

No. 22-6599

Supreme Court, U.S.

FILED

NOV 14 2022

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

HERMAN HARRIS JR. —PETITIONER

vs.

THE SUPREME COURT OF OHIO — RESPONDENT(S)  
THE ATTORNEY GENERAL FOR THE STATE OF OHIO

THE OHIO SUPREME COURT AND SEVENTH DISTRICT COURT OF  
APPEALS FOR NOBLE COUNTY, OHIO.  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

HERMAN HARRIS JR  
INMATE NO. A285-745

*Herman Harris, Jr.*  
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(PHONE NUMBER)

ORIGINAL

## QUESTION(S) PRESENTED

1. When the State of Ohio Legislatures/The Ohio General Assembly had failed to drafted with reasonably clarity the precise number of years that equals/totals a maximum sentence being served by incarceration combined with parole supervision, with a sentence phrased "To Life" imprisonment for an offender convicted of Murder, or Murder as a lesser included offense, (Ohio Revised Code § 2903.02, Ohio Revised Code §§ 2945.74 Defendant may be convicted of lesser included offense; and Criminal Rule 31 (C) Verdict/Conviction of lesser offense) when the requested relief (parole) has been granted, and, the Ohio Dept. of Rehab. & Correction Adult Parole Authority has granted a parolee his/her final release pursuant to Ohio Revised Code §§ 2967.16 (A) Final release of paroled prisoner has a legislative decision been performed by the Ohio Dept. of Rehab. & Correction Adult Parole Authority defining the maximum number of years that equals/totals a maximum sentence with the phrase "To Life" imprisonment for the conviction of murder/murder as a lesser included offense being served in full by incarceration combined with parole supervision?

Petitioner answer yes.

2. When the State of Ohio Legislatures/The Ohio General Assembly had failed to drafted with reasonably clarity the precise number of years that equals/totals a maximum sentence being served by incarceration combined with parole supervision, with a sentence phrased "To Life" imprisonment for an offender convicted of Murder, or Murder as a lesser included offense, (Ohio Revised Code § 2903.02, Ohio Revised Code §§ 2945.74 Defendant may be convicted of lesser included offense; and Criminal Rule 31 (C) Verdict/Conviction of lesser offense) when the requested relief (parole) has been granted, and, the Ohio Dept. of Rehab. & Correction Adult Parole Authority has granted a parolee his/her final release pursuant to Ohio Revised Code §§ 2967.16 (A) Final release of paroled prisoner has a legislative decision been performed by the Ohio Dept. of Rehab. & Correction Adult Parole Authority defining the maximum number of years that equals/totals a maximum sentence with the phrase "To Life" imprisonment for the conviction of murder/murder as a lesser included offense being served in full by incarceration combined with parole supervision, providing an offender with a created liberty interest pursuant in the state statute of Ohio Revised Code §§ 2901.04 (A) Rules of construction?

Petitioner answer yes.

3. When the State of Ohio Legislatures/The Ohio General Assembly had failed to drafted with reasonably clarity the precise number of years that equals/totals a maximum sentence being served by incarceration, with a sentence phrased "To Life" imprisonment for an offender convicted of Murder, or Murder as a lesser included offense, (Ohio Revised Code § 2903.02, Ohio Revised Code §§ 2945.74 Defendant may be convicted of lesser included offense; and Criminal Rule 31 (C) Verdict/Conviction of lesser offense) when the requested relief (parole) has been denied to an offender, by the Ohio Dept. of Rehab. & Correction Adult Parole Authority/Parole Board the offender's maximum sentence phrased "To Life" imprisonment has

the potential of becoming a natural life prison sentence, because the State of Ohio Legislatures/The Ohio General Assembly had failed to draft with reasonable clarity the precise number of years that equals/equals a maximum sentence being served by incarceration when the requested relief (parole) has been denied. Therefore, any continuance of a future parole board hearing that affect future liberty of an offender violates Ohio Bill of Rights: Article II, §§ 1?

Petitioner answer yes.

4. When the State of Ohio Legislatures/The Ohio General Assembly has drafted a sentencing/penalty statute, (Ohio Revised Code §§ 2929.02 Penalties for aggravated murder or murder; Ohio Revised Code §§ 2929.03 Imposing sentence for aggravated murder) using a catch phrase "For Life" Imprisonment in reference to the maximum sentence/penalty is the operational effect(s) of the phrase "For Life" Imprisonment a potential possible natural life prison sentence?

Petitioner answer yes.

5. When the State of Ohio Legislatures/The Ohio General Assembly has drafted a sentencing/penalty statute, (Ohio Revised Code §§ 2929.02 Penalties for aggravated murder or murder; Ohio Revised Code §§ 2929.03 Imposing sentence for aggravated murder) using a catch phrase "Life" Imprisonment in reference to the maximum sentence/penalty is the operational effect(s) of the phrase "Life" Imprisonment a potential possible natural life prison sentence?

Petitioner answer yes.

6. When the State of Ohio Legislatures/The Ohio General Assembly has drafted a sentencing/penalty statute, (Ohio Revised Code §§ 2929.02 Penalties for aggravated murder or murder; Ohio Revised Code §§ 2929.03 Imposing sentence for aggravated murder) using a catch phrase "To Life" Imprisonment in reference to the maximum sentence/penalty is the operational effect(s) of the phrase "To Life" Imprisonment a potential possible natural life prison sentence?

Petitioner answer yes.

7. When the State of Ohio Legislatures/The Ohio General Assembly has drafted a criminal penalty statute governing parole eligibility hearing and the statute in question Ohio Revised Code §§ 2967.03 Pardon, commutation, medical release, or reprieve does not provide language that create(s) a protected liberty interest to mandatory release under parole supervision for an offender convicted of aggravated murder; murder/murder as a lesser included offense where the maximum sentence/penalty is phrased "For Life" Imprisonment; "Life" Imprisonment and "To Life" Imprisonment having no constitutional or statutory rights to parole is the sentence a potential possible natural life sentence/penalty?

Petitioner answer yes.

8.In the State of Ohio since parole, (Ohio Revised Code §§ 2967.01 (E)) is not a full release, (Ohio Revised Code §§ 2967.01 (I); Ohio Revised Code §§ 2967.02 (C) and (D)) nor a form of leniency, (State ex rel., McKee v. Cooper, (1974), 40 Ohio St.2d 66, 320 N.E.2d 286) rather, the conditional extension of certain freedoms, Whether Ohio offender's convicted of either aggravated murder; murder/murder as a lesser included offense that has been denied the requested relief (parole) by the Ohio Department of Rehabilitation & Correction Adult Parole Board does the offender including Petitioner, have a created liberty interest within Ohio Revised Code § 2901.04 (A) Rules of construction?

