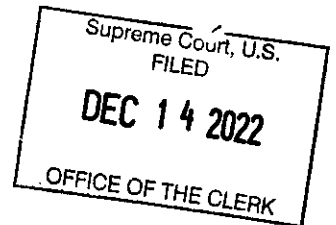


22-6380 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



Joseph Bergeron --- PETITIONER

vs.

Paul Schnell, Commissioner of Corrections, et., al. --- RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Joseph Bergeron -

MCF-Stillwater
970 Pickett Street North

(Address)

Bayport, MN 55003 -
(City, State, Zip Code)

N/A -
(Phone Number)

QUESTION(S) PRESENTED

- 1.) Can Minnesota State Courts ignore issues presented to it by a party, circumvent the rule of law to effectuate a clearly biased opinion?
 - (a) The Commissioner had a nondiscretionary duty to specify a period of revocation and assign a release date. (Appellant Brief, Pg. 17-24, Reply, Pg. 23-25)

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgement is the subject of this petition is as follows:

TABLE OF CONTENTS

Subject	Page #
OPINIONS BELOW.....	1
JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	2
STATEMENT OF THE CASE.....	3
REASONS FOR GRANTING THE WRIT.....	10
CONCLUSION.....	10
PROOF OF SERVICE.....	12
APPENDIX.....	13

INDEX TO APPENDICES

- APPENDIX A Minnesota Appellate Court Opinion; *Bergeron v. Comm'r of Corr.*,
2022 Minn. App. LEXIS 86
- APPENDIX B Minnesota District Court Opinion; *Bergeron v. Commissioner of*
Corrections, Paul Schnell, Ct. File No. 82-CV-21-2440.
- APPENDIX C Minnesota Supreme Court denying Review; *Bergeron v. Comm'r of*
Corr. 2022 Minn. LEXIS 421

TABLE OF AUTHORITIES CITED

CASES	PAGE #
<i>Anders v. California</i> , 386 U.S. 738, 743 (1967)	5
<i>Arizona v. Fulminante</i> , 499 US 279, 308, 113 L. Ed. 2d. 302, 111 S. Ct. 1246 (1991)	10,
<i>B&B Hardware Inc. v. Hargis Indus.</i> , 135 S. Ct. 1293, 1303, HN 11 (2015	7,
<i>Bergeron v. Commissioner of Corrections, Paul Schnell</i> , Ct. File No. 82-CV-21-2440	5,
<i>Bergeron v. Comm’r of Corr.</i> , 2019 Minn. App. Unpub. LEXIS 37	3,
<i>Bergeron v. Comm’r of Corr.</i> , 2022 Minn. App. LEXIS 86	3, 5, 8
<i>Bergeron v. Roy</i> , 2017 Minn. App. Unpub. LEXIS 590	7,
<i>Boutin v. Lafleur</i> , 591 N.W. 2d. 711, 716 (Minn. 1999);	4, 9,
<i>Butz v. Economou</i> , 98 S. Ct. 2894 (1978).	6,
<i>Dunn v. Fairfield Comm. High Sch. Dist. No. 225</i> , 158 F.3d. 962, 964-5 (7 th Cir. 1998)	11,
<i>Greenlaw v. United States</i> , 128 S. Ct. 2559, 171 L.ED. 2d. 399 (2008)	5,
<i>Hauschildt v. Beckingham</i> , 686 N.W. 2d. 829, 840-41 (Minn. 2004)	9,
<i>In Re Blodgett</i> , 510 N.W. 2d. 910, 914 (Minn. 1994)	9,
<i>Kentucky DOC v Thompson</i> , 490 US 454, 109 S. Ct. 1904 (1989)	7,
<i>McCarney v. Ford Motor Co.</i> , 657 F. 2d. 230 (8 th Cir. 1981).	9,
<i>Melendez-Diaz v. Mass.</i> 557 U.S. 305 353 (2009)	5,
<i>Montana v. U.S.</i> , 440 U.S. 147, 162 (1979)	9,
<i>N.C. Dept. of Revenue v. Kimberly Rice Kaestner 1992 Family Trust</i> , 139 S. Ct. 2213 (2019)	4,
<i>Ohio v. Adult Parole Auth. v. Woodard</i> , 323 U.S. 272, 293 (1998)	4,
<i>Olim v. Wakinekona</i> , 461 US 238 (1983)	7
<i>Save Lake Calhoun v. Strommen</i> , 943 N.W. 2d. 171, HN10, and HN11, MN S. Ct. (2020)	8,
<i>State ex rel. Marlowe v. Fabian</i> , 755 N.W. 2d. 792 (Minn. App. 2008)	8,
<i>State ex rel. Ford v. Schnell</i> , 933 N.W. 2d. 393, n.12 (MN S. Ct. 2019)	10,

