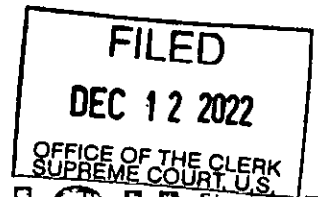


22-6364

IN THE
SUPREME COURT OF THE
UNITED STATES



ORIGINAL

FAIRLY W. EARLS,
Petitioner-Appellant,

v.

FEDERAL BUREAU OF PRISONS,
Respondent-Appellee.

On Petition for Writ of Certiorari from the United States
Court of Appeals for the Seventh Circuit Case No. 22-2023
in a 28 U.S.C. 2241 Petition.

PETITION FOR WRIT OF CERTIORARI

Dated 12-10-2022

Fairly W. Earls
Jackson Correctional
P.O.Box 233
Black River Falls, 54615

QUESTION PRESENTED

- I. Whether Earls should have to serve the same Federal Sentence a Second Time. The United States Court of Appeals for the Seventh Circuit violated Earls Constitutional Rights by deciding that Earls Federal Sentence still has to be served. Altho the Federal Sentence was issued First prior to any State Sentence and his State Sentence was issued consecutive to the Federal Sentence. Earls Federal Sentence as given has been satisfied in full.
- II. Whether the Court of Appeals and District Court both failed to apply section USSG 5G1.3 sentencing guideline to Earls Sentence because the guide line does apply and would run Earls Federal Sentence and the State Sentences together.

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CONSTITUTIONAL PROVISIONS

U.S. Constitution 5th Amendment
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CITATIONS - ORDERS ENTERED

The Order of the United States Court of Appeals for the Seventh Circuit denying the Petition for Rehearing. (App.1), Final Judgment Order Affirming Judgment of the District Court (App. 2), Opinion and Order by the United States Court of Appeals for the Seventh Circuit denying Earls 28 U.S.C. 2241 Petition (App. 3), Opinion and Order Wisconsin District Court denying Earls 28 U.S.C. 2241 Petition (App. 4), Earls Federal B.O.P. Housing Status (App. 5), Section USSG 5G1.3 Imposition of Sentence (App. 6).

JURISDICTION STATEMENT

The United States Supreme Court has Jurisdiction on the United States Court of Appeals Order's and Federal District Court Orders invoked under 28 U.S.C. 2241 and the United States Constitution Article III 2. This Petition is timely filed pursuant to 28 U.S.C. 2101(c). Pursuant to Rule 14(1)(e)(v) and 28 U.S.C. 2403(b) the Wisconsin Attorney General has been served via the U.S. Postal Service.

CONSTITUTIONAL - STATUTORY PROVISIONS

The United States Constitution Fourteenth Amendment Right to Due Process.
The United States Constitution Fifth Amendment Right on the Double Jeopardy.
The United States Sentencing Guideline U.S.S.G. 5g1.3(b)(2).
The United States Section 28 U.S.C. 2241.

STATEMENT OF THE CASE

On August 26, 2010, Fairly Earls was arrested and in the Federal Custody by the Federal Authorities of the United States of America facing charges of Multiple Fraud and Identity Theft. (id.)

The United States of America was the sovereign that First Arrested Earls and took Primary Custody over Earls. In August of 2010 Earls was given a United States of America Federal Inmate I.D. number of 10759089 and held as a Federal Inmate in Orange County Florida for two weeks, see (A5-31; trial Tr. 138f 1-9, June 08, 2011, U.S.D.C. Indiana) then transported to a Oklahoma Federal Facility for several weeks. This is Primary Custody by the First authority to Arrest.

Earls was given Sentence Credit for his time spent in Federal Custody prior to sentencing of 13 months and 10 days which included and started on August 25th, 2010. see (DKT 101 Criminal Docket Transcript of Sentencing for Case 2:10-cr-00222-jvb, U.S.D.C. Indiana), Appendix).

