI-001664-MR

DANIEL H. JONES — APPELLANT

v.

APPEAL FROM HARLAN CIRCUIT COURT
ACTION NO. 17-CI-00418

DON BOTTOM, WARDEN — APPELLEE

** ** ** ** **

ORDER

BEFORE: ACREE, NICKELL AND THOMPSON, JUDGES.

On August 17, 2017, the Harlan Circuit Court entered an order which denied appellant's motion to proceed *in forma pauperis* on his petition for declaration of rights because appellant is a state inmate in Tennessee and therefore is not "a poor person residing in this state" pursuant to KRS 453.190.

In reviewing a decision of the circuit court regarding an inmate's motion to proceed *in forma pauperis*, this Court is mindful that the decision to grant or deny such a motion is within the discretion of the trial court and that we may not reverse that decision in the absence of clear error. CR 52.01; *Bush by Bush v. O'Daniel*, 700 S.W.2d 402 (Ky. 1985).

In the matter before us, the Harlan Circuit Court properly considered appellant's motion to proceed *in forma pauperis*. We find no error.

Appendix-A

Doc. 5

Having considered the record, the applicable law and being otherwise sufficiently advised, this Court ORDERS that the Harlan Circuit Court is hereby AFFIRMED.

ENTERED: 12/15/17

JUDGE, COURT OF APPEALS

NICKELL, JUDGE, CONCURS.

THOMPSON, JUDGE, DISSENTS. I would reverse the order of the Harlan Circuit Court as there is no difference between being an indigent residing in this state and an indigent residing out-of-state.

WESTLAW

454.210 Personal jurisdiction of courts over nonresident; process, how served; fee; venue
Baldwin's Kentucky Revised Statutes Annotated Title XLII. Miscellaneous Practice Provisions Effective: July 15, 2014 *(Approx. 3 pages)*

Baldwin's Kentucky Revised Statutes Annotated
Title XLII. Miscellaneous Practice Provisions
Chapter 454. Miscellaneous Civil Practice Provisions (Refs & Annos)

Proposed Legislation

Effective: July 15, 2014

KRS § 454.210

454.210 Personal jurisdiction of courts over nonresident; process, how served; fee; venue

Currentness

(1) As used in this section, "person" includes an individual, his executor, administrator, or other personal representative, or a corporation, partnership, association, or any other legal or commercial entity, who is a nonresident of this Commonwealth.

(2) (a) A court may exercise personal jurisdiction over a person who acts directly or by an agent, as to a claim arising from the person's:

1. Transacting any business in this Commonwealth;

2. Contracting to supply services or goods in this Commonwealth;

3. Causing tortious injury by an act or omission in this Commonwealth;

4. Causing tortious injury in this Commonwealth by an act or omission outside this Commonwealth if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this Commonwealth, provided that the tortious injury occurring in this Commonwealth arises out of the doing or soliciting of business or a persistent course of conduct or derivation of substantial revenue within the Commonwealth;

5. Causing injury in this Commonwealth to any person by breach of warranty expressly or impliedly made in the sale of goods outside this Commonwealth when the seller knew such person would use, consume, or be affected by, the goods in this Commonwealth, if he also regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this Commonwealth;

6. Having an interest in, using, or possessing real property in this Commonwealth, providing the claim arises from the interest in, use of, or possession of the real property, provided, however, that such in personam jurisdiction shall not be imposed on a nonresident who did not himself voluntarily institute the relationship, and did not knowingly perform, or fail to perform, the act or acts upon which jurisdiction is predicated;

7. Contracting to insure any person, property, or risk located within this Commonwealth at the time of contracting;

8. Committing sexual intercourse in this state which intercourse causes the birth of a child when:

a. The father or mother or both are domiciled in this state;

b. There is a repeated pattern of intercourse between the father and mother in this state; or

c. Said intercourse is a tort or a crime in this state; or

Appendix-F
Doc. 6

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION
at LONDON

DANIEL H. JONES,
Plaintiff,

V.

COMMONWEALTH OF KENTUCKY, et al.,
Defendant.

Civil Action No. 6: 18-96-KKC

MEMORANDUM OPINION AND ORDER

*** *** *** ***

Plaintiff Daniel H. Jones is an inmate currently confined in the Turney Center Industrial Complex located in Only, Tennessee. Jones has filed a *pro se* civil rights complaint pursuant to 42 U.S.C. § 1983 [R. 1] and a motion to waive payment of the filing and administrative fees. [R. 3] The information contained in Jones's fee motion indicates that he lacks sufficient assets or income to pay the $350.00 filing fee. [R. 4] Because Jones has been granted pauper status in this proceeding, the $50.00 administrative fee is waived. District Court Miscellaneous Fee Schedule, § 14.

The Court must conduct a preliminary review of Jones's complaint because he has been granted permission to pay the filing fee in installments and because he asserts claims against government officials. 28 U.S.C. §§ 1915(e)(2), 1915A. A district court must dismiss any claim that is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. *Hill v. Lappin*, 630 F. 3d 468, 470-71 (6th Cir. 2010). When testing the sufficiency of Jones's complaint, the Court affords it a forgiving construction, accepting as true all non-conclusory factual allegations and liberally

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Doc 7

construing its legal claims in the plaintiff's favor. *Davis v. Prison Health Servs.*, 679 F.3d 433, 437-38 (6th Cir. 2012).

In his complaint, Jones names as Defendants the Commonwealth of Kentucky, Harlan County Circuit Judge Kent Hendrickson, and "Justices Acree, Nickell, Venters, Wright, Cunningham and Hughes" of the Kentucky Court of Appeals and the Kentucky Supreme Court. [R. 1] Although his allegations are not entirely clear, he generally claims violations of his "state and U.S. constitutional rights involving each defendants' act of gross-negligence as to a statutory need in protecting the plaintiff's best interest, seeking both immediate and permanent injunction, as well as a declaratory judgment with monetary compensation for the injuries sustained." [R. 1 at p. 1] He also references his rights under the Constitution of the State of Tennessee. [*Id.* at p. 2]

The majority of Jones's complaint generally accuses the defendants of gross negligence, acting with callous indifference and malicious intent, willfully violating legislation, and acting unprofessionally, without indicating the specific factual basis for these allegations. However, from what the Court is able to ascertain, it appears that Jones tendered a civil complaint to the Harlan Circuit Court in July 2017 "requesting, *inter alia*, a declaration of rights regarding a crucial piece of evidence; [doc.A-1], clearly negating his guilt involving a crime of rape. Here, plaintiff's indicia overwhelmingly shows a deliberate omission by the Commonwealth in neglecting this crucial evidence which 'could have' exculpated him in preventing a conviction and sentence to a term of Life w/o Parole." [*Id.* at p. 5]. Although it is not entirely clear, Jones's allegations suggest that his requests for relief were denied by the Harlan Circuit Court, as well as on appeal by the Kentucky Court of Appeals and the Kentucky Supreme Court. [*Id.* at p. 5-6]. Jones also indicates that, because of Defendants' actions, Tennessee's TBI Agency has retained him on its Sex

Offenders Registry. [*Id.* at p. 6] As relief, he seeks a declaration by this Court that Jones's due process rights have been violated, an injunction, and monetary damages. [*Id.* at p. 7-8]

A complaint must set forth sufficient allegations to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The Court has an obligation to liberally construe a complaint filed by a person proceeding without counsel, but it has no authority to create arguments or claims that the plaintiff has not made. *Coleman v. Shoney's, Inc.*, 79 F. App'x 155, 157 (6th Cir. 2003) ("Pro se parties must still brief the issues advanced with some effort at developed argumentation."). In addition, a federal district court has the authority to dismiss any complaint under Fed. R. Civ. P. 12(b)(1) "when the allegations of a complaint are totally implausible, attenuated, unsubstantial, frivolous, devoid of merit, or no longer open to discussion." *Apple v. Glenn*, 183 F.3d 477, 479 (6th Cir. 1999) (citing *Hagans v. Lavine*, 415 U.S. 528, 536 (1974)).

Here, Jones's complaint must be dismissed for failure to state a claim for which relief may be granted. First, Jones's complaint does not comply with Federal Rule of Procedure 8 because it does not contain "a short and plain statement of the claim showing that [he] is entitled to relief" and fails to include allegations that are "simple, concise, and direct." Fed. R. Civ. P. 8(a)(2), (d)(1). Indeed, the majority of Jones's complaint simply labels defendants' actions as "grossly negligent," "willful," "malicious," and "unprofessional," without providing any factual allegations supporting such conclusions. Vague allegations that one or more of the defendants acted wrongfully or violated the plaintiff's constitutional rights are not sufficient. *Laster v. Pramstaller*, No. 08-CV-10898, 2008 WL 1901250, at *2 (E.D. Mich. April 25, 2008).

Moreover, Jones's complaint seeks to assert civil rights claims against the Commonwealth of Kentucky and various state judges based on decisions and rulings made during the course of

civil proceedings. However, Jones's claims against the Commonwealth of Kentucky are be barred by sovereign immunity, *see Sefa v. Kentucky*, 510 F. App'x 435, 437 (6th Cir. 2013). In addition, Jones's claims against the individual judges are clearly barred by judicial immunity.

Judges have long been entitled to absolute judicial immunity from tort claims arising out of their performance of functions integral to the judicial process. *Pierson v. Ray*, 386 U.S. 547, 553-55 (1967). Indeed, "judicial immunity is not overcome by allegations of bad faith or malice..." *Mireles v. Waco*, 502 U.S. 9, 11 (1991). Here, the judicial conduct alleged by Jones falls squarely within the individual judge's respective roles as trial and appellate judges. *See Huffer v. Bogen*, 503 F. App'x 455, 459 (6th Cir. 2012)("[T]he factors determining whether an act by a judge is a 'judicial' one relate to the nature of the act itself, *i.e.*, whether it is a function normally performed by a judge, and to the expectations of the parties, *i.e.*, whether they dealt with the judge in his judicial capacity.")(quoting *Stump v. Sparkman*, 435 U.S. 349, 362 (1978)). Thus, each of the individual judges named as defendants are entitled to absolute judicial immunity against Jones's claims.

For all of the foregoing reasons, Jones's complaint fails to state a claim for which relief may be granted and will be dismissed.

Accordingly, it is hereby **ORDERED** as follows:

1. Jones's motion for leave to proceed *in forma pauperis* [R. 3] is **GRANTED** and payment of the filing and administrative fees is **WAIVED**.
2. Jones's complaint [R. 1] is **DISMISSED**.
3. All pending requests for relief, including Jones's Motion for Issuance of Summons [R. 7], are **DENIED AS MOOT**.

4. The Court will enter an appropriate judgment.

5. This action is **STRICKEN** from the Court's docket.

Dated May 30, 2018.

Karen K. Caldwell

KAREN K. CALDWELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION at LONDON

DANIEL H. JONES,

Plaintiff,

V.

COMMONWEALTH OF KENTUCKY, et al.,

Defendant.

Civil Action No. 6: 18-96-KKC

JUDGMENT

*** *** *** ***

Consistent with the Memorandum Opinion and Order entered this date, and pursuant to Rule 58 of the Federal Rules of Civil Procedure, it is hereby **ORDERED** and **ADJUDGED** as follows:

1. The Complaint [R. 1] filed by Plaintiff, Daniel H. Jones, is **DISMISSED** with prejudice.
2. Judgment is **ENTERED** in favor of the Defendants.
3. This action is **DISMISSED** and **STRICKEN** from the Court's docket.
4. This is a **FINAL** and **APPEALABLE** Judgment and there is no just cause for delay.

Dated May 30, 2018.

Karen K. Caldwell

KAREN K. CALDWELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

No. 18-5601

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Mar 19, 2019
DEBORAH S. HUNT, Clerk

DANIEL H. JONES,

Plaintiff-Appellant,

v.

COMMONWEALTH OF KENTUCKY, ET AL.,

Defendants-Appellees.

ORDER

BEFORE: KEITH, MOORE, and GIBBONS, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Doc. 8

Appendix - A

NO. 20-5046
IN THE
UNITED STATES SUPREME COURT
OCTOBER TERM, 2020

IN RE: DANIEL H. JONES,
Petitioner

PETITION FOR EXTRAORDINARY WRIT OF PROHIBITION AND/OR WRIT OF MANDAMUS TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT AT CINCINNATI , OHIO No. 18-5601

DECLARATORY AND INJUNCTIVE QUESTION FOR REVIEW

APPENDIX - B

EXHIBITS	*DOCUMENTS*
F.R.Civ.P. 62; Stay of Proceedings	*1*
Ky. Const. §231; Suits against the Commonwealth	*2*
KRS 49.060; Legislative Intent as to sovereign immunity in Negligence Claims	*3*
KRS 446.070; Penalty no bar to civil recovery	*4*
Ky. Brief for the Appellant	*5*
ORDER; Martin v. Patterson	*6*

Federal Rules of Civil Procedure Rule 62

Rule 62. Stay of Proceedings to Enforce a Judgment

Currentness

(a) **Automatic Stay.** Except as provided in Rule 62(c) and (d), execution on a judgment and proceedings to enforce it are stayed for 30 days after its entry, unless the court orders otherwise.

(b) **Stay by Bond or Other Security.** At any time after judgment is entered, a party may obtain a stay by providing a bond or other security. The stay takes effect when the court approves the bond or other security and remains in effect for the time specified in the bond or other security.

(c) **Stay of an Injunction, Receivership, or Patent Accounting Order.** Unless the court orders otherwise, the following are not stayed after being entered, even if an appeal is taken:

(1) an interlocutory or final judgment in an action for an injunction or receivership; or

(2) a judgment or order that directs an accounting in an action for patent infringement.

(d) **Injunction Pending an Appeal.** While an appeal is pending from an interlocutory order or final judgment that grants, continues, modifies, refuses, dissolves, or refuses to dissolve or modify an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights. If the judgment appealed from is rendered by a statutory three-judge district court, the order must be made either:

(1) by that court sitting in open session; or

(2) by the assent of all its judges, as evidenced by their signatures.

(e) **Stay Without Bond on an Appeal by the United States, Its Officers, or Its Agencies.** The court must not require a bond, obligation, or other security from the appellant when granting a stay on an appeal by the United States, its officers, or its agencies or on an appeal directed by a department of the federal government.

(f) **Stay in Favor of a Judgment Debtor Under State Law.** If a judgment is a lien on the judgment debtor's property under the law of the state where the court is located, the judgment debtor is entitled to the same stay of execution the state court would give.

(g) **Appellate Court's Power Not Limited.** This rule does not limit the power of the appellate court or one of its judges or justices:

(1) to stay proceedings--or suspend, modify, restore, or grant an injunction--while an appeal is pending; or

(2) to issue an order to preserve the status quo or the effectiveness of the judgment to be entered.

Appendix-B
Doc. 1

WESTLAW

Ky Const § 231 Suits against the Commonwealth
Baldwin's Kentucky Revised Statutes Annotated Constitution of Kentucky *(Approx. 1 page)*

Baldwin's Kentucky Revised Statutes Annotated
Constitution of Kentucky
General Provisions

KY Const § 231

Ky Const § 231 Suits against the Commonwealth

Currentness

The General Assembly may, by law, direct in what manner and in what courts suits may be brought against the Commonwealth.

Credits

HISTORY: Adopted eff. 9-28-1891; Source--Const 1850, Art 8, § 6

Notes of Decisions (167)

Const § 231, KY Const § 231
Current with emergency effective legislation through Chapter 74, 96-154, 158-164 and 170 of the 2018 Regular Session

End of Document

Appendix-B
Doc. 2

WESTLAW

49.060 Legislative intent as to sovereign immunity in negligence claims
Baldwin's Kentucky Revised Statutes Annotated Title VI. Financial Administration Effective: June 29, 2017 *(Approx. 2 pages)*

Baldwin's Kentucky Revised Statutes Annotated
Title VI. Financial Administration
Chapter 49. Kentucky Claims Commission
Investigations, Hearings, and Compensation for Negligent Acts

Effective: June 29, 2017

KRS § 49.060
Formerly codified as 44.072

49.060 Legislative intent as to sovereign immunity in negligence claims

Currentness

It is the intention of the General Assembly to provide the means to enable a person negligently injured by the Commonwealth, any of its cabinets, departments, bureaus, or agencies, or any of its officers, agents, or employees while acting within the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies to be able to assert their just claims as herein provided. The Commonwealth thereby waives the sovereign immunity defense only in the limited situations as herein set forth. It is further the intention of the General Assembly to otherwise expressly preserve the sovereign immunity of the Commonwealth, its cabinets, departments, bureaus, and agencies and its officers, agents, and employees while acting in the scope of their employment in all other situations except where sovereign immunity is specifically and expressly waived as set forth by statute. The commission shall have exclusive jurisdiction to hear claims for damages, except as otherwise specifically set forth by statute, against the Commonwealth, its cabinets, departments, bureaus, or agencies, or any of its officers, agents, or employees while acting within the scope of their employment.

Credits

HISTORY: Repealed, reenacted, and amended by 2017 c 74, § 6, eff. 6-29-17; 1986 c 499, § 1, eff. 7-15-86

Editors' Notes

HISTORICAL AND STATUTORY NOTES

Note: 49.060, formerly compiled as 44.072, repealed, reenacted, and amended by 2017 c 74, § 6, eff. 6-29-17.

Notes of Decisions (291)

KRS § 49.060, KY ST § 49.060
Current with emergency effective legislation through Chapter 74, 96-154, 158-164 and 170 of the 2018 Regular Session

End of Document

Appendix B
Doc. 3

WESTLAW

446.070 Penalty no bar to civil recovery
Baldwin's Kentucky Revised Statutes Annotated Title XLI. Laws (Approx. 2 pages)

Baldwin's Kentucky Revised Statutes Annotated
Title XLI. Laws
Chapter 446. Construction of Statutes (Refs & Annos)

KRS § 446.070

446.070 Penalty no bar to civil recovery

Currentness

A person injured by the violation of any statute may recover from the offender such damages as he sustained by reason of the violation, although a penalty or forfeiture is imposed for such violation.

