

APPENDIX

1. Fred Auston Wortman, III v. Tennessee, et. al., No.3:20-cv-00159 (M.D.Tenn. Apr. 3, 2021, ruling on petition to alter or amend issued May 27, 2021)
2. Fred Auston Wortman, III v. Tennessee, et. al., No.20-5718 (6th Cir. Sept.23, 2021, ruling on petition for rehearing February 14, 2022
3. Alford Plea Agreement and sentencing court's judgment order

WESTLAW

Appendix
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Wortman v. Tennessee

United States District Court, M.D. Tennessee, Nashville Division. April 3, 2020 Not Reported in Fed. Supp. 2020 WL 1666601 (Approx. 8 pages)

2020 WL 1666601

Only the Westlaw citation is currently available.

United States District Court, M.D. Tennessee, Nashville Division.

Fred Auston **WORTMAN**, III, Plaintiff,

v.

State of TENNESSEE Board of Parole, et al., Defendants.

No. 3:20-cv-00156

Filed 04/03/2020

Attorneys and Law FirmsFred Auston **Wortman**, III, Wartburg, TN, pro se.

Pamela S. Lorch, Tennessee Attorney General's Office, Nashville, TN, for Defendants.

MEMORANDUM OPINION

ELI RICHARDSON, UNITED STATES DISTRICT JUDGE

*1 Fred Auston **Wortman**, III, an inmate of the Morgan County Correctional Complex in Wartburg, Tennessee, filed this pro se action under 42 U.S.C. § 1983 against the State of Tennessee Board of Parole ("Parole Board"), Gary Faulcon, Gay Gregson, Roberta Kustoff, Richard Montgomery, Tim Gobble, Zane Duncan, Barrett Rich, Rob Clark, Jim Purviance, Gayle Barbee, Richard O'Bryan, Mark Edward Davidson, Paul Hagerman, and f/n/u Stewart. (Doc. No. 1). Plaintiff sues the non-entity Defendants in their individual and official capacities. Plaintiff also filed a motion to participate in all proceedings by telephone. (Doc. No. 2).

The complaint is before the Court for an initial review pursuant to the Prison Litigation Reform Act ("PLRA"), 28 U.S.C. §§ 1915(e)(2) and 1915A.

I. PLRA Screening Standard

Under 28 U.S.C. § 1915(e)(2)(B), the court must dismiss any portion of a civil complaint filed in forma pauperis that fails to state a claim upon which relief can be granted, is frivolous, or seeks monetary relief from a defendant who is immune from such relief. Section 1915A similarly requires initial review of any "complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity," *id.* § 1915A(a), and summary dismissal of the complaint on the same grounds as those articulated in § 1915(e)(2)(B). *Id.* § 1915A(b).

The court must construe a pro se complaint liberally, *United States v. Smotherman*, 838 F.3d 736, 739 (6th Cir. 2016) (citing *Erickson v. Pardus*, 551 U.S. 89, 94 (2007)), and accept the plaintiff's factual allegations as true unless they are entirely without credibility. See *Thomas v. Eby*, 481 F.3d 434, 437 (6th Cir. 2007) (citing *Denton v. Hernandez*, 504 U.S. 25, 33 (1992)). Although pro se pleadings are to be held to a less stringent standard than formal pleadings drafted by lawyers, *Haines v. Kerner*, 404 U.S. 519, 520–21 (1972); *Jordan v. Jabe*, 951 F.2d 108, 110 (6th Cir. 1991), the courts' "duty to be 'less stringent' with pro se complaints does not require us to conjure up [unpleaded] allegations." *McDonald v. Hall*, 610 F.2d 16, 19 (1st Cir. 1979) (citation omitted).

II. Section 1983 Standard

Title 42 U.S.C. § 1983 creates a cause of action against any person who, acting under color of state law, abridges "rights, privileges, or immunities secured by the Constitution and laws...." To state a claim under § 1983, a plaintiff must allege and show two elements: (1) that he was deprived of a right secured by the Constitution or laws of the United States; and (2) that the deprivation was caused by a person acting under color of state law. *Dominguez v. Corr. Med. Servs.*, 555 F.3d 543, 549 (6th Cir. 2009) (quoting *Sigley v. City of Panama Heights*, 437 F.3d 527, 533 (6th Cir. 2006)); 42 U.S.C. § 1983.

III. Alleged Facts

The complaint alleges that, less than week before Plaintiff's parole hearing, Defendant Freddie Sevier¹ conducted a risk needs assessment of Plaintiff. The results of that assessment showed that Plaintiff had a low risk of reoffending and was an excellent candidate for parole release. Approximately twenty-four hours prior to Plaintiff's parole hearing, Defendant f/n/u Stewart² contacted Defendant Sevier "in order to pressure and influence Mr. Sevier to negatively change a risk assessment score that had been assigned to" Plaintiff. (Doc. No. 1 at 24). Immediately prior to the hearing, Defendant "District Attorney" Mark Davidson participated in a "closed-door, private, secret ex parte meeting with one or more members of the Parole Board for the purpose of influencing the Board to deny parole release" to Plaintiff "and to set off any review of [Plaintiff's] release as long as possible." (*Id.* at 25). According to the complaint, Defendant Davidson engaged in bribery during the meeting.

*2 On September 19, 2019, the Parole Board held a hearing to determine whether Plaintiff would be released on parole. Defendant Gary Faulcon presided over the hearing. Unspecified members of the media attended the hearing. Defendants Davidson and Paul Hagerman³ testified during the hearing and, according to the complaint, their testimony contradicted "written testimony in the form of the Alford Plea agreement entered into by Mr. Davidson and Mr. Hagerman on behalf of the State and [Plaintiff] and which was approved of by the victim and the court." (*Id.* at 26-27).

After less than five minutes of deliberating, Defendant Faulcon recommended that the Parole Board defer review until 2026, citing Tennessee Code Annotated § 40-35-503(b)(1) and (2). According to the complaint, Defendant Faulcon did not have time to meaningfully review the numerous documents submitted to the Parole Board as recently as the morning of the hearing. The complaint alleges that Defendants "produced an administrative proceeding that was subject to bribery, undue influence, civil conspiracy, collusion, cover-up and interference with governmental operations." (Doc. No. 1 at 5).

Plaintiff received the written decision of the Parole Board on October 7, 2019. He filed an administrative appeal of the Parole Board's decision on or about November 18, 2019. As part of his appeal, he submitted discovery requests to the Parole Board. Defendant Rob Clark, counsel for the Parole Board, informed Plaintiff that his requests for discovery were denied.

IV. Analysis

Plaintiff alleges that he has been improperly denied parole. He sues the Parole Board, individual Parole Board members, the attorney for the Parole Board, two state prosecutors, and two corrections officers. He is unclear about precisely what he is asking from this Court, if anything, beyond requesting in effect that the lawsuit go forward, proceed through discovery to a hearing, and then (with Plaintiff presumably victorious at the hearing) be "remanded to the administrative agency with instructions." (Doc. No. 1 at 36). What Plaintiff apparently seeks from this Court is a determination essentially that his parole proceedings were improper or invalid, plus a resulting remand to the Parole Board requiring it either to parole Plaintiff or at least re-do the proceedings in a proper manner. But there are numerous obstacles to the relief he seeks from this Court, and they prove to be insurmountable.

First, a suit against the Parole Board is actually a suit against the state of Tennessee. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 98-100 (1984). And, a suit against a Parole Board member in his or her official capacity is a suit against the state agency. *Hafer v. Melo*, 502 U.S. 21 (1991); *Ky. v. Graham*, 473 U.S. 159, 165-66 (1985). The Eleventh Amendment to the United States Constitution bars claims for damages against a state, its agencies, and its employees in their official capacities unless a state has waived its immunity. *Quern v. Jordan*, 440 U.S. 332, 337 (1979), *overruled on other grounds by Hafer*, 502 U.S. at 27; see *Cowan v. Univ. of Louisville Sch. of Med.*, 900 F.2d 936, 940 (6th Cir. 1990) ("a suit in federal court by private parties seeking to impose a liability which must be paid from public funds in the state treasury is barred by the Eleventh Amendment."). Tennessee has not waived its immunity. *Berndt v. State of Tenn.*, 796 F.2d 879, 881 (6th Cir. 1986); *Gross v. Univ. of Tenn.*, 620 F.2d 109, 110 (6th Cir. 1980). Furthermore, a state is not a person within the meaning of section 1983. *Will v. Michigan*, 491 U.S. 58 (1989). Therefore, to the extent Plaintiff seeks damages from the Parole Board, the state of Tennessee, or any Parole Board member in his or her official capacity, such a request is barred by the Eleventh Amendment and does not fall within the purview of Section 1983. See *Horton v. Martin*, 137 F. App'x 773, 775 (6th Cir. 2005) (dismissing damages claim against state parole board under the Eleventh Amendment).