In October 2010 Earls was borrowed by the State of Wisconsin thru a Writ of Habeas Corpus AD Prosequendum and transported to the State of Wisconsin. Proceeding from 11-16-2010 thru 01-04-2011 in the Federal Court where the United States of America filed the Motion for Writ of Habeas Corpus AD Prosequendum. This was evidence that the transferring sovereign intended to maintain Primary Custody see Criminal Docket's 1 thru 8 for Case 2:10-cr-00222-jvb U.S.D.C. Indiana, Appendix), and publicly available records of Earls proceedings.

Earls was not facing a trial in 2010 and the Federal Government on January 14, 2011 exercised it's primary Custody Control and picked Earls up in Wisconsin and transported Earls back to Federal Custody in Hammond Indiana for Arraignment and then transported Earls to Jerome Comb' detention center in Joliet Illinois see (DKT. 8,9 Criminal Docket for Case 2:10-cr-00222-jvb, Appendix).

On June 08, 2011 thru June 10, 2011 a federal Jury Trial was had and Earls is found guilty of Counts 1,2 and 3, see (DKT. 56-60 Criminal Docket for Case 2:10-cr-00222-jvb, U.S.D.C. Indiana, Appendix)).

On June 10, 2011 the Government advises the Court that he may file a Motion to have defendant transported to Wisconsin to face state charges.see (DKT.60 Criminal Docket for Case 2:10-cr-00222-jvb, U.S.D.C.Indiana,Appendix 1). It is the United States Government who is doing the Motion to send Earls to Wisconsin,It is not theState of Wisconsin requesting.

On October 05,2011 Earls Federal Sentence is Imposed for 60 months and the Federal Court Order says "Earls is hereby committed tothe Custody of the BOP". see (DKT.90 Criminal Docket for Case 2:10-cr-00222-jvb, U.S.D.C. Indiana, Appendix), Also see :Disposition in Criminal Docket for Case 2:10-cr-00222, Appendix), where in Paragraph 22 (Paragraph one) under Disposition "Defendant is hereby committed to the Custody of the BOP" to be imprisoned for a term of 36 months on count 1 and 3, "Defendant is hereby committed to the Custody of the BOP" on count 2. See Paragraph two where it repeats this "Committed to the Custody of the BOP". See Paragraph Three, where it repeats this "Committed to the Custody of the BOP".

On October 20, 2011 Earls is Received in Custody at the Federal Bureau of Prisons, Metropolitan Correctional Center Facility in Chicago Illinois to Commence his service of Federal Sentence, the Official Detention Facility at which the Sentence is to be served. Earls was being housed in housing unit CCC-G-A, see (Appendix), the Federal Bureau of Prison Facility Sheet dated 10-20-2011).

It was not until 11-02-2011 that the State filed a Writ of Habeas Corpus AD Prosequendum, see (DKT. 103 Criminal Docket for Case 2:10-cr-00222-jvb, U.S.D.C. Indiana,Appendix). Several weeks later Earls was Borrowed by Wisconsin.

Earls was housed in a Federal Facility serving his Federal Commitment when the Bureau of Prison's released Earls to the Custody of the State of Wisconsin on a State Detainer hold. The Federal Government never filed another habeas corpus for Earls return to federal custody. Therefore letting Earls serve his federal sentence in a State Facility. On October 11, 2012 over a year after the Federal Commitment was given to Earls. Earls was sentenced by the State of Wisconsin to a term of 60 years for 10 counts of bail jumping and also a Retrial Case that was Reversed by this Court for Insufficiency of Evidence and Ineffective Assistance of counsel. Earls was sentenced to another 60 years "Consecutive" to the Federal Commitment.

The State of Wisconsin Circuit Court Judge in the judgment of Conviction was very clear and concise in October 11, 2012 Ordering that the State Sentence's were to run Consecutive to any other Sentence. The State Judge clearly Ordered and decided that the State Sentences were to be Consecutive to the already imposed Federal Commitment.