Petitioner answer yes.

9.An Offender convicted of aggravated murder (Ohio Revised Code §§ 2903.01; Aggravated Murder/ without death penalty specification(s); Ohio Revised Code §§ 2929.02 Penalties for aggravated murder or murder; Ohio Revised Code §§ 2929.03 Imposing sentence for aggravated murder) the maximum sentence/penalty of imprisonment is either "For Life" Imprisonment; or "Life" Imprisonment with the operational effect(s) of a potential possible natural life sentence excluding the penalty of "Life without parole eligibility."?

Petitioner answer yes.

10.An Offender convicted of Murder/Murder as a lesser included offense (Ohio Revised Code §§ 2903.02; § 2929.02 Penalties for aggravated murder or murder §2945.74 Defendant may be convicted of lesser included offense; Criminal Rule 31 (C) Verdict / Conviction of lesser offense (Ohio Rules of Criminal Procedures) the maximum sentence/penalty "To Life" Imprisonment has the operational effect(s) of a potential possible lengthen term of incarceration including Petitioner's prison sentence?

Petitioner answer yes.

11.An Offender convicted of Murder/Murder as a lesser included offense (Ohio Revised Code §§ 2903.02; § 2929.02 Penalties for aggravated murder or murder §2945.74 Defendant may be convicted of lesser included offense; Criminal Rule 31 (C) Verdict / Conviction of lesser offense (Ohio Rules of Criminal Procedures) the maximum sentence/penalty "To Life" Imprisonment has the operational effect(s) of a potential possible lengthy term of incarceration including Petitioner's prison sentence?

Petitioner answer yes.

12. An Offender convicted of Murder/Murder as a lesser included offense (Ohio Revised Code §§ 2903.02; § 2929.02 Penalties for aggravated murder or murder §2945.74 Defendant may be convicted of lesser included offense; Criminal Rule 31 (C) Verdict / Conviction of lesser offense (Ohio Rules of Criminal Procedures) the maximum sentence/penalty "To Life" Imprisonment has the operational effect(s) of a potential possible natural life sentence including Petitioner's prison sentence?

Petitioner answer yes.

13. When the State of Ohio Legislatures/Ohio General Assembly has failed to draft with reasonable clarity the specific number of years that equals and/or totals the maximum sentence /penalty "To Life" Imprisonment (Ohio Revised Code §§ 2903.02 Murder; Ohio Revised Code §§2929.02 Penalties for murder) being served in full by prison incarceration when the requested relief (parole) has been denied by the Ohio Department of Rehabilitation & Correction Adult Parole Authority/Parole Board to an offender convicted of murder/murder as a lesser included offense, (Ohio Revised Code §§ 2903.02; § 2929.02 Penalties for aggravated murder or murder §2945.74 Defendant may be convicted of lesser included offense; Criminal Rule 31 (C) Verdict / Conviction of lesser offense (Ohio Rules of Criminal Procedures) have State of Ohio Legislature(s)/Ohio General Assembly created an ambiguous sentence?

Petitioner answer yes.

14. With the operational effect(s) of Ohio Revised Code §§ 2967.16 (A) Final release of [\*\*\*\*] prisoner by the termination of a prison sentence for an offender convicted of Murder/Murder as a lesser included offense, (Ohio Revised Code §§ 2903.02; § 2929.02 Penalties for aggravated murder or murder §2945.74 Defendant may be convicted of lesser included offense; Criminal Rule 31 (C) Verdict / Conviction of lesser offense (Ohio Rules of Criminal Procedures) and thus, obtains his/her final release pursuant to Ohio Revised Code § 2967.16 (A), has the Ohio Department of Rehabilitation & Correction Adult Parole Authority performed an Legislative function defining the maximum number of years that equals and/or totals a maximum sentence /penalty being served in full by prison incarceration combined with parole supervision for an offender convicted of murder/murder as a lesser included offense?

Petitioner answer yes.

15. Whether Petitioner convicted of murder/murder as a lesser included offense, (Ohio Revised Code §§ 2903.02; § 2929.02 Penalties for aggravated murder or murder §2945.74 Defendant may be convicted of lesser included offense; Criminal Rule 31 (C) Verdict / Conviction of lesser offense (Ohio Rules of Criminal Procedures) has served his/her maximum sentence/penalty "To Life" Imprisonment when the requested relief (parole) has been denied by the Ohio Department of Rehabilitation & Correction Adult Parole Authority/Parole Board when the Petitioner has no constitutional or statutory rights to the requested relief (parole) before serving the maximum court imposed sentence/penalty "To Life" Imprisonment and/or no constitutional or statutory rights to parole before the expiration date of the maximum court imposed sentence/penalty with the operational effect(s) of Ohio Revised Code §§ 2967.16 (A)?

Petitioner answer yes.

16. Whether Ohio's criminal defendant's convicted of the capital offense aggravated murder, (Ohio Revised Code §§ 2903.01) and the sentencing trial court imposes the maximum sentence/penalty phrased "For Life" Imprisonment pursuant to Ohio Revised Code §§ 2929.02 Penalties For Murder do the criminal defendant have a created liberty interest within Ohio Revised Code §2901.04 (A) Rules of construction with the operational effect(s) of Ohio Revised Code § 2967.16 (A)?

Petitioner answer yes.

17. Whether Ohio's criminal defendant's convicted of the capital offense aggravated murder, (Ohio Revised Code §§ 2903.01) and the sentencing trial court imposes the maximum sentence/penalty phrased "For Life" Imprisonment pursuant to Ohio Revised Code §§ 2929.03 Imposing sentence for aggravated murder, do the criminal defendant have a created liberty interest within Ohio Revised Code §2901.04 (A) Rules of construction with the operational effect(s) of Ohio Revised Code § 2967.16 (A)?

Petitioner answer yes.

18. Once an offender is convicted of aggravated murder (Ohio Revised Code §2903.01) has served thirty (30) full years minimum sentence incarceration for parole eligibility, pursuant to Ohio Revised Code §2967.03 Pardon, [parole], commutation, medical release, or reprieve, when have the offender served his/her maximum sentence/penalty as drafted by the State Legislatures/Ohio General Assembly?

**19.** Once an offender is convicted of aggravated murder (Ohio Revised Code §2903.01) has served twenty-five (25) full year's minimum sentence incarceration for parole eligibility, pursuant to Ohio Revised Code §2967.03 Pardon, [parole], commutation, medical release, or reprieve, when have the offender served his/her maximum sentence/penalty as drafted by the State Legislatures/Ohio General Assembly?

**20.** Once an offender is convicted of aggravated murder (Ohio Revised Code §2903.01) has served twenty (20) full year's minimum sentence incarceration for parole eligibility, pursuant to Ohio Revised Code §2967.03 Pardon, [parole], commutation, medical release, or reprieve, when have the offender served his/her maximum sentence/penalty as drafted by the State Legislatures/Ohio General Assembly?