*3 The complaint identifies only Defendant Faulcon as a member of the Parole Board.⁴ Defendant members of the Parole Board, including the parole hearing director, hearing officer, and parole administrator, are absolutely immune from damages liability. "[A] parole board is entitled to absolute immunity for activities related to 'the execution of parole revocation procedures.'" *Wright v. McClain*, 626 F. Supp. 1073, 1074 (W.D. Tenn. 1986) (citations omitted); see *Murray v. Miller*, No. 89-5506, 1989 WL 149987, at *1 (6th Cir. Dec. 12, 1989) (holding that "[t]he district court correctly concluded that the defendants are immune from suit for damages under 42 U.S.C. § 1983. Individual members of state boards uniformly have been found to have absolute immunity from suit for damages."); *Robinson v. Bd. of Paroles*, No. 88-6400, 1989 WL 68024, at *1 (6th Cir. June 23, 1989) (affirming district court's holding that suit for monetary damages against Tennessee Board of Parole members was frivolous). Thus, the complaint fails to state damages claims upon which relief can be granted under Section 1983 against Defendant Faulcon and any other Parole Board member in his or her individual capacity.

The complaint also names Gay Gregson, Roberta Kustoff, Richard Montgomery, Tim Gobble, Zane Duncan, Barrett Rich, Jim Purviance, Gayle Barbee, and Richard O'Bryan as Defendants. (Doc. No. 1 at 1). However, other than being listed as Defendants in the caption of the complaint, these Defendants are not mentioned in the narrative of the complaint or anywhere else in the complaint. A plaintiff must identify the right or privilege that was violated and the role of the defendant in the alleged violation. *Miller v. Calhoun Cnty.*, 408 F.3d 803, 827 n.3 (6th Cir. 2005); *Dunn v. Tenn.*, 697 F.2d 121, 128 (6th Cir. 1982). Because Plaintiff does not allege the personal involvement of these Defendants in the events set forth in the complaint, Plaintiff has not established a basis for imposing individual liability on these Defendants. See *Rizzo v. Goode*, 423 U.S. 362, 371 (1976); *Heyerman v. Cnty. of Calhoun*, 680 F.3d 642, 647 (6th Cir. 2012). Thus, Plaintiff's claims against Defendants Gregson, Kustoff, Montgomery, Gobble, Duncan, Rich, Purviance, Barbee, and O'Bryan in their individual capacities must be dismissed.

Plaintiff complains about the way his parole hearing was handled and asks this Court for non-monetary relief in the form of holding a hearing, permitting discovery, and an ordering a remand. (Doc. No. 1 at 35-36). Because Tennessee's statutory scheme places the decision to grant parole within the complete discretion of the parole board, inmates have no state-created liberty interest in parole. See *Seagroves v. Tenn. Bd. of Probation & Parole*, 86 F. App'x 45 (6th Cir. 2003); *Berry v. Traughber*, 48 F. App'x 483, 484 (6th Cir. 2002) ("Berry has neither an inherent constitutional right to parole nor a protected liberty interest created by mandatory state parole laws."); *Wright v. Trammell*, 810 F.2d 589 (6th Cir. 1987) (per curiam) (Tennessee law creates no liberty interest in parole). See also *Sweeton v. Brown*, 27 F.3d 1162, 1164-65 (6th Cir. 1994) (en banc) ("After *Olim* and *Inmates*, it became clear that procedural statutes and regulations governing parole do not create federal procedural due process rights....The parole authorities in the State of Michigan may have been required to follow their own procedural statutes and regulations on parole as amplified in the consent decree as a matter of state law, but there is not now any viable legal theory by which Michigan state authorities are required to follow such procedural rules as a matter of federal due process.").

"Due process in parole proceedings is satisfied as long as the procedure used affords the inmate an opportunity to be heard, and, if parole is denied, the Parole Board informs the inmate of the basis upon which it denied parole." *Seagroves*, 86 F. App'x 45, 48 (citing *Greenholtz v. Inmates of the Ne. Penal & Corr. Complex*, 442 U.S. 1, 16 (1979)). Likewise, there is "no constitutional or inherent right of a convicted person to be conditionally released" on parole. *Crump v. Laffer*, 657 F.3d 393, 397 (6th Cir. 2011). Here, it is undisputed that Plaintiff received a parole hearing and the Parole Board denied parole to Plaintiff. Plaintiff does not allege that he was denied an opportunity to be heard during his parole hearing. As such, Plaintiff has no due process claims based on the parole hearing itself, the process leading up to his parole hearing, or the denial of his parole—no matter how improper or unfair they all allegedly were.

*4 The complaint alleges that the Parole Board relied on an erroneous or doctored risk assessment score in denying Plaintiff's parole. However, "reliance on false information in a parole hearing does not constitute a violation of due process rights." *Jergens v. Ohio Dep't of Rehab. & Corr.*, No. 2:10-cv-01183, at **3-4 (S.D. Ohio June 13, 2011) (citing *Whiteside v. Ohio Dep't of Rehab. & Corr.*, No. 2:03-cv-00439, Doc. No. 49 at 13) (S.D. Ohio Mar. 31, 2004)) (where plaintiff was not challenging the outcome of his parole decision but rather the process that "unfairly determined the outcome," court rejected the claim, agreeing with *Whiteside* that a prisoner has no right protected by due process to challenge the accuracy of information used by the parole board); *Reffitt v. Nixon*, 917 F. Supp. 409, 413 (E.D. Va.

1996), *aff'd*, 121 F.3d 699 (4th Cir. 1997) (*per curiam*) (explaining that a prisoner may not raise a claim under Section 1983 to contest information in his parole file because a prisoner does not have a liberty interest in being granted parole); *Washington v. White*, 805 F. Supp. 191, 193 (S.D. N.Y. 1992) (explaining that "[s]ince New York's parole provisions do not create an entitlement to parole...any alleged unfairness in plaintiff's parole hearing does not and cannot afford a predicate for relief under Section 1983"). Plaintiff fails to state a claim upon which relief can be granted under Section 1983 here as well.

Plaintiff alleges that, despite the sentence specifying that he became eligible for release after serving 30% of his sentence, the Parole Board continues to deny him parole. (Doc. No. 1 at 10). He believes his plea agreement is a contract that requires the Parole Board to grant him parole now that he has served 30% of his sentence. However, there is no right under the Constitution to parole or early release. *Greenholtz*, 442 U.S. 1, 11. Tennessee law and regulations do not create a right to parole. *Wright*, 810 F.2d 589, 591. Tennessee Code Annotated § 40-28-117(a) states, in pertinent part:

Parole being a privilege and not a right, no prisoner shall be released on parole merely as a reward for good conduct or efficient performance of duties assigned in prison, but only if the board is of the opinion that there is reasonable probability that if such prisoner is released he will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society. If the board shall so determine, such prisoner may be paroled.

Id. (emphasis added). Section 40-35-501(a) states, in pertinent part: "An inmate shall not be eligible for parole until reaching his release eligibility date...." (emphasis added). By reaching the release eligibility date, as the name suggests, a prisoner becomes eligible for release, not entitled to release. Thus, Plaintiff's plea agreement does not entitle him to an earlier release; the agreement simply recognized his release eligibility date. See *Hinds v. State of Tenn.*, 888 F. Supp. 854, 857 (W.D. Tenn. 1995) (finding that plaintiff's plea agreement recognized his release eligibility date and "did not promise he would actually be released then.").

Plaintiff appears to sue two state prosecutors, Defendants Hagerman and Davidson, for their alleged roles in Plaintiff's parole hearing and their failure to abide by Plaintiff's plea agreement. However, these Defendants have no authority over the Parole Board's decision and, in any event, are protected by absolute immunity for their actions in negotiating the plea agreement under which Plaintiff was sentenced. See *Hinds*, 888 F. Supp. 854, 857 (citing *Imbler v. Pachtman*, 424 U.S. 409, 427-28 (1976); *Burns v. Reed*, 500 U.S. 478, 489-92 (1991); *Grant v. Hollenbach*, 870 F.2d 1135, 1137 (6th Cir. 1989); *Jones v. Shankland*, 800 F.2d 77, 80 (6th Cir. 1986), *cert. denied*, 481 U.S. 1048 (1987)).

In Tennessee, decisions regarding parole are discretionary and are vested exclusively in the Parole Board. *Doyle v. Hampton*, 340 S.W.2d 891, 893 (Tenn. 1960). Therefore, the only vehicle for obtaining limited judicial review of a Parole Board's decision to deny parole is a common law writ of certiorari. *Stone v. Tenn. Bd. of Parole*, No. M201601730COAR3CV, 2017 WL 4217164, at *4 (Tenn. Ct. App. Sept. 20, 2017), *perm. app. denied* (Tenn. 2017). A common law writ of certiorari may be used "to remedy (1) fundamentally illegal rulings; (2) proceedings inconsistent with essential legal requirements; (3) proceedings that effectively deny a party his or her day in court; (4) decisions beyond the lower tribunal's authority; and (5) plain and palpable abuses of discretion." *Willis v. Tenn. Dep't of Corr.*, 113 S.W.3d 706, 712 (Tenn. 2003) (citing *State v. Willoughby*, 594 S.W.2d 388, 392 (Tenn. 1980)). The Tennessee Court of Appeals explained:

*5 The scope of review under the common law writ...is very narrow. It covers only an inquiry into whether the Board has exceeded its jurisdiction or [acted] illegally, fraudulently, or arbitrarily....At the risk of oversimplification, one may say that it is not the correctness of the decision that is subject to judicial review, but the manner in which the decision is reached. If the agency or board has reached its decision in a constitutional or lawful manner, the decision would not be subject to judicial review.