The State Court was clear on it's Order that the State Sentence's are to be imposed after the Federal Commitment has been satisfied. The State of Wisconsin and the Federal Bureau of Prison's with the United State's Marshal's and the United States Attorney General, all four agency's elected to not transfer Earls back to a Federal Facility and leave Earls in a State Facility to serve his Federal Commitment.

All four agency's knowingly and willingly elected to leave Earls in a Non-Federal Facility as the place of confinement to serve his Federal Commitment as Ordered by the State Court for Earls State Sentences to be started after the Federal sentence in a State Facility was served.

Earls contacted the Federal Bureau of Prison's Operation's Manager in Grand Prairie Texas on several occasions, 01-20-2015, 08-11-2015, 09-21-2015, 03-14-2016, 04-17-2017, 06-10-2017, and in 2019, 2022, and 2021 requesting

a Satisfactory of Judgement letter and the Detainer be removed because the Commitment as Ordered by the District Court has been Satisfied. The Bureau of Prison's being the holder of the Judgment of Conviction is refusing to release Earls from the Detainer and the Federal Commitment even tho the Judgment has been Satisfied therefore it's an illegal Custody by the Federal Bureau of Prison's. The Bureau abused its discretion by deciding to tell Earls that he needed a Court Order in Order for them to act. Which is not true when you read the text of USSC § 5G1.3, 18 U.S.C. § 5G1.3(b)(2).

Earls petitioned the Federal Bureau of Prison's in 2016 and then the Federal District Court, and the 7th Circuit Court of Appeals in Case No. 15-3631 (7th Cir. April 6, 2016). Then in Case No. 18-2427 (7th Cir. April 12, 2019 which lead to the Filing of Case 19-2034 filed with the Clerk of the Court 7th Circuit on 05-19-2019, decided by the Court on May 13, 2021. Earls has actively been pursuing this matter but it is not a second or successive petition because the 7th Circuit decided the Claim was Filed in the wrong District.

Earls petitioned the Federal Bureau of Prison's on several occasions in an attempt to get the Bureau to Remove the Illegal detainer from his State of Wisconsin Record and issue a Satisfactory Completion of Sentence Report/Letter. The latest response from the Federal Bureau of Prison's was from the Operations Manager and she instructed Earls that his judgment was a lawful commitment and the Bureau has no Authority to change or modify the commitment, instructing Earls that he would need a Court Order to get the detainer removed.

Earls was informed by the Federal Bureau of Prison's Operation's Manager that there currently is No Administrative Remedy available for him on exhaustion remedies purposes. Earls did however exhaust the State Administrative Remedy that was available to him in a State Facility. The Federal Government has yet to respond to Earls petition in essence conceding to the Correctness of the facts in the record.

On June 07, 2021 Earls submitted his 28 U.S.C. § 2241 Petition as directed by the Seventh Circuit Court telling him to file his petition with the United States District Court Western District of Wisconsin. On June 02, 2022 the District Court abused it's discretion and denied Earls § 2241 Petition.

STATEMENT OF FACTS

Earls was taken into Primary Custody and given a Federal Inmate I.D. number by the Federal Government First on August 26th, 2010. Therefore the Record is clear by evidence that this fact is true and correct. Earls was Sentenced by the Federal District Court First on October 5th, 2011 and the Sentence as the district court now says could not of been Consecutive to any Case because Earls did nothave any other State or Federal sentences or convictions at that time. Earls was Committed to the Custody of the United State's Bureau of Prison's by the Federal Court in a Court Order on October 05, 2011 by the Court for the term of 60 month's. This fact is clear and correct by the Record Evidence (Criminal Docket) where the Federal Court Issued a Federal Court Order Ordering Earls sentencing to be "committed to the Custody of the BOP" to be imprisoned to commence his Federal Sentence on October 05, 2011. Earls had no other Criminal sentences, Earls was in the Primary Federal Custody at the time his Sentence was imposed.