**21.** Once an offender is convicted of murder (Ohio Revised Code §2903.02) has served the indefinite (15) years minimum sentence incarceration for parole eligibility, pursuant to Ohio Revised Code §2967.03 Pardon, [parole], commutation, medical release, or reprieve, when have the offender served his/her maximum sentence/penalty as drafted by the State Legislatures/Ohio General Assembly?

**22.** Applying the operational effect(s) of having no constitutional or statutory rights to the requested relief (parole) pursuant to Ohio Revised Code §§ 2967.03 Pardon, [parole], commutation, medical release, or reprieve, the first test under the lesser included offense, is the lesser included offense carry a lesser sentence/penalty than the greater indicted criminal offense. Applying logic to facts under this scenario the sentence/penalty imposed for the greater capital offense aggravated murder "For Life" Imprisonment; or "Life" Imprisonment maximum sentence/penalty are identical in its operational effect(s) a catch-21 for the State of Ohio and the County Common Pleas Courts Prosecuting Attorneys, obtaining a maximum sentence/penalty "For Life" Imprisonment or "Life" Imprisonment upon the greater indicted capital offense aggravated murder or obtains a maximum sentence/penalty "To Life" Imprisonment on the lesser included offense of murder. By the operational effect(s) murder is not a lesser included offense of aggravated murder as established by the Ohio Supreme Court under State v. Deem, 40 Ohio St.3d 205, 533 N.E.2d 294.

**23.** Whether The Ohio Adult Parole Authority is without jurisdiction to make such determination as to when the petitioner has served his maximum sentence that's phrased "To Life" Imprisonment, the question then becomes whether The State Legislatures/The Ohio General Assembly "abused its legislative powers" by permitting The Ohio Department of Rehabilitation & Correction Adult Parole Authority to decide when an offender convicted of murder/murder as a lesser included offense have served his/her maximum sentence by incarceration combined with parole supervision with the operational effects) of Ohio Revised Code § 2967.16 (A).

## **LIST OF PARTIES**

All parties appear in the caption of the case on the cover page

**The Ohio Supreme Court, et al**

**The Ohio Supreme Court**  
**65 South Front Street 3<sup>rd</sup> Floor**  
**Columbus, Ohio 43215**

**The Seventh Judicial District Court of Appeals**  
**For Noble County, Ohio**

**Noble County Clerk of Courts**  
**Karen S. Starr, Clerk**  
**Caldwell, Ohio 43724**

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"In my correspondence to Office of the Ohio Public Defender whose address is 250 East Broad Street – Suite 1400 Columbus, Ohio 43215 on October 6, 2014 Petitioner asked a question of then Assistant State Public Defender John Fenlon of the Intake Section.

Mr. Fenlon responded as follows in his response to me

Dear Mr. Harris:

Regretfully you found my last letter "offensive and assaulting to [your] intelligence." That was certainly not my intent. My reply was not meant to patronizing. If you disagree with my analysis that is certainly your prerogative.

Your follow up letter asked the following question: "**My legal question and constitutional concerns are clear. Is it possible that I may serve the remainder of my natural life incarcerated without being granted parole?**" The answer is "YES."

Aggravated Murder (absent capital specifications) and Murder carry the same maximum penalty. Defendants convicted of either Aggravated Murder or Murder face the same possibility of life in prison. The offense differ as their minimum term before becoming parole eligibility. Those convicted of Murder have parole eligibility sooner. But they face a potential penalty of life in prison, just like those convicted of Aggravated Murder.

That was true in 1993 and is still true today.

You asked that I "explain why you will not assist me in the filling of a Writ of Mandamus against the state legislature/the Ohio General Assembly having the state legislature/the Ohio General Assembly define the specific number of years that equals and/or totals the specific number of years an offender must serve under incarceration when parole have been denied by the Ohio Adult Parole Board/ Ohio Adult parole Authority, when have an offender serve his/her maximum sentence of life imprisonment."

The General Assembly chose not to set a specific term as the penalty of Murder. It decided to set and minimum and maximum term. It has left it to the Ohio Parole Board to make the ultimate release decision somewhere between those points. There is nothing unconstitutional about this statutory system.

The maximum penalty of life imprisonment for murder is not a greatly disproportionate sentence in violation of the Eighth and Fourteenth Amendment of the United States Constitution, or the Ohio Bill of Rights Article 1, §§ 2,9 and 16.

This office will not assist you because you are not entitled to a writ of mandamus.

Sincerely

Mr. John Fenlon Signature

John Fenlon

Assistant State Public Defender  
Intake Section

#427767 v1-Harris Herman ltr 10-6-14."

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 **federal courts**:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

For cases from **state courts**:

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

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the STATE COURT OF APPEALS 7th DIST. court appears at Appendix D to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

## JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals 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. § 1254(1).

[x] For cases from **state courts**:

The date on which the highest state court decided my case was 9-28-2022.  
A copy of that decision appears at Appendix E.

[ ] 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

**Constitutional Claim No. I: The Ohio Dep't of Rehab., & Correction Adult Parole Authority had extinguished or nullified or invalidated its jurisdiction over the Petitioner's maximum sentence "To Life" imprisonment for the conviction of Murder or Murder as a lesser included offense of Aggravated Murder. Ohio's Dep't of Rehab., & Correction Adult Parole Auth., has constructively defined with reasonable clarity The precise number of years that totals the maximum sentence "To Life" imprisonment Being served in full by incarceration combined with parole supervision by the operational Effects of Ohio Revised Code §§ 2901.04 (A) Rules of Construction; Ohio Revised Code § 2967.16 (A) Final release of paroled prisoner; and Ohio Revised Code § 5145.02 Termination of imprisonment. The Discriminatory application of Ohio Revised Code § 2967.16 (A) Final release of paroled prisoner only being applied towards inmate(s)/prisoner(s) that have been awarded and/or granted parole, violates Petitioner's "Due Course of law" "Substantive Due Process" rights depriving Petitioner of his liberty without applying "Due Course of Law"; "Substantive Due Process" of Law, under Ohio Bill of Rights, Article I, § 16 to the Ohio Const., Ohio Bill of Rights, Article I, § 2 "equal Protection" of the laws; and, the 14<sup>th</sup> Amendment to the United States Constitution.**