Credits

HISTORY: 1942 c 208, § 1, eff. 10-1-42; KS 466

Notes of Decisions (159)

KRS § 446.070, KY ST § 446.070
Current with emergency effective legislation through Chapter 74, 96-154, 158-164 and 170 of the 2018 Regular Session

End of Document

Appendix-B
Doc. #4

IN THE CRIMINAL COURT OF APPEALS
AT FRANKFORT, KENTUCKY

F-1611-A
IN RE:
DANIEL H. JONES,
Appellant

Vs. *Case No.* 2017-CA-001664-MR

COMMONWEALTH OF KENTUCKY,
Appellee

BRIEF FOR THE APPELLANT

Rule 3; Appeal from the Harlan Circuit Court
26th Judicial District
Harlan County Kentucky

Hon. Kent Hendrickson, Judge

Andy Beshear,
Attorney General and Reporter
Office of the Attorney General
700 Capital Avenue, Suite 118
Frankfort, Kentucky. 40601

Appendix-B
Doc. 5

Table of Contents

ARGUMENT

THE LOWER COURT ERRED IN OVERRULING APPELLANT'S REQUEST FOR DECLARATION OF RIGHTS PREMISED UPON HIS STATUS AS BEING A NONRESIDENT OF THE COMMONWEALTH OF KENTUCKY.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

*Whether the Trial Court erred in overruling the Appellant's request for a declaration of rights where there existed an "**actual controversy**" in which the lower court could have made a binding declaration of rights and where there remains a remedial cure so to do under Kentucky's long-arm statute and regardless as to one's residency.*

STATEMENT OF THE CASE

In the underlying judicial proceedings, the lower court was required to determine whether this Appellant is entitled to a binding declaration of rights where there "yet exist an actual controversy", see appendix—[doc. 1], which "could have" absolved the issue of his innocence referencing an essential document omitted during the course of the investigative stage in order to serve the compulsory process for either the state or the Appellant's defense.

This essential piece of evidence would be the "sole instrument" to either [in]culpate or [ex]culpate an accused of the offense of rape, and, in this instance, this particular document "would have" exculpated—in fact, clearly exonerated the Appellant of an offense he didn't commit. However, "summarily overruled." [doc.2].

*The purpose for the Appellant's current litigation in this Commonwealth, and after forty-two ["42"] years, is to accomplish two (2) objectives, which is – 1.] To be exonerated of an offense he never committed, [doc.3], and 2.] To bar other states from utilizing it to retain and restrict him to any such sex offender registries (hereafter—S.O.R.); **See** [doc.5].Hence, and after such a lengthy period of time, the Appellant's only remedial cure was to petition this Commonwealth for a binding of ["his"] declaration of rights, and premised upon the lower court's omissive conduct protecting his rights to have received a full and fair trial utilizing this evidence [doc.1].*

*Under the stigma of this crucial but tardy demonstration of Appellant's innocence, and because of this Commonwealth's acts and omission subjecting him to a period of forty-two years of tortious injury, the **"State of Tennessee"** is now in contempt and*

violation of the Separation of Powers Doctrine (adopted between the states) See [doc.6-6a], barring the encroachment of Kentucky's jurisdiction and authority, to serve its actions in retaining Appellant on "its" S.O.R. [doc.7].See also Ky. Constitution, § 27,[doc.6b].

*Appellant's records clearly shows, [doc.4], absolutely no stipulation to any such S.O.R. restrictions, neither were there any "**Megan-Laws**" applicable to him (past or present) in this Commonwealth, [doc. 9], or by Order of the lower court (upon his release in July of 1997), [doc.10], PLACING HIM on any such S.O.R. [doc.4], which gives rise to both this request and ensuing appeal, [doc.2].*

*That, as a direct result of the remedial action pursued, the lower court's summary position and ruling, [doc.1], was to deny Appellant's access "purely" because he is not a poor person and "resident" of this Commonwealth, despite the fact the Appellant's troubles occurred in **"this state" over forty-two years ago** (1974); See [doc.3], inherent to date subjecting him to a long standing tortious injury; which moots an issue of residency; accordingly, from whence this appeal derives. Afterwhich followed a motion to alter and/or amend judgment---also overruled---summarily.[doc.2a].*

* * * *

STATEMENT OF THE FACTS

In 2010, while being incarcerated in a Tennessee Correctional Facility, the Appellant made an attempt, [doc.11] to overcome the stigma and intimidation of being a sex offender, [doc.5], however, to no avail, and by seeking an order of "termination" from its agency, Tennessee Bureau of Investigations---hereafter, T.B.I., [doc.12], followed up with a long exhaustive and unsuccessful appeal in its final outcome, [doc.13].

By reason of Tennessee's inherent and biased rejection of Appellant's cause, he's now compelled to resort to the very essence of his injury, i.e. the Commonwealth of Kentucky, and by virtue of its "long-arm statute" in obtaining the relief he seeks, ***See also*** *[Technical Record to this appeal in its entirety], which was to—**a.]** Request the court's binding of a declaration of ["his"] rights premised upon this long omitted and essential piece of evidence--- [doc.1], **b.]** A permanent injunction to bar further encroachment by other states from breaching the separation of powers doctrine, [6b], governing decisions rendered in this Commonwealth **c.]** To provide monetary compensation for the damage done due to acts and omissions of this Commonwealth. **d.]** Issue an Agreed Order exonerating the Appellant, as well as to "expunge" his records in both state and federal jurisdictions---amongst other relief to-*

***1.]** Be granted the right to **"amend"** his pleader either **in whole or part** to conform to all criminal and/or civil procedure, as provided under Kentucky Constitution, §231.*

***2.]** The right to expand the records for purposes of expediting his proceedings—to include Hearings, Conferences, mediations, and, to be present at each.*

3.] Lastly, to cause to be served compulsory process, e.g. subpoenas upon any and all parties relevant to his action.

ARGUMENT

THE LOWER COURT ERRED IN OVERRULING APPELLANT'S REQUEST FOR DECLARATION OF RIGHTS PREMISED UPON HIS STATUS AS BEING A NONRESIDENT OF THE COMMONWEALTH OF KENTUCKY.

In the state of Kentucky, the General rule is that the litigant [who in this case is Jones] be a poor person and ***"resident"*** *of this Commonwealth, KRS 453.190(2) (3), before being allowed to proceed in forma pauperis, ["except where otherwise legislation permits"].*

Here, however, the exception to the general rule is provided under the "long-arm statute", ***KRS 454.210****, particularly in the instant the litigant ["Jones"] demonstrates his cause of action arises in this Commonwealth;* ***See Appendix,*** *[doc.3]. In viewing Appellant's short-lived attempt to overcome his dilemma, the lower court just summarily denied the Appellant's access purely because of his [non]-resident status, which "could be" construed as a tact to evade what is and remains, to date, to be an actual controversy, KRS 418.040, alternatively, being recognized as both civil and criminal contempt of legislation.*

Ordinarily, the court is not required to decide "speculative-rights", or duties which may or may not arise in the future, but only rights and duties [as here] about which there is a "present" actual controversy, [doc.1]. . . and in which a binding judgment concluding the controversy may be entered, Veith v. City of Louisville,,Ky. 355 S.W.2d. 295 (Ky.1962).This Appellant met both threshold requirements in overcoming what would ordinarily bar a remedial cure, first, he demonstrated conclusively that he fell within the meaning of KRS 453.190's pauper status, Salyers v.Cornett,Ky. 566 S.W.2d. 418 (Ky. 1976).

*Secondly, and by virtue of the fact his charged offense rose in "this Commonwealth", [doc.3], provided him with Kentucky's long-arm provision of law securing personal jurisdiction over non-residents; **See** KRS 452.210(2)(a) as distinguished in Davis v. Wilson,Ky., 619 S.W.3d. 709 (1980) with Cummins v. Pitman,239 S.W.3d. 77,84 (2007).*

So, what then remains to compete with, "is" to have the lower court's binding judgment over present rights, duties and liabilities that does not involve a question which is merely hypotechnical, [doc.1], or an answer which is no more than an advisory ["summary"] opinion, [doc.2], Foley v. Commonwealth,Ky.,306 S.W.3d. 28 [Ky.2010], particularly where all other remedies have failed, See [doc. 11-13], Yost v. Ratliff,246 S.W.2d. 447[Ky.1951]. Such as it happened to have occurred, and in absence of this crucial piece of evidence, [doc.1], the Appellant's trial ended in a "[R]oman-[H]oliday," cf. Jacob v. Commonwealth, Ky., 870 S.W.2d. 412(1994).

CONCLUSION

WHEREFORE, under auspice of §11; Kentucky Constitution, the circumstances should be construed in favor of the right it was intended to secure----"reversal" for purposes of a binding of Appellant's rights; KRS 418.040.

Respectfully submitted,

Daniel H. Jones, Appellant, pro se
Turney Center Industrial Complex
1499 R.W. Moore Memorial Hwy.
Only, Tennessee. 37140-4050

CERTIFICATION

This is to certify, that the foregoing Brief for the Appellant has this day been mailed postage prepaid, via U.S. Postal Service to the Clerk, Criminal Court of Appeals located at 360 Democrat Drive, Frankfort, Kentucky. 40601. On this 17th day of Nov. 2017.And to;

Andy Beshear,
Attorney General & Reporter
Office of Attorney General
700 Capitol Ave. Suite 118
Frankfort, Kentucky. 40601.

C: File

Martin v. Patterson
United States District Court, E.D. Kentucky, Central Division, at Lexington. · October 9, 2013 Not Reported in F.Supp.2d 2013 WL 5574485 (Approx. 5 pages)

2013 WL 5574485
Only the Westlaw citation is currently available.
United States District Court, E.D. Kentucky,
Central Division, at Lexington.

Anthony MARTIN, next friend and guardian of a minor child, J.M.,
Plaintiff,
v.
Andre PATTERSON, individually and as a Madison County Deputy Sheriff,
Defendant.

Civil Action No. 5:12–117.
Oct. 9, 2013.

Attorneys and Law Firms

Joshua Ryan Kidd, Claycomb & Kidd, PLLC, Stillwater, OK, for Plaintiff.

Adrian M. Mendiondo, D. Barry Stilz, Robert Coleman Stilz, III, Kinkead & Stilz, PLLC, Lexington, KY, for Defendant.

MEMORANDUM OPINION AND ORDER

KAREN K. CALDWELL, District Judge.

*1 This matter is before the Court on Defendant's Motion for Summary Judgment (DE 24). Defendant Andre Patterson asks this Court to dismiss the Complaint on the grounds that Plaintiff Anthony Martin's claims are barred by the doctrine of collateral estoppel. In the alternative, Patterson asks this Court to dismiss all claims against him in his official capacity as a Madison County Deputy Sheriff. For the reasons stated below, this Court will deny in part and grant in part the defendant's motion.

BACKGROUND

On June 14, 2011, Defendant Andre Patterson, a Madison County Deputy Sheriff, arrested J.M. for theft and fraudulent use of credit cards. During the course of the arrest there was a struggle, and J.M. was subsequently found delinquent of resisting arrest in a juvenile adjudication in Madison District Court. (DE 24–4, p. 49–50). J.M denied the charge and testified that Patterson choked and dragged him to his car, causing J.M. to lose consciousness and injure his wrist as he fell. He did not argue that he only acted in self-defense. Rather, J.M. testified that he did not resist at all. (DE 24–4, p. 28–29, 34–35). Despite this testimony, the juvenile court found him delinquent of resisting arrest.

Plaintiff Anthony Martin, as next friend and guardian of J.M., now brings this action against Patterson for excessive force under 42 U.S.C. § 1983, along with state-law claims of battery and intentional infliction of emotional distress. Patterson moves this Court to dismiss the action in its entirety due to collateral estoppel, arguing that the lawfulness of his conduct was necessarily adjudicated in the state court juvenile proceeding where J.M. was found delinquent of resisting arrest. In the alternative, Patterson moves to have all claims dismissed to the extent that they are brought against him in his official capacity as a Madison County Deputy Sheriff.

Appendix - B
Doc. 6

STANDARD OF REVIEW

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56; *Pennington v. State Farm Mut. Auto. Ins. Co.*, 553 F.3d 447, 450 (6th Cir.2009). The central issue is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251–52, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). "The party bringing the summary judgment motion has the initial burden of informing the [Court] of the basis for its motion and identifying portions of the record that demonstrate the absence of a genuine dispute over material facts." *Rodgers v. Banks*, 344 F.3d 587, 595 (6th Cir.2003). The moving party may satisfy this burden by presenting affirmative evidence that negates an element of the non-moving party's claim or by

demonstrating 'an absence of evidence to support the nonmoving party's case.' " *Id.* (quoting *Celotext Corp. v. Catrett*, 477 U.S. 317, 325, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986)). The Court must view all of the evidence in the light most favorable to the party opposing summary judgment. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986).

DISCUSSION

I. Collateral Estoppel Claim

*2 Martin's claims against Patterson are not barred by collateral estoppel because the lawfulness of Patterson's conduct was not necessarily adjudicated in the prior juvenile proceeding. Whether a claim is barred by collateral estoppel due to a prior state decision is determined by the relevant state law. *See Wicker v. Bd. of Educ. of Knott Cnty., Ky.*, 826 F.2d 442, 450 (6th Cir.1987) (citing *Kremer v. Chemical Construction Co.*, 456 U.S. 461, 102 S.Ct. 1883, 72 L.Ed.2d 262 (1982)). In Kentucky, "a judgment in a former action operates as an estoppel only as to matters which were *necessarily* involved and determined in the former action, and is not conclusive as to matters ... which were not necessary to uphold the judgment." *See Gossage v. Roberts*, 904 S.W.2d 246, 248 (Ky.Ct.App.1995) (emphasis added) (quoting *Sedley v. City of West Buechel*, 461 S.W.2d 556, 558–59 (Ky.1970)). "If a fact was not 'necessarily determined' in the former trial, the possibility that it may have been decided does not preclude reexamination of the issue." *Ordway v. Com.*, 352 S.W.3d 584, 589 (Ky.2011) (quoting *Benton v. Crittenden*, 14 S.W.3d 1, 5 (Ky.1999)).

Here, Martin brings claims under § 1983 for unreasonable seizure along with state-law tort claims by asserting that Patterson used excessive force in effecting J.M.'s arrest. Patterson contends that the prior state court adjudication—during which J.M. was found delinquent of resisting arrest—precludes these claims because the court necessarily determined that Patterson's conduct was lawful.

Generally, a conviction under KRS § 520.090 for resisting arrest does not, on its own, preclude a subsequent claim against the officer for excessive force. *See Donovan v. Thames*, 105 F.3d 291, 295 (6th Cir.1997). This is because "the offense of resisting arrest does not require a finding that the police officers did not use excessive force in effecting the arrest." *Id.* Patterson argues that the issue of excessive force became necessary to the judgment in this case, however, because J.M. defended the charge by testifying that Patterson choked and dragged him across the parking lot. According to Patterson, the state court could not have found J.M. delinquent of resisting arrest if it did not reject J.M.'s testimony that Patterson used excessive force. Thus, the argument goes, the state court necessarily determined that Patterson's conduct was lawful by finding J.M. delinquent.

For support, Patterson points to *Robertson v. Johnson Cnty. Ky.*, 896 F.Supp. 673 (E.D.Ky.1995), and *Satterly v. Louisville–Jefferson Cnty. Metro Gov't*, 2008 WL 4127028 (W.D.Ky. Sept.4, 2008), two cases where the court found an excessive force claim precluded by prior state-court convictions. Significantly, in both *Robertson* and *Satterly* the courts relied on the fact that the plaintiffs claimed self-defense in their underlying criminal trials, which in turn required evaluating whether the officers created a right to self-defense by using unreasonable force. In *Robertson*, a case where the plaintiff had an underlying conviction for menacing, the court found that "the jury clearly rejected Robertson's defense that [the officers] beat him and that Robertson was acting in self-defense." *Robertson*, 896 F.Supp. at 688. Similarly, the instructions given to the jury in *Satterly* expressly required they decide whether the officer "was not using any more force than was reasonably necessary to effect the detention." *Satterly*, 2008 WL 4127028 at * 5. By rejecting the claim of self-defense, the jury unambiguously adjudicated the issue of excessive force.

*3 Unlike the plaintiffs in *Robertson* and *Satterly*, J.M. did not claim self-defense in the prior adjudication. Rather, both the hearing transcript and J.M.'s deposition reveal that J.M. repeatedly denied resisting arrest at all. (DE 24–4, p. 28–29, 35–36; DE 24–2, p. 12). This fact is crucial, because without a claim of self-defense it was not *necessary* for the court to evaluate whether Patterson's conduct was reasonable in order to find that J.M. resisted arrest. This is true even though J.M. testified that Patterson choked and dragged him across the parking lot. Finding that J.M. resisted arrest implies only that the court rejected his testimony that he did not resist; it does necessarily indicate a judgment as to whether Patterson's force was excessive. "[T]he *possibility* that [an issue] may have been decided" is not sufficient to invoke collateral estoppel. *Ordway*, 352 S.W.3d at 589 (emphasis added). Because the juvenile court could believe both that J.M. resisted arrest *and* that Patterson used excessive force, the lawfulness of Patterson's conduct was not necessarily determined by J.M.'s conviction.