CASES

PAGE#

<i>State v. Krause</i> , 817 N.W. 2d. 136, 144 (Minn. 2012)	4,
<i>State Ex Rel. Young v. Schell</i> , 956 N.W. 2d. 652, 670, HN16 (MN. S. Ct. 2021)	6, 8
<i>Tumey v. Ohio</i> , 273 US 510, 535, 71 L .Ed. 749, 47 S. Ct. 437 (1927)	10,
<i>US v. Cronic</i> , 466 US 648, 656 – 7 (1984)	5,
<i>Wolff v. McDonnell</i> , 418 US 539 (1974)	4,
<i>Zinerman v. Burch</i> , 494 US 113, 125 (1998)	4, 9,

STATUTES

Minn. Stat. §§ 244.01, subd. 7 .05, subd. 5	8,
Minn. Stat. §244.05, Subd. 2, (1988)	4, 8
Minn. Stat. § 586.01 (2016)	6,
Minn. Stat. § 586.02	5,

RULES

S. Ct. R. 10 (b) and (c)	6,
Minn. R. 2940.3500-.4500	8,
Minn. Prom. R. 2940.3800	8,

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☒ For cases from state courts:

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

☒ reported at *Bergeron v. Comm'r of Corr.*, 2022 Minn. App. LEXIS 86; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished

The opinion of the Washington County District Court appears at Appendix B to the petition and is

☒ reported at *Bergeron v. Commissioner of Corrections, Paul Schnell*, Ct. File No. 82-CV-21-2440; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☒ For cases from state courts:

The date on which the highest state court decided my case was 28 September 2022. A copy of that decision appears at Appendix C.

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Right to Due Process – Substantive and Procedural

U.S. Const. Amd. XIV

Minn. Const. Art. 1, §7

STATEMENT OF THE CASE

The lower Courts have so far departed from the accepted and usual course of justice as to call for an exercise of the Supreme Courts supervisory powers.

The Minnesota Appellate court has twice abandoned the rule of law and fundamental due process fairness with clearly prejudicial decisions that defy controlling law raised before it. See 1.) *Bergeron v. Comm'r of Corr.*, 2019 Minn. App. Unpub. LEXIS 37, and 2.) *Bergeron v. Comm'r of Corr.*, 2022 Minn. App. LEXIS 86.

In the *Bergeron* 86 opinion the court violated the due process clause of the U.S. Const. Amd. XIV, and Minn. Const. Art. 1, §7. protections when it ignored procedural and substantive due process required for revocation reimprisonment, and did not even bother to analyzed the arguments before it, the court simply determined without citation to authority that Appellant may be indefinitely reimprisoned, despite controlling law forbidding such. The courts clear prejudicial opinion is a violation of Fundamental fairness required for judicial bodies.

The Minnesota Supreme court's decision not to review such an obvious abrogation of the rule of law has tacitly supported the Appellate courts abuse of discretion.

Argument

Due Process is controlling legal authority for all judicial branches and the bedrock of the Nations judicial system, as such a court has no discretion to circumvent this authority.

Due Process

The Due Process Clauses of the 14th Amendment (U.S. Const. Amd. XIV) and Minn. Const. Art. 1, §7 are intended to ensure that no one in this nation is deprived of life,

liberty, or property without due process of law. “The Due Process clause provides that [n]o state shall ... deprive any person of life, liberty or property, without due process of law”. Amdt. 14§, The clause “centrally concerns the fundamental fairness of government activity”. *N.C. Dept. of Revenue v. Kimberly Rice Kaestner 1992 Family Trust*, 139 S. Ct. 2213 (2019).