Powell v. Parole Eligibility Review Bd., 879 S.W.2d 871, 873 (Tenn. Ct. App. 1994) (citations omitted). *Id.* The court will issue a writ of certiorari where a prisoner makes a showing that there was a "fundamental irregularity in the Board's procedures" or that "the Board acted illegally, fraudulently, or arbitrarily." *Williams v. Tenn. Bd. of Prob. & Parole*, No. M2006-02336-COA-R3CV, 2007 WL 3132935, at *4 (Tenn. Ct. App. Oct. 26, 2007).⁵

The complaint is unclear as to whether Plaintiff has pursued or obtained a common law writ of certiorari. However, it is clear that this Court cannot hold a hearing to review the decision of the Parole Board or remand the matter "with instructions," as Plaintiff requests. (Doc. No. 1 at 36). This Court has no jurisdiction under Section 1983 to issue a writ of certiorari finding that the Parole Board acted illegally, fraudulently, or arbitrarily. See *Whipple v. Tenn. Bd. of Paroles*, No. 1:17-CV-148-RLJ-SKL, 2018 WL 1387066, at *7 (E.D. Tenn. Mar. 19, 2018) (dismissing plaintiff's claim in his amended Section 1983 complaint for an application for a writ of certiorari seeking judicial review of the parole board's decision to deny him parole).

Next, Plaintiff alleges that Defendants engaged in a civil conspiracy. But a § 1983 civil conspiracy by itself does not constitute a separate cause of action. As recently explained by a district court in this circuit:

"A claim for civil conspiracy under § 1983 exists only where the plaintiff has established a separate and actionable constitutional injury." *Rapp v. Dutcher*, 557 F. App'x 444, 450 (6th Cir. 2014) (citing *Bauss v. Plymouth Twp.*, 233 F. App'x 490, 500 (6th Cir. 2007)); see *Wiley v. Oberlin Police Dep't*, 330 F. App'x 524, 530 (6th Cir. 2009) ("[Plaintiff] cannot succeed on a conspiracy claim because there was no underlying constitutional violation that injured her."). Having dismissed the individual panel members because [the plaintiff] has not sufficiently alleged that they violated its due process rights, [the plaintiff's] conspiracy claim against them also fails.

PB&J Towing Serv., I&II, LLC v. Hines, No. 2:18-CV-2556, 2020 WL 236745, at *8 (W.D. Tenn. Jan. 15, 2020). The same applies to the instant case; because Plaintiff has failed to state a claim against any of the defendants for a violation of his constitutional rights, Plaintiff's § 1983 civil conspiracy claim against them also fails.

Alternatively, "[e]ven if there were a 'separate and actionable constitutional injury,' the Court would dismiss the conspiracy claim because PB&J Towing has not alleged sufficient facts to support it. The Sixth Circuit has defined a civil conspiracy under 42 U.S.C § 1983 as follows:

A civil conspiracy is an agreement between two or more persons to injure another by unlawful action. Express agreement among all the conspirators is not necessary to find the existence of a civil conspiracy. Each conspirator need not know all of the details of the illegal plan or all of the participants involved. All that must be shown is that there is a single plan, that the alleged co-conspirator shared in the general conspiratorial objective, and that an overt act was committed in furtherance of the conspiracy that caused injury to the complainant.

*6 *Hooks v. Hooks*, 771 F.2d 935, 943-44 (6th Cir. 1985).

Conspiracy claims must be pled with a degree of specificity. *Hamilton v. City of Romulus*, 409 F. App'x 826, 835-36 (6th Cir. 2010). Vague and conclusory allegations unsupported by material facts are insufficient, although circumstantial evidence of an agreement among all conspirators may provide adequate proof. *Id.*

Plaintiff's allegations of a civil conspiracy between two or more Defendants are too vague and conclusory under *Hooks*, 771 F.2d 935, 943-44, and *Hamilton*. 409 F. App'x 826, 835-36. The Court finds that Plaintiff's allegations of a civil conspiracy do not survive the PLRA's screening, and any such claims will be dismissed.

The complaint also alleges that some or all Defendants engaged in activity in violation of state criminal statutes, such as fraud and bribery. To the extent that Plaintiff asks the Court to initiate criminal charges against these individuals on behalf of Plaintiff, the "[a]uthority to initiate a criminal complaint rests exclusively with state and federal prosecutors." *Tunne v. U.S. Postal Service*, No. 5:08CV-189-R, 2010 WL 290512, at *1 (W.D. Ky. Jan. 21, 2010) (quoting *Sahagian v. Dickey*, 646 F. Supp. 1502, 1506 (W.D. Wis. 1986)). Private citizens have "no authority to initiate a federal criminal prosecution of the defendants for their alleged unlawful acts." *Williams v. Luttrell*, 99 F. App'x 705, 707 (6th Cir. 2004). This Court

lacks jurisdiction to initiate any investigations of alleged criminal activity upon request of Plaintiff.

V. Conclusion

As explained above, the complaint fails to state a claim upon which relief can be granted under Section 1983, and this action will be dismissed. This dismissal is without any prejudice to Plaintiff's ability to seek any relief that may be available to him by way of a habeas corpus filing.⁶

Because this case will be dismissed, Plaintiff's motion to participate in all proceedings by telephone (Doc. No. 2) will be denied as moot.

*7 An appropriate Order will be entered.

All Citations

Not Reported in Fed. Supp., 2020 WL 1666601

Footnotes

- 1 According to the complaint, Defendant Sevier works at the Morgan County Correctional Complex. (Doc. No. 1 at 22). A reasonable inference can be drawn from the complaint that Sevier is a corrections officer. (*Id.*)
- 2 According to the complaint, Defendant Stewart is a "Board or TDOC employee." (Doc. No. 1 at 23).
- 3 A reasonable inference can be drawn from the complaint that Defendant Hagerman is a state prosecutor. (Doc. No. 1 at 26-27).
- 4 It is unclear whether the attorney for the Parole Board is a member of the Parole Board.
- 5 As the Tennessee appellate decisions make clear, if the prisoner is dissatisfied with the ruling of the lower state court on his request for a writ, he or she may appeal to the Tennessee Court of Appeals.
- 6 Although Plaintiff refers to himself as "Petitioner" and to Defendants as "Respondents," he paid the \$400 filing fee for civil actions, not the \$5 filing fee for habeas corpus actions. (Doc. No. 5). Moreover, Plaintiff does not request release from confinement, a remedy typically requested in habeas proceedings. (Doc. No. 1 at 35-36). So the Court does not purport to have passed herein on the propriety of habeas relief for Plaintiff. But habeas relief, like relief under Section 1983, seems unlikely for the kinds of grievances Plaintiff has set forth in this Section 1983 action. *see, e.g., Leggs v. Genovese*, No. 3:16-cv-02069, 2017 WL 6507972, at *6 (M.D. Tenn. Dec. 20, 2017) ("Because Tennessee law does not provide any substantive liberty interest in parole, Petitioner has no basis for any habeas challenge to the Board's parole decisions or the procedures surrounding them.") (citing *Settle v. Tenn. Dep't of Corr.*, 487 F. App'x 290, 291 (6th Cir. 2012)) (citing *Olim v. Wakinekona*, 461 U.S. 238, 250 (1983) and *Sweeton v. Brown*, 27 F.3d 1162, 1164-65 (6th Cir.1994) (en banc)).

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Wortman v. Board of Parole

United States District Court, M.D. Tennessee, Nashville Division. | May 27, 2020 Slip Copy 2020 WL 2748267 (Approx. 4 pages)

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United States District Court, M.D. Tennessee, Nashville Division.

Fred Auston **WORTMAN, III**, Plaintiff,

v.

State of Tennessee **BOARD OF PAROLE**, et al., Defendants.

No. 3:20-cv-00156

Signed 05/27/2020

Attorneys and Law FirmsFred Auston **Wortman, III**, Wartburg, TN, pro se.

Pamela S. Lorch, Tennessee Attorney General's Office, Nashville, TN, for Defendants.

MEMORANDUM OPINION AND ORDER

ELI RICHARDSON, UNITED STATES DISTRICT JUDGE

*1 Pending before the Court is a pro se motion for reconsideration of the Court's Order and Memorandum entered on April 3, 2020 (Doc. No. 15) and a supplement to the motion (Doc. No. 17),¹ both filed by Plaintiff Fred Auston **Wortman, III**.

I. BACKGROUND

Plaintiff, an inmate of the Morgan County Correctional Complex in Wartburg, Tennessee, filed this pro se action under 42 U.S.C. § 1983 against the State of Tennessee Board of Parole ("Parole Board"), Gary Faulcon, Gay Gregson, Roberta Kustoff, Richard Montgomery, Tim Gobble, Zane Duncan, Barrett Rich, Rob Clark, Jim Purviance, Gayle Barbee, Richard O'Bryan, Mark Edward Davidson, Paul Hagerman, and f/n/u Stewart. (Doc. No. 1). Plaintiff sued the non-entity Defendants in their individual and official capacities.