Earls has provided evidence that ne arrived at a Federal Facility (Metropolitan Correctional Center) to commence service of his Federal sentence at the Official Detention Facility to which the Federal Sentence is to be served starting October 10, 2011. (see Appendix). Under the Doctrine of Primary Custody, a prisoner's Federal Sentence only begins to run when he is in the Primary Custody of the Federal Government.

Pursuant to Section 18 U.S.C. § 3585(a): "a sentence to a term of imprisonment commences on the date the defendant is received in Custody awaiting transport or arrives to commence service of sentence at, the official detention facility at which the sentence is to be served" 18 U.S.C. § 3585(a).

Earls Federal Commitment is now over and Earls should be given his release from the Federal Bureau of Prison's and the release from the Federal detainer that is in his State Record file as active.

The Bureau of Prison's knowingly and willingly elected to leave Earls in a State Facility to serve his Federal Commitment. Earls has successfully satisfied his Federal Judgment of Conviction as a model inmate at 100% of the incarceration rate rule.

Earls was again borrowed by the State of Wisconsin on a writ of habeas corpus ad prosequendum on November 02, 2011, however was not picked up or transported until December 10, 2011. Earls was eventually convicted and sentenced in October 2012, a year after he commenced his Federal Sentence at the Federal Facility.

The State of Wisconsin issued an Order in Earls Judgment of Conviction in October 2012 Ordering Earls State Sentence is to be Consecutive to the already imposed Federal sentence. see (Appendix)..

The BOP may not delay the commencement of the sentence of an inmate in it's primary custody by failing to designate an official detention facility. Here the BOP did designate Earls official detention Facility. However the Bureau of Prison's knowingly and willingly elected to leave Earls in a State Facility to serve his Federal Commitment.

DISTRICT COURT ERROR'S

The District Court of Wisconsin in Earls § 2241 Petition unreasonably applied the Facts and the Law in a very suspicious manner, it is beyond question that Earls Claim is, at a minimum, "reasonably debatable". see Buck v. Davis, 580 U.S. ___, 137 S.Ct. 759 at 774 (2017). The Wisconsin District Court erred in denying Earls § 2241 Petition and this Court should not allow that error to go uncorrected.

The District Court of Wisconsin committed Clear error and abused it's discretion on reaching its erroneous decision on it's factual findings. First, the District Court committed Clear and Plain error when the Court inferred on the facts that the Federal Sentencing Court in Indiana Expressly stated Earls sentence be consecutive to the State of Wisconsin sentence. The District Court in searching the internet misapplied the facts and Law. The Indiana Court was silent, because there was no other sentences at the time of the Federal Sentence. The State conviction did not exist until a year later.

Therefore the Indiana Sentencing Court could not of expressly said Consecutive to what, there was "No other Sentence" to be consecutive to.

Second, district Court error, and abuse of discretion, where if the Wisconsin District Court in the June 02, 2022 Order was referring to the BOP sending an inquiry to the Indiana Court in 2019 on the silent sentence. That inquiring by the BOP and the Indiana Court decision on that inquiry responding to the BOP was Vacated and Reversed By the Seventh Circuit Court of Appeals, thereby Remanding back to the Indiana Federal Court on Appeal Case No. 18-2427, entered March 13, 2019 (deciding that the Indiana Court was without Authority to render that decision, thus Earls Federal sentence remains silent).

Third error by the Wisconsin District Court, Moreover of importance, Mr. Earls was Sentenced by the Federal District Court of Indiana on October 5th, 2011 and was housed in a Federal Facility commencing his Federal Sentence.

Therefore that Sentence could not of been expressly stated consecutive to any Case because Mr. Earls had no other State or Federal Sentence's at that time. The State of Wisconsin sentenced Earls a year later on October, 2012 to be consecutive to the Federal Sentence.