Finally, Patterson argues that even if J.M.'s testimony and defense at the prior proceeding is not sufficient to invoke collateral estoppel, the judge's statement from the bench indicates that the court did in fact adjudicate the lawfulness of his conduct. In the course of finding J.M. delinquent for resisting arrest, the judge said,

> Frankly, young man, ... it's actually kind of shocking to me that he didn't either let you go earlier and then Taser you or actually use more force than what he used to get you into the back of the car, and ... you're actually lucky in this situation that what happened to you, although it was unfortunate, you weren't hurt even worse that night. (DE 24–4, p. 49)

This statement however, falls short of any legal determination that Patterson's conduct was lawful. Patterson has the "steep burden" of proving that his conduct was a "fact distinctly put in issue in the former [adjudication] and not merely collaterally in question." *See Ordway*, 352 S.W.3d at 589. Expressing surprise that Patterson did not use more force, or admonishing a juvenile defendant that they are lucky to have avoided a more serious injury, does not demonstrate that the juvenile court "actually decided" whether Patterson used reasonable force. *See id.* Accordingly, and for the above-stated reasons, this Court finds that Martin's claims arising under § 1983 and Kentucky tort law are not barred by collateral estoppel.

II. Claims Against Patterson in His Official Capacity

Patterson contends that even if the present action is not barred by collateral estoppel, all claims brought against him in his official capacity should be dismissed. He argues that the § 1983 claim must be dismissed because Martin cannot demonstrate that the allegedly unconstitutional action taken by Patterson was the result of a policy or custom of the county government, and that the state tort claims are barred by sovereign immunity. This Court finds that the § 1983 claim must be dismissed, but the state tort claims may proceed.

A. § 1983 Claim of Excessive Force

*4 Martin's § 1983 claim for unreasonable seizure and excessive force against Patterson in his official capacity must be dismissed. Claims against county officials in their official capacity are treated as claims against the county itself. *See Shamaeizadeh v. Cunigan*, 338 F.3d 535, 556 (6th Cir.2003). A county government, however, cannot be held liable under § 1983 for the acts of its employees simply through respondeat superior. Rather, plaintiffs must demonstrate that "a custom, policy, or practice attributable to the municipality was the 'moving force' behind the violation of the plaintiff's rights." *Heyerman v. Cnty. of Calhoun*, 680 F.3d 642, 648 (6th Cir.2012) (quoting *Miller v. Sanilac Cnty.*, 606 F.3d 240, 254–55 (6th Cir.2010)). In the present case, Martin does not allege that Patterson's conduct was the result of a custom, policy, or practice of the county government. The Court will therefore dismiss his claim in Count I under § 1983 to the extent that it is asserted against Patterson in his official capacity.

B. State–Law Claims for Battery and Intentional Infliction of Emotional Distress

This Court does not agree, however, that Martin's state-law claims for battery and intentional infliction of emotional distress should be dismissed. Patterson argues that as a Madison County deputy sheriff he is entitled to the same sovereign immunity as the county itself when he is sued in his official capacity. Under Kentucky law, county governments are cloaked with sovereign immunity that extends to public officials sued in their official capacity. *See Jones v. Cross*, 260 S.W.3d 343, 345 (Ky.2008) (citing *Yanero v. Davis*, 65 S.W.3d 510, 517 (Ky.2001)). Although this immunity absolutely shields county employees from tort liability, it may be waived by legislative action. *See id.*; *Com., Dept. of Highways v. Davidson*, 383 S.W.2d 346, 348 (Ky.1964).

One such waiver is found in KRS § 70.040, which waives sovereign immunity as applied to the office of the sheriff for acts committed by its deputies. The statute states that "[t]he sheriff shall be liable for the acts or omissions of his deputies; except that, the office of sheriff, and not the individual holder thereof, shall be liable under this section." KRS § 70.040. The Supreme Court of Kentucky has held that this statute waives immunity for the office of the sheriff for acts committed by its deputies. *See Jones*, 260 S.W.3d at 346. To the extent that Patterson is shielded from suit in his official capacity by sovereign immunity, such immunity is derived from that granted to the county office in which he is employed—the office of the sheriff. It therefore follows that any sovereign immunity extending to Patterson for acts he commits as a deputy sheriff is waived by KRS § 70.040. *See Harlan Cnty. v. Browning*, 2013 WL 657880, at *3–4 (Ky.Ct.App. Feb.22, 2013) (finding that KRS § 70.040 waives sovereign immunity for deputy sheriffs sued in their official capacity) (unpublished); *Meogrossi v. Aubrey*, 2011 WL 1235063, at * 19 (E.D.Ky. Mar.31, 2011). The Court, therefore, finds that

the state-law tort claims of battery and intentional infliction of emotional distress brought against Patterson in his official capacity as a Madison County Deputy Sheriff are not barred by sovereign immunity.

CONCLUSION

*5 Accordingly,

IT IS ORDERED that Patterson's Motion for Summary Judgment (DE 24) is granted in part and denied in part as follows:

1. The motion is GRANTED as to the plaintiff's § 1983 claim against Patterson in his official capacity, and that claimed is DISMISSED;

2. The motion is otherwise DENIED.

All Citations

Not Reported in F.Supp.2d, 2013 WL 5574485

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NO. 20-5046
IN THE
UNITED STATES SUPREME COURT
OCTOBER TERM, 2020

IN RE: DANIEL H. JONES,
Petitioner

PETITION FOR EXTRAORDINARY WRIT OF PROHIBITION AND/OR WRIT OF MANDAMUS TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT AT CINCINNATI, OHIO
No. 18-5601
MERITORIOUS ISSUES FOR REVIEW
APPENDIX-C

#00443638

COMMONWEALTH OF KENTUCKY
HARLAN CIRCUIT COURT
INDICTMENT NO. F-1611-A

ENTERED IN MY OFFICE THIS
22 DAY OF July 1997
PAUL F. WILLIAMS, CLERK
By M. Bolin DC

DANIEL HENDERSON JONES — MOVANT

VS. AGREED ORDER AMENDING SENTENCE

COMMONWEALTH OF KENTUCKY — RESPONDENT

****

The Commonwealth and the Movant, Daniel Henderson Jones, having agreed that Movant's sentence should be amended pursuant to CR 60.02 (e) and (f):

This Court finds: Daniel Jones committed the offense of rape on December 27, 1974. At the time the offense was committed the maximum punishment for rape was life without parole. However by the time of movant's trial the new penal code had been adopted, and the maximum punishment for rape with a victim over age twelve and no serious physical injury was reduced to twenty (20) years.

In this case the victim was over the age of twelve and she did not suffer a serious physical injury. Thus the court finds it would no longer be equitable to require movant to serve a sentence of live without parole. This court also finds that the Court in Sanders v. Commonwealth, Ky., 844 S.W. 2d 391 (1992) held that requiring a defendant convicted of rape to serve one hundred eighty-five years before being eligible for parole violated the United States Constitutional Fifth and Eighth Amendments as well as Sections Two and Seventeen of the Kentucky Constitution. The Court

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TN BUREAU INVEST.

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reasoned it was not logical to require someone convicted of rape to serve move time to be eligible for parole than someone convicted of a capital offense.

THEREFORE BOTH PARTIES HAVING AGREED: THIS COURT HOLDS THAT MOVANT'S SENTENCE BE AMENDED BY BEING REDUCED from life without parole to twenty (20) years.

THIS THE 22 DAY OF July, 1997.

Farmer H. Helton

FARMER H. HELTON
SPECIAL JUDGE

HAVE SEEN AND AGREED TO:

Henry S. Johnson 7/22/97
FOR THE COMMONWEALTH DATE

William Eddy 7/22/97
FOR THE MOVANT DATE

cc: ✓Hon. Henry Johnson
Commonwealth Attorney
P.O. Box 1679
Harlan, KY 40831

✓Hon. William H. Eddy
Department of Public Advocacy
P.O. Box 50
Eddyville, KY 42038

✓Karen Defew Cronen
Director of Offender Records
5th Floor
State Office Building
Frankfort, KY 40601

Michael O'Dea (Warden)
E.K.C.C.

25

Case No. 10-74-1197
Laboratory No. 75-50

Re: Daniel Henderson Jones

REPORT OF LABORATORY EXAMINATION

SUBMITTED BY: Det. D. A. Castle, KSP Post 10 DATE

RECEIVED BY: Larry Ayres DATE 1-6-75 TIME 8 a.m.

RETURNED TO: Holding for pickup at the laboratory DATE

MATERIAL SUBMITTED:
(Describe Markings and Wrapping.)

Exhibit 1: Vaginal washings from the victim.
Exhibit 2: Pubic hair brushings from the victim.
Exhibit 3: Pubic hair brushings from the accused.
Exhibit 4: Blue jacket from the accused.
Exhibit 5: Cut off trousers from the accused.
Exhibit 6: Boxer type undershorts from the accused.
Exhibit 7: Knit shirt from the accused.

EXAMINATION REQUESTED:

Examine Exhibits 1, 4, 5, 6, and 7 for semen and determine the ABO blood group factors present if possible. Examine Exhibit 2 for Negro hair. Examine Exhibits 3, 4, 5, 6, and 7 for Caucasian hair.

RESULTS OF EXAMINATION:

Exhibit 1 was found to contain semen.

Exhibits 5 and 6 were found to contain acid phosphatase, a constituent of seminal fluid.

No semen was found on Exhibits 4 and 7.

Grouping tests on Exhibits 1, 5, and 6 were inconclusive.

No Negro hair was found on Exhibit 2.

No Caucasian hair was found on Exhibits 3, 4, 5, 6, or 7.

Larry Ayres

KENTUCKY STATE POLICE CRIME LABORATORY

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Doc. 2

Rev. 1-26

KENTUCKY STATE POLICE
CRIME LABORATORY
Request for Examination

Case No. 10-74-1197

Case or File No. _____

TO: Crime Laboratory

FROM: Det. D. A. Castle, Unit 280

OFFENSE: FORCIBLE RAPE
DATE: Friday, December 27, 1974, at 1600 hours.
VICTIM:
SUSPECT OR ACCUSED: JONES, DANIEL HENDERSON
INVESTIGATING OFFICER: Det. D. A. Castle
DEPARTMENT: Kentucky State Police, Post #10, Harlan

EXHIBITS: #1. Two (2) glass vials containing cultures from rape victim, in white envelope, marked Exhibit #1.
#2. Pubic hair brushings and brush from the rape victim, in white envelope, marked Exhibit #2.
#3. Pubic hair brushings and brush from accused, in plastic evidence bag, marked Exhibit #3.
#4. Man's navy blue, nylon, jacket, large, in brown manila envelope, marked Exhibit #4.
#5. Cut off, man's trousers, greyish plaid, in plastic bag, inside manila envelope, marked Exhibit #5.

Continued - Page 2

SYNOPSIS:
Friday, December 27, 1974, at 1600 hours, the victim and two small brothers were forced at gunpoint by a colored male into the accused's vehicle. The accused raped the victim at gunpoint, after taking her to a remote area.

EXAMINATION REQUESTED:
Examine exhibit #1 for acid phosphatate, blood group antigen of semen, precipitin tests against human sperm and blood (copy of medical report and attending physician's request attached). Determine if Exhibit #2 contains any Negro pubic hair. If test is positive, any and all examinations of Negro pubic hair possible. Determine if Exhibit #3 contains pubic hair from rape victim (white female)

Continued Page #2

DISPOSITION OF EVIDENCE:
Return to investigating officer for court purposes.

12-30-74 | | Det. D. A. Castle, U-280
Date | Reviewed by | Officer making Request

Attach additional pages if needed

CRIME LABORATORY

Request for Examination

Case No. 10-74-1197

Case or File No. _____

TO: Crime Laboratory

FROM:

OFFENSE:
DATE:
VICTIM:
SUSPECT OR ACCUSED:
INVESTIGATING OFFICER:
DEPARTMENT:

EXHIBITS:

#6. Man's boxer type undershorts, brown & yellow design, in plastic bag, in brown manila envelope, marked Exhibit #6.
#7. Maroon, short sleeve, knit, turtle neck shirt, sweater type, with white trim, in plastic bag, inside manila envelope, marked Exhibit #7.

SYNOPSIS:

EXAMINATION REQUESTED:

Examine Exhibit #4 - Victim had light brown, shoulder length hair. If #4 has any of this type hair, hair sample from victim will be obtained. Examine Exhibit #5 for pubic hair of victim, same request for Exhibit #6. Examine Exhibit #7 for same as in Exhibit #4.

DISPOSITION OF EVIDENCE:

Date _____ Reviewed by _____ Officer making Request _____

Attach additional pages if needed

behavior unprotected by the first amendment. *Adamian v. Jacobsen*, 523 F.2d 929 (9th Cir.1975). The Montana Supreme Court, in upholding Wurtz's conviction, indicated its awareness both of the invalidation of a similar statute in *Landry v. Daley*, *supra*, and of the *Broadrick* tests. It did not narrow the construction of section 203(1)(c), however, because it viewed the statute as one that regulated almost exclusively conduct. *State v. Wurtz*, 636 P.2d 246, 250 (Mont.1981). That view of the statute took into account only the nature of the activity threatened rather than the communication that constitutes the crime. In any event, the Supreme Court did not narrow the literal scope of the statute, and left future "misapplications" of the statute to be remedied as those cases arose. *Id.* Those cases may not arise, however, because speakers may refrain from delivering their constitutionally protected messages for fear of the statute's application,[5] particularly in view of the severity of the authorized penalty—ten years' imprisonment. *See New York v. Ferber*, 458 U.S. 747, 768, 102 S.Ct. 3348, 3361, 73 L.Ed.2d 1113 (1982). It is that chilling effect that the first amendment forbids. We therefore conclude that, in the absence of a narrowing construction, section 203(1)(c) is void on its face for overbreadth. *See Erznoznik v. Jacksonville*, 422 U.S. 205, 216–17, 95 S.Ct. 2268, 2276–77, 45 L.Ed.2d 125 (1975); *Lewis v. New Orleans*, 415 U.S. 130, 134, 94 S.Ct. 970, 972, 39 L.Ed.2d 214 (1974).

It follows that Wurtz's conviction is invalid and that his application for a writ of habeas corpus must be granted.

REVERSED.

5. Counsel for the State points out that Wurtz appears to be the first person prosecuted under the statute, and that it is therefore unrealistic to suppose that the statute has any widespread effect of chilling constitutionally protected speech. We do not agree. The more successful the *in terrorem* effect of the statute, the fewer will be the prosecutions.

Kermit George HILLIARD, Petitioner-Appellant,

v.

James C. SPALDING, Superintendent, and Slade Gorton, Attorney General of the State of Washington, Respondents-Appellees.

No. 82-3641.

United States Court of Appeals, Ninth Circuit.

Submitted May 9, 1983.*

Decided Nov. 8, 1983.

As Amended Dec. 1, 1983.

Petitioner filed habeas corpus petition seeking to overturn his convictions of rape, kidnapping and sodomy. The United States District Court for the Western District of Washington, Donald S. Voorhees, J., denied the petition, and petitioner appealed. The Court of Appeals, Ferguson, Circuit Judge, held that if a sperm sample is taken from rape victim, and prosecution is in possession of or has control over the sample and is aware of its exculpatory nature, prosecution is constitutionally required to disclose the existence of the sample and to make it available to the defense, even if defense counsel does not specifically request that the prosecution do so; therefore, where it was unclear whether prosecution ever asserted possession of or control over a sperm sample taken from rape victim, evidentiary hearing was required to determine whether the prosecution knew that a sperm sample had been taken and could be charged with the knowledge that the sample could be used to exculpate the petitioner.

Remanded.

Boochever, Circuit Judge, dissented and filed opinion.

* The panel finds this case appropriate for submission without oral argument pursuant to Fed.R.App.P. 34(a) and Ninth Circuit Rule 3(a).

APPENDIX-C
Doc. 3

1. Criminal Law ⇐700

Constitution prohibits prosecution from suppressing material evidence in a criminal case.

2. Criminal Law ⇐1171.1(1)

The test for reversal based on prosecution's breach of its duty to disclose, even if defense counsel fails to specifically request particular evidence, is whether the government failed to disclose evidence which, in the context of the particular case, might have led jury to entertain a reasonable doubt about defendant's guilt.

3. Criminal Law ⇐1163(2)

Prisoners denied their right to counsel need not show that they were actually prejudiced in preparing their defense; rather, prejudice will be presumed.

4. Criminal Law ⇐1163(1)

Where a defendant who is charged with rape has not been permitted to test a sperm sample taken from victim, it is impossible for him to prove that he was actually prejudiced by government's conduct, and therefore, courts assume that he was so prejudiced.

5. Constitutional Law ⇐268(5)

Individual's due process rights are violated if government suppresses evidence which was so important that its absence prevented accused from receiving his constitutionally guaranteed fair trial.

6. Criminal Law ⇐700
Habeas Corpus ⇐90

If a sperm sample is taken from rape victim, and prosecution is in possession of or has control over the sample and is aware of its exculpatory nature, prosecution is constitutionally required to disclose the existence of the sample and to make it available to the defense, even if defense counsel does not specifically request that the prosecution do so; therefore, where it was unclear whether prosecution ever asserted possession of or control over a sperm sample taken from rape victim, evidentiary hearing was required to determine whether the prosecution knew that a sperm sample had been taken and could be charged with the knowledge that the sample could be used to exculpate the petitioner.

Kermit George Hilliard, in pro. per.

Michael P. Lynch, Asst. Atty. Gen., Olympia, Wash., for respondents-appellees.

Appeal from the United States District Court for the Western District of Washington.

Before TANG, FERGUSON and BOOCHEVER, Circuit Judges.

FERGUSON, Circuit Judge:

Hilliard was tried and convicted in a Washington state court on charges of rape, kidnapping and sodomy. After exhausting his state remedies, he petitioned for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The district court denied the petition, and Hilliard brought this appeal, in which he raised eleven issues. Ten of his contentions are without merit; we treat them in a separate memorandum disposition issued today. However, Hilliard has raised a colorable claim that the government suppressed evidence relevant to the rape conviction in violation of his constitutional right to due process of law. Because the proper resolution of this claim depends on a factual determination, we reverse and remand to the district court for an evidentiary hearing.

FACTS:

The record shows that the rape for which Hilliard was convicted took place in July 1975. Immediately after the victim reported the crime to the Seattle police, she was taken to Harborview Hospital for a physical examination. There, a physician obtained a sample of fluids from her vaginal tract which he placed on a glass slide. An examination of the sample revealed the presence of sperm in the victim's vaginal secretions. However, the record is silent as to the subsequent fate of the glass slide. It cannot be determined whether the hospital retained the sample or turned it over to the government, or whether the sample was ultimately destroyed.