By Order and Memorandum entered on April 3, 2020, the Court conducted the required screening of the complaint pursuant to the Prison Litigation Reform Act ("PLRA"), 28 U.S.C. §§ 1915(e)(2) and 1915A and dismissed all claims against all Defendants. (Doc. Nos. 8 and 9). First, the Court found that, to the extent Plaintiff seeks damages from the Parole Board, the state of Tennessee, or any Parole Board member in his or her official capacity, such a request is barred by the Eleventh Amendment and does not fall within the purview of Section 1983. (Doc. No. 8 at 5). Second, the Court found that the complaint fails to state damages claims upon which relief can be granted under Section 1983 against Defendant Faulcon and any other Parole Board member in his or her individual capacity. (*Id.* at 5-6). Third, the Court dismissed the claims against Defendants Gregson, Kustoff, Montgomery, Gobble, Duncan, Rich, Purviance, Barbee, and O'Bryan in their individual capacities because Plaintiff did not allege the personal involvement of these Defendants in the facts set forth in the complaint. (*Id.* at 6). Fourth, the Court found that Plaintiff had no federal due process claims based upon his parole hearing, the process leading up to his parole hearing, or the denial of his parole; further, Plaintiff's plea agreement does not entitle him to an earlier release. (*Id.* at 7-8). Fifth, the Court dismissed Plaintiff's claims against state prosecutors Hagerman and Davidson because they are protected by absolute immunity. (*Id.* at 9). Sixth, the Court explained that it has no jurisdiction under Section 1983 to issue a writ of certiorari finding that the Parole Board acted illegally, fraudulently, or arbitrarily. (*Id.* at 10). Seventh, the Court found that, because Plaintiff failed to state a claim against any of Defendants for a violation of his constitutional rights, Plaintiff's Section 1983 civil conspiracy claim against all Defendants failed. (*Id.* at 11). Alternatively, the Court found that, even if there were a separate and actionable constitutional injury, the Court would dismiss the civil conspiracy claims because Plaintiff has not alleged sufficient facts to support them. (*Id.*) Finally, the Court found that, to the extent Plaintiff asked the Court to initiate criminal charges against any Defendant on behalf of Plaintiff, the Court lacked jurisdiction to do so. (*Id.* at 12).

*2 The Court's dismissal of this action was without any prejudice to Plaintiff's ability to seek any relief that may be available to him by way of a habeas corpus filing. (*Id.* at 12 & n.6).

II. ANALYSIS

Because there is no federal procedural rule permitting a "motion for reconsideration," the Court first considers Plaintiff's motion (Doc. No. 15) as a motion to alter or amend judgment under Rule 59(e) of the Federal Rules of Civil Procedure. Motions to alter or amend judgment may be granted if there is a clear error of law, newly discovered evidence, an intervening change in controlling law, or to prevent manifest injustice. *GenCorp, Inc. v. Am. Int'l Underwriters*, 178 F.3d 804, 834 (6th Cir. 1999). The movant may not use Rule 59 to re-argue the case or to present evidence that should have been before the court at the time judgment entered. See *Roger Miller Music, Inc. v. Sony/ATV Publ'g, LLC*, 477 F.3d 383, 395 (6th Cir. 2007) (collecting cases).

Rule 59 motions must be filed no later than 28 days after the entry of judgment. Fed. R. Civ. P. 59(e). Here, Plaintiff's motion was filed within 28 days after entry of judgment; thus, the motion is timely under Rule 59.

In his Rule 59 motion to alter or amend the Court's dismissal of his Section 1983 action, Plaintiff does not seek to amend his complaint to add claims based on newly discovered evidence or to add different theories of relief than those theories Plaintiff presented in his original complaint. Plaintiff does not allege that there has been an intervening change in controlling law that would require the Court to revisit its previous analysis. Instead, he contends that the Court erred in dismissing this action. Plaintiff's argument largely rests on the alleged *ex parte* communication between Defendants Stewart, Sevier, and Davidson prior to Plaintiff's parole hearing² and on Defendants Davidson and Hagerman's alleged "speaking against and breaching [of]" Plaintiff's plea agreement (Doc. No. 1 at 21), allegations on which Plaintiff elaborated at length in his complaint.

In asking the Court to vacate its prior decision to dismiss his complaint, Plaintiff contends that "(i) his legal rights to a full, fair, and meaningful administrative hearing have been invaded by the Defendants in the instant matter based upon the *ex parte* communications to one or more members of the Board by Defendant Davidson and based upon the acts engaged in by other Defendants which comprise a civil conspiracy; (ii) the federal statute 42 U.S.C. § 1983 provides Plaintiff with a general right to sue for the invasion of Plaintiff's rights; and (iii) this federal court is authorized to 'use any available remedy to make good the wrong done' by Defendants to Plaintiff." (Doc. No. 15 at 5). Plaintiff explains that "he is relying on the equitable powers of the Court to form appropriate relief that may include remand to the administrative agency with instructions." (*Id.* at 15).

*3 The Court has carefully reviewed Plaintiff's motion to reconsider and the Court's previous rulings in this case. The Court is not persuaded that its prior decision is erroneous. Plaintiff continues to seek from this Court a determination that his parole proceedings were improper or invalid for a variety of reasons, plus resulting "equitable relief" Plaintiff assures the Court it can fashion. However, as the Court has explained, this Court simply cannot require the Parole Board to parole Plaintiff or re-do Plaintiff's most recent parole proceedings.

In Tennessee, decisions regarding parole are discretionary and are vested exclusively in the Parole Board. *Doyle v. Hampton*, 340 S.W.2d 891, 893 (Tenn. 1960). Therefore, the only vehicle for obtaining limited judicial review of a Parole Board's decision to deny parole is a common law writ of certiorari. *Stone v. Tenn. Bd. of Parole*, No. M201601730COAR3CV, 2017 WL 4217164, at *4 (Tenn. Ct. App. Sept. 20, 2017), *perm. app. denied* (Tenn. 2017). A common law writ of certiorari is filed in state court, not here in federal court. See *Whipple v. Tenn. Bd. of Paroles*, No. 1:17-CV-148-RLJ-SKL, 2018 WL 1387066, at *7 (E.D. Tenn. Mar. 19, 2018) ("To state the obvious, this is a federal forum, not a state court. This Court has no jurisdiction under § 1983 to issue a writ of certiorari finding that the Parole Board acted illegally, fraudulently, or arbitrarily when it denied Plaintiff parole."). A state court will issue a writ of certiorari where a prisoner makes a showing, as Plaintiff here urges he can, that there was a "fundamental irregularity in the Board's procedures" or that "the Board acted illegally, fraudulently, or arbitrarily." *Williams v. Tenn. Bd. of Prob. & Parole*, No. M2006-02336-COA-R3CV, 2007 WL 3132935, at *4 (Tenn. Ct. App. Oct. 26, 2007). If a prisoner is dissatisfied with the ruling of the lower state court on his request for a writ, he or she may appeal to the Tennessee Court of Appeals. This Court has no role in that process. *Wells v. Tenn. Bd. of Paroles*, 909 S.W.2d 826, 827 (Tenn. Ct. App. 1995).

True, as Plaintiff insists, this Court has the power under certain circumstances to craft equitable remedies. But *Heck v. Humphrey*, 512 U.S. 477 (1994), bars all claims for injunctive or declaratory relief that would necessarily undermine the denial of parole. *Id.* at 486-87, 489. "[A] state prisoner's § 1983 action is barred (absent prior invalidation)—no matter the relief sought (damages or equitable relief), no matter the target of the prisoner's suit (state conduct leading to conviction or internal prison proceedings)—if success in that action would necessarily demonstrate the invalidity of the confinement or its duration." *Wilkinson v. Dotson*, 544 U.S. 74, 81-82 (2005) (emphasis in original). Granting Plaintiff a new parole hearing and declaring that Defendants violated his constitutional rights in denying him parole would implicate the validity of his continued confinement. See *Whipple*, 2018 WL 1387066, at *7 (citing *Butterfield v. Bail*, 120 F.3d 1023, 1024 (9th Cir. 1997)). Plaintiff has not indicated that the decision to deny him parole has been overturned or otherwise has been invalidated. Therefore, any request by Plaintiff for injunctive or declaratory relief is precluded by *Heck*, and therefore cannot be entertained in this lawsuit.

Accordingly, the Court finds no clear error of law, no newly discovered evidence, or no intervening change in controlling law justifying the granting of Plaintiff's motion to alter or amend judgment under Rule 59(e), Fed. R. Civ. P.; see *GenCorp, Inc.*, 178 F.3d 804, 834. Nor do the circumstances alleged by Plaintiff require the Court to alter or amend its previous decision to prevent manifest injustice. See *id.* Plaintiff's motion for reconsideration, which the Court construes as a motion to alter or amend judgment (Doc. No. 15), is hereby **DENIED**.

*4 Federal Rule of Civil Procedure 60(b) allows a court to relieve a party from a final judgment for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or the judgment is based on an earlier judgment that has been reversed or vacated, or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief. Fed. R. Civ. P. 60(b)(1)-(6). A motion for relief from a judgment or order under Rule 60 must be filed "within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c)(1). Therefore, Plaintiff's motion (Doc. No. 15), if construed as a Rule 60 motion, was timely filed.