The District Court of Wisconsin committed factual error's because it is the State of Wisconsin Circuit Court in 2012 who in fact Ordered Earls State Sentences to be served Consecutive to the Federal Sentence. The Record is clear and is there for the Court to use in reaching it's decision. It's apparent that the District Court failed to rely on the true facts of the Case and inserted internet facts of it's own acting as the government. see (Earls § 224) Memorandum of Law and the Record exhibits , pages 5, and 10).

Fourth error by the District Court, the District Court abused it's discretion by committing an error of Law and Fact by deciding in its opinion that Earls has not served any portion of his Federal Sentence. Earls was arrested by the United States Government First and Earls had started serving when he arrived at the Federal Facility to serve his Federal sentence on October 20, 2011, just two weeks after sentencing. see (Appendix Evidence)).

Further in this continued decision the District Court abused it's discretion by erroneously applying the Doctrine of Primary Custody Standard/Law. The District Court continued the erroneous factual error's by deciding Earls was just a week after sentencing in Federal Court he was transferred back to Wisconsin. Using Appendix 5 as evidence Earls proves that this District Court fact is false because Earls was sentenced on October 5th, 2011 and as Appendix 5 proves two weeks later Earls was physically commencing his Federal Sentence on October 20th, 2011 in Metropolitan Correctional Center in Chicago Illinois in Housing Unit CCG-G-A. So clearly Earls was Commencing his Federal Sentence and the Record is clear and does not support the District Court decision.

Regardless of how the Wisconsin District Court reviews Earls Federal Sentence, the District Court can't get past the true fact in the Record Earls "State Judgment of Conviction unequivocally says "Consecutive to the Federal sentence. Therefore the continued enforcement of the duration of Earls Federal sentence is an illegal Sentence.

Four major error's of factual findings and Law committed by the District Court of Wisconsin. Where in it's decision and being obvious by the Record submitted to the Court that the District Court erroneously inserted inaccurate facts that were not in the record and committed those factual error's, searching the public record on the internet on Earls Criminal proceedings. The district Court abused it's discretion and authority because it is not to act as a litigant against the petitioner and search records. Further the District Court took on the role of the Respondent.

ARGUMENT

ISSUE I. The Federal Bureau of Prison's is Violating Earls 5th Amendment double jeopardy and his 14th Amendment equal protection and due process by the illegal Custody and the denial of the release on his challenge to the duration of confinement and the removal of the detainer lodged against him.

A Petitioner has a Constitutional Right pursuant to the United States Constitution of the 14th Amendment equal protection and due process, and the 5th Amendment from successive punishments.

Earls is challenging the United States Federal Bureau of Prison's calculation of his Custody terminal date, and the Detainer that the Bureau is refusing to remove and acknowledge the fact that Earls sentence has been 100% served.

Earls claims that the BOP incorrectly calculated his sentence by refusing to credit him time he spent in custody starting when he was received into the Federal Facility in October 20, 2011 until his sentence was completed in the State Facility. The Claim is properly raised in a § 2241 petition. see *Preiser v. Rodriguez*, 411 U.S. 475, 490, 95 S.Ct. 1827 (1973). (challenges to the fact or duration confinement must be brought in a writ of habeas corpus); *Walatzki v. Keohane*, 13 F.3d 1079, 1080 (7th Cir. 1994); *Romandine v. United States*, 206 F.3d 731, 735 (7th Cir. 2000) (noting that issues related to BOP's sentencing calculations are properly brought in a § 2241 petition).

The Attorney General through the BOP, is responsible for computing terms of imprisonment for federal prisoners, *United States v. Wilson*, 503 U.S. 329, 112 S.Ct. 1351, 1354 (1992). There are two main steps in making this calculation, as outlined in 28 U.S.C. § 3585; First, under 18 U.S.C. § 3585(a), the BOP must determine the date a sentence commenced. Second, under 18 U.S.C. § 3585(b), the BOP must determine the credit an inmate should get prior custody for. Here Earls was in the Primary Custody of the federal government as of the date of his sentence.