1. **In Layman terms this is un charter waters or un charter territory**, Herman Harris, Jr., the Petitioner, (herein after Petitioner) eligibility seeking possible release under parole supervision continues to change every time Petitioner, has appeared before the Ohio Dep't of Rehab. & Correction Adult Parole Auth., Parole Board. continues reaching for the carrot (relief of parole) and the carrot is moved further away it has become virtually impossible to reach. When does this pointless infliction of suffering ends, when is enough, enough? The Petitioner, has served approximately 12 years before his first parole eligibility hearing from late 1993 until early 2005, Petitioner's first parole eligibility hearing was early 2005- Petitioner's parole eligibility hearing was continued until early 2015, Petitioner's 2015 parole eligibility hearing was continued until early 2025. By the operational effect of the Ohio Dept. of Rehab. & Correction Adult Parole Authority Parole Board previous decisions to continue petitioner's incarceration and/or continuing his parole eligibility hearing dates by twenty (20) years in ten years' increments. At all scheduled parole hearings petitioner was denied the requested relief (parole) the parole board members has been conducting and/or performing judicial or quasi-judicial function(s), the act(s) of holding the hearings that would decide whether petitioner convicted of murder/murder as a lesser included offense shall be held in confinement or granted relief (parole). The decision(s) performed by the adult parole board constituted an exercise of judicial or quasi-judicial powers, precisely the act

which the sentencing judge performed when a judge pronounced sentence, and the sentencing hearing decision has affected petitioner's fundamental rights and his/her liberty in the coming future.

2. In the State of Ohio, the State Legislatures/Ohio General Assembly had failed to draft with reasonable clarity the precise number of years which equals a "To Life" imprisonment maximum sentence/penalty being served in full by prison incarceration and by incarceration combined with parole supervision. The State Legislatures/Ohio General Assembly has been permitting the Ohio Dep't of Rehab. & Correction/Adult Parole Authority to make such determinations. The Legislatures drafted the penalty/sentence shame referring to the maximum sentence using the phrase(s): "To Life" imprisonment for the conviction of murder, and the phrases "For Life" imprisonment; and "Life" imprisonment for the conviction of aggravated murder see Ohio Revised Code §§2929.02 et. seq. Penalty for aggravated murder or murder, and Ohio Revised Code §§2929.03 Imposing sentence for aggravated murder, (aggravated murder also carry the penalty that's phrased "Life imprisonment without parole and death)." With the courts previous rulings that offender(s) in the State of Ohio serving indefinite sentence has no constitutional and/or statutory right to parole before serving the maximum court imposed sentence. This would be correct for a court imposed sentence that has been drafted with reasonable clarity (i.e. indefinite sentence 15 years to 25 years and/or 45 years to 85 years here the sentences have an understandable clarity). However, when the sentence has a maximum sentence/penalty phrased "To Life" imprisonment or a maximum sentence/penalty phrased "For Life" imprisonment or a maximum sentence/penalty phrased "Life" imprisonment where does the maximum sentence/penalties differ? They do not each maximum sentence/penalty has the operational effects of becoming a potential natural life sentence.

3. Here it is clear that an offender convicted of aggravated murder/murder and murder is a lesser included offense of aggravated murder can only attain a release through the operation of the Adult Parole Authority/Parole Board this is clearly demonstrated by **Ohio Revised Code §§ 2967.01** see definitions below and **Ohio Revised Code §§ 2967.16(A)** below providing the following in part; to wit:

## **Ohio Revised Code Pardon; Parole; Probation § 2967.01 Definitions.**

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As used in this chapter:

**(A)** "State correctional institution" includes any institution or facility that is operated by the department of rehabilitation and correction and that is used for the custody, care, or treatment of criminal, delinquent, or psychologically or psychiatrically disturbed offenders.

**(E)** "Parole" means, regarding a prisoner who is serving a prison term for aggravated murder or murder, who is serving a prison term of life imprisonment for rape or for felonious sexual penetration as it existed under section 2907.12 of the Revised Code prior to September 3, 1996, or who was sentenced prior to July 1, 1996, a release of the prisoner from confinement in any state correctional institution by the adult parole authority that is subject to the eligibility criteria specified in this chapter and that is under the terms and conditions, and for the period of time, prescribed by the authority in its published rules and official minutes or required by division (A) of section 2967.131 of the Revised Code or another provision of this chapter.

**(G)** "Convict" means a person who has been convicted of a felony under the laws of this state, whether or not actually confined in a state correctional institution, unless the person has been pardoned or has served the person's sentence or prison term.

**(H)** "Prisoner" means a person who is in actual confinement in a state correctional institution.

**(I)** "Parolee" means any inmate who has been released from confinement on parole by order of the adult parole authority or conditionally pardoned, who is under supervision of the adult parole authority and has not been granted a final release, and who has not been declared in violation of the inmate's parole by the authority or is performing the prescribed conditions of a conditional pardon.

**(K)** "Final release" means a remission by the adult parole authority of the balance of the sentence or prison term of a parolee or prisoner or the termination by the authority of a term of post-release control of a releasee.

**(M)** "Administrative release" means a termination of jurisdiction over a particular sentence or prison term by the adult parole authority for administrative convenience under that section.

**(R)** "Random drug testing" has the same meaning as in section 5120.63 of the Revised Code.

**(S)** "Non-life felony indefinite prison term" has the same meaning as in section 2929.01 of the Revised Code.

**§ 2967.16 (A) Final release; restoration of rights and privileges.**

Except as provided in division (D) of this section, when a paroled prisoner has faithfully performed the conditions and obligations of the paroled prisoner's parole and has obeyed the rules and regulations adopted by the adult parole authority that apply to the paroled prisoner, the authority may grant a final release and thereupon shall issue to the paroled prisoner a certificate of final release that shall serve as the minutes of the authority, but the authority shall not grant a final release earlier than one year after the paroled prisoner is released from the institution on parole, and, in the case of a paroled prisoner whose sentence is life imprisonment, the authority shall not grant a final release earlier than five years after the paroled prisoner is released from the institution on parole.

4. The statue above **Ohio Revised Code §§ 2967.16(A)** clearly demonstrates that a parolee can only attain his/her final release upon his/her faithfully performance of the conditions and obligations of the paroled prisoner's parole and has obeyed the rules and regulations adopted by the adult parole authority that apply to the paroled prisoner. Once the Ohio Adult Parole Authority has granted a final release pursuant to the state statue **Ohio Revised Code §§ 2967.16(A)** a legislative decision has been rendered defining the maximum number of years that total a maximum sentence/penalty being served in full by incarceration combined with parole supervision see above definition in the **Ohio Revised Code §2967.01(E), (I), and (K)**. The petitioner directs this court attention to **State ex. Rel. McKee v. Cooper, 40 Ohio St. 2d 65** provides in part:

"Parole is recognized as a type of legal custody, and, therefore, constitutes a part of a person's "term of imprisonment" within the meaning of § 5143.05. This definition of parole is clearly established by Ohio Rev. Code Ann. § 2967.01(E), which states that legal custody of a parolee shall remain in the Department of Rehabilitation and Correction until a final release is granted by the authority." Parole is used properly as a flexible alternative to either imprisonment or total release, and

as a means of controlling the transition between imprisonment and life in the community. Parole is a form of supervised custody outside prison walls and attempts to deal with a fundamental problem of penology -- how is a prisoner who has been confined within the artificial world of prison life to be reintegrated into society so that he is least likely to commit new crimes, and is most able to find a productive role. As the United States Supreme Court stated in *Morrissey v. Brewer, supra*, at 477 (1972), 408 U.S. 471: [Parole's] purpose is to help individuals re integrate into society as constructive individuals as soon as they are able, without being confined for the full term of the sentence imposed. \* \* \* Parole properly supervised permits flexibility and individualization of treatment, while the prisoner is outside prison walls.