None of the enumerated grounds for relief under Rule 60(b)(1)-(5) apply in this case, however. As for Rule 60(b)(6), it is a catchall provision that provides for relief from a final judgment for any reason justifying relief not captured in the other provisions of Rule 60(b). *McGuire v. Warden*, 738 F.3d 741, 750 (6th Cir. 2013). Rule 60(b)(6) only applies in exceptional or extraordinary circumstances where principles of equity mandate relief. *Id.* "The decision to grant Rule 60(b)(6) relief is a case-by-case inquiry that requires the trial court to intensively balance numerous factors, including the competing policies of the finality of judgments and the incessant command of the court's conscience that justice be done in light of all the facts." *Blue Diamond Coal v. Trustees of United Mine Workers*, 249 F.3d 519, 529 (6th Cir. 2001); see also *Thompson v. Bell*, 580 F.3d 423, 442 (6th Cir. 2009). A district court's discretion in deciding a Rule 60(b)(6) motion is especially broad due to the underlying equitable principles involved. *Tyler v. Anderson*, 749 F.3d 499, 509 (6th Cir. 2014).

Here, Plaintiff does not describe any exceptional or extraordinary circumstances that mandate relief. The relief sought by Plaintiff is relief that, at this time, he must pursue in state court by way of a writ of certiorari.

III. CONCLUSION

Accordingly, Plaintiff's filing (Doc. No. 15), whether construed as a Rule 59(e) motion to alter or amend judgment or a Rule 60(b) motion for relief from a judgment or order, is hereby **DENIED**.

IT IS SO ORDERED.

All Citations

Slip Copy, 2020 WL 2748267

Footnotes

- 1 The supplement serves primarily to apprise the Court of his view of the relevant standards for reviewing the sufficiency of a complaint. Most of the authorities he cites are inapplicable because they are state court cases discussing Tennessee law regarding this topic. In any event, the Court is well aware of the standard it is to apply in this (federal) case and it has in fact applied it in this case.
- 2 Plaintiff alleges that approximately twenty-four hours prior to Plaintiff's parole hearing, Defendant Stewart contacted Defendant Sevier "in order to pressure and influence Mr. Sevier to negatively change a risk assessment score that had been assigned to" Plaintiff. (Doc. No. 1 at 24). Immediately prior to the hearing, Defendant Davidson participated in a "closed-door, private, secret *ex parte* meeting with one or more members of the Parole Board for the purpose of influencing the Board to deny parole release" to Plaintiff "and to set off any review of [Plaintiff's] release as long as possible." (*Id.* at 25).

**End of
Document**

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Thomson Reuters is not providing legal advice

Wortman filed a complaint against the State of Tennessee Board of Parole, Gary Faulcon, Gay Gregson, Roberta Kustoff, Richard Montgomery, Tim Gobble, Zane Duncan, Barrett Rich, Rob Clark, Jim Purviance, Gayle Barbee, Richard O'Bryan, Mark Edward Davidson, Paul Hagerman, and f/n/u Stewart. He identified Faulcon as a state parole board member, Clark as an attorney for the state parole board, Davidson and Hagerman as state prosecutors, and Stewart as either a state parole board member or a state prison employee. The remaining defendants were only identified by name. Wortman challenged the denial of his release on parole, claiming that he was denied a proper hearing and a fair administrative process before, during, and after his parole hearing. Wortman claimed that Clark refused his discovery requests; that the parole board

refused his request to issue subpoenas; that he was presumed entitled to parole because he had served thirty percent of his sentence and had good behavior during incarceration at the time of the parole hearing; that Davidson and Hagerman violated his *Alford* plea agreement, in which all parties agreed to his release on parole after service of thirty percent of the sentence imposed, by arguing against his release at his parole hearing; that the prosecutors' arguments at the parole hearing and the parole board's review of the serious nature of his crime during the hearing violated the Double Jeopardy Clause; that Faulcon denied him parole without meaningful review of all the submitted documentation and without factually supported statements; that Stewart influenced a prison official to change his risk assessment score before the parole hearing, which negatively affected his parole decision; and that Davidson participated in a private, ex parte meeting with the parole board before the hearing to influence the board to deny Wortman parole and bribed parole board members during that meeting.

Wortman claimed that the defendants tortiously interfered with his parole proceedings; conspired to deny him parole; engaged in collusion and fraud; tortiously and unduly influenced a government employee; and tortiously interfered with and unduly influenced government operations. He sought a remand to the parole board "with instructions."

On initial screening, the district court dismissed Wortman's complaint under 28 U.S.C. §§ 1915(e)(2) and 1915A for failure to state a claim on which relief may be granted. The district court denied Wortman's motions for reconsideration.

Wortman filed a timely appeal. Wortman argues that the district court erroneously: (1) dismissed his case without conducting a hearing; (2) concluded that his parole proceeding did not violate his due process rights "to a full, fair, impartial, unbiased, uninfluenced and meaningful administrative process"; (3) dismissed his action before discovery could be conducted; (4) determined that the defendants did not breach his *Alford* plea agreement; and (5) concluded that the defendants were entitled to immunity. Wortman requests oral argument.

We review de novo a district court judgment dismissing a complaint under §§ 1915(e) and 1915A for failure to state a claim. *Wershe v. Combs*, 763 F.3d 500, 505 (6th Cir. 2014). "In

determining whether a prisoner has failed to state a claim, we construe his complaint in the light most favorable to him, accept his factual allegations as true, and determine whether he can prove any set of facts that would entitle him to relief.” *Id.* (quoting *Harbin-Bey v. Rutter*, 420 F.3d 571, 575 (6th Cir. 2005)). A complaint must contain “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

First, Wortman argues that the district court erroneously dismissed his complaint without conducting a hearing. He contends that the district court failed to accept his “factual allegations as true and to draw all reasonable inferences” in his favor and erroneously dismissed his complaint for failure to state a claim for relief. He also argues that the district court erroneously concluded that it lacked jurisdiction to issue a writ of certiorari to the Tennessee parole board.

Under § 1915A, a district court is obligated to “review, before docketing, if feasible” all civil complaints filed by prisoners who seek redress from governmental entities, officers, or employees and must dismiss any complaint that fails to state a claim for relief. Similarly, § 1915(e) provides for the dismissal of a complaint for failure to state a claim “at any time.” 28 U.S.C. § 1915(e)(2). Because the allegations in Wortman’s complaint, liberally construed and accepted as true, failed to state a claim for relief, he was not entitled to a hearing before his action was dismissed. *See* 28 U.S.C. §§ 1915A, 1915(e)(2).

The district court properly dismissed Wortman’s complaint for failure to state a claim. Wortman’s claims challenging the denial of release on parole, the administrative processing of his parole, and the handling of his hearing fail because he lacks a constitutional right to parole in order to implicate the Due Process Clause and Tennessee’s parole scheme does not create a constitutionally protected liberty interest. *See Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 7 (1979); *Settle v. Tenn. Dep’t of Corr.*, 487 F. App’x 290, 291 (6th Cir. 2012) (per curiam). As noted by the district court, after serving thirty percent of his sentence,

Wortman became eligible for, but not entitled to, parole. Furthermore, Wortman failed to establish a separate claim against any defendant for violating his constitutional rights, and, in any event, his vague, conclusory, and factually unsupported allegations were insufficient to support a civil conspiracy claim. *See Robertson v. Lucas*, 753 F.3d 606, 622 (6th Cir. 2014); *Wiley v. Oberlin Police Dep't*, 330 F. App'x 524, 530 (6th Cir. 2009). To the extent that Wortman requested the initiation of criminal charges against the defendants, the district court lacked jurisdiction to initiate a criminal investigation on his request, and Wortman lacks authority to compel the criminal investigation or prosecution of private citizens. *See Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973).

Moreover, the district court properly concluded that it lacked jurisdiction to issue a common-law writ of certiorari to the parole board. *See Willis v. Tenn. Dep't of Corr.*, 113 S.W.3d 706, 712 (Tenn. 2003) ("The common-law writ of certiorari serves as the proper procedural vehicle through which prisoners may seek review of decisions by prison disciplinary boards, parole eligibility review boards, and other similar administrative tribunals."). Wortman has demonstrated no error in the district court's conclusions.

Second, Wortman argues the district court erroneously concluded that his parole proceeding did not violate his due process rights "to a full, fair, impartial, unbiased, uninfluenced and meaningful administrative process." He argues that he has substantive and procedural "due process rights to a meaningful" parole hearing but that "Davidson, Faulcon and other [parole board] members" violated those rights by engaging in ex parte communications in an effort to negatively influence the parole board's decision in his case. Wortman argues that Davidson and Hagerman lack immunity for their testimony at his parole hearing and are liable for breaching his plea agreement by testifying against his release on parole.

But Wortman has no constitutional or state-created right to parole. *See Greenholtz*, 442 U.S. at 7; *Settle*, 487 F. App'x at 291. And in any event, although Wortman argues to the contrary, the district court properly determined that the defendants are entitled to immunity from suit. To the extent that Wortman sought damages and equitable relief from the parole board and

the defendants in their official capacities, his claims were essentially against the governmental entity they represent, in this case the State of Tennessee, and were barred by Eleventh Amendment immunity because the State of Tennessee has not waived its sovereign immunity or consented to civil rights suits in federal court. *See Thiokol Corp. v. Dep't of Treasury*, 987 F.2d 376, 381 (6th Cir. 1993); *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989); *Berndt v. Tennessee*, 796 F.2d 879, 881 (6th Cir. 1986). To the extent that Wortman sought monetary damages from state parole board members in their individual capacities, his claims were subject to dismissal because they are entitled to absolute immunity. *See Hawkins v. Morse*, No. 98-2062, 1999 WL 1023780, at *1 (6th Cir. Nov. 4, 1999). And the state prosecutors are entitled to absolute immunity. *See Imbler v. Pachtman*, 424 U.S. 409, 430-31 (1976).