The BOP is required to calculate the federal sentence's start date, Pursuant to § 3585(a): "A sentence to a term of imprisonment commences on the date the defendant is received in custody awaiting transportation to, or arrives voluntarily to commence service of sentence at, the official detention facility at which the sentence is to be served". 18 U.S.C. § 3585(a).

Under the Doctrine of primary custody, a prisoner's federal sentence only begins to run when he is in the primary custody of the federal government. Generally, a prisoner is in the Primary Custody and primary jurisdiction of the sovereign that first arrested him—meaning either the State or the federal government—until that sovereign relinquishes its priority in some way". *Pope v. United States* 389 F.3d at 415 (quoting *United States v. Cole*, 416

F.3d 894, 897 (3th Cir. 2005)). A sovereign releases its primary priority through such actions as releasing the prisoner on bail or parole. *Loewe v. Crass*, 589 Fed. App. 788, 790 (7th Cir. 2014).

Here the Federal Commitment by the Federal District Court was imposed to Earls First on October 5th, 2011 for 60 month's. However here on August 26th, 2010 is the date Earls sentence commenced because Earls was in primary Federal Custody at the time his sentence was imposed. This was recognized by the Federal Court when the Federal Court issued an Order giving Earls credit under 18 U.S.C. § 3585(b) of 13 months and 10 days pre-trial credit.

Earls State sentences were all Ordered by the State Court to be consecutive to the Federal sentence. Earls Federal sentence started to run on October 5th, 2011 minus the pre-trial credit and the duration of that confinement has been satisfied. The evidence proves conclusively that the Federal Commitment was Ordered to Earls First on October 5th, 2011 before any State conviction and the State judgment of conviction was to be served after the Federal commitment, see (Appendix -)). Earls has been incarcerated for over 12 years since the 60 month Federal Commitment.

Importantly, however, Earls had been borrowed by the State pursuant to a Writ of Habeas Corpus ad Prosequendum, so the Federal Authorities could certainly not have been seen as relinquishing there primary Custody, primarily based on the Metropolitan Correctional Center Housing Earls to Commence his Federal Sentence. Earls was only borrowed into State Custody pursuant to their Writ of Habeas Corpus ad Prosequendum.

This Court has always reviewed Constitutional question's de novo, see *Fairley v. Andrews*, 578 F.3d 518, 525 (7th Cir. 2009). Earls is presenting a Constitutional question on his liberty and freedom as given in his Constitutional Rights of the 5th and 14th Amendments of the United States Constitution.

Once a defendant has satisfied a Criminal Judgment that was entered against him, the defendant is no longer bound by that judgment and is no longer a defendant in that Action. Earls has satisfied his Federal Judgment. By the Law and Facts of Earls case he is a person the same as any other citizen of the United States and is entitled to present a petition for redress on an action and should not be held to a PLRA Standard. see *Pufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 384 (1992); also see *Kleven v. Mrozinski*, 489 B.R. 818 (2013).

This Court just like the United States Supreme Court has held that a change in circumstances does warrant relief as Earls is requesting. see *Matter of Canopy Financial Inc.*, 708 F.3d 934 (7th Cir. 2013); quoting *Horne v. Flores*, 557 U.S. 433, 447 (2009); *Agostini v. Felton*, 521 U.S. 203, 215 (1997).

A Petitioner is entitled to relief from a Judgment or Order when the Judgment has been satisfied as Earls has done on his Federal Judgment. see *Horne v. Flores*, 557 U.S. 433, 447 (2009); *Gonzalez v. Crosby*, 545 U.S. 524 (2005); *Thorge v. Sellers*, 138 S.Ct. 545 (2018).

The Federal Court's have held that Flexible Standards generally apply in all equitable cases. The Court should keep in mind that if the change in circumstances eliminates the violation of federal law the injunction was designed to prevent, then a continuing injunction exceeds appropriate limits even if it's term's have not been satisfied to the letter, *Horne*, 557 U.S. at 450. If a durable remedy achieving the objective of the judgment has been implemented, then continued enforcement of the Order is not unnecessary, but improper. see *Hendrix v. Page*, 986 F.2d 195, 198 (7th Cir. 1993).