5. The above case authority clearly demonstrate the Adult Parole Authority is in powered with the statutory Authority to terminate a maximum sentence/penalty of prison incarceration by the operational effect of the Ohio Revised Code § 2967.16 Final release.

**Ohio Revised Code §2901.04(A) Rule of Construction** provides the following in part:

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**§ 2901.04 Rules of construction;** references to previous conviction; interpretation of statutory references that define or specify a criminal offense.

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Except as otherwise provided in division (C) or (D) of this section, sections of the Revised Code defining offenses or penalties shall be strictly construed against the state, and liberally construed in favor of the accused.

6. This statue provides petitioner with the necessary created liberty interest mandating his/her immediate release from further incarceration and any future Adult Parole Authority supervision under parole. At present this statue is being applied in an unconstitutional manner and is not being applied towards "To Life" offenders where the requested relief (Parole) has been denied resulting in lifers serving lengthier and/or longer terms of incarceration.

7. The petitioner's remaining life is under control of the operation effect(s) of the Ohio Adult Parole Authority/Parole Board the decision maker's "can deny the requested relief (parole) for any constitutionally permissible reason or for no reason at all." *Id.* (quoting Connecticut Bd. of Pardons v. Dumschat, 452 U.S. 458, 467, 69 L. Ed. 2d 158, 101 S. Ct. 2460 (1981) In the instant

case Petitioner's sentence having the potential of becoming a natural life sentence, because the State Legislatures/Ohio General Assembly has been permitting the Ohio Dep't of Rehab. & Corr. Adult Parole Authority to make such determinations, as to when an offender convicted of aggravated murder / murder/murder as a lesser included offense has served his/her maximum sentence by incarceration combined w/ parole supervision.

8. In order for petitioner to obtain any type of release from prison incarceration his liberty is controlled by the Ohio Dep't of Rehab. & Corr. Adult Parole Authority/Parole Board. (see State Ex Rel. McKee v. Cooper, 320 N.E.2d 286 (1974)). Petitioner understands in the State of Ohio, Ohio prisoner(s) serving indefinite sentence(s) have no statutory or constitutional rights to parole before serving the maximum court imposed sentence as established by cited landmark decisions Inmates v. State Adult Parole Auth., 929 F.2d 233 (6<sup>th</sup> Cir. 1991); Jago v. Van Curen, 454 U.S. 14, 70 L.Ed.2d 13, 102 S.Ct. 31 (1981); Wagner v. Gilligan, 609 F.2d 867 (6<sup>th</sup> Cir. 1979); Whitker v. Maxwell (1966), 217 N.E.2d 233; Olim v. Wakinekona, 461 U.S. 238, 249, 75 L.Ed. 2d 813, 103 S.Ct. 1741 (1983); Connecticut Bd. Of Pardons v. Dumschat, 452 U.S. 458, 467, 69 L.Ed. 2d 158, 101 S.Ct. 2460; Mayes v. Trammell, 751 F.2d 175, 178 (6<sup>th</sup> Cir. 1984); Beard v. Livesay, 798 F.2d 874, 877 (6<sup>th</sup> Cir. 1986); Hewitt v. Helms, 459 U.S. 460, 472, 74 L.Ed.2d 675, 103 S.Ct. 864 (1983); Kentucky Dept. of Corrections v. Thompson, 490 U.S. 454, 463, 104 L.Ed.2d 506, 109 S.Ct. 1904 (1989); King v. Dallman (Ohio App.12<sup>th</sup> Dist. 1993), 619 N.E.2d 66; State Ex Rel. Ferguson v. Ohio Adult Parole Auth. (1989), 544 N.E.2d 674; State Ex Rel. Blake v. Shoemaker (1983), 446 N.E.2d 169; State Ex Rel. Newman v. Lowery (1952), 105 N.E.2d 643; Meachum v. Fano, 427 U.S. 215, 224 (1976); Morrissey v. Brewer, 408 U.S. 471, 481 (1972); Bd. Of Regents v. Roth, 408 U.S. 564, 571-572 (1972); Bishop v. Wood, 426 U.S. 341 (1976); Wolff v. McDonnell, 418 U.S., at 556. Any parole and/or parole board reference that may be contained in a constitutional claim(s) serve only to make the "minimum" portion of the indefinite "To Life" sentence moot, (i.e. subject to a parole action that is not the right of the offender. The State of Ohio Entity Ohio Dep't of Rehab. & Corr. Adult Parole Authority/Parole Board operating under the, "non-delegation doctrine" and an archaic operation that police itself answering to no higher authority, can be conduct parole board hearing(s) with vengeance(s) and retribution, because the requested relief (parole) can be denied for any constitutional reasons or for no reason(s) at all. See. Greenholtz v. Inmates of the Nebraska Penal & Correctional Complex, et al., 442 U.S. 1, 99 S.Ct. 2100, 60 L.Ed.2d 668 (1979); Id., 99 S.Ct., at 2014; accord Bell v. Kentucky Parole Board, 556 F.2d 805, 808 (6<sup>th</sup> Cir. Cert. denied 434 U.S. 960, 98 S.Ct. 429, 54 L.Ed.2d 320 (1977); Trop v. Dulles, 356 U.S., at 111, 78 S.Ct., at 603,604;