Prior to trial, Hilliard's counsel made several discovery requests, including the following, "Defendant moves for discovery of

all evidence known to the State which may prove the defendant's innocence." The sperm sample was not among the items produced by the prosecution.

At trial, no testimony regarding the sperm sample was introduced other than a brief exchange between the prosecutor and the examining physician, in which the doctor described the procedure by which the sample was obtained. Hilliard invoked an alibi defense and was convicted of kidnapping, rape and sodomy. He was sentenced to life imprisonment in the Washington state penitentiary.

Hilliard contends that the prosecution suppressed material evidence in his case, i.e., the sperm sample, and thus deprived him of a fair trial.

DISCUSSION:

[1,2] It is well established that the constitution prohibits the prosecution from suppressing material evidence in a criminal case. The government's duty to disclose such evidence was first announced by the Supreme Court in *Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194, 1196, 10 L.Ed.2d 215 (1963), which held "that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." This court subsequently expanded that notion, imposing a duty to disclose even if defense counsel failed to specifically request particular evidence. *United States v. Hibler*, 463 F.2d 455, 459 (9th Cir.1972). The test for reversal in that situation is whether "the government failed to disclose evidence which, in the context of this particular case, might have led the jury to entertain a reasonable doubt about [the defendant's] guilt." *Id.* at 460.

This view, which was Ninth Circuit law when Hilliard went to trial in 1975, was accepted by the Supreme Court in *United States v. Agurs*, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976). That case established the prevailing constitutional standard in cases where defense counsel makes only a general "Brady request" for evidence, or makes no request at all. Under *Agurs*, evidence is "material," and reversal required, "if the omitted evidence creates a reasonable doubt that did not otherwise exist." 427 U.S. at 112, 96 S.Ct. at 2402.

From the record before us, it appears that Hilliard's counsel did not specifically request the prosecution to turn over a sperm sample taken from the victim. However, counsel did move for discovery "of all evidence known to the State which may prove the defendant's innocence." In determining whether Hilliard's due process rights were violated, the question therefore becomes, assuming that the government did suppress the sperm sample, was that sample "material evidence" of the kind which would raise a reasonable doubt that did not otherwise exist? We believe it was.

In a rape case, it is possible to test a sample of seminal fluid taken from the victim and compare it with samples of a defendant's saliva and blood. The results of such a test cannot positively identify a defendant as the perpetrator, but the test *can* conclusively exculpate an individual if the blood-types do not match. This procedure is widely employed by law enforcement authorities, and has been accepted by a number of courts. *See, e.g., United States v. Kennedy*, 714 F.2d 968 (9th Cir. 1983); *Davis v. Pitchess*, 388 F.Supp. 105, 107–08 (C.D.Cal.1974), *aff'd*, 518 F.2d 141 (9th Cir.1974), *rev'd on other grounds*, 421 U.S. 482, 95 S.Ct. 1748, 44 L.Ed.2d 317 (1975); *Bowen v. Eyman*, 324 F.Supp. 339, 340 (D.Ariz.1970); *People v. Nation*, 26 Cal.3d 169, 604 P.2d 1051, 1054–55, 161 Cal.Rptr. 299 (1980); *State v. Bowen*, 104 Ariz. 138, 449 P.2d 603, 605, *cert. denied*, 396 U.S. 912, 90 S.Ct. 229, 24 L.Ed.2d 188 (1969); *People v. Kemp*, 55 Cal.2d 458, 359 P.2d 913, 924, 11 Cal.Rptr. 361, *cert. denied*, 368 U.S. 932, 82 S.Ct. 359, 7 L.Ed.2d 194 (1961); *see also* 65 Am.Jur.2d *Rape* § 61 (1972). The materiality of a sperm sample in a rape case thus goes well beyond the *Agurs* "reasonable doubt" requirement because it can be used to prove the defendant's innocence to a certainty.

Of course, the utility of a sperm sample to the defense necessarily depends on

whether or not the blood types match. Thus, if the sperm sample were still available for testing, it would be reasonable to require the defendant to make some showing that the evidence would indeed have been exculpatory. If the sample had come into government hands prior to trial and subsequently been destroyed, however, the government may not interfere with the accused's ability to present a defense by imposing on him a requirement which the government's own actions have rendered impossible to fulfill.

We note that in some cases involving "what might loosely be called the area of constitutionally guaranteed access to evidence," *United States v. Valenzuela-Bernal*, 458 U.S. 858, 867, 102 S.Ct. 3440, 3447, 73 L.Ed.2d 1193 (1982), the defendant is required to make some showing that the government's actions actually prejudiced his defense, even when those actions have rendered such a showing more difficult. The Supreme Court's recent decision in *Valenzuela-Bernal* is such a case. There, however, the actions were taken in furtherance of legitimate governmental interests, so that, on balance, it was not unreasonable to place a heavier burden on a defendant challenging them.

The *Valenzuela-Bernal* Court held that when the government deports illegal-alien witnesses before the defense has an opportunity to interview them, the compulsory process and due process clauses are not violated absent a showing that "the lost evidence would be both material and favorable to the defense." 102 S.Ct. at 3449. Although the removal of potentially favorable witnesses creates additional problems for the defense, the Court explicitly noted that the government's conduct must be viewed in light of the executive's concurrent duty to faithfully carry out the immigration laws, which requires prompt deportation of undocumented persons. 102 S.Ct. at 3444–45. We can discern no comparable government duty in cases such as the one before us now. The Court in *Valenzuela-Bernal* was also cognizant of the high costs the government incurs while detaining large numbers of alien witnesses. 102 S.Ct. at 3445–46. In contrast, the cost of preserving sperm samples is insignificant—a slide can last over six years without refrigeration and still be tested with scientific certainty. *Davis v. Pitchess*, 388 F.Supp. at 107 n. 9. Finally, even though the government has a considerable interest in deporting aliens promptly, it cannot pursue that interest without making some effort to ensure that the accused is not denied his fundamental right to a fair trial. Thus, the *Valenzuela-Bernal* Court held that alien witnesses could be deported "upon the Executive's good-faith determination that they possess no evidence favorable to the defendant in a criminal prosecution." 102 S.Ct. at 3449. In the case before us, it appears that no such good-faith determination was made regarding the sperm sample. In cases where the government has arbitrarily suppressed a sperm sample without affording the defense an opportunity to test it, requiring a showing of prejudice before a defendant may assert his constitutional right to the evidence places his rights in the unsupervised hands of the prosecution.

[3, 4] We find Hilliard's situation to be more closely analogous to the cases in which no showing of prejudice is required. In those cases, government conduct, even though furthering a legitimate government interest, renders the defendant's burden of demonstrating prejudice extraordinarily difficult or impossible; in that situation the scales must be tipped in favor of the accused's right to a fair trial. This court's recent decision in *United States v. Gouveia*, 704 F.2d 1116 (9th Cir.1983) (*en banc*), provides an example. *Gouveia* was a pre-indictment delay case which held that prisoners suspected of committing crimes in prison who are placed in administrative detention for more than ninety days are entitled to counsel. Prisoners denied their right to counsel need not show that they were actually prejudiced in preparing their defense; rather, prejudice will be presumed. 704 F.2d at 1126. This court noted, then that cases involving prisoners were "fundamentally different" from those involving free men, and wrote that "[u]nder those circumstances we presume prejudice because ordi-

narily it will be impossible adequately either to prove or refute its existence." *Id.* Similarly, where, as here, a defendant has not been permitted to test a sperm sample, it is impossible for him to prove that he was actually prejudiced by the government's conduct. We must therefore assume that he was so prejudiced.

CONCLUSION:

[5] An individual's due process rights are violated if the government suppresses evidence which "was so important that its absence prevented the accused from receiving his constitutionally guaranteed fair trial." *United States v. Hibler*, 463 F.2d 455, 459 (9th Cir.1972). The type of evidence in question here certainly meets that test. It can provide incontrovertible proof that the defendant is innocent of the heinous crime of rape and, as such, is "obviously of such substantial value to the defense that elementary fairness requires it to be disclosed even without a specific request." *United States v. Agurs*, 427 U.S. at 110, 96 S.Ct. at 2401.

[6] Government suppression of this type of evidence, which deprives the defendant of what could be his only opportunity to conclusively prove his innocence, cannot withstand constitutional scrutiny. We therefore hold that in a case of this type if a sperm sample is taken from the victim and the prosecution is in possession of or has control over the sample and is aware of its exculpatory nature, the prosecution is constitutionally required to disclose the existence of the sample and to make it available to the defense, even if defense counsel does not specifically request that the prosecution do so. This holding does not require the government to take a sample or to independently test it. Nor does it require defense counsel to test the sample. It simply guarantees the defendant access to what could be conclusively exculpatory evidence, to utilize in whatever manner he deems appropriate.

In Hilliard's case it is unclear whether the prosecution ever asserted possession of or control over the sperm sample taken at Harborview Hospital. An evidentiary hearing is required to determine (1) whether the prosecution (a) knew that a sperm sample had been taken, (b) could be charged with the knowledge that the sample could be used to exculpate the defendant, (c) had control of the sperm sample, and (2) whether a demand for production by defense counsel upon knowledge of the slide's existence would have been successful in making the evidence available. Therefore, we remand to the district court so that such an evidentiary hearing may be held.

REMANDED for an evidentiary hearing.

BOOCHEVER, Circuit Judge, dissenting.

I have difficulty with the majority's conclusion that a remand is necessary in this case because the existence of the sperm slide was disclosed at trial. Dr. Silverstri testified that he examined the vagina for sperm and placed the material on a glass slide. Thus the defendant and his counsel were made aware that a sperm slide had been prepared. Nevertheless, counsel remained silent. He did not demand production of the slide for testing, nor did he request a continuance to review the slide and pursue further discovery.

There is no reversible error for failure to disclose when the information is furnished at trial. *See United States v. Agurs*, 427 U.S. 97, 103, 96 S.Ct. 2392, 2397, 49 L.Ed.2d 342 (1976) ("The rule of *Brady v. Mary* and ... involves the discovery, *after trial* of information which had been known to the prosecution but unknown to the defense.") (emphasis added); *United States v. Iverson*, 648 F.2d 737 (D.C.Cir.1981); *United States v. Craig*, 573 F.2d 455, 492 (7th Cir.1977) *cert. denied*, 439 U.S. 820, 99 S.Ct. 83, 58 L.Ed.2d 110 (1978).

The majority suggests that the sample may have been destroyed prior to Dr. Silverstri's testimony. If so, this fact was discoverable either by cross-examination, or by a prompt motion to produce. Defense counsel failed to undertake either.[1]

1. I do not mean to suggest here that defense counsel was incompetent. The magistrate states in his recommendation, "A review of the record indicates that petitioner was vigorously defended by counsel and counsel's actions clearly were at or beyond the level of reasonable competence."

A remand is unnecessary for any of the reasons proffered by the majority. It is clear from the existing record that both the prosecution and the defense had knowledge of the existence of the sperm sample from Dr. Silverstri's testimony of the existence of the sperm sample. Whether the prosecution is charged with the knowledge that the sample could be used to exculpate the defendant is irrelevant when the defendant knew of its existence at trial and could have reviewed the slide to determine whether in fact it would exculpate him. To remand for a determination of whether a demand by defense counsel for production of the slide would have been successful allows the defendant to have it both ways. If in fact a demand for production would have been futile (because of destruction of the slide), the defendant could have discovered that fact at trial.

A defendant should not be permitted to remain silent when informed of evidence that could conceivably be exculpatory, await the jury's verdict and then proceed to raise the issue by petition for writ of habeas corpus. *See United States v. Kubiak*, 704 F.2d 1545, 1552 (11th Cir.1983) (per curiam); *Evans v. United States*, 408 F.2d 369, 370 (7th Cir.1969).

Moreover, the defense made no showing that the evidence was potentially exculpatory. Apparently only eighty percent of the male population secrete blood in their semen. Hence, for twenty percent of the male population the test of semen to show blood type is not possible. *United States v. Kennedy*, 714 F.2d 968 at 971 (9th Cir.1983). Hilliard has made no showing that he has the secreter characteristic.

Principally because the sperm slide was made known to counsel and defendant at trial, I do not believe that failure to produce the slide can be made a ground for habeas relief.

David DeWITT, Plaintiff-Appellee,

v.

The WESTERN PACIFIC RAILROAD COMPANY, a corporation, Defendant-Cross Claimant-Appellee,

and

The Flintkote Company, a corporation, d/b/a U.S. Lime, Defendant-Cross Defendant-Appellant.

No. 82-4249.

United States Court of Appeals, Ninth Circuit.

Argued and Submitted July 13, 1983.

Decided Nov. 9, 1983.

Railroad conductor brought acti... against owner of plant served by railro... under a spur track agreement to recover f... injuries sustained in a collision on a sp... line leading to the owner's plant. Th... United States District Court for the Nort... ern District of California, Owen E. Wo... ruff, Jr., Magistrate, entered judgment f... railroad conductor on his negligence cl... and entered judgment for railroad on ... claim for indemnity, and owner of pl... appealed. The Court of Appeals, Dunn... Circuit Judge, held that: (1) evidence s... tained finding that railroad conductor ... not contributorily negligent, (2) award ... $400,900 to injured railroad conductor, ... presented evidence showing a future w... loss totalling $841,568 and considerable ... dence of pain and suffering, past wages ... and continuing medical expenses, was ... excessive, and (3) spur track agreeme... entered into between railroad and owner ... plant, prohibited plant owner's conduct ... leaving empty freight cars on the tr...

Affirmed.

1. Courts ⇐100(1)

Court of Appeals' decision holding ... constitutional section of Magistrates Act ... lowing magistrates, with consent of par... to litigation, to conduct civil trials and ...

WESTLAW

Doe v. Gwyn
Court of Appeals of Tennessee. April 8, 2011 Slip Copy 2011 WL 1344996 (Approx. 12 pages)

2011 WL 1344996
Only the Westlaw citation is currently available.

SEE COURT OF APPEALS RULES 11 AND 12

Court of Appeals of Tennessee.

John DOE, alias a Citizen and resident of Hamilton County, Tennessee,

v.

Mark GWYN, Director of the Tennessee Bureau of Investigation, et al.

No. E2010-01234-COA-R3-CV.
Dec. 13, 2010 Session.
April 8, 2011.
Application for Permission to Appeal
Denied by Supreme Court
Aug. 24, 2011.

Appeal from the Chancery Court for Hamilton County, No. 10-0320; W. Frank Brown, III., Chancellor.

Attorneys and Law Firms

Jerry H. Summers, and Marya L. Schalk, Chattanooga, Tennessee, for the appellant, **John Doe**.

Robert E. Cooper, Jr., Attorney General and Reporter, Michael E. Moore, Solicitor General, and Benjamin A. Whitehouse, Assistant Attorney General, Nashville, Tennessee, for the appellee, **Mark Gwyn**.

HERSCHEL PICKENS FRANKS, P.J., delivered the opinion of the Court, in which CHARLES D. SUSANO, JR., J., and D. MICHAEL SWINEY, J., joined.

OPINION

HERSCHEL PICKENS FRANKS, P.J.

*1 This declaratory judgment action challenges the constitutionality of the Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification and Tracking Act, Tenn.Code Ann. § 40-39-201 *et seq.* on the grounds that plaintiff should not be required to register because his criminal convictions occurred in other states prior to the passage of the Tennessee Act, as applied to him. The Trial Judge declared that plaintiff was required to register under the Act, and plaintiff has appealed. On appeal, we affirm the Chancellor's Judgment which requires plaintiff to register in accordance with the Act.

Plaintiff Doe filed a complaint in the Chancery Court against the Tennessee Attorney General, Robert E. Cooper, Jr., the Tennessee Bureau of Investigation Director **Mark Gwyn**, Hamilton County Sheriff Jim Hammond, and Hamilton County Sheriff Detective Jimmy Clifton, alleging that Mr. Doe was convicted in January 1983 of crimes which may or may not qualify as predicate offenses under Tenn.Code Ann. § 40-39-201 *et seq.*, the Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification and Tracking Act of 2004 (hereinafter the "Registration Act").

In the spring of 2010 Doe received a letter from defendant Detective Jimmy Clift that directed him to register as a sex offender pursuant to the Registration Act. The letter stated that if Mr. Doe did not do so within forty-eight hours, he would be arrested. The Complaint alleges that the requirements of Tenn.Code Ann. § 40-39-201 *et seq.*, as applied to Mr. Doe, violate his rights under various provisions of the Tennessee Constitution including the allegation that the statute violates the prohibition of ex post facto laws under Article 1, § 11 of the Tennessee Constitution. The Complaint alleges that in the event information regarding his criminal convictions were released to the general public, the plaintiff would suffer injury to his reputation and livelihood. The Complaint asks that the Court issue an injunction against the defendants forbidding them from arresting Mr. Doe for violation of the Registration Act, and seeks a declaratory judgment that "plaintiff's constitutional rights under the Tennessee

Appendix-C
Doc. 4

Constitution would be violated if the plaintiff was required to register with the Sex Offender Registry."

The Trial Court entered a temporary retraining order prohibiting the defendants from requiring Mr. Doe to register. Prior to the hearing, Doe submitted affidavits of his former attorneys, a judgment from an Ohio court sentencing an unnamed defendant to three to ten years of incarceration for the crime of "gross sexual imposition", a copy of Detective Clift's letter to Mr. Doe, TBI's instructions regarding registration and Mr. Doe's affidavit.

Subsequently, the Court dismissed Detective Clift and extended the temporary restraining order for fifteen days. On May 5, the Trial Court dismissed General Cooper from the case on the agreement of the parties.