Third, Wortman argues that the district court erroneously dismissed his complaint before discovery could be conducted. In particular, Wortman contends that discovery was necessary to support his claims for civil conspiracy and procedural and substantive due process violations surrounding his parole hearing. But given the requirement in § 1915A that a district court screen and dismiss a complaint that fails to state a claim on which relief may be granted at the earliest opportunity, the district court did not err in dismissing Wortman's complaint before discovery was conducted. *See* § 1915A(a); *see also* § 1915(e)(2).

Fourth, Wortman argues the district court erroneously determined that the defendants did not breach his *Alford* plea agreement. He argues that he had a due process and contractual expectation of release on parole based on his plea agreement and that the defendants violated his agreement by not granting him parole. He also argues that the denial of parole contradicts his low risk assessment score and that the parole board improperly considered his underlying crime when denying parole. Wortman argues that there is a presumption in favor of release on parole "at the earliest possible release date" where a prisoner "has maintained good behavior," that parole release is presumed in his case, that he has had no "failures in past efforts at rehabilitation," and that his plea agreement provides for his release on parole after service of thirty percent of his sentence. Wortman argues that because his plea agreement provides for his

release on parole after service of thirty percent of his sentence, Davidson and Hagerman breached the agreement by arguing against his release on parole and that he is entitled to specific performance of the agreement.

The defendants did not breach Wortman's plea agreement. As noted by the district court, Wortman was eligible for, but not entitled to, parole after serving thirty percent of his sentence. Moreover, Wortman lacks a constitutional or state-created right to parole. *See Greenholtz*, 442 U.S. at 7; *Settle*, 487 F. App'x at 291.

Accordingly, we **DENY** the request for oral argument and **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

A handwritten signature in dark ink, appearing to read 'Deborah S. Hunt', is written over a horizontal line.

Deborah S. Hunt, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

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Filed: February 14, 2022

Mr. Fred Auston Wortman III
Morgan County Correctional Complex
P.O. Box 2000
Wartburg, TN 37887

Re: Case No. 20-5718, *Fred Wortman, III v. State of TN Board of Parole, et al*
Originating Case No.: 3:20-cv-00156

Dear Mr. Wortman,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Beverly L. Harris
En Banc Coordinator
Direct Dial No. 513-564-7077

cc: Ms. Dawn M. Jordan

Enclosure

No. 20-5718

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Feb 14, 2022
DEBORAH S. HUNT, Clerk

FRED AUSTON WORTMAN III,

Plaintiff-Appellant,

v.

STATE OF TENNESSEE BOARD OF PAROLE,
ET AL.,

Defendants-Appellee.


ORDER

BEFORE: SUTTON, Chief Judge; SILER and ROGERS, 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

IN THE CIRCUIT COURT OF FAYETTE COUNTY, TENNESSEE
TWENTY-FIFTH JUDICIAL DISTRICT

STATE OF TENNESSEE

VS.

Fred Auston Wortman III

DOCKET NO. 15-CR-179

(Alford Plea)
PLEA OF GUILTY and

MOTION TO WAIVE TRIAL BY JURY AND WAIVE APPEAL

My full name is Fred Auston Wortman III and I am represented by Hon. Robert Brannon, Attorney at Law.
I am charged with:

1. Attempted First Degree Murder for which the minimum penalty is 15 years @ 30 % and a \$ 0 fine, and the maximum penalty is 25 years @ 30 % and a \$ 50,000 fine as a Range I offender.
2. Solicitation First Degree Murder for which the minimum penalty is 8 years @ 30 % and a \$ 0 fine, and the maximum penalty is 12 years @ 30 % and a \$ 25,000 fine as a Range I offender.
3. Solicitation First Degree Murder for which the minimum penalty is 8 years @ 30 % and a \$ 0 fine, and the maximum penalty is 12 years @ 30 % and a \$ 25,000 fine as a Range I offender.

1. Having received a copy of the indictment and discussed it with my attorney, I understand the nature of the charges against me and any defenses that could be raised in my behalf. I have discussed all defenses with my attorney, and am satisfied that proper investigation of my case has been made. I have met with my attorney and am satisfied with my attorney's representation of me.
2. I know the State's charges against me and have been told the penalties each carries.
3. I have discussed with my attorney and fully understand that I have a right to plead not guilty or to persist in that plea if it has already been made, that if I plead not guilty, I am entitled to a speedy and public trial by a jury, or by a judge sitting without a jury, that I have a right to assistance of counsel, the right to confront and cross-examine witnesses testifying against me, and the right to compel witnesses to appear and testify on my behalf, that at trial I could not be compelled to take the witness stand and incriminate myself, and that if I wanted to testify at trial, I would have that right.
4. I understand that if I plead guilty and the guilty plea is accepted by the Court, there will not be a further trial of any kind, other than imposing sentence on me, so that by pleading guilty, I waive the right to a trial, and to a jury determination of guilt and sentencing factors.
5. I understand that in accepting this plea, the Court or the State may ask me questions and require that I answer under oath on the record, and that my answers must be truthful, and if not truthful, may later be used against me in a prosecution for perjury.
6. I understand that my plea of guilty will result in a conviction which may be used to enhance punishment if I should be found guilty of another criminal offense in the future.
7. I understand that this guilty plea will be my day in Court, and I am waiving appeal.

Understanding these rights, I do voluntarily and freely petition to be allowed to waive a trial by jury and to enter a plea of guilty, and to waive appeal. I voluntarily plead guilty to the offense of:

1. Attempt First Degree Murder, which is a Class A (felony) (misdemeanor), with a range of punishment of 15-25 years @ 30 % as a Range I offender and fines of \$ 0 to \$ 50,000.
2. N/A, which is a Class (felony) (misdemeanor), with a range of punishment of years @ % as a Range offender and fines of \$ to \$.
3. Solicitation First Degree Murder, which is a Class B (felony) (misdemeanor), with a range of punishment of 8-12 years @ 30 % as a Range I offender and fines of \$ 0 to \$ 25,000.

- I understand that the Court will impose sentence. The District Attorney General will (not recommend a sentence) (recommend a sentence of:
- Ct. 1: 30 years @ 30 %; Suspended after days; Supervision by ; \$ fine; Restitution of \$; Pay fine, restitution and costs at \$ per month beginning
- Ct. 2: Dismiss @ %; Suspended after days; Supervision by ; \$ fine; Restitution of \$; Pay fine, restitution and costs at \$ per month beginning
- Ct. 3: 30 years @ 30 %; Suspended after days; Supervision by ; \$ fine; Restitution of \$; Pay fine, restitution and costs at \$ per month beginning

I certify that my plea of guilty is voluntary and not the result of force or threats or promises apart from a plea agreement. I acknowledge that there have been no promises or guarantees made to me as to release or parole date of my sentence and there are no other promises other than as stated herein or in Open Court. I am pleading guilty because I am guilty.

I fully understand my right to appeal and have my case reviewed by an Appellate Court, but hereby expressly and knowingly waive my right to appeal and agree that there is no basis for appeal.

This the 9th day of November, 2015.

Robert Brannon
District Attorney General
Attorney for the Defendant

Defendant: F. Wortman

RECEIVED-ENTERED

NOV 09 2015

Date of Birth: 2-22-76

CLERK, DEPUTY CLERK

The defendant having been fully advised in person of his rights in Open Court, and after a full explanation of those rights, voluntarily entered a plea of guilty which is accepted by the Court; the motions to waive trial by jury and appeal are granted.

Entered Minute Judge

Page 130 Page 775

IN THE CRIMINAL CIRCUIT COURT FOR HAYES COUNTY, TENNESSEE

Case No. 15A-F-17 Court 1 Counsel for the State MARK F. HENDERSON
 Jackson District 28 Federal Division 1 Counsel for the Defendant ROBERT M. BARNES, Jr.
 State of Tennessee 2 Retained ☐ Public Appr. ☐ Private Appr. ☐
 v. ☐ Counsel Waived ☐ Pro Se ☐
 Defendant FRED GUSTON WORTMAN III Alias _____ Date of Birth 02-22-1976 Sex Male
 Race White SSN: 443-29-3220 Driver License # 078767631 Issuing State IN
 State ID # _____ County Offender ID # (if applicable) _____ TOXISIDOC # _____
 Relationship to Victim SPOUSE Victim's Age _____
 State Control # _____ Arrest Date 06/05/2015 Indictment Filing Date _____

JUDGMENT ☒ Original ☐ Amended ☐ Corrected

Come the parties for entry of judgment.