“The due process protection provided under the Minnesota Constitution is identical to the due process[s] guaranteed under the Constitution of the United States” *State v. Krause*, 817 N.W. 2d. 136, 144 (Minn. 2012)

Procedural Due Process is what process is necessary before a person can be deprived of life, liberty, or property.

“Parolee’s must be accorded due process in “any” revocation Proceedings” *Ohio v. Adult Parole Auth. v. Woodard*, 323 U.S. 272, 293 (1998) (Emphasis Added)

“[P]rocedures for the Revocation of Supervised Release shall provide Due Process of Law for the inmate”. Minn. Stat. §244.05, Subd. 2, (1988);

“Substantive Due Process embodies our fundamental protection from arbitrary government action.” (citing *Boutin v. Lafleur*, 591 N.W. 2d. 711, 716 (Minn. 1999); *Zinerman v. Burch*, 494 US 113, 125 (1998); U.S. Const. Amd. V, XIV; Minn. Const. Art. 1, § 7 and *Wolff v. McDonnell*, 418 US 539 (1974).

Rule of Law

“In our adversary system, in both civil and criminal cases, in the first instance and on appeal, we follow the principle of party presentation! That is, we rely on the parties to frame the issues for decision and assign the courts as the role of neutral arbiter of

matters the parties present” *Greenlaw v. United States*, 128 S. Ct. 2559, 171 L.ED. 2d. 399 (2008).

The adversarial process is protected by the 6th amendment. *Anders v. California*, 386 U.S. 738, 743 (1967). “[I]f the process loses its character as a confrontation between adversaries, the constitutional guarantee is violated” *Melendez-Diaz v. Mass.* 557 U.S. 305 353 (2009)(quoting *US v. Cronin*, 466 US 648, 656 – 7 (1984)).

State Court Procedural History:

Washington County District Court Judge Galler did not issue the Writ despite Minn. Stat. § 586.02 requiring in mandatory language: “The Writ shall issue on the information of the party beneficially interested ... “. Instead he plead for the Commissioner of Corrections, and then denied Appellant’s Writ with prejudice: *Bergeron v. Commissioner of Corrections, Paul Schnell*, Ct. File No. 82-CV-21-2440. (See Appendix B).

The Minnesota Appellate Court affirmed the lower court’s decision ignoring the district courts due process violation(s), and without findings of fact, legal analysis or citation to authority. It simply stated: “The Commissioner therefore has discretion to imprison Bergeron for more than six months”. *Bergeron v. Comm’r of Corr.*, 2022 Minn. App. LEXIS 86, at #6. (See Appendix A). The court abandoned the Rule of Law in its clearly discriminatory opinion.

The Minnesota Appellate Court’s decision was inconsistent both with the U.S. Supreme Court precedent, and Minnesota Supreme Court precedent that requires: “parolees must be accorded due process in “any” revocation proceeding” *Woodard*; “Broad discretion is not unbound discretion ... drew bounds of the Departments

discretion by prohibiting it from failing to abide by its own policies]" *State Ex Rel. Young v. Schell*, 956 N.W. 2d. 652, 670, HN16 (MN. S. Ct. 2021).

The Minnesota Appellate court's opinion violates fundamental Rules of Law, and general rules of law that trace their origins back hundreds of years. See S. Ct. R. 10 (b) and (c). This abandonment of the adversarial process has impermissibly placed the Minnesota Commissioner of Corrections above the law. "All officers of the government from the highest to the lowest are creatures of the law, and are bound to obey it." *Butz v. Economou*, 98 S. Ct. 2894 (1978).

U.S. Supreme Court review is imperative to preserve the system of law in Minnesota that has stabilized our country for hundreds of years.

1.) Can Minnesota State courts ignore issues presented to it by a party, circumvent the rule of law to effectuate a clearly biased opinion?

The Minnesota Appellate courts role was "neutral arbiter" of the issues the parties presented to it. Before the court was an application for Writ of Mandamus, Minnesota law narrowed the courts review to determining whether the Minnesota Commissioner of Corrections did or did not perform an act that "the law specifically enjoins as a duty resulting from [his] office, ...".

Minn. Stat. § 586.01 (2016) "The Writ of Mandamus may be issued to any inferior tribunal, corporation, board, or person to compel the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station. It may require inferior tribunal to exercise its judgment or proceed to the discharge of any of its functions, but it cannot control Judicial Discretion."