*2 A hearing was held on April 27, 2010 on defendants' motion to dismiss. The Chancellor filed an extensive memorandum opinion and order wherein he held that the Registration Act did not violate the Tennessee Constitution's prohibition of ex post facto laws, thus the registration requirements of the Act were not unconstitutional as applied to Mr. Doe. The order stated that Doe was, accordingly, required to register with the TBI pursuant to the Act.

Doe has appealed to this Court, and the parties entered an agreed order that there would be a stay of the judgment while the matter was before this Court.

The issues presented for review are:

A. Did the Trial Court lack subject matter jurisdiction to hear this matter?

B. Did the Trial Court err in granting the defendants' motion to dismiss for failure to state a claim upon which relief can be granted based on the ground that Mr. Doe is required to register as a sex offender pursuant to the Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification and Tracking Act of 2004?

C. Did the Trial Court err in granting the defendants' motion to dismiss for failure to state a claim upon which relief can be granted because requiring Mr. Doe to register under the Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification and Tracking Act of 2004 would be constitutional as applied to him?

Essentially, the facts are not in dispute. Some of the facts are based on the allegations in the Complaint, and the affidavit of John Doe and the affidavit of Doe's former attorney. Mr. Doe has been and is a resident of Hamilton County, Tennessee since 1989. He is licensed by the State of Tennessee and is engaged in the practice of an unnamed profession. He was convicted in January 1983 in Ohio and Kentucky of criminal offenses which may or may not qualify as predicate offenses pursuant to Tenn.Code Ann. § 40–39–201 *et seq.*, the Registration Act. The conviction in Ohio was on four counts of "gross sexual imposition". Doe served approximately three years in custody in one state and ninety days in the other state and was released on two years probation, which ended in 1989. He moved to Hamilton County, Tennessee in 1989 where he established a professional occupation.

At the time he was convicted in the states of Ohio and Kentucky, neither state had sexual offender registration requirements, nor was there such a requirement in Tennessee. Since moving to Hamilton County, Doe has not been arrested or convicted of any sexual offense that requires registration under the Tennessee Registration Act. Doe received a letter from Detective Jimmy Clift which informed him he was required to register with the designated law enforcement agency, and he was directed to register by April 7, 2010, otherwise his failure to comply would result in his arrest.

Our standard of review as to the granting of a motion to dismiss for failure to state a claim upon which relief can be granted is set out in *Stein v. Davidson Hotel Co.*, 945 S.W.2d 714, 716 (Tenn.1997), in which the Supreme Court explained:

> *3 A Rule 12.02(6), Tenn. R. Civ. P., motion to dismiss for failure to state a claim upon which relief can be granted tests only the legal sufficiency of the complaint, not the strength of a plaintiff's proof. Such a motion admits the truth of all relevant and material averments contained in the complaint, but asserts that such facts do not constitute a cause of action. In considering a motion to dismiss, courts should construe the complaint liberally in favor of the plaintiff, taking all allegations of fact as true, and deny the motion unless it appears that the plaintiff can prove no set of facts in support of her claim that would entitle her to relief. *Cook v. Spinnaker's of Rivergate, Inc.*, 878 S.W.2d 934, 938 (Tenn.1994). In considering this appeal from the trial court's

> grant of the defendant's motion to dismiss, we take all allegations of fact in the plaintiff's complaint as true, and review the lower courts' legal conclusions *de novo* with no presumption of correctness. Tenn.R.App.P. 13(d); *Owens v. Truckstops of America*, 915 S.W.2d 420, 424 (Tenn.1996); *Cook, supra*.

Stein at 716.

This suit involves a constitutional challenge to the Tennessee Sexual Offender and Violet Sexual Offender Registration, Verification and Tracking Act, Tenn.Code Ann. §§ 40–39–201 *et seq*. (2004).

The Court is asked to construe the statute and determine its validity under the Tennessee Constitution. The Supreme Court, in *Waters v. Farr*, 291 S.W.3d 873 (Tenn.2009), set forth the standard of review to be employed in such cases:

> When called upon to construe a statute, we must first ascertain and then give full effect to the General Assembly's intent and purpose. *Waldschmidt v. Reassure Am. Life Ins. Co.*, 271 S.W.3d 173, 176 (Tenn.2008). Our chief concern is to carry out the legislature's intent without either broadening or restricting the statute beyond its intended scope. *Houghton v. Aramark Educ. Res., Inc.*, 90 S.W.3d 676, 678 (Tenn.2002) (quoting *Owens v. State*, 908 S.W.2d 923, 926 (Tenn.1995)). Every word in a statute "is presumed to have meaning and purpose, and should be given full effect if so doing does not violate the obvious intention of the Legislature." *In re C.K.G.*, 173 S.W.3d 714, 722 (Tenn.2005) (quoting *Marsh v. Henderson*, 221 Tenn. 42, 424 S.W.2d 193, 196 (1968)). When the statutory language is clear and unambiguous, we apply its plain meaning without complicating the task. *Eastman Chem. Co. v. Johnson*, 151 S.W.3d 503, 507 (Tenn.2004). When a statute is ambiguous, however, we may reference the broader statutory scheme, the history of the legislation, or other sources to discern its meaning. *Colonial Pipeline*, 263 S.W.3d [827] at 836 [Tenn. 2008]. We presume that the General Assembly was aware of its prior enactments and knew the state of the law at the time it passed the legislation. *Owens*, 908 S.W.2d at 926.

Waters at 881–882.

The Court in *Waters* then discussed the standard of review for constitutional interpretation:

> *4 Issues of constitutional interpretation are questions of law, which we review de novo without any presumption of correctness given to the legal conclusions of the courts below. *Colonial Pipeline*, 263 S.W.3d at 836. It is well-settled in Tennessee that "courts do not decide constitutional questions unless resolution is absolutely necessary to determining the issues in the case and adjudicating the rights of the parties." *State v. Taylor*, 70 S.W.3d 717, 720 (Tenn.2002) (citing *Owens*, 908 S.W.2d at 926). Our charge is to uphold the constitutionality of a statute wherever possible. *State v. Pickett*, 211 S.W.3d 696, 700 (Tenn.2007). "In evaluating the constitutionality of a statute, we begin with the presumption that an act of the General Assembly is constitutional." *Id.* (quoting *Gallaher v. Elam*, 104 S.W.3d 455, 459 (Tenn.2003)); *see also Vogel v. Wells Fargo Guard Servs.*, 937 S.W.2d 856, 858 (Tenn.1996) ("A statute comes to a court 'clothed in a presumption of constitutionality [since] the Legislature does not intentionally pass an unconstitutional act.' " (quoting *Cruz v. Chevrolet Grey Iron, Div. of Gen. Motors Corp.*, 398 Mich. 117, 247 N.W.2d 764, 766 (1976)) (alteration in original)).

Waters at 882.

This appeal challenges the constitutionality of the Act as applied to the plaintiff, John Doe. The Federal Sixth Circuit, in *Cutshall v. Sundquist*, 193 F.3d 466, 469–470 (6th Cir. (Tenn.1999) *cert. denied* 529 U.S. 1053, 120 S.Ct. 1554, 146 L.Ed.2d 460 (2000), provided the background of the sexual offender registration laws enacted by all of the states under the direction of the federal government. In 1994 Congress enacted, and the President signed into law, the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program, 42 U.S.C. § 14071. Under this legislation, the Attorney General of the United States was required to establish guidelines for state programs requiring persons convicted of crimes against minors or crimes of sexual violence to register a current address with state law enforcement officials. *See* 42 U.S.C. § 14071(a)(1)(A). The federal law provided that the states were given three years from September 1, 1994 within which to comply with the statute and enact a sexual offender registration scheme. *See* 42 U.S.C. § 14071(f)(1) (1994). Failure to implement a registration program would result in the loss of some federal funding. *See* 42 U.S.C. § 14071(f)(2)(A) (1994). [1]

In 1994, the Tennessee legislature adopted its own Sexual Offender Registration and Monitoring Act., Tenn.Code § 40–39–101 to 108 (repealed 2004), which required convicted sexual offenders to register with the Tennessee Bureau of Investigation. *Cutshall* at 470. The 1994 Tennessee law did not apply to anyone convicted of a sexual offense prior to January 1, 1995 who had been discharged from incarceration or supervision prior to that date. *State v. Gibson*, No. E2003–02102–CCA–R3–CD, 2004 WL 2827000 at * 4 (Tenn.Ct.App. Dec. 9, 2004).

*5 Effective August 1, 2004, the Sexual Offender Registration and Monitoring Act was repealed and was replaced with the Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification, and Tracking Act of 2004, Tenn.Code Ann. § 40–39–201 *et seq.*; *State v. Davenport*, No. M2005–01157–CCA–R3–CD, 2007 WL 1582659 at * 2, n. 1 (Tenn.Crim.App. Sept.17, 2007). The 2004 Registration Act is a comprehensive statute requiring persons convicted of certain sexual offenses to register with the TBI and to have their names, addresses and other information maintained in a central offender registry. Applicable provisions of the Act to this appeal are as follows: Tenn.Code Ann. § 40–39–203 (a)(1) provides that an offender must register or report within forty-eight hours of establishing certain contact with Tennessee. The contact with Tennessee that triggers the registration requirement is the establishment or changing a primary or secondary residence in Tennessee, establishment of a physical presence at a particular location in Tennessee, becoming employed or practicing a vocation in the state or becoming a student in this state. Tenn.Code Ann. § 40–39–203(a)(2) provides that regardless of an offender's date of conviction or discharge from supervision, an offender whose contact with this state is sufficient to satisfy the requirements of subdivision (a)(1) and who was an adult when the offense occurred is required to register or report in person as required by the Act. The definition of "offender" as both a "sexual offender" and a "violent sexual offender" is found at section 40–39–202(10). The definitions of a "sexual offender" and a "violent sexual offender" are provided at sections 40–39–202(19) and (27). A "sexual offender" means a person who has been convicted in this state of committing a sexual offense or has another qualifying conviction and a "violent sexual offender" is a person who has been convicted in this state of committing a violent sexual offense or has another qualifying conviction. The terms "sexual offense" and "violent sexual offense" are defined at sections 40–39–202(20) and (28) and reference specific crimes contained in the Tennessee Criminal Code. The term conviction is also defined and found at section 40–39–202(2) as follows:

> Conviction means a judgment entered by a Tennessee court upon a plea of guilty, a plea of nolo contendere, a finding of guilt by a jury or the court.... Conviction includes, but is not limited to, a conviction by a federal court or military tribunal, including a court-martial conducted by the armed forces of the United States, and a conviction, whether upon a plea of guilty, a plea of nolo contendere or a finding of guilt by a jury or the **court in any other state of the United States, other jurisdiction or other country. A conviction .... for an offense committed in another jurisdiction that would be classified as a sexual offense or a violent sexual offense if committed in this state shall be considered a conviction for the purposes of this** part.... (Emphasis added).

*6 Tenn.Code Ann. § 40–39–203(j), was added to the Registration Act in 2007, which made the sexual offender registration requirements applicable to all sexual offenders and violent sexual offenders as defined in Tenn.Code Ann. § 40–39–202(10)(19)(20)(27)(28) regardless of when they were convicted of their crimes. Thus, pursuant to Tenn.Code Ann. § 40–39 –203(a)(1), as Mr. Doe was convicted in another state of an offense, he would be required to register in Tennessee if his offense would have been classified as a sexual offense or a violent sexual offense if committed in Tennessee, regardless of the date of the conviction.

The first issue to consider is appellee's contention on appeal that the Trial Court was without subject matter jurisdiction. Appellant's response to this contention is that lack of subject matter jurisdiction was not raised at the trial level. However, pursuant to Tenn. R. Civ. P. 12. 08, the issue of subject matter jurisdiction can be raised at any stage of the proceeding, including at the appellate level. *Toms v. Toms*, 98 S.W.3d 140, 143 (Tenn.2003).

Appellee maintains that the Registration Act provides, at Tenn.Code Ann. § 40–39–207(g), a procedure for those who are registered as sexual offenders to challenge their registration by applying to the TBI. Appellee maintains that if the registrant is not successful in the challenge before the TBI he can apply to the Chancery Court of Davidson County or the Chancery Court of his county of residence for relief. Accordingly, appellee contends that Mr.

Doe was obligated to bring the issue of the constitutionality of the Act as applied to him to the TBI first and only to the Chancery Court if he did not get satisfaction from the TBI. Appellee argues that as Mr. Doe failed to exhaust the administrative remedies available to him prior to filing suit for a declaratory judgment in Chancery Court the Trial Court did not have subject matter jurisdiction over the controversy. Appellee's reliance on section 40–39–207 of the Registration Act to support this argument is misplaced. That section sets out the procedure a registered sexual offender can take to petition TBI to have the registration requirements terminated as to the registrant ten years after release from incarceration or supervision on parole or probation. *See* Tenn.Code Ann. § 40–39–207(a). Tenn.Code Ann. § 40–39–207(g) provides that "[a]n offender whose request for termination of registration requirements is denied by a TBI official may petition the chancery court of Davidson County or the chancery court of the county where the offender resides ... for review of the decision." For section 40–39–207 of the Registration Act to apply here, Mr. Doe would have to have been a registrant seeking to have his name removed from the registry due to the passage of time and lack of further convictions. This is not the case. Mr. Doe's filing of a suit for declaratory judgment was an appropriate avenue for him to pursue to determine the constitutionality of the Act and, thus to avoid registration as a sexual offender.

*7 The Tennessee Declaratory Judgment Act, Tenn.Code Ann. § 29–14–103, provides the right to seek a declaratory judgment from a court as follows:

> Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status or other legal relations thereunder.

The Tennessee Supreme Court, in *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827 (Tenn.2008), discussed the Declaratory Judgment Act at length and in particular addressed such a suit brought against a state agency:

> "Declaratory judgments" are so named because they proclaim the rights of the litigants without ordering execution or performance. 26 C.J.S. *Declaratory Judgments* § 1 (2001). Their purpose is to settle important questions of law before the controversy has reached a more critical stage.[2] 26 C.J.S. *Declaratory Judgments* § 3 (2001). The chief function is one of construction. *Hinchman v. City Water Co.*, 179 Tenn. 545, 167 S.W.2d 986, 992 (1943) (quoting *Newsum v. Interstate Realty Co.*, 152 Tenn. 302, 278 S.W. 56, 56–57 (1925)). While findings of fact are permitted in a declaratory judgment action, "the settlement of disputed facts at issue between the parties will ordinarily be relegated to the proper jurisdictional forums otherwise provided." *Id.*
>
> In its present form, the Tennessee Declaratory Judgment Act grants courts of record the power to declare rights, status, and other legal relations. Tenn.Code Ann. § 29–14–102 (2000). The Act also conveys the power to construe or determine the validity of any written instrument, statute, ordinance, contract, or franchise, provided that the case is within the court's jurisdiction. Tenn.Code Ann. § 29–14–103 (2000). Of particular relevance to this case, the Act provides that **"[a]ny person ... whose rights, status, or other legal relations are affected by a statute ... may have determined any question of construction or validity arising under the ... statute ... and obtain a declaration of rights, status or other legal relations thereunder."** *Id.*
> *Colonial Pipeline* at 837 (emphasis added).

Thus, a declaratory judgment suit is appropriate, in that Doe is seeking a determination of how his rights and status are effected by the Registration Act and whether the Act is valid as applied to him, i.e. is the act, as applied to him, in violation of the ex post facto provisions of the Tennessee Constitution.

The Supreme Court, in *Colonia Pipeline*, explained that in a declaratory judgment action the plaintiff need not show a present injury but "an actual 'case' or 'controversy' is still required." *Id.* (*citing Cardinal Chem. Co. v. Morton Int'l*, 508 U.S. 83, 95, 113 S.Ct. 1967, 124 L.Ed.2d 1 (1993)). A bona fide disagreement must exist, and there must be a real interest in dispute. *Id.* (citing *Goetz v. Smith*, 152 Tenn. 451, 278 S.W. 417, 418 (1925). Here, the plaintiff is not seeking an advisory opinion from the Court based on hypothetical facts. Mr. Doe is faced with criminal prosecution if he refuses to register with TBI. Thus, he has a real interest in the Court's, determination of the constitutionality of the Registration Act as applied to him.

*8 The *Colonial Pipeline* Court then discussed the implications of filing a suit for declaratory judgment against a state agency and noted that in such disputes the plaintiff must generally exhaust the available administrative remedies before filing a suit for declaratory relief. *Id.* at 338. However, in this case there are no available administrative remedies available to Mr. Doe for a determination of whether the registration requirements violate his constitutional rights. The *Colonial Pipeline* case involved a tax issue but the Court found that the administrative remedies contained in the tax code did not preclude the plaintiff's suit for declaratory judgment because the controversy was not whether the plaintiff's property was incorrectly assessed but whether the applicable statutory provisions violated constitutional principles. The Court stated that while the defendants correctly asserted that taxpayers must exhaust administrative remedies to appeal a final decision of the board, the statutory provisions for administrative remedies was not a "barrier to a constitutional challenge to the facial validity of the statute." *Id.* at 840. Similarly, in this case, even if the Registration Act contained administrative remedies to an offender's challenge regarding the requirements to register, those remedies would not be a bar to Mr. Doe's constitutional challenge of the validity of the Act as applied to him. *See Doe v. Cooper*, M200900915COAR3CV, 2010 WL 2730583 at *9 (Tenn.Ct.App. July 9, 2010), appeal denied (Dec. 7, 2010)(stating that the plaintiff had standing to challenge the constitutionality of the classification and registration requirement of the 2004 Registration Act by a declaratory judgment suit filed in Chancery Court). We conclude that the appellee's contention that the Trial Court was without subject matter jurisdiction is without merit.