On the 01 day of NOVEMBER, 2015, the defendant

<input checked="" type="checkbox"/> Pled Guilty <input type="checkbox"/> Dismissed/Notle Prosequi <input type="checkbox"/> Pled Nolo <input type="checkbox"/> Pled Guilty - Certified Question Findings Incorporated by Reference	Indictment: Class (circle one) 1 st A B C D E <input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor Indicted Offense Name AND TCA §: <u>16-2-101 - CRIMINAL ATTEMPT AT 1ST DEGREE MURDER</u> Amended Offense Name AND TCA §: _____ Offense Date: <u>06/05/2015</u> County of Offense: <u>FAYETTE</u> Conviction Offense Name AND TCA §: <u>SAME</u> Conviction: Class (circle one) 1 st A B C D E <input checked="" type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor Is this conviction offense methamphetamine related? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Sentence Imposed Date: <u>11/09/2015</u>
Is found: <input checked="" type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Jury Verdict <input type="checkbox"/> Not Guilty by Reason of <input type="checkbox"/> Bench Trial	

After considering the evidence, the entire record, and in the case of sentencing, all factors in Tennessee Code Annotated Title 40, Chapter 55, all of which are incorporated by reference herein, it is ORDERED and ADJUDGED that the conviction described above is imposed hereby and that a sentence and costs are imposed as follows:

Offender Status: (Check One)	Release Eligibility (Check One)				Concurrent with: COUNT 3; SHELBY CO - DOCKET #15- 02878	Pretrial Jail Credit Period(s):
<input type="checkbox"/> Mitigated	<input type="checkbox"/> Mitigated 20%	<input type="checkbox"/> Agg Rob w/Prior 100%	<input type="checkbox"/> 1 st Degree Murder	<input type="checkbox"/> Drug Free Zone <input type="checkbox"/> Gang Related <input type="checkbox"/> Repeat Violator/Off	From 06/05/2015 to 11/09/2015	
<input checked="" type="checkbox"/> Standard	<input type="checkbox"/> Mitigated 30%	<input type="checkbox"/> Multiple Rapist 100%	<input type="checkbox"/> Death Free Zone		From _____ to _____	
<input type="checkbox"/> Multiple	<input checked="" type="checkbox"/> Standard 30%	<input type="checkbox"/> Child Rapist 100%	<input type="checkbox"/> Gang Related		From _____ to _____	
<input type="checkbox"/> Persistent	<input type="checkbox"/> Multiple 35%	<input type="checkbox"/> Child Predator 100%	<input type="checkbox"/> Repeat Violator/Off		From _____ to _____	
<input type="checkbox"/> Career	<input type="checkbox"/> Persistent 45%	<input type="checkbox"/> Agg Rapist 100%	<input type="checkbox"/> Agg Child Neg/En 70%		From _____ to _____	
	<input type="checkbox"/> Career 60%	<input type="checkbox"/> Meth 39-17-1-324 100%	<input type="checkbox"/> Agg Child/Neg/En 85%		From _____ to _____	
	<input type="checkbox"/> Agg Rob 85%	<input type="checkbox"/> 39-17-17-24(a), (b) 100%	<input type="checkbox"/> Meth 100%		From _____ to _____	
	<input type="checkbox"/> 30-35-501(a) 100%	<input type="checkbox"/> Agg Assault w/Death 75%			From _____ to _____	
	<input type="checkbox"/> 39-13-512 100%	<input type="checkbox"/> Att 1 st Degree Murder w/SBII 85%			From _____ to _____	

Sentenced To: ☒ TDOC ☐ County Jail ☐ Workhouse
Sentence Length: 30 Years Months Days Hours ☐ Life ☐ Life w/out Parole ☐ Death
Mandatory Minimum Sentence Length: 39-17-417, 39-13-513, 39-13-514, or 39-17-432 in Prohibited Zone or 35-10-401 DUI 4th Offense
or 39-17-1324 Possession/Employment of Firearm or 40-39-208, 211 Violation of Sex Offender Registry or Meth (39-17-434, -417, -418)
Period of incarceration to be served prior to release on probation or Community Corrections. Months Days Hours
Minimum service prior to eligibility for work release, furlough, trusty status and rehabilitative programs: % (Misdemeanor Only)
Alternative Sentence: ☐ Sup Prob ☐ Unsup Prob ☐ Comm Corr (CHECK ONE BOX) Years Months Days Effective:

WAS DRUG COURT ORDERED AS A CONDITION OF THE ALTERNATIVE SENTENCE? ☐ Yes ☒ No

Court Ordered Fees and Fines:		Costs to be Paid by		Restitution: Victim Name _____									
\$ _____	Court Costs	<input type="checkbox"/> Defendant	<input type="checkbox"/> State	Address _____									
\$ _____	Fine Assessed			_____									
\$ _____	Traumatic Brain Injury Fund (68-55-301 et seq.)			_____									
\$ _____	Drug Testing Fund (TN Drug Control Act)			Total Amount \$ _____ Per Month \$ _____									
\$ _____	CRF	\$ _____	Sex Offender Tax										
\$ _____	Other: _____			<input type="checkbox"/> Unpaid Community Service <table border="0"> <tr> <td>_____</td> <td>Hours</td> <td>_____</td> <td>Days</td> <td>_____</td> <td>Weeks</td> <td>_____</td> <td>Months</td> </tr> </table>		_____	Hours	_____	Days	_____	Weeks	_____	Months
_____	Hours	_____	Days	_____	Weeks	_____	Months						

☐ Pursuant to 59-12-521 the defendant is ordered to provide a biological specimen for the purpose of HIV testing

Special Conditions ☐ Pursuant to Title 68, Chapter 11 Part 10 the clerk shall forward this judgment to the Department of Health

Autographed UT poster and flag seized by TBI to be returned to defendant's parents.

W. R. S. M. '1339'

IN THE CRIMINAL/CIRCUIT COURT FOR FAYETTE COUNTY, TENNESSEE

Case Number: 15-CR-179 Count: 3 Counsel for the State: MARK E. DAVIDSON
 Judicial District: 25th Judicial Division: 1 Counsel for the Defendant: ROBERT M. BRANNON, JR.
 State of Tennessee ☒ Retained ☐ Pub Def Appr ☐ Private Att Appr
 vs. ☐ Counsel Waived ☐ Pro Se
 Defendant: FRED AUSTON WORTMAN III Alias: _____ Date of Birth: 02/22/1976 Sex: Male
 Race: White SSN: [REDACTED] Driver License #: 075767641 Issuing State: TN
 State ID #: _____ County Offender ID # (if applicable): _____ TOMISTDOC #: _____
 Relationship to Victim: SPOUSE Victim's Age: _____
 State Control #: _____ Arrest Date: 06/05/2015 Indictment Filing Date: _____

JUDGMENT

☒ Original ☐ Amended ☐ Corrected

Come the parties for entry of judgment.

On the 9 day of NOVEMBER, 2015, the defendant:

<input checked="" type="checkbox"/> Pled Guilty <input type="checkbox"/> Dismissed/Nolle Prosequi <input type="checkbox"/> Pled Nolo <input type="checkbox"/> Pled Guilty - Certified Question Findings Incorporated by Reference Is found: <input checked="" type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Jury Verdict <input type="checkbox"/> Not Guilty by Reason of <input type="checkbox"/> Bench Trial	Indictment: Class (circle one) 1 st A <u>B</u> C D E <input checked="" type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor Indicted Offense Name <u>AND TCA § 21-12-102 AND 39-13-202 SOLICITATION OF FIRST DEGREE MURDER</u> Amended Offense Name <u>AND TCA §</u> Offense Date: <u>07/01/2015</u> County of Offense: <u>FAYETTE</u> Conviction Offense Name <u>AND TCA § SAME</u> Conviction: Class (circle one) 1 st A <u>B</u> C D E <input checked="" type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor Is this conviction offense methamphetamine related? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Sentence Imposed Date: <u>11/09/2015</u>
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After considering the evidence, the entire record, and in the case of sentencing, all factors in Tennessee Code Annotated Title 40, Chapter 35, all of which are incorporated by reference herein, it is ORDERED and ADJUDGED that the conviction described above is imposed hereby and that a sentence and costs are imposed as follows:

Offender Status (Check One)	Release Eligibility (Check One)	Concurrent with:	Pretrial Jail Credit Period(s):
<input type="checkbox"/> Mitigated <input checked="" type="checkbox"/> Standard <input type="checkbox"/> Multiple <input type="checkbox"/> Persistent <input type="checkbox"/> Career	<input type="checkbox"/> Mitigated 20% <input type="checkbox"/> Mitigated 30% <input checked="" type="checkbox"/> Standard 30% <input type="checkbox"/> Multiple 35% <input type="checkbox"/> Persistent 45% <input type="checkbox"/> Career 60% <input type="checkbox"/> Agg. Rob 85% <input type="checkbox"/> 40-35-501(i) 100% <input type="checkbox"/> 39-13-518 100%	<input type="checkbox"/> Agg. Rob w/Pror 100% <input type="checkbox"/> Multiple Rapist 100% <input type="checkbox"/> Child Rapist 100% <input type="checkbox"/> Child Predator 100% <input type="checkbox"/> Agg. Rapist 100% <input type="checkbox"/> Mult 39-17-1324 100% <input type="checkbox"/> 39-17-1324(a), (b) 100% <input type="checkbox"/> Agg. Assault w/Death 75% <input type="checkbox"/> All 1 st Degree Murder w/SBI 85%	From <u>07/01/2015</u> to <u>11/09/2015</u> From _____ to _____ From _____ to _____ From _____ to _____