9. The State Legislators has never defined the maximum number of years that equals and or totals a maximum sentence “To Life” Imprisonment being served by prison incarceration when the requested relief (parole) has been denied by the Ohio Adult Parole Board. The failure of the State Legislators to defined the maximum number of years that equals and or totals a maximum sentence “To Life” Imprisonment being served by prison incarceration the Petitioner could serve the remainder his natural life incarcerated without ever being granted the requested relief (parole), because this Honorable Court has held “Parole is not a full release, nor is it a form of leniency. Rather, it is the conditional extension of certain freedoms, under the supervision of a parole officer, to a person who has already served a period of time in a correctional institution.” See; State Ex Rel. McKee v. Cooper, 320 N.E.2d 286, (December 11, 1974). In the present case Petitioner’s maximum sentence as drafted is phrased as “To Life” imprisonment (See Ohio Revised Code §§ 2929.02 (B)(1) Penalties For Murder), also (Petitioner Appendix D, E, & F). The common meaning of the phrase “Life Imprisonment {Confinement of a person in prison for the remaining years of his or her natural life. Also termed Life in prison.} See, Black’s Law Dictionary Tenth Edition /Bryan A. Garner Editor in Chief/Copyright 2014 Pg. 875. “The period from an occurrence until death [imprisoned for life”]. Webster’s II New College Dictionary copyrights 1999, ISBM #0-395-96214 pg. 633; “The disposition of a serious criminal case (e.g., Capital Offense by which the convicted defendant is sentenced to spend the rest of his/ natural life in prison.” Black’s law Dictionary 6th Edition (Copyright 1990) pg. 1365; “[L]ife sentence” \*\*\* to mean a sentence which has a statutory maximum of life imprisonment.” State v. Smith 89 Ohio App. 3d 497,624 N.E.2d. 1114, (September 21, 1993). By definition the Petitioner is serving a potential natural life sentence for the conviction of Murder/Murder as a lesser included offense of Aggravated Murder (Petitioner Appendix D Trial Court’s Verdict). The Petitioner could 29have

received an identical undefined maximum “Life imprisonment” sentence being found guilty of the indicted offense of aggravated murder. Refer to **OTHER**.

10. The Ohio Dep’t of Rehab., & Correction Adult Parole Authority’s power to grant parole is discretionary (see State Ex Rel., McKee v. Cooper, 40 Ohio St.2d 65, 69 Ohio Op.2d 396, 320 N.E.2d 286, (1974) and does not automatically create a liberty interest sufficient to establish a right to procedural due process, or create any presumption that parole will be issued. See State Ex Rel. Adkins v. Capots, 46 Ohio St.3d 187, 546 N.E.2d 412 (1989); State Ex Rel., Ferguson v. Ohio Adult Parole Authority, 45 Ohio St.3d 355, 544 N.E.2d 574 (1989); State Ex Rel., Blake v. Shoemaker, 4 Ohio St.3d 42, 446 N.E.2d 169 (1983); Wagner v. Gilligan, (6<sup>th</sup> Cir. 1979) 609 F.2d 866, 867; King v. Dallman, (Ohio App. Dist. Court of Appeals), 619 N.E.2d 66 clearly establishes fact Petitioner has no constitutional and/or statutory right to parole before serving his maximum court imposed sentence “To Life” imprisonment. A sentence that has a statutory maximum phrased “To Life” imprisonment. The Ohio’s Adult Parole Board operating under the doctrine ‘of discretion’ petitioner could serve the remainder of his natural life incarcerated without ever being granted the requested relief (parole). However, **Ohio Revised Code §§ 2967.16 (A)** combined with **Ohio Revised Code §§ 2901.04 (A) Rules of construction**, provides Petitioner with a created liberty interest by state statute, to have his “To Life” maximum sentence terminated. The definition of “Parole” by the Supreme Court of Ohio has clearly stated “Parole is not a full release, nor is it a form of leniency. Rather, it is the conditional extension of certain freedoms, under the supervision of a parole officer, to a person who has already served a period of time in a correctional institution.” The liberty interest of freedom must be attached to the individuals that has not met the unknown condition(s) for the quote “conditional extension of

certain freedom" otherwise Appellant's present ambiguous sentence will remain a possible natural life sentence for the conviction of murder/murder as a lesser included offense. Appellant's unconstitutional sentence is being carried out and/or inflicted by the operational effect of the Ohio's Dept. of Rehab., & Correction Adult Parole Authority /Parole Board because the State Legislatures / Ohio General Assembly failed to perform its duties in direct violation of Weems v. United States (1910), 217 U.S., 349, 30 S.Ct. 544 holding the following in part; to wit:

*“While the judiciary may not oppose its power to that of the legislature in defining crimes and their punishment as to expediency, it is the duty of the judiciary to determine whether the legislature has contravened a constitutional prohibition and in that respect and for that purpose the power of the judiciary is superior to that of the legislature.”*

11. The State Legislatures abused its powers delegating or transferring its legislatures duties to a state agency The Ohio Dept. of Rehab., & Correction Adult Parole Authority to define the precise number of years which equal(s) a maximum sentence being served in full by incarceration combined with parole supervision. The 'Equal Protection' Clause to the Fourteenth Amendment of the United States Constitution, §§ 1, commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws.' Ohio Constitution Article I, §§ 2 provides the same protections. It simply keeps the governmental decision makers from treating differently persons who are in all relevant respect alike. (See; F.S. Royster Guano Co. v. Virginia, 235 U.S. 412, 415 (40 S.Ct. 560, 561, 64 L.Ed. 989, 990-991) (1920) also see Huntington Natl. Bank v. Limbach (1994), 71 Ohio St.3d 261, 262, 643 N.E.2d 523, 523-524. Also Whitaker v. Maxwell (1966), 6 Ohio St.2d 202, 35 0.0.2d 313, 217 N.E.2d 233 the Court holding in part; to wit:

“[p]arole is recognized as a type of legal custody and, therefore constitutes a part of a person's “term of imprisonment” within the meaning of §§ 5143.05 and O.R.C. §§ 2967.01 (E) states no limitation as to the use of parole as a form of custody. Ohio law specifically

**states that a parolee remains in the legal custody of the Ohio Department of Rehabilitation & Correction until a final release is granted."**

**12.** The operational effect of The Ohio Department of Rehabilitation & Correction and/or Ohio Department of Rehabilitation & Correction Adult Parole Authority terminating a former prisoner's court imposed sentence pursuant to Ohio Revised Code § 2967.16 (A) that has the phrase "To Life" imprisonment, where the offender, has been convicted of murder/ murder as a lesser included offense the same operation of law must be applied to the Petitioner, in the termination of his maximum sentence/penalty "To Life" sentence imprisonment. Having no right to parole does not surrender the expiration date of the maximum sentence /penalty as established by the Ohio Department of Rehabilitation & Correction Adult Parole Authority by the operational effect(s) of Ohio Revised Code § 2967.16 (A) when read in conjunction with Ohio Revised Code §§ 2901.04 (A) Rules of construction.