Appellant's first issue on appeal is that Mr. Doe is exempt from the registration requirement based on Tenn.Code Ann. § 40–39–203(a)(2), which requires that any person who is required to register as a sex offender in another state must register in Tennessee if the offender has sufficient contacts with the state.[3] Mr. Doe argues that it was the legislature's intent that the language in Tenn.Code Ann. § 40–39–203(a)(2) would exempt sexual offenders from having to register if they came from other states where registration was not required. We do not agree with Doe's interpretation of the statute. However, we do not rule on the issue because Doe never raised the issue in the Trial Court. It is a well settled principle of law that issues not raised in the trial court cannot be raised for the first time on appeal. *Jordan v. Jordan*, No. W2002–00854–COA–R3–CV, 2003 WL 1092877 at *8 (Tenn.Ct.App. Feb.19, 2003)(citing *Lovell v. Metro. Gov't.* 696 S.W.2d 2 (Tenn.1985); *Lawrence v. Stanford*, 655 S.W.2d 927 (Tenn.1983)).

Mr. Doe claims that requiring him to register as a sexual offender for an offense he was convicted of by an Ohio court in 1983, when he was not required to register either in Ohio or Tennessee at the time he was released from supervision in 1989, is an unconstitutional application of the Tenn.Code Ann. § 40–39–201 *et seq.*, to him. He asserts that the application of the Act to his particular circumstances resulted in the violation of his due process rights and the right against ex post facto laws contained in the Tennessee Constitution.[4]

*9 Doe framed his constitutional challenge of the Registration Act as an "as applied" challenge, as opposed to a facial challenge to the statute. The Supreme Court explained at length the distinction between facial challenges and "as applied" challenges to a statute's constitutionality in *Waters v. Farr*, 291 S.W.3d 873 (Tenn.2009). A facial challenge is a claim that a statute is "invalid in all applications" and cannot be applied constitutionally to anyone. *Id.* at 92 (citing *United States v. Salerno*, 481 U.S. 739, 745, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987). A facial challenge to a statute is the most difficult type of challenge to make as the "presumption of a statute's constitutionality applies with even greater force when a facial challenge is made." Thus, plaintiff bears the burden of showing that "no set of circumstances exists under which the statute would be valid." *Id.* at 921 (citations omitted).

An "as applied" challenge presumes that the statute is generally valid, but the challenger claims that "specific applications of the statute are unconstitutional." Accordingly, the challenger is required to show only that the statute operates unconstitutionally when applied to his particular circumstances. *Id.* at 923. Thus, the court is required to "consider the constitutionality of statutes on a case-by-case basis, and to analyze the facts of the particular case to determine whether the application of the challenged statute deprived the challenger of a constitutionally protected right." Upholding an "as applied" constitutional challenge of a statute obviates the need for addressing a facial challenge to the statute. *Id.* Appellant alleges that the Trial Court's finding that the Registration Act was constitutional and that Mr. Doe was required to register was error because the Trial Court approached the case as a facial constitutional challenge rather than an "as applied" challenge.

After the Trial Court issued its memorandum opinion and order in this case, the Middle Section of this Court rendered an opinion regarding an "as applied" constitutional challenge to the Registration Act in *Doe v. Cooper*, 2010 WL 2730583. While somewhat factually different from the facts before this Court, *Doe v. Cooper* deals with the same legal issues under consideration here. Thus, the analytic framework set out by the Middle Section is instructive to the analysis to be employed here.

Doe v. Cooper, like this case, was a declaratory judgment action wherein the petitioner challenged as unconstitutional the retroactive application of the Registration Act. Petitioner was convicted of five counts of indecent exposure involving a minor in 2001 when the Sexual Offender Registration and Monitoring Act of 1994 was in effect. The 1994 Act did not classify indecent exposure as a "sexual offense" thus petitioner was not required to register. Three years after his convictions, the 2004 Registration Act, at issue here, became law. Under the 2004 Act, petitioner was required to register and he, along with all other sexual offenders whose victims were minors, was prohibited from working or residing within 1,000 feet of a school, child care facility, or public park. Petitioner registered with the sex offender registry when the 2004 Act became law, and was employed at a medical center that was within 1000 feet of a school. When his employer learned that he was a registered sexual offender who was prohibited from working in such close proximity to a school, he was terminated. He obtained employment with another firm, but voluntarily left that job upon learning that a public park was within 1000 feet of the place of his employment. *Doe v. Cooper* at *1–2. Petitioner brought his suit for declaratory judgment, asserting the Registration Act of 2004, as applied to him, was in violation of Article I, Section 11 of the Tennessee Constitution. He contended that the *ex post facto* application of the law is unconstitutional because it requires that he register as a sexual offender and he is prohibited from working or residing within 1,000 feet of a child care center, a school or a public park. *Id.* at * 2.

***10** Here, as discussed above, Mr. Doe was not required to register by the State of Tennessee until 2007 when the Registration Act of 2004 was amended to provide that all sexual offenders and violent sexual offenders as defined by the act must register regardless of the date of conviction. Doe, like the petitioner in *Doe v. Cooper*, is challenging the ex post facto application of the Registration Act "as applied" to him.

The *Doe v. Cooper* Court looked at the constitutional prohibitions on ex post facto laws. Tennessee Constitution Article I, § 11 provides "[t]hat laws made for the punishment of acts committed previous to the existence of such laws, and by them only declared criminal, are contrary to the principles of a free Government; wherefore no ex post facto law shall be made." The ex post facto prohibition contained in the United States Constitution, the Tennessee Constitution and the constitutions of other states apply to laws that "retroactively alter the definition of crimes or increase the punishment for criminal acts." *Kaylor v. Bradley*, 912 S.W.2d 728, 732 (Tenn.Ct.App.1995) (quoting *California Dep't of Corrs. v. Morales*, 514 U.S. 499, 504, 115 S.Ct. 1597, 131 L.Ed.2d 588 (1995)). The United States Supreme Court's definition of an ex post facto law includes laws which:

> [Make] that criminal which was not so at the time the action was performed, or which increases the punishment, or, in short, which, in relation to the offense or its consequences, alters the situation of a party to his disadvantage. *Kring v. Missouri*, 107 U.S. 221, 228–29, 2 S.Ct. 443, 27 L.Ed. 506 (1883). The Court later declared: "The Constitution forbids the application of any new punitive measure to a crime already consummated, to the detriment or material disadvantage of the wrongdoer." *Dobbert v. Florida*, 432 U.S. 282, 299, 97 S.Ct. 2290, 53 L.Ed.2d 344 (1977). However, in 1990 the Court reined in what it would consider an ex post facto law by eliminating the broad "detriment or disadvantage" category and returning to a more traditional definition of ex post facto by prohibiting laws which, "punish as a crime an act previously committed, which was innocent when done; ... make more burdensome the punishment for a crime, after its commission; [and] deprive one charged with crime of any defense available according to law at the time when the act was committed." *Collins v. Youngblood*, 497 U.S. 37, 52, 110 S.Ct. 2715, 111 L.Ed.2d 30 (1990).

Doe v. Cooper, at * 5 (citing *State v. Gibson*, No. E2003–02102–CCA–R3–CD, 2004 WL 2827000 at *2 (Tenn.Crim.Ct.App. Dec. 9, 2004).

The Tennessee Supreme Court has established five broad categories of laws that violate the ex post facto clause of the Tennessee Constitution as follows:

1. A law which provides for the infliction of punishment upon a person for an act done which, when it was committed, was innocent.

2. A law which aggravates a crime or makes it greater than when it was committed.

*11 3. A law that changes the punishment or inflicts a greater punishment than the law annexed to the crime when it was committed.

4. A law that changes the rules of evidence and receives (sic) less or different testimony than was required at the time of the commission of the offense in order to convict the offender.

5. Every law which, in relation to the offense or its consequences, alters the situation of a person to his disadvantage.

Doe v. Cooper at * 5 (citing *Miller v. State,* 584 S.W.2d 758, 761 (Tenn.1979). The Court in *Miller* also noted that the ex post facto clause of the Tennessee Constitution has a broader reach than its federal counterpart. *Id.*

The Court in *Doe v. Cooper* went on to explain that when a court is called upon to determine whether an ex post facto violation of the constitution exists, it is important to first determine whether the challenged statute deals with sentencing or, instead, the statute establishes a civil proceeding. When considering, in the context of sentencing, whether an ex post facto violation of the constitution exists, the important issue, under both the United States and Tennessee Constitutions, "is whether the law changes the punishment to the defendant's disadvantage, or inflicts a greater punishment than the law allowed when the offense occurred." The court makes this determination by "comparing the standard of punishment prescribed by each statute, rather than the punishment actually imposed." If the court determines that the statute provides for the same or a lesser punishment there is no violation of the ex post facto clause. *Doe v. Cooper* at * 5 (citing *State v. Pearson,* 858 S.W.2d [879] at 883 [Tenn. 1993]).

On the other hand, if the court finds the statute is not intended to affect sentencing, but rather establishes civil proceedings a different analysis is employed. *Doe v. Cooper* at *5 (citing *Smith v. Doe,* 538 U.S. 84, 93, 123 S.Ct. 1140, 155 L.Ed.2d 164 (2003); *Strain v. Tennessee Bureau of Investigation,* No. M2007–01621–COA–R3–CV, 2009 WL 137210 at *6 (Tenn.Ct.App. Jan.20, 2009)). In that case, the courts have developed a two-part test, the "intent-effects test," that requires courts to first "ascertain whether the legislature meant the statute to establish 'civil' proceedings." *Doe v. Cooper* at *5 (citing *Smith,* 538 U.S. at 92) (quoting *Kansas v. Hendricks,* 521 U.S. 346, 361, 117 S.Ct. 2072, 138 L.Ed.2d 501 (1997))). The second part of the intent-effects tests examines the effects of the law and is accomplished by reviewing the factors set forth in *Kennedy v. Mendoza–Martinez,* 372 U.S. 144, 83 S.Ct. 554, 9 L.Ed.2d 644 (1963). *Doe v. Cooper* at *6. The *Kennedy v. Mendoza* factors, which have been used by courts in the arena of sex offender registration and reporting requirements, include: (1) in its necessary operation, whether the regulatory scheme has been regarded in our history and traditions as a punishment; (2) whether the regulatory scheme imposes an affirmative disability or restraint; (3) whether the scheme promotes the traditional aims of punishment; (4) whether the scheme has a rational connection to a non-punitive purpose; or (5) whether the scheme is excessive with respect to this non-punitive purpose. *Smith v. Doe,* 538 U.S. at 96.

*12 This Court, in applying the intent-effects test, is first called upon to consider whether the Tennessee General Assembly intended to establish civil proceedings with the enactment of the 2004 Registration Act. The Tennessee Supreme Court, in *Ward v. State,* 315 S.W.3d 461 (Tenn.2010) answered this question, holding that the General Assembly clearly indicated its intent that the Registration Act was a remedial and regulatory measure rather than a punitive measure. *Id.* at 469. *See also Strain v. Tennessee Bureau of Investigation,* M2007–01621–COA–R3–CV, 2009 WL 137210 at * 6 (Tenn.Ct.App. Jan.20, 2009) (Registration Act was part of a non-punitive regulatory framework and not punishment); *Livingston v. State,* M2009–01900–COA–R3–CV, 2010 WL 3928634 (Tenn.Ct.App. Oct.6, 2010)(registry is part of non-punitive regulatory framework and is not punishment); *Doe v. Cooper* at * 7(purpose of Act was not to inflict retribution or additional punishment on those offenders but to protect the safety and general welfare of the people).

The holdings of the foregoing cases are consistent with the Tennessee General Assembly's declaration regarding its intentions in enacting the Registration Act. Tenn.Code Ann. § 40 –39–201(b)(8) provides "[t]he general assembly also declares, however, that in making information about certain offenders available to the public, the general assembly does not

intend that the information be used to inflict retribution or additional punishment on those offenders". Further as noted by the Court in *Doe v. Cooper* at * 6–7, evidence of the General Assembly's non-punitive intent can be found throughout section 201(b) of the Act:

> (1) ... Sexual offenders pose a high risk of engaging in further offenses after release from incarceration or commitment, and protection of the public from these offenders is of paramount public interest;
>
> (2) It is a compelling and necessary public interest that the public have information concerning persons convicted of sexual offenses collected pursuant to this part, to allow members of the public to adequately protect themselves and their children from these persons;
>
> (3) Persons convicted of these sexual offenses have a reduced expectation of privacy because of the public's interest in public safety;
>
> (4) In balancing the sexual offender's and violent sexual offender's due process and other rights against the interests of public security, the general assembly finds that releasing information about offenders under the circumstances specified in this part will further the primary governmental interest of protecting vulnerable populations from potential harm;
>
> (6) To protect the safety and general welfare of the people of this state, it is necessary to provide for continued registration of offenders and for the public release of specified information regarding offenders. This policy of authorizing the release of necessary and relevant information about offenders to members of the general public is a means of assuring public protection and shall not be construed as punitive; ...

*13 Tenn.Code Ann. § 40–39–201(b).

Accordingly, based on the holdings of *Ward, Strain, Doe v. Cooper and Livingston* and the clear declaration made by the General Assembly, the intent of the legislature in enacting the Act was to protect the safety and general welfare of the people of Tennessee and it's purpose is not to inflict additional punishment of the offenders who are required to register.

The General Assembly's intent in enacting the Registration Act was to establish a non-punitive regulatory framework to protect the safety and welfare of the citizens of this state, and we now are required to consider the second prong of the "intent-effects" test using the *Kennedy v. Mendoza* factors. Because of the "as applied" nature of Mr. Doe's constitutional challenge we are required to look at his specific circumstances if applicable.

The first factor is whether the Registration Act has been regarded as punishment in our history and tradition. As discussed above, the requirements of the Act have been held to be non-punitive by our Supreme Court in *Ward* as well as by the Court of Appeals in numerous cases.[5] Further, in reaching its conclusion that the Registration Act was non-punitive, our Supreme Court in *Ward* looked at how sexual offender registration acts had been viewed in other state and federal courts. The Court stated that, based on its review of cases from other states, the overwhelming majority of courts considering this issue have concluded that a sex offender registration requirement does not impose additional punishment on the offender. *Ward* at 470–471.

Based on the details provided in *Ward* regarding the first *Mendoza v. Kennedy* factor, we hold that courts have overwhelmingly viewed sexual offender registry statutes as non-punitive.

The next *Mendoza v. Kennedy* factor is whether the regulatory scheme imposes an affirmative disability or restraint on Mr. Doe. He has not offered any specific facts which demonstrate that the registry scheme would constitute affirmative disability or restraint on him. He has merely argued that registration would cause embarrassment and damage his standing in the community, which would seem to be a universal result of registration. Mr. Doe has failed to articulate how the registration requirements would uniquely impose disability or restraint on him, as he must to sustain an "as applied" challenge, his argument is without merit.

The third *Mendoza v. Kennedy* factor is whether the Registration Act promotes the traditional aims of punishment. In *Doe v. Cooper*, the Court stated that the traditional aims of punishment are retribution and deterrence. *Id.* at 10. In that case the Court of Appeals found, in the context of restrictions on living and working conditions, that the Act was not created for the purpose of retribution or to deter criminal conduct. *Id.* We agree with the findings of the

Court in *Doe v. Cooper*, the Act was enacted to protect the welfare of the people of Tennessee and not to further punish the offenders who are required to register.

*14 The next *Mendoza v. Kennedy* factor is whether the registry, as applied to Mr. Doe, bears a rational connection to a non-punitive purpose. We conclude that there is a clear and rational non-punitive interest in the State of Tennessee's desire to inform the public of Mr. Doe's history of sexual offenses. The registry's aim is to provide the public with information that already exists in public records so that members of the public may take whatever safeguards they deem appropriate. Mr. Doe has not pleaded any specific facts applicable only to him to show the Court that this non-punitive purpose cannot apply to him.

The last *Mendoza v. Kennedy* factor is whether the scheme is excessive with respect to its non-punitive purpose. The Supreme Court in *Ward* noted that the "overwhelming importance of protecting the public safety outweighs the discomfort or inconvenience imposed upon a sex offender by requiring compliance with the registration requirements." *Ward* at 417. Thus, the Court held that, in general, the registration requirement of the Act is not excessive with respect to its non-punitive purpose. Here, Mr. Doe has not stated any reasons why requiring him to register would be more excessive than for any of the other thousands of sexual offenders registered in Tennessee.

Based upon the foregoing, Mr. Doe has failed to show, based on the intent-effect test, that the Registration Act, as applied to him, is in violation of the ex post facto provisions of the Tennessee Constitution.

We affirm the Trial Court's Judgment granting defendant's motion to dismiss for failure to state a claim upon which relief can be granted.

In our discretion, the cost of the appeal is assessed one-half to the appellant and one-half to the appellee.

All Citations

Slip Copy, 2011 WL 1344996

Footnotes

1 There statutes are often referred to as Meagan's Laws.

2 The Supreme Court noted that Tennessee actually allows for additional relief based upon a declaratory judgment. See Tenn.Code Ann. § 29–14–111 (2007).

3 The contacts with the state as set out in Tenn.Code Ann. § 40–39–203(a)(1).

4 Appellant notably did not frame his ex post facto challenge in the context of ex post facto clause of Article I, § 10, cl. 1, of the United States Constitution. He probably avoided a federal constitutional challenge because the United States Supreme Court upheld Alaska's sex offender registration act against a federal ex post facto challenge finding that the act was nonpunitive in intent and effect. *Smith v. Doe*, 538 U.S. 84, 91, 105–106 123 S.Ct. 1140, 155 L.Ed.2d 164 (2003). Additionally, plaintiff apparently abandoned the due process challenge at the trial level as it was not addressed in the trial court's memorandum opinion and was not appealed.

5 *See Strain v. Tenn. Bureau of Investigation*, 2009 WL 137210; *Livingston v. State*, 2010 WL 3928634; *Doe v. Cooper*, 2010 WL 2730583; *State v. Gibson*, 2004 WL 2827000.

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KENTUCKY 1994 SESSION LAWS
1994 REGULAR SESSION

Additions are indicated by <<+ Text +>>; deletions by
<<- Text ->>. Changes in tables are made but not highlighted.