There is no doubt as established by the Federal Court and housing evidence presented in the appendix that Earls was sentenced First and housed in a Federal Facility commencing his Federal Sentence.

1. Earls Federal Commitment started October 5th, 2011,
2. Earls commenced his Federal Sentence in a Federal Facility on October 20, 2011.
3. Earls State sentence is the one that is consecutive to the Federal sentence.
4. Earls has been in Custody since August 2010.
5. The Federal Authorities arrested Earls First and took primary custody.

The District Court was fully aware that Earls had no other sentences to serve. The District Court at the Sentencing hearing said on the Record, "Whatever Facility" that Earls was to serve his Federal Commitment in. The District Court was also aware that Earls could be facing a State Sentence fully aware that the case was reversed by the 7th Circuit and in their opinion there was no evidence against Earls. So it's clear the District Court did not care what Facility Earls was serving his sentence in. Further the government at that time did not object to the sentence being imposed in that manner.

A year after the Federal Sentence was Ordered by the District Court Earls was given a State Sentence in October 2012. The State Sentence was Ordered by the State Court for Earls sentence to be consecutive to any other sentence, that meant that the State sentence was consecutive to Earls Federal commitment.

The State sentencing Order by the State Circuit Court Judge was with no doubt to be served after Earls Federal Commitment. The State Court was aware of Earls Federal sentence because the U.S. Marshal from the Federal Case testified on the Record to that exact fact and the Federal Judgment of Conviction was presented in the State Case as evidence and exhibits.

Earls has been housed in a State Facility in the State of Wisconsin ever since the Bureau of Prison's transferred Earls to the State Facility from the Federal Correctional Center in Chicago on or about 01-10-2012. After Earls State sentencing on October 2012 the Federal Bureau of Prison's and Federal Authority's knowingly and willingly elected to leave Earls in a

State Facility to serve his Federal Commitment. The EOP declined to retrieve or accept Earls back to the Federal Facility. The Final decision to where Earls was to be housed was left up to the BOP and based on the outcome it was for Earls to serve his Federal Commitment in a State Facility. It is clear by their reluctance to bring Earls back to the BOP Facility, given that they knew at that time the State Sentence was consecutive to the Federal sentence.

The movant party Earls in this petition has met his burden of proof by providing clear and convincing evidence that his Federal Commitment was to be served first before the State sentence.

Earls has thereby established that the change in circumstances do warrant relief from the illegal custody by the BOP and removal of the Federal Detainer in Earls State record, see *Matter of Canopy Financial Inc.*, 708 F.3d 934 (7th Cir. 2013), quoting *Horn*, 557 U.S. at 447.

The United States Supreme Court has said that relief is to be given by the Courts when a party has satisfied his Judgment. Earls is entitled to be released from the Federal Commitment and the Federal Detainer because the BOP abused its discretion and The commitment has been satisfied. The Supreme Court even went further by stating that Federal Courts must vigilantly enforce Federal law and must not hesitate in awarding relief.

The objective of the Federal Court's Commitment was for Earls to serve 60 month's for the misconduct that was before the Court. The District Court decided that it did not matter to the Court where Earls was to serve his Federal Commitment, deciding "Whatever Facility". Earls has satisfied that objective by the completion of the original commitment in a non-Federal Facility as decided by the judgment holder.

Since the original Federal commitment has been satisfied Earls by Law is deservant of the release and to be free from further restraint's by the

Federal Bureau of Prison's. see (In Re Bradley, 318 U.S. 50, 63 S.Ct. 470, 471 (1943); cited by the District Court in Cecil, 2017 U.S. Dist. Lexis 2366).

Issue II. Whether the Court of Appeals and District Court abused their discretion by Fundamental Error's of failing to apply 18 U.S.S.G.

§ 5G1.3 Sentencing Guidelines to Earls Case.