**13.** If The Ohio Adult Parole Authority is without jurisdiction to make such determination the question then becomes whether The State Legislatures/The Ohio General Assembly "abused its legislative powers" by permitting The Ohio Department of Rehabilitation & Correction Adult Parole Authority to decide when an offender convicted of murder/murder as a lesser included offense have served his/her maximum sentence by incarceration combined with parole supervision with the operational effects) of Ohio Revised Code § 2967.16 (A) also see; Furman v. Ga., 92 S.Ct. 2726 providing in part: to wit; "The Court in *Weems* thus recognized that this "restraint upon legislatures" possesses an "expansive and vital character" that is "'essential . . . to the rule of law and the maintenance of individual freedom.'" Id., at 376-377. Accordingly, the responsibility lies with the courts to make certain that the prohibition of the Clause is

enforced. Referring to cases in which "prominence [was] given to the power of the legislature to define crimes and their punishment," the Court said "We concede the power in most of its exercises. We disclaim the right to assert a judgment against that of the legislature of the expediency of the laws or the right to oppose the judicial power to the legislative power to define crimes and fix their punishment, unless that power encounters in its exercise a constitutional prohibition." In the present case state laws (Ohio Revised Code § 2901.04 (A) Rules of Construction; and Ohio Revised Code § 2967.16 (A)) has created a "legitimate claim of entitlement" for the petitioner's immediate release without parole supervision by The Ohio Department of Rehabilitation & Correction Adult Parole Authority. The Petitioner, Herman Harris, Jr., has therefore served his court imposed sentence in full by the operational effects of Ohio Revised Code §§ 2967.16 (A) Final release of paroled prisoner combined with the operational effect(s) of Ohio Revised Code § 2901.04 (A) Rules of construction.

14. The High Court ruling in Furman v. Ga., 92 S.Ct. 2726 (1972) holding in part; to wit: In Weems v. United States, 217 U.S., at 381, the Court, in the course of holding that Weems' punishment violated the Eighth Amendment, contrasted it with penalties provided for other offenses and concluded: "This contrast shows more than different exercises of legislative judgment. It is greater than that. It condemns the sentence in this case as cruel and unusual. It exhibits a difference between unrestrained power and that which is exercised under the spirit of constitutional limitations formed to establish justice. The State thereby suffers nothing and loses no power. *The purpose of punishment is fulfilled, crime is repressed by penalties of just, not tormenting, severity, its repetition is prevented, and hope is given for the reformation of the criminal.*" (Emphasis added.) The action(s) and conduct of the Ohio Adult Parole Authority/Parole Board as submitted within the writ are also a direct violation of Fourteenth

Amendment to the United States Constitution denying petitioner the "procedure due process of law" and the "equal protection" of laws as established in Furman v. Ga., 92 S.Ct. 2726 (1972). The abuse of power might, indeed, be apprehended, but not that it would be manifested in provisions or practices which would shock the sensibilities of men." Id., at 375. **The Clause**, then, guards against "the abuse of power"; contrary to the implications in Wilkerson v. Utah, supra, and In re Kemmler, supra, the prohibition of the Clause is not "confine[d] . . . to such penalties and punishment as were inflicted by the Stuarts." 217 U.S., at 372. The infliction of an extremely severe punishment will often entail physical suffering. See Weems v. United States, 217 U.S., at 366 Yet the Framers also knew "that there could be exercises of cruelty by laws other than those which inflicted bodily pain or mutilation." Id., at 372. Even though "there may be involved no physical mistreatment, no primitive torture," Trop v. Dulles, supra, at 101, severe mental pain may be inherent in the infliction of a particular punishment. See Weems v. United States, supra, at 366. O'Neil v. Vermont, 144 U.S. 323, 339 (1892)

Of further interest see; Subcommittee No. 3 of the House committee on Judiciary, 92d Cong., 21d Sess., Ernest van den Haag, testifying on H.R. 8414 et al., stated:

"Any penalty, a fine, imprisonment or the death penalty could be unfairly or unjustly Applied. The vice in this case is not the penalty but in the process by which it is inflicted. It is unfair to inflict unequal penalties on equally guilty parties, or on any innocent parties, Regardless of what the penalty is." Id., at 116-117. (Emphasis supplied.) Also see; McGautha v. California, 402 U.S. 183, 198; Furman v. Ga., 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972); and Weems v. United States, 217 U.S. 349, 378-382.

15. The State of Ohio criminal sentence(s)/penal(ties) for the criminal offenses aggravated murder; murder/ murder as a lesser included offense (Ohio Revised Code §§ 2903.01 through §§ 2903.02) the sentencing statutes in reference to aggravated murder and murder/ murder as a lesser

included offense under the Ohio Revised Code §§ 2929.02 (Penalties for aggravated murder or murder); Ohio Revised Code §§ 2929.03 (Imposing sentence for aggravated murder) these criminal sentencing statutes as drafted only makes reference to the maximum sentence /penalty using ambiguous catch phrase's "For Life" imprisonment; "Life" imprisonment; and "To life" imprisonment. The ambiguous catch phrases are the vehicles employed to extend the Petitioner's term of incarceration leading to lengthy and/or lengthener, and/or a potential natural life sentence. The State Legislatures created discriminatory maximum sentences/penalties for the criminal offenses of aggravated murder, and murder/murder as a lesser included offense using ambiguous catch phrase's for the sole purpose for the operation(s) of The Ohio Department of Rehabilitation & Correction Adult Parole Authority/Parole Board to extend an offender's term of incarceration including the petitioner. Thereby, violates Petitioner's Eighth and Fourteenth Amendments to the United States Constitution "procedural due process" and "equal protection of laws." *Weems v. United States*, 217 U.S. 349, 378-382.

16. The state statute in question Ohio Revised Code §2967.16 (A) Final release of [ \*\*\* ] prisoner is a discriminatory application of law that violates Equal Protection Clause of the Fourteenth Amendment. Any law which is nondiscriminatory on its face may be applied in such a way as to violate the Equal Protection Clause of the Fourteenth Amendment. *Yick Wo v. Hopkins*, 118 U.S. 356.

17. Ohio Revised Code §2967.16 (A) statute are unconstitutional under the "equal protection" clauses of the Constitutions of the United States (Fourteenth Amendment) and of Ohio Bill of Rights: (Section 2, Article I Ohio Constitution) also see State v. Buckley, 16 05 (2d) 128, 243 N.E.2d 66, (1968); State v. Morris, 378 N.E.2d 708 (1978); Fairbank v. United States, 181 U.S.