Ch. 392 (S.B. 43)
West's No. 414
CRIMES—SEX OFFENDERS—REGISTRATION

AN ACT relating to the registration of sexual offenders.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

<<+As used in Sections 1 to 5 of this Act:+>>
<<+(1) "Cabinet" means the Justice Cabinet.+>>
<<+(2) "Law enforcement agency" means any lawfully-organized investigative agency, police unit, or police force of federal, state, county, city, metropolitan government, or a combination of these, responsible for the detection of crime and the enforcement of the general criminal federal or state laws.+>>
<<+(3) "Sex offender information" means the name, Social Security number, age, race, sex, date of birth, height, weight, hair and eye color, aliases used, residence, vehicle registration data, a brief description of the crime or crimes committed, and other information the cabinet determines, by administrative regulation, may be useful in the identification of sex offenders.+>>
<<+(4) "Sex crime" means a felony offense defined in KRS Chapter 510, KRS 530.020, 530.064, or 531.310, a felony attempt to commit a sex crime, or similar offenses in another jurisdiction.+>>
<<+(5) For purposes of Section 6 of this Act, "convicted" shall refer to the date that the defendant appeared in court to plead guilty or the date that a verdict of guilty was returned by the jury.+>>

SECTION 2. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

<<+(1) The cabinet shall develop and implement a sex offender registration system which includes creating a new computerized information file to be accessed through the Law Information Network of Kentucky.+>>
<<+(2) Beginning January 1, 1995, any person eighteen (18) years of age or older at the time of the offense who is released on probation, shock probation, conditional discharge by the court, parole, or a final discharge from a penal institution for committing or attempting to commit a sex crime shall, within fourteen (14) days after his release, register with the local probation and parole office in the county in which he resides.+>>
<<+(3) Beginning January 1, 1995, any person who is discharged, paroled, or released on shock probation from a jail, prison, or other institution where he was confined because of the commission or attempt to commit a sex crime shall, prior to discharge, parole, or release, be informed of the duty to register under this section by the official in charge of the place of confinement. The official shall require the person to read and sign any form that may be required by the cabinet, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement shall require the releasee to complete the registration form. The official shall then send the form to the Information Services Center, Kentucky State Police, Frankfort, Kentucky.+>>
<<+(4) Beginning January 1, 1995, any person who is sentenced in this state pursuant to a guilty plea or a jury verdict of conviction of the commission or attempt to commit a sex crime and who is released on probation or conditional discharge shall prior to release or discharge be informed by the court in which the person has been convicted of the duty to register with the local probation and parole office in the county in which he resides. The court shall require the person to read and sign any form that may be required by the cabinet, stating that the duty of the person to register under this section has been explained and order the person to register with the local probation and parole office. Upon completion of the registration form, the probation and parole office shall send the form to the Information Services Center, Kentucky State Police, Frankfort, Kentucky.+>>

Appendix-C
Doc. 5

<<+(5) Beginning January 1, 1995, any person who has pled guilty or been convicted in another state of the commission or attempt to commit a sex crime and who remains under active probation or parole supervision at the time of his relocation to Kentucky shall be informed of the duty to register under this section by the interstate compact officer of the Department of Corrections. The officer shall require the person to read and sign any form that may be required by the cabinet, stating that the duty of the person to register under this section has been explained. The officer shall require the person to complete the registration form. The officer shall then send the form to the Information Services Center, Kentucky State Police, Frankfort, Kentucky.+>>

<<+(6) The registration form shall be a written statement signed by the person which shall include sex offender information.+>>

<<+(7) If the residence address of any registrant changes, the person shall register, within fourteen (14) days of the change of address, with the local probation and parole office in the county of his new residence. The local probation and parole office shall send this information to the Information Services Center, Kentucky State Police, Frankfort, Kentucky.+>>

<<+(8) Any person required to register under this section who violates any of the provisions of this section is guilty of a Class A misdemeanor.+>>

<<+(9) Any person required to register under this section who knowingly provides false, misleading, or incomplete information is guilty of a Class A misdemeanor.+>>

<<+(10) The appropriate court, parole authority, or corrections agency shall be immediately notified to consider revocation of the parole, probation, or conditional discharge of any person released under its authority who has failed to register within the prescribed time period as required by this section.+>>

<<+(11) The statement required by subsection (5) of this section shall not be open to inspection by the public and may only be accessible to law enforcement agencies.+>>

<<+(12) Any person who disseminates, receives, or otherwise uses or attempts to use information in the registry database, knowing the dissemination, receipt, or use is for a purpose other than authorized by law, shall be guilty of a Class A misdemeanor.+>>

SECTION 3. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

<<+Persons required to register pursuant to the provisions of Section 2 of this Act shall remain registered for a period of ten (10) years following their discharge from confinement or ten (10) years following their maximum discharge date on probation, shock probation, conditional discharge, parole, or other form of early release, whichever period is greater.+>>

SECTION 4. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

<<+The cabinet may share information gathered pursuant to Section 2 of this Act with law enforcement agencies in this state and other states in the course of their official duties.+>>

SECTION 5. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

<<+Sections 1 to 5 of this Act may be cited as the "Sex Offender Registration Act."+>>

Section 6. The provisions of Sections 1 to 5 of this Act shall apply to persons convicted after the effective date of this Act.

Approved April 11, 1994.

KY LEGIS 392 (1994)

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(c) Any employee of the Justice and Public Safety Cabinet who disseminates, or does not disseminate, registrant information in good faith compliance with the requirements of this subsection shall be immune from criminal and civil liability for the dissemination or lack thereof.

(6) Any person who has been convicted in a court of any state or territory, a court of the United States, or a similar conviction from a court of competent jurisdiction in any other country, or a court martial of the United States Armed Forces of a sex crime or criminal offense against a victim who is a minor and who has been notified of the duty to register by that state, territory, or court, or who has been committed as a sexually violent predator under the laws of another state, laws of a territory, or federal laws, or has a similar conviction from a court of competent jurisdiction in any other country, shall comply with the registration requirement of this section, including the requirements of subsection (4) of this section, and shall register with the appropriate local probation and parole office in the county of residence within five (5) working days of relocation. No additional notice of the duty to register shall be required of any official charged with a duty of enforcing the laws of this Commonwealth.

Does not apply to Jones

(7) If a person is required to register under federal law or the laws of another state or territory, or if the person has been convicted of an offense under the laws of another state or territory that would require registration if committed in this Commonwealth, that person upon changing residence from the other state or territory of the United States to the Commonwealth or upon entering the Commonwealth for employment, to carry on a vocation, or as a student shall comply with the registration requirement of this section, including the requirements of subsection (4) of this section, and shall register within five (5) working days with the appropriate local probation and parole office in the county of residence, employment, vocation, or schooling. A person required to register under federal law or the laws of another state or territory shall be presumed to know of the duty to register in the Commonwealth. As used in this subsection, "employment" or "carry on a vocation" includes employment that is full-time or part-time for a period exceeding fourteen (14) days or for an aggregate period of time exceeding thirty (30) days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit. As used in this subsection, "student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade or professional institution, or institution of higher education.

(8) The registration form shall be a written statement signed by the person which shall include registrant information, including an up-to-date photograph of the registrant for public dissemination.

(9) For purposes of KRS 17.500 to 17.580 and 17.991, a post office box number shall not be considered an address.

(10) (a) If the residence address of any registrant changes, but the registrant remains in the same county, the person shall register, on or before the date of the change of address, with the appropriate local probation and parole office in the county in which he or she resides.

(b) 1. If the registrant changes his or her residence to a new county, the person shall notify his or her current local probation and parole office of the new residence address on or before the date of the change of address.

2. The registrant shall also register with the appropriate local probation and parole office in the county of his or her new residence no later than five (5) working days after the date of the change of address.

(c) If the electronic mail address or any instant messaging, chat, or other Internet communication name identities of any registrant changes, or if the registrant creates or uses any new Internet communication name identities, the registrant shall register the change or new identity, on or before the date of the change or use or creation of the new identity, with the appropriate local probation and parole office in the county in which he or she resides.

(d) 1. As soon as a probation and parole office learns of the person's new address under paragraph (b)1. of this subsection, that probation and parole office shall notify the appropriate local probation and parole office in the county of the new address of the effective date of the new address.

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DREXEL HENDERSON Jones IS NOT REGISTERED

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Search Criteria:- Last Name: JONES - 73 matches in 4 pages [Click Photo or Name for deta

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Photo	Name	DOB	Address	City	County	Zip	
	JONES, FREDERICK DWIGHT	11/18/1963	324 21ST ST	LOUISVILLE	JEFFERSON	40203	C(
	JONES, JAMES ALLEN	12/11/1947	1447 NIGHTINGALE ROAD #1	LOUISVILLE	JEFFERSON	40213	C(
	JONES, JAMES K	08/28/1943	2710 WEST JEFFERSON STREET #3	LOUISVILLE	JEFFERSON	40212	C(
	JONES, JAMES LEE	07/12/1980	1249 NICE DR	LEXINGTON	FAYETTE	40504	C(
	JONES, JAMES ROBERT	07/11/1950	516 M STREET	LOUISVILLE	JEFFERSON	40208	C(
	JONES, JASON HOWLE	12/09/1975	723 HOPEWELL RD	MAYFIELD	GRAVES	42066	C(
	JONES, JASON WESLEY	07/04/1977	6435 ANTIOCH ROAD	HOPKINSVILLE	CHRISTIAN	42240	C(
	JONES, JASON WILLIAM	01/21/1977	4518 LUNENBURG DR	LOUISVILLE	JEFFERSON	40245	C(
	JONES, JEFFREY	03/04/1963	3916 ACCOMACK DR APT 11	LOUISVILLE	JEFFERSON	40241	C(
	JONES, JESSE RAY	07/29/1953	448 GRINST MILL RD	STANFORD	LINCOLN	40484	C(
	JONES, JOE T	03/22/1959	99 KINGDOM HALL RD	MADISONVILLE	HOPKINS	42431	C(

APPENDIX - C
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	JONES, JOHN JOLLY	04/21/1982	62 MONROE ST	CADIZ	TRIGG	42211	C(
	JONES, JONATHAN EUGENE	02/13/1975	691 NORTH UNION STREET	LIMA	ALLEN	45801	OU
	JONES, JOSEPH EARL	02/15/1972	0 FMC LEXINGTON	LEXINGTON	FAYETTE	40512	INC.
	JONES, JOSEPH LEE	06/30/1940	4415 SWEET OWEN ROAD	OWENTON.	OWEN	40359	C(
	JONES, KENNETH RAY	12/17/1942	643 POSSUM HOLLOW RD	DAYHOIT	HARLAN	40824	C(
	JONES, LARRY THOMAS	06/25/1967	984 FARLEE RD	CLINTON	HICKMAN	42031	C(
	JONES, LAWRENCE	07/14/1971	218 E 26TH ST	COVINGTON	KENTON	41014	C(
	JONES, LAWRENCE	06/27/1954	604 MAYDE RD	BEREA	MADISON	40403	C(
	JONES, LONNIE	12/21/1981	0 KY STATE REFORMATORY	LAGRANGE	OLDHAM	40032	INC.

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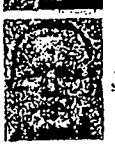
Photo	Name	DOB	Address	City	County	Zip
	JONES, MARK (Alias)	04/05/1965	0 NORTHPOINT TRAINING CTR	BURGIN	MERCER	4031
	JONES, ANDRE (Alias)	09/25/1981	0 USP TUCSON	TUCSON	UKNOWN	8573
	JONES, ALLEN K	08/08/1967	0 KY STATE REFORMATORY	LAGRANGE	OLDHAM	4003
	JONES, ALVIN RICHARD	10/02/1952	0 METRO DEPT OF CORR	LOUISVILLE	JEFFERSON	4020
	JONES, BARRY CHARLES	09/14/1962	314 TRENTON	RUTHERFORD	GIBSON	3836
	JONES, BILLY RAY	07/17/1964	146 BRUCE LN	BREMEN	MUHLENBERG	4232
	JONES, BOBBY	02/26/1950	6102 MAYSVILLE RD	MOUNT STERLING	MONTGOMERY	4035
	JONES, BRADLEY STEVEN	11/26/1984	74 KAY LANE RD	LILY	LAUREL	4074
	JONES, BRIAN HALE	04/26/1968	8406 LOCUST DR	CHARLESTOWN		4711
	JONES, BURT	09/11/1964	2280 HIGHWAY 149	MANCHESTER	CLAY	4096
	JONES, CARLOS RAMON SR	07/21/1971	236 EMMAUS CIR	ELIZABETHTOWN	HARDIN	4210

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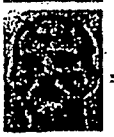
			WOODLARK RD			
	JONES, CHAD MATTHEW	12/25/1975		VERSAILLES	WOODFORD	4038
	JONES, CONNIE C	11/05/1953	337 BLUEGRASS AVE	LEXINGTON	FAYETTE	4050
	JONES, CURTIS WAYNE	10/16/1967	644 NORTH LIMESTONE #7	LEXINGTON	FAYETTE	4050
	JONES, DARRICK	06/24/1983	18731 KY HWY 10	CALIFORNIA	CAMPBELL	41007-9
	JONES, DEBORAH ELAINE	01/05/1972	4006 CHURCHMAN AVE	LOUISVILLE	JEFFERSON	4021
	JONES, DESHANE LEE	05/26/1980	0 EASTERN KY CORR CMPLX	WEST LIBERTY	MORGAN	4147
	JONES, ELMO EUGENE	12/25/1976	2166 MT CARMEL RD	MILTON	TRIMBLE	4004
	JONES, ERIC DELON	06/14/1979	2095 LOWER POMPEY RD	SHELBIANA	PIKE	4156
	JONES, FREDDIE MELVIN JR	12/20/1966	0 KY STATE REFORMATORY	LAGRANGE	OLDHAM	4003

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Photo	Name	DOB	Address	City	County	Zip	
	JONES, LUKE	06/11/1946	4501 SOUTH 6TH STREET #5	LOUISVILLE	JEFFERSON	40214	
	JONES, MATTHEW AARON	12/16/1968	1542 DUIGUID RD APT-E	MURRAY	CALLOWAY	42071	
	JONES, MATTHEW IVEY	05/15/1982	2865 TULIPAN STREET	BROWNSVILLE	CAMERON	78521	(
	JONES, MICHAEL DAVID	07/28/1970	702 11TH ST	CARROLLTON	CARROLL	41008	
	JONES, MICHAEL KEVIN	10/13/1971	450 MILL RD	JENKINS	LETCHER	41501	
	JONES, MICHAEL RAY	07/16/1963	2366 SHELBYVILLE RD RM 141	SHELBYVILLE	SHELBY	40065	
	JONES, NOEL DEAMONE	12/24/1955	1335 COMPTON RD #1	CINCINNATI	HAMILTON	45231	(
	JONES, PAUL DWAYNE	11/13/1963	0 NON-COMPLIANT	SOMERSET	PULASKI	42503	ABSC
	JONES, RAMONE DEON	08/17/1968	0 WARREN CO DET CTR	BOWLING GREEN	WARREN	42101	NON
	JONES, RANDALL	06/18/1962	2012 RAYMOND RD	SHEPHERDSVILLE	BULLITT	40165	
	JONES, RANDALL LYNN	10/02/1966	700 EAST MUHAMMAD ALI BLVD	LOUISVILLE	JEFFERSON	40202	
Photo Not			1008 ROSE				

Available	JONES, RHONDA KAY	03/12/1977	AVE	FRANKLIN	SIMPSON	42134
	JONES, ROBERT LEE	03/05/1992	191 SHOEMAKER HOLLOW	BAXTER	HARLAN	40806
	JONES, ROBERT LEE	11/23/1963	107 CHRIS DR	RICHMOND	MADISON	40475
	JONES, ROD WAYMAN	04/07/1954	2127 ST JOHNS PL	LOUISVILLE	JEFFERSON	40210
	JONES, RODNEY DALE	06/25/1967	6704 WREN RD	CRESTWOOD	OLDHAM	40014
	JONES, RONALD IRVIN	09/15/1959	80 GILBERT CT	VINE GROVE	MEADE	40175
	JONES, RONDAL WAYNE	12/03/1947	599 DONALDSON ROAD #125	ERLANGER	KENTON	41018
	JONES, RUSSELL DAVID III	01/04/1972	2685 KY 1547	LIBERTY	CASEY	42539
	JONES, RUSSELL SCOTT	05/02/1972	617 WEST HOUSEMAN ST	MAYFIELD	GRAVES	42066

[<<Prev 1 2 3 4 Next>>]

Database as of: Jan 07 2013 at 03:00 pm

Kentucky State Police
Headquarters
919 Versailles Road
Frankfort, KY40601
Phone (502) 227-8700

Revised: 04/14/2011.