In this case the Appellate court completely ignored Appellant's issue that the "Commissioner had a nondiscretionary duty to specify a period of revocation and assign a release date. Instead it held without analytical determinations or citation to authority to support its holding, that the Commissioner may indefinitely

reimprison a releasee for a first-time revocation. The court has effectively placed the Minnesota Commissioner of Corrections above the law.

The court clearly and obviously abused its discretion with a fundamental violation of Appellant's federal and state due process protections. As the following illustrates the courts role was first to determine if the law was followed with the issuance of a revocation sentence and release date. Because it was not the court was bound by fundamental due process to issue Appellant's Writ to enforce compliance with the law.

- (a) **The Commissioner had a nondiscretionary duty to specify a period of revocation and assign a release date.** (Appellant Brief, Pg. 17-24, Reply, Pg. 23-25)

"In sum, the use of '**explicitly mandatory language**' in connection with the establishment of 'specified substantive predicates' to limit discretion, forces a conclusion that the state has created a liberty interest." *Kentucky DOC v Thompson*, 490 US 454, 109 S. Ct. 1904 (1989). (Emphasis Added)

The "State creates a protected Liberty Interest by placing Substantive limitations on official discretion". (*Olim v. Wakinekona*, 461 US 238, 103 S.Ct. 1741, 75 L.Ed.2d 813 (1983).

The *Bergeron v. Roy*, 2017 Minn. App. Unpub. LEXIS 590 decision controlled the Appellate Courts decision-making.

"[W]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment the determination is conclusive in subsequent action between the parties, whether on the same or a different claim" *B&B Hardware Inc. v. Hargis Indus.*, 135 S. Ct. 1293, 1303, HN 11 (2015).

The MN Appellate court mischaracterizes the *Bergeron* 590 decision, (*Bergeron* 86 at #7.). That court did hold that the Commissioner violated statutes and regulations;

The *Bergeron* 590 court clearly held: “ ... it does not excuse the Commissioner of Corrections from compliance with Minn. R. 2940.3500-.4500 in exercising that the authority, ... the commissioner is required to “adopt by rule standards and procedures for the revocation of supervised release,” Minn. Stat. § 244.05, subd. 2, which is defined to include the release of inmates serving life sentences, Minn. Stat. §§ 244.01, subd. 7 .05, subd. 5” *Bergeron* 590, at [*13].

“[O]ffenders who have violated the conditions of parole or supervised release and who have been returned to institutional status shall be assigned a release date and term of reimprisonment” Minn. Prom. R. 2940.3800” *Id.* at [9*], Ln. 3, - Ln. 7.

“Broad discretion is not unbound discretion ... drew bounds of the Departments discretion by prohibiting it from failing to abid[e] by its own polic[ies]” *State Ex Rel. Young v. Schell*, 956 N.W. 2d. 652, 670, HN16 (MN. S. Ct. 2021).

As such the Minnesota Appellate court was required to adhere to judicial precedent and to enforce the plain language of rules and statutes in its determinations.

“Courts do not add words or phrases to unambiguous statutes or rules” ... “And the court presumes that the legislature intended the entire statute to be effective and certain” *Save Lake Calhoun v. Strommen*, 943 N.W. 2d. 171, HN10, and HN11, MN S. Ct. (2020).

What the Commissioner “may” do is immaterial (see Order at Pg. 2; #.6) only what the record shows he did do is ripe for adjudication, the *Bergeron* 590 court held that Commissioner Roy violated revocation procedural and substantive law at the 15 December 2014 revocation dispositional hearing. As such no valid hearing was held; “In sum, the rule of law set forth in *Marlowe* and *Ford* is straightforward; The [DOC] must follow its own rules ...” *State Ex Rel. Young v. Schnell*, 956 N.W. 2d.

652, 670., HN16 (MN S. Ct. 2021). The Appellate Courts judicial responsibility was the role of “neutral arbiter” and as such to enforce the law as is, instead it completely ignored the issue, the law, and legal holdings and provided a biased opinion that violates the rule of law, federal and state due process, while also impermissibly placing the Minnesota Commissioner of Corrections above the law.