Sentenced To: ☒ TDOC ☐ County Jail ☐ Workhouse
 Sentence Length: B Years _____ Months _____ Days _____ Hours _____
 Life ☐ Life w/out Parole ☐ Death ☐
 Mandatory Minimum Sentence Length: 39-17-417, 39-13-513, 39-13-514, or 39-17-432 in Prohibited Zone or 55-10-401 DUI 4th Offense
 or 39-17-1324 Possession/Employment of Firearm or 46-39-208, -211 Violation of Sex Offender Registry or Meth (39-17-434, -417, -418)
 Period of incarceration to be served prior to release on probation or Community Corrections: _____ Months _____ Days _____ Hours
 Minimum service prior to eligibility for work release, furlough, trusty status and rehabilitative programs: _____ % (Misdemeanor Only)
 Alternative Sentence: ☐ Sup Prob ☐ Unsup Prob ☐ Contin Corr (CHECK ONE BOX) _____ Years _____ Months _____ Days Effective: _____
 WAS DRUG COURT ORDERED AS A CONDITION OF THE ALTERNATIVE SENTENCE? ☐ Yes ☒ No

Court Ordered Fees and Fines: S _____ Court Costs S _____ Fine Assessed S _____ Traumatic Brain Injury Fund (68-55-301 et seq.) S _____ Drug Testing Fund (TN Drug Control Act) S _____ CRT S _____ Sex Offender Tax S _____ Other: _____	Costs to be Paid by: <input type="checkbox"/> Defendant <input type="checkbox"/> State Restitution: Victim Name _____ Address _____ Total Amount \$ _____ Per Month \$ _____ <input type="checkbox"/> Unpaid Community Service _____ Hours _____ Days _____ Weeks _____ Months
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☒ The Defendant having been found guilty is rendered infamous and ordered to provide a biological specimen for the purpose of DNA analysis
☐ Pursuant to 39-13-521 the defendant is ordered to provide a biological specimen for the purpose of HIV testing
☐ Pursuant to 39-13-524 the defendant is sentenced to community supervision for the following sentence expiration.
☐ Pursuant to Title 68, Chapter 11, Part 10, the clerk shall forward this judgment to the Department of Health

Special Conditions

J. WEBER McCRAW

Judge's Name

Counsel for State/Signature (optional)

Judge's Signature

Defendant/Defendant's Counsel/Signature (optional)

Nov 9, 2015

Date of Entry of Judgment

I, _____, clerk, hereby certify that, before entry by the court, a copy of this judgment was made available to the party or parties who did not provide a signature above.

IN THE CRIMINAL/CIRCUIT COURT FOR FAYETTE COUNTY, TENNESSEE

Case Number: 15-CR-179 Count: 2 Counsel for the State: MARK E. DAVIDSON
 Judicial District: 25th Judicial Division: 1 Counsel for the Defendant: ROBERT M. BRANNON, JR.
 State of Tennessee ☒ Retained ☐ Pub Def Appt ☐ Private Atty Appt
 vs. ☐ Counsel Waived ☐ Pro Se
 Defendant: FRED AUSTON WORTMAN III Alias: _____ Date of Birth: 02/22/1976 Sex: Male
 Race: White SSN: ██████████ Driver License #: 075767641 Issuing State: TN
 State ID #: _____ County Offender ID # (if applicable): _____ TOMIS/DOC #: _____
 Relationship to Victim: _____ Victim's Age: _____
 State Control #: _____ Arrest Date: _____ Indictment Filing Date: _____

JUDGMENT ☒ Original ☐ Amended ☐ Corrected

Come the parties for entry of judgment.

On the 9 day of NOVEMBER, 2015, the defendant:

<input type="checkbox"/> Pled Guilty <input checked="" type="checkbox"/> Dismissed/Nolle Prosequi <input type="checkbox"/> Pled Nolo <input type="checkbox"/> Pled Guilty -- Certified Question Findings Incorporated by Reference Is found: <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Jury Verdict <input type="checkbox"/> Not Guilty by Reason of <input type="checkbox"/> Bench Trial	Indictment: Class (circle one) 1 st <u>A</u> <u>B</u> <u>C</u> <u>D</u> <u>E</u> <input checked="" type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor Indicted Offense Name <u>AND TCA § 39-13-101 - Solicitation</u> Amended Offense Name <u>AND TCA §</u> Offense Date: <u>06/05/2015</u> County of Offense: <u>FAYETTE</u> Conviction Offense Name <u>AND TCA §</u> Conviction: Class (circle one) 1 st <u>A</u> <u>B</u> <u>C</u> <u>D</u> <u>E</u> <input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor Is this conviction offense methamphetamine related? <input type="checkbox"/> Yes <input type="checkbox"/> No Sentence Imposed Date: _____
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After considering the evidence, the entire record, and in the case of sentencing, all factors in Tennessee Code Annotated Title 40, Chapter 35, all of which are incorporated by reference herein, it is ORDERED and ADJUDGED that the conviction described above is imposed hereby and that a sentence and costs are imposed as follows.

Offender Status (Check One)	Release Eligibility (Check One)	Concurrent with:	Pretrial Jail Credit Period(s):
<input type="checkbox"/> Mitigated <input type="checkbox"/> Standard <input type="checkbox"/> Multiple <input type="checkbox"/> Persistent <input type="checkbox"/> Career	<input type="checkbox"/> Mitigated 20% <input type="checkbox"/> Mitigated 30% <input type="checkbox"/> Standard 30% <input type="checkbox"/> Multiple 35% <input type="checkbox"/> Persistent 45% <input type="checkbox"/> Career 60% <input type="checkbox"/> Agg Rob 85% <input type="checkbox"/> 40-35-501(i) 100% <input type="checkbox"/> 39-13-518 100%	<input type="checkbox"/> Agg Rob w/Pris 100% <input type="checkbox"/> Multiple Rapist 100% <input type="checkbox"/> Child Rapist 100% <input type="checkbox"/> Child Predator 100% <input type="checkbox"/> Agg Rapist 100% <input type="checkbox"/> Mult 39-17-1324 100% <input type="checkbox"/> 39-17-1324(a), (b) 100% <input type="checkbox"/> Agg Assault w/Death 75% <input type="checkbox"/> Att 1 st Degree Murder w/SBI 85%	<input type="checkbox"/> 1 st Degree Murder <input type="checkbox"/> Drug Free Zone <input type="checkbox"/> Gang Related <input type="checkbox"/> Repeat Violent Off <input type="checkbox"/> Agg Child Negl/En 70% <input type="checkbox"/> Agg Child Neg/En 85% <input type="checkbox"/> Meth 100%
Sentenced To: <input type="checkbox"/> TDOC <input type="checkbox"/> County Jail <input type="checkbox"/> Workhouse Sentence Length: _____ Years _____ Months _____ Days _____ Hours <input type="checkbox"/> Life <input type="checkbox"/> Life w/out Parole <input type="checkbox"/> Death Mandatory Minimum Sentence Length <u>39-17-417, 39-13-513, 39-13-514, or 39-17-432 in Prohibited Zone or 55-10-401 DUI 4th Offense</u> or <u>39-17-1324 Possession/Employment of Firearm or 40-39-208, -211 Violation of Sex Offender Registry or Meth (39-17-434, -417, -418)</u> Period of incarceration to be served prior to release on probation or Community Corrections: _____ Months _____ Days _____ Hours Minimum service prior to eligibility for work release, furlough, trusty status and rehabilitative programs: _____ % (Misdemeanor Only) Alternative Sentence: <input type="checkbox"/> Sup Prob <input type="checkbox"/> Unsup Prob <input type="checkbox"/> Comm Corr (CHECK ONE BOX) _____ Years _____ Months _____ Days Effective: _____ WAS DRUG COURT ORDERED AS A CONDITION OF THE ALTERNATIVE SENTENCE? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			From _____ to _____ From _____ to _____ From _____ to _____ From _____ to _____

Court Ordered Fees and Fines: _____ \$ _____ Court Costs <input type="checkbox"/> Defendant <input type="checkbox"/> State \$ _____ Fine Assessed \$ _____ Traumatic Brain Injury Fund (68-55-301 et seq) \$ _____ Drug Testing Fund (TN Drug Control Act) \$ _____ CICC <input type="checkbox"/> Sex Offender Tax \$ _____ Other: _____	Restitution: Victim Name _____ Address: _____ Total Amount \$ _____ Per Month \$ _____ <input type="checkbox"/> Unpaid Community Service _____ Hours _____ Days _____ Weeks _____ Months
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☒ The Defendant having been found guilty is rendered infamous and ordered to provide a biological specimen for the purpose of DNA analysis.
☐ Pursuant to 39-13-521 the defendant is ordered to provide a biological specimen for the purpose of HIV testing.
☐ Pursuant to 39-13-229 the defendant is sentenced to community supervision for life following sentence expiration.
☐ Pursuant to Title 68, Chapter 11, Part 10, the clerk shall forward this judgment to the Department of Health.

Special Conditions

J. WEBER MCCRAW
 Judge's Name [Signature] Judge's Signature [Signature] Date of Entry of Judgment Nov 9, 2015
 Counsel for State/Signature (optional) _____ Defendant/Defendant's Counsel/Signature (optional) _____

I, the clerk, hereby certify that, before entry by the court, a copy of this judgment was made available to the party or parties who did not provide a signature above.