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KENTUCKY STATE POLICE

SEX OFFENDER REGISTRY

Search Registry
Radius Map
Home
KSP Home
KRS Chapter 17
Justice Cabinet
Corrections
FAQ
Related Sites

NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN

Contact the K.S.P. Sex Offender Registry

1266 Louisville Road
Frankfort, KY 40601

Business Hours:
0800 - 0430 EST
PH: 502 227-8700
After Hrs:
PH: 502 564-0838

Email Us:
kspsor@ky.gov

Registry Search Results

Search Criteria:- Last Name: JONES - 73 matches in 4 pages [Click Photo or Name for deta

[<<Prev 1 2 3 4]

Photo	Name	DOB	Address	City	County	Zip	Sta
	JONES, SCOTT ALLEN	03/03/1979	354 BRIAR CREEK RD	WILLIAMSBURG	WHITLEY	40769	COMPl
	JONES, STEVEN RAY	07/24/1969	33 ROBERTS ST	PLEASUREVILLE	HENRY	40057	COMPl
	JONES, TERRY	11/10/1982	605 SKAGGS RD	ADOLPHUS	ALLEN	42120	COMPl
	JONES, TERRY LEE	10/10/1986	177 DURHAM SPRINGS RD	SCOTTSVILLE	ALLEN	42164	COMPl
	JONES, TIMOTHY	07/09/1969	3605 PARTHENIA AVE	LOUISVILLE	JEFFERSON	40215	COMPl
	JONES, TOMMY RANDAL	11/06/1978	0 LUTHER LUCKETT CORR CMPLX	LAGRANGE	OLDHAM	40031	INCARCl
	JONES, VAN ALAN	04/04/1962	6260 SIERRA TRL	BURLINGTON	BOONE	41005	COMPl
	JONES, WENDELL RAY	05/13/1965	0 LUTHER LUCKETT CORR CPLX	LAGRANGE	OLDHAM	40031	INCARCl
Photo Not Available	JONES, WILLIAM KENNETH	11/10/1944	54 CARLIE AYERS RD	ALBANY	CLINTON	42602	COMPl
	JONES, WILLIAM TODD	12/08/1963	158 WADE RD	CLINTON	HICKMAN	42031	COMPl
	JONES, JAMIE (Alias)	10/16/1975	0 SHELBY CO DET CNTR RD	SHELBYVILLE	SHELBY	40065	INCARCl
			RT 1 BOX				

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1E CACHE

	JONES, JACQULYN R (Alias)	03/27/1972		CAIRO		62914	OUT OF
	JONES, LARRY (Alias)	09/09/1962	3117 KY HIGHWAY 203	HAZEL GREEN	WOLFE	41332	COMPI

[<<Prev 1 2 3]

Search | Radius Map | Home | KSP Home | KRS Chapter 17 | Justice Cabinet
Dept. of Corrections | Related Sites | FAQ/Help

Database as of: Jan 07 2013 at 03:00 pm

Kentucky State Police
Headquarters
919 Versailles Road
Frankfort, KY40601
Phone (502) 227-8700

Revised: 04/14/2011.

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WESTLAW

17.510 Registration system for adults who have committed sex crimes or crimes against minors; persons required...
Baldwin's Kentucky Revised Statutes Annotated Title III. Executive Branch Effective: June 29, 2017 *(Approx. 4 pages)*

Baldwin's Kentucky Revised Statutes Annotated
Title III. Executive Branch
Chapter 17. Public Safety (Refs & Annos)
Sex Offender Registration

Unconstitutional or Preempted : Prior Version Held Unconstitutional as Applied by Cardona v. Com. Ky.App. : Jan. 22, 2010

Proposed Legislation

Effective: June 29, 2017

KRS § 17.510

17.510 Registration system for adults who have committed sex crimes or crimes against minors; persons required to register; exemption for registration for juveniles to be retroactive; manner of registration; penalties; notifications of violations required

Currentness

(1) The cabinet shall develop and implement a registration system for registrants which includes creating a new computerized information file to be accessed through the Law Information Network of Kentucky.

(2) A registrant shall, on or before the date of his or her release by the court, the parole board, the cabinet, or any detention facility, register with the appropriate local probation and parole office in the county in which he or she intends to reside. The person in charge of the release shall facilitate the registration process.

(3) Any person required to register pursuant to subsection (2) of this section shall be informed of the duty to register by the court at the time of sentencing if the court grants probation or conditional discharge or does not impose a penalty of incarceration, or if incarcerated, by the official in charge of the place of confinement upon release. The court and the official shall require the person to read and sign any form that may be required by the cabinet, stating that the duty of the person to register has been explained to the person. The court and the official in charge of the place of confinement shall require the releasee to complete the acknowledgment form and the court or the official shall retain the original completed form. The official shall then send the form to the Information Services Center, Department of Kentucky State Police, Frankfort, Kentucky 40601.

(4) The court or the official shall order the person to register with the appropriate local probation and parole office which shall obtain the person's fingerprints, DNA sample, and photograph. Thereafter, the registrant shall return to the appropriate local probation and parole office not less than one (1) time every two (2) years in order for a new photograph to be obtained, and the registrant shall pay the cost of updating the photo for registration purposes. Any registrant who has not provided a DNA sample as of July 1, 2009, shall provide a DNA sample to the appropriate local probation and parole office when the registrant appears for a new photograph to be obtained. Failure to comply with this requirement shall be punished as set forth in subsection (11) of this section.

NEVER OCCURRED.

(5) (a) The appropriate probation and parole office shall send the registration form containing the registrant information, fingerprint card, and photograph, and any special conditions imposed by the court or the Parole Board, to the Information Services Center, Department of Kentucky State Police, Frankfort, Kentucky 40601. The appropriate probation and parole office shall send the DNA sample to the Department of Kentucky State Police forensic laboratory in accordance with administrative regulations promulgated by the cabinet.

APPENDIX - C
Doc. 2

(b) The Information Services Center, upon request by a state or local law enforcement agency, shall make available to that agency registrant information, including a person's

fingerprints and photograph, where available, as well as any special conditions imposed by the court or the Parole Board.

(c) Any employee of the Justice and Public Safety Cabinet who disseminates, or does not disseminate, registrant information in good faith compliance with the requirements of this subsection shall be immune from criminal and civil liability for the dissemination or lack thereof.

(6) (a) Except as provided in paragraph (b) of this subsection, any person who has been convicted in a court of any state or territory, a court of the United States, or a similar conviction from a court of competent jurisdiction in any other country, or a court martial of the United States Armed Forces of a sex crime or criminal offense against a victim who is a minor and who has been notified of the duty to register by that state, territory, or court, or who has been committed as a sexually violent predator under the laws of another state, laws of a territory, or federal laws, or has a similar conviction from a court of competent jurisdiction in any other country, shall comply with the registration requirement of this section, including the requirements of subsection (4) of this section, and shall register with the appropriate local probation and parole office in the county of residence within five (5) working days of relocation. No additional notice of the duty to register shall be required of any official charged with a duty of enforcing the laws of this Commonwealth.

(b) No person shall be required to register under this subsection for a juvenile adjudication if such an adjudication in this Commonwealth would not create a duty to register. This paragraph shall be retroactive.

(7) (a) Except as provided in paragraph (b) of this subsection, if a person is required to register under federal law or the laws of another state or territory, or if the person has been convicted of an offense under the laws of another state or territory that would require registration if committed in this Commonwealth, that person upon changing residence from the other state or territory of the United States to the Commonwealth or upon entering the Commonwealth for employment, to carry on a vocation, or as a student shall comply with the registration requirement of this section, including the requirements of subsection (4) of this section, and shall register within five (5) working days with the appropriate local probation and parole office in the county of residence, employment, vocation, or schooling. A person required to register under federal law or the laws of another state or territory shall be presumed to know of the duty to register in the Commonwealth. As used in this subsection, "employment" or "carry on a vocation" includes employment that is full-time or part-time for a period exceeding fourteen (14) days or for an aggregate period of time exceeding thirty (30) days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit. As used in this subsection, "student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade or professional institution, or institution of higher education.

(b) No person shall be required to register under this subsection for a juvenile adjudication if such an adjudication in this Commonwealth would not create a duty to register. This paragraph shall be retroactive.

(8) The registration form shall be a written statement signed by the person which shall include registrant information, including an up-to-date photograph of the registrant for public dissemination.

(9) For purposes of KRS 17.500 to 17.580 and 17.991, a post office box number shall not be considered an address.

(10) (a) If the residence address of any registrant changes, but the registrant remains in the same county, the person shall register, on or before the date of the change of address, with the appropriate local probation and parole office in the county in which he or she resides.

(b) 1. If the registrant changes his or her residence to a new county, the person shall notify his or her current local probation and parole office of the new residence address on or before the date of the change of address.

2. The registrant shall also register with the appropriate local probation and parole office in the county of his or her new residence no later than five (5) working days after the date of the change of address.

(c) If the electronic mail address or any instant messaging, chat, or other Internet communication name identities of any registrant changes, or if the registrant creates or uses any new Internet communication name identities, the registrant shall register the change or new identity, on or before the date of the change or use or creation of the new identity, with the appropriate local probation and parole office in the county in which he or she resides.

(d) 1. As soon as a probation and parole office learns of the person's new address under paragraph (b)1. of this subsection, that probation and parole office shall notify the appropriate local probation and parole office in the county of the new address of the effective date of the new address.

2. As soon as a probation and parole office learns of the person's new address under paragraph (b)2. of this subsection or learns of the registrant's new or changed electronic mail address or instant messaging, chat, or other Internet communication name identities under paragraph (c) of this subsection, that office shall forward this information as set forth under subsection (5) of this section.

(11) Any person required to register under this section who knowingly violates any of the provisions of this section or prior law is guilty of a Class D felony for the first offense and a Class C felony for each subsequent offense.

(12) Any person required to register under this section or prior law who knowingly provides false, misleading, or incomplete information is guilty of a Class D felony for the first offense and a Class C felony for each subsequent offense.

(13) (a) The cabinet shall verify the addresses and the electronic mail address and any instant messaging, chat, or other Internet communication name identities of individuals required to register under this section. Verification shall occur at least once every ninety (90) days for a person required to register under KRS 17.520(2) and at least once every calendar year for a person required to register under KRS 17.520(3). If the cabinet determines that a person has moved or has created or changed any electronic mail address or any instant messaging, chat, or other Internet communication name identities used by the person without providing his or her new address, electronic mail address, or instant messaging, chat, or other Internet communication name identity to the appropriate local probation and parole office or offices as required under subsection (10)(a), (b), and (c) of this section, the cabinet shall notify the appropriate local probation and parole office of the new address or electronic mail address or any instant messaging, chat, or other Internet communication name identities used by the person. The office shall then forward this information as set forth under subsection (5) of this section. The cabinet shall also notify the appropriate court, Parole Board, and appropriate Commonwealth's attorney, sheriff's office, probation and parole office, corrections agency, and law enforcement agency responsible for the investigation of the report of noncompliance.

(b) An agency that receives notice of the noncompliance from the cabinet under paragraph (a) of this subsection:

1. Shall consider revocation of the parole, probation, postincarceration supervision, or conditional discharge of any person released under its authority; and

2. Shall notify the appropriate county or Commonwealth's Attorney for prosecution.

Credits

HISTORY: 2017 c 158, § 16, eff. 6-29-17; 2011 c 2, § 92, eff. 6-8-11; 2009 c 100, § 6, eff. 6-25-09; 2009 c 105, § 5, eff. 3-27-09; 2008 c 158, § 13, eff. 7-1-08; 2007 c 85, § 100, eff. 6-26-07; 2006 c 182, § 6, eff. 7-12-06; 2000 c 401, § 16, eff. 4-11-00; 1998 c 606, § 138, eff. 7-15-98; 1994 c 392, § 2, eff. 7-15-94

LRC NOTES

Legislative Research Commission Note (6-26-07): 2007 Ky. Acts ch. 85, relating to the creation and organization of the Justice and Public Safety Cabinet, instructs the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in that Act. Such a correction has been made in this section.

Notes of Decisions (45)

KRS § 17.510, KY ST § 17.510
Current through the end of the 2017 regular session

End of Document

No: 15-5128

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Aug 10, 2015
DEBORAH S. HUNT, Clerk

DANIEL H. JONES,

Plaintiff-Appellant,

v.

MARK GWYN, Director of Admissions; AVIS STONE, Law Enforcement Information Coordinator, [TBI] Tennessee Bureau of Investigations,

Defendants-Appellees.

ORDER

Daniel H. Jones, a Tennessee prisoner proceeding pro se, appeals the district court's order dismissing his civil rights case, filed pursuant to 42 U.S.C. § 1983. Jones's appellate brief is construed as a motion to proceed in forma pauperis pursuant to Federal Rule of Appellate Procedure 24(a)(5).

On January 14, 2015, Jones filed a complaint against Mark Gwyn, Director of the Tennessee Bureau of Investigations ("TBI"), and Avis Stone, TBI's Law Enforcement Information Coordinator. He alleged that the defendants' denial of his March 26, 2010, request to remove his name from Tennessee's sex-offender registry violated his equal protection rights, his "civil right to be free from intimidation," and Tennessee Code Annotated § 39-17-309(a). After granting Jones leave to proceed in forma pauperis, the district court dismissed Jones's complaint under 28 U.S.C. § 1915(e)(2), for failure to state a claim upon which relief may be granted, finding that Jones's complaint was barred by the one-year statute of limitations that applies to civil-rights claims brought in Tennessee.

Appendix - C
Doc. 8

An indigent litigant may obtain leave to proceed in forma pauperis on appeal if the appeal is taken in good faith. Fed. R. App. P. 24(a)(5); *Owens v. Keeling*, 461 F.3d 763, 774-76 (6th Cir. 2006). An appeal is not taken in good faith if it is frivolous, i.e., it lacks an arguable basis in law or fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Coppedge v. United States*, 369 U.S. 438, 445 (1962).

It appears that Jones's appeal lacks an arguable basis in law. Accordingly, his motion to proceed in forma pauperis is denied. Unless Jones pays the $505 filing fee to the district court within thirty days of the entry of this order, this appeal will be dismissed for want of prosecution.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

3d

TENNESSEE SEXUAL OFFENDER / VIOLENT SEXUAL OFFENDER
REGISTRATION / VERIFICATION / TRACKING FORM
Tennessee Bureau of Investigation, 901 R. S. Gass Boulevard, Nashville, TN 37216

___ Previously Registered / ___ Initial Registration — ___ Annual Reporting / ___ Quarterly Reporting
YES Information Update

SECTION A - Registrant Information — Please Print or Type all Information

Name: JONES, DANIEL HENDERSON (Last, First, Middle) DOB: 03/05/1953 SSN: [redacted]
Alias: City of Birth: NORTON State/County of Birth: VA
Driver License#: 090212133 State: TN Government ID #: NA TOMIS #: SO000435
Race: BLACK Sex: M Height: 507 Weight: 190 Hair: BLACK Eyes: BROWN Scars, Marks, Tattoos:

SECTION B - Primary Address: P.O. BOX NOT ACCEPTABLE

Street: 1001 TRANBARGER DR Apt/Lot #3
KINGSPORT (City) SULLIVAN (County) TN (State) 37664 (Zip)
Phone #: 423 367-6173 Start Date: 04/01/2007
Minors residing at residence: NO End Date:
Agency to be Notified: KINGSPORT PD
Resident of Nursing Home/Assisted Living: NO Homeless: NO

Mailing Address:
Street #: 1001 TRANBARGER DR Apt/Lot:
P.O.Box:
KINGSPORT (City) SULLIVAN (County) TN (State) 37664 (Zip)

Secondary Address: P.O. BOX NOT ACCEPTABLE

Street: PO BOX 1786 Apt/Lot#
SULLIVAN (City) TN (State) 37664 (Zip)
Phone #: Start Date: 04/01/2006
Minors residing at residence: NO End Date:
Agency to be Notified: KINGSPORT PD

Closest Living Relative:
Name:
Street #: Apt/Lot #:
City County State Zip
Phone #: Relationship:

SECTION C - Vehicle, Mobile Home, Trailer or Manufactured Home:

Vin: Registered to:
License Tag# State
Description(color/make/model):

Vessel, Live-Aboard Vessel, or Houseboat:

Hull ID#: Name of Vessel:
Registration # Registered to:
Description(color/make/model):

SECTION D Campus Activity — Start Date: End Date:

University/School: Campus: Agency to be Notified:

SECTION E - Employment EMPLOYED Type of Employment TRUCK DRIVER

Employer 1: D AND L Contact LINDA HALL Phone #: 423 239-5656 Start Date: 09/01/2006
Address: 5063 FT. HENRY DR (Street) KINGSPORT (City) SULLIVAN (County) TN (State) 37660 (Zip) End Date:

Employer 2: Contact Phone #: Start Date:
Address: (Street) (City) (County) (State) (Zip) End Date:

Agency to Notify: KINGSPORT PD Agency to Notify:

SECTION F - Offense Information

Date of Offense:	Conviction Offense:	Offense Location:	Victim:
1. 12/27/1974	RAPE	HARLON KY	Minor NO Age 18 Sex FEMALE
2.			Minor Age Sex
3.			Minor Age Sex

Release Date 07/23/1997 Type of Release: EXPIRATION OF SENTENCE. NO SUPERVISION
County:

SECTION G - Parole/Probation Officer (or person responsible for supervision):

Name/Title:
Parole/Probation Office Street Address: Phone
City: State: County: Zip: Agency to be Notified:

SECTION H - PLEASE READ CAREFULLY BEFORE SIGNING:

Under penalty of perjury, I declare the information provided on this form is true and correct. [(TCA 39-16-702(b)(3))]

X I acknowledge I have read and understand the requirements.
___ The requirements have been read to me and I understand the requirements.

THIS IS NOT A confession OF 9:39 AM - 11/27/07

JONES, DANIEL HENDERSON (Printed Name of Offender) — Daniel H. Jones (Signature of the Offender) — 11/27/2007 9:30 AM (Date and Time Signed)
MURRAY, RANDY (Printed Name of Reporting Officer) — Dist. Body Murray (Signature of Reporting Officer) — 11/27/2007 9:30 AM (Date and Time Signed)

SECTION I
Classification: VIOLENT
Status: ACTIVE

SECTION J - Contributing Agency Information (Please Print Legibly)

Agency Name: KINGSPORT PD Reporting Officer: MURRAY, RANDY
Agency Address: SHELBY STREET (Street) KINGSPORT (City) SULLIVAN (County) TN (State) 37660-0000 (Zip)
Phone # 423 229-9301 Fax #
Criminal History Run: FBI ___ SID ___ Photographed? NO Fingerprinted? NO

THIS IS NOT A confession OF DHCT. B

Appendix - C Doc. 9

TENNESSEE BUREAU OF IN

Truth • Bravery • In

That Guilt Shall Not Escape Nor Inno

Tennessee Sexual Offender Regis

Appendix - C Doc. 10

Primary Address Search

Return to Search

Offenders Found: 2

TID	Picture	Last Name	First Name	Middle Name	Primary Res Addr
00443638		JONES	DANIEL	HENDERSON	7177 COCKRILL BE
00467462		JONES	DANIEL	ANTHONY	239 COUNTY LINE

22