The Minnesota Appellate court provides no basis or authority to support its finding that Commissioner Roy satisfied the requirements of Revocation law, and allowing him to indefinitely reimprison Appellant is a clear abuse of judicial discretion. The courts determinations were controlled by fundamental due process and *Bergeron* 590:

Findings of Law

“The test for (Binding Precedent) is whether the same evidence will sustain both actions” *Hauschildt v. Beckingham*, 686 N.W. 2d. 829, 840-41 (Minn. 2004)

“Even when erroneous determinations are made, facts, assertions and rights adjudicated in the original [Habeas] action cannot be disputed in subsequent actions” *Montana v. U.S.*, 440 U.S. 147, 162 (1979)

“Judgment on the merits in the [*Bergeron* 590] order is a bar concerning all theories of relief that might have been presented as well as those that were” *McCarney v. Ford Motor Co.*, 657 F. 2d. 230 (8th Cir. 1981).

“Substantive due process is violated where no matter how much procedure is used, the state is not entitled to do an action.” *Dunn v. Fairfield Comm. High Sch. Dist. No. 225*, 158 F.3d. 962, 964-5 (7th Cir. 1998); “Substantive due process embodies our fundamental protection from arbitrary government action” *Boutin v. Lafleur*, 591 N.W. 2d. 711, 716 (Minn. 1999); *Zinerman v. Burch*, 494 US 113, 125 (1998); “[C]urtailment of a person’s liberty is entitled to substantive due process protections” *In Re Blodgett*, 510 N.W. 2d. 910, 914 (Minn. 1994);

The court clearly erred by finding that Commissioner Roy complied with Revocation law without finding that a period of revocation and release date was

issued as required by law. *State ex rel. Ford v. Schnell*, 933 N.W. 2d. 393, n.12 (MN S. Ct. 2019); "... why the Department would resist abiding by its own policy is unclear, and in any case, the Department must follow judicial precedent". *Ford* indicating that the court was required to enforce the law on multiple occasions because the DOC had refused to adhere to clearly established law.

REASONS FOR GRANTING THE PETITION

S. Ct. R. 10 provides a non-exhaustive list of reasons for which review may be granted. This list includes:

- (a) a United States Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter; has decided an important Federal question in a way that conflicts with a decision by State Court of last resort; **or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower Court, as to call for an exercise of this Court's supervisory power;**
- (b) a State Court of last resort has decided an important Federal question in a way that conflicts with the decision of another State Court of last resort or of a United States Court of Appeals;
- (c) a State Court or a United States Court of Appeals has decided an important question of Federal Law that has not been, but should be, settled by this Court, or has decided an important Federal question in a way that conflicts with relevant decisions of this Court.

This list is "neither controlling nor fully measur[es] the Court's discretion".

Conclusion

"Substantive due process is violated where no matter how much procedure is used, the state is not entitled to do an action." *Dunn v. Fairfield Comm. High Sch. Dist. No. 225*, 158 F.3d. 962, 964-5 (7th Cir. 1998).

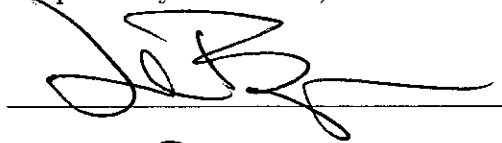
Despite clear and binding Federal and MN State precedential law raised before the court Appellant remains illegally and indefinitely reimprisoned; A "defendant tried by a

partial judge is entitled to have his conviction set aside, no matter how strong the evidence against him. *Tumey v. Ohio*, 273 US 510, 535, 71 L. Ed. 749, 47 S. Ct. 437 (1927); *Arizona v. Fulminante*, 499 US 279, 308, 113 L. Ed. 2d. 302, 111 S. Ct. 1246 (1991).

Clearly the law and precedent forbid the MN Commissioner of Corrections from reimprisoning inmates who have been placed on supervised released, indefinitely. The Minnesota judicial systems refusal to enforce the law is an obvious abuse of discretion that violates both Federal and State due process protections. As such, United States Supreme Court review is imperative, without such the Minnesota Appellate Courts abandonment of the rule of law will stand, judicial integrity in jeopardy, and the MN DOC will continue to violate the law and the holdings of this Court, with full support of the Minnesota Judicial System.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'J. R.', written over a horizontal line.

Date: 14 DECEMBER 2022