Federal Sentences prior to a unrelated undischarged State Imprisonment are to be Concurrent to the State Sentence. see (United States v. Hernandez, 620 F. 3d 822, 823-24 (7th Cir. 2010); United States v. Campbell, 617 F.3d 958, 961-62 (7th Cir. 2010) at Hn 1 & 4 (18 U.S.S.G. §§ 5G1.3(b), 5G1.3(c)). cited in (United States v. Hill, 187 F.Supp. 3d 959 (D.C. IL. 2016) at Hn3; United States v. Horn, 2022 WL 4094173).

The Court of Appeals and the district Court both made Fundamental Errors by slighting Earls on important factors in Section 18 U.S.C. § 5G1.3 on Concurrent Sentencing. Thereby abusing their discretion, see (Gali v. United States, 552 U.S. 38, 72 (2007); Gen. Elec. Co. v. Joiner, 522 U.S. 136, 141 (1997); Hanan v. Crete Carrier, 2022 WL 2188527 at * 2).

Further, the Bureau of Prison's also abused it's discretion by not applying 18 U.S.C. § 3585(a) when it denied Earls request for a satisfaction Order and by not removing the Detainer from Earls State Case Record. The holding in Pope does not upset the BOP's ability to run Earls Sentence Concurrent with the State Sentence through designation under 18 U.S.C. § 3585(a) and 3621(b). Likewise the BOP abused its authority by not applying Section 18 U.S.C. § 5G1.3(b)(2), The BOP stated Earls needed a Court Order, when clearly it was within their authority to Grant Earls the Relief he requested, Therefore the BOP, Circuit Court of Appeals and the district Court are all violating Earls 5th Amendment Right by multiple punishments on a Commitment that has already been served, and deciding Earls has to serve that commitment again..

A unlawful restraint is regarded as punishment which is multiple punishments are imposed for the same Offense. see (Blockburger v. United States, 284 U.S. 299 (1932) ("The Blockburger analysis applies to claims of successive punishments as well as successive prosecutions"). Further the Court of Appeals, district court and the BOP are violating Earls 14th Amendment of equal protection rights of the United States Constitution. They are all three treating Earls sentence different than those afforded the appropriate order of release when a sentence or commitment has been satisfied. Therefore Earls Federal Sentence and custody by the BOP and the Federal Court errors result in an Illegal Custody in Violation of the Due Process Clause of the 14th Amendment and Equal Protection. Earls has a Constitutional Right to be free from the Illegal Restraint being imposed by the BOP, and Federal Courts.

The Federal Courts in the Case at hand have Abused their Discretion by making "Fundamental Errors" and their decisions to ignore the Law in 18 U.S.C. § 5G1.3 for Concurrent Sentencing for Earls federal Sentence that was issued prior to a State Sentence, and the State Sentence was Ordered to be served after the Federal Sentence.

CONCLUSION

Earls has presented Evidence that his Federal Sentence was Issued First and then his State Sentence was Ordered by the State Court to be served after his Federal sentence. Earls pleads with this Courts Honorable Justices to Grant the Writ of Certiorari and send the Case back to the Seventh Circuit for them to Correct their Grave error's of Law.

Dated: 12-10-2022

Sincerely,

Fairly W. Earls

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Jackson Correctional
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UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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FINAL JUDGMENT

September 20, 2022

Before

FRANK H. EASTERBROOK, *Circuit Judge*
MICHAEL B. BRENNAN, *Circuit Judge*
CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 22-2023	FAIRLY W. EARLS, Petitioner - Appellant v. FEDERAL BUREAU OF PRISONS, Respondent - Appellee
Originating Case Information:	
District Court No: 3:21-cv-00377-wmo Western District of Wisconsin District Judge William M. Conley	

The judgment of the District Court is **AFFIRMED**, with costs, in accordance with the decision of this court entered on this date.

A handwritten signature in cursive script, appearing to read "Christopher Conley".

Clerk of Court

form name: c7_FinalJudgment (form ID: 132)