283; Monongahela Navigation Co. v. United States, 148 U.S. 312; I. C. C. v. Brimson, 154 U.S. 447; Hampton , Jr., & Co. v. United States, 276 U.S. 394, 48 S.Ct., 72 L.Ed. 624 (1928); compare Blue Cross of Northeast Ohio v. Ratchford, 64 0S 2d. 256, 416 N.E.2d 614 (1980); although the General Assembly is precluded from delegating its legislative function, this court has consistently recognized that the General Assembly can delegate discretionary functions to administrative bodies or officers so that they can apply the law to various sets of facts or circumstances. State v. Switzer (1970), 22 Ohio St. 2d 47; Weber v.. Bd. of Health (1947), 148 Ohio St. 389; Matz v.. J.L.CurtisCartage(1937), 132OhioSt.271; State v..Messenger (1900), 63 Ohio St. 398; Carney v. Bd. of Tax Appeals (1959), 169 Ohio St. 445; Matz, supra: Panama Refining Co. v. Ryan, 293 U.S. 388, 55 S.Ct. 241, 79 L.Ed. 446 (1934); The Constitution provides that "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." Art. I, § 1, the Congress is empowered "To make all laws which shall be necessary and proper for carrying into execution" its general powers. Art. I, § 8, 18. Also See; The Plain Dealer Publishing Co. v. Cleveland, 75 Ohio St.3d 31, 661 N.E.2d 187; Constitutional Law, **Separation of Powers**. The United States Constitution does not impose the doctrine of separation of powers on the states. Although Ohio does not have a constitutional provision expressly stating the concept of separation of powers, this doctrine is implicitly embedded in the entire framework of those sections of the Ohio Constitution that define the substance and scope of powers granted to the three branches of state government. The state constitutional legislative power is vested in the General Assembly. Ohio Const. §, § 1. The United States Constitution does not impose the doctrine of separation of powers on the states. Mayor of Philadelphia v. Educational Equality League (1974), 415 U.S. 605, 615, 94 S. Ct. 1323, 1330, 39 L. Ed. 2d 630, 641, fn. 13. Although Ohio does not have a constitutional provision expressly

stating the concept of separation of powers, "this doctrine is implicitly embedded in the entire framework of those sections of the Ohio Constitution that define the substance and scope of powers granted to the three branches of state government South Euclid v. Jemison (1986), 28 Ohio St. 3d 157, 158-159, 28 Ohio B. Rep. 250, 251, 503 N.E.2d 136, 138; State v. Warner (1990), 55 Ohio St. 3d 31, 43-44, 564 N.E.2d 18, 31. The state constitutional legislative power is vested in the General Assembly. Section 1, Article II, Ohio Constitution. State Ex Rel. Jackman v. Court of Common Pleas, 224 N.E.2d 906, 909, (1976) "An enactment of the General Assembly is presumed to be constitutional, and before a court may declare it unconstitutional it must appear beyond a reasonable doubt that the legislation and constitutional provisions are clearly incompatible." That duty applies both to the General Assembly of Ohio Congress. However, it should be noted that the federal Constitution is a *grant* of power to the Congress, while the state Constitution is primarily a *limitation* on legislative power of the General Assembly. It follows that the General Assembly may pass any law unless it is specifically prohibited by the state or federal Constitutions. McNab v. Board of Park Commrs., 108 Ohio St. 497, 501 (1923); Fisher Bros. Co. v. Brown, Secy. of State, 111 Ohio St. 602, 625 (1924); State, ex rel. Youngstown, v. Jones, Auditor, 136 Ohio St. 130, 133 (1939); State, ex rel. Brunenkant, v. Wallace, Registrar, 137 Ohio St. 379, 383 (1940); Angell v. Toledo, 153 Ohio St. 179, 181 (1950). See Cass v. Dillon, 2 Ohio St. 607 (1853). An excellent summary of these principles of law was made by the court in State, ex rel., v. Jones, Auditor, 51 Ohio St. 492, 503, 504 (1894): "In determining whether an act of the Legislature is or is not in conflict with the Constitution, it is a settled rule, that the presumption is in favor of the validity of the law. The legislative power of the state is vested in the General Assembly, and *whatever limitation is placed upon the exercise of that plenary grant of power must be found in clear prohibition by the Constitution*. The legislative power will generally be deemed

ample to authorize the enactment of a law, unless the legislative discretion has been qualified or restricted by the Constitution in reference to the subject matter in question. If the constitutionality of the law is involved in doubt, that doubt must be resolved in favor of the legislative power.

18. In the present case any attempts to delegate to an administrative agency The State of Ohio Department of Rehabilitation & Correction, The Ohio Department of Rehabilitation & Correction Adult Parole Authority/Parole Board power(s) in deciding, which is part of the executive branch of government, legislative authority which only the state legislature can exercise. Such a delegation of authority is unconstitutional and void. See, similarly, State v. Rodriguez (La. 1980), 379 So. 2d 1084; Sundberg v.. State (1975), 234 Ga. 482, 216 S.E. 2d 332; Howell v.. State (Miss. 1974), 300 So. 2d 774; State v.. Perrico (1980), 66 Ohio Misc. 7, 20 O. O. 3d 86 (Montgomery Co. C. P.); *contra*, Ex Parte McCurley (Ala. 1980), 390 So. 2d 25; People v. Einhorn (S. Ct. 1973), 75 Misc. 2d 183, 346 N.Y.S.2d 986; State v.. Lovelace (Mo. App. 1979), 585 S.W. 2d 507; People v.. Uriel (Mich. App. 1977), 255 N.W. 2d 788.

**Constitutional Claim No. II:** Ohio's undefined maximum sentence "To Life" imprisonment for the conviction of Murder/murder as a lesser included offense has the potential of becoming a natural life sentence at the pure discretion of the Ohio Dept. of Rehab. & Correction Adult Parole Authority/Parole Board with no right to parole before serving the maximum court imposed sentence. The undefined maximum sentence "To Life" imprisonment expose the Petitioner to a harsher and/or lengthier term of incarceration by the operational effects and facts of the State Legislatures/Ohio General Assembly failing to define with reasonable clarity the specific number of years that totals a "To Life" imprisonment sentence being served in full by incarceration for the conviction of murder or murder as a lesser included offense, Petitioner could have received identical undefined maximum "Life" sentence for the conviction of the indicted criminal offense aggravated murder, the sentence violates the Ohio Bill of Rights, Article I, §§ 2, 9, and 16, and violates the 8<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution.

Petitioner incorporates paragraphs (1) through, 18.

20. In the present case Petitioner's undefined maximum sentence "To Life" imprisonment for the conviction of Murder/Murder as a lesser included offense, ((Ohio Revised Code §§ 2903.01 Aggravated Murder; §§2903.02 (B) Murder; §§ 2929.02 Imposing penalties for aggravated murder and murder; §§ Imposing sentence for aggravated murder; §§ 2945.74 Defendant may be convicted of lesser included offense; and Verdict/Conviction of lesser offense.)) The State Legislatures/Ohio General Assembly had failed to draft with reasonable clarity the precise number of years which equals a "To Life" imprisonment maximum sentence being served in full by prison incarceration and by incarceration combined with parole supervision, for the Petitioner convicted of murder/murder as a lesser included offense, (Murder/Murder as a lesser included offense, ((Ohio Revised Code §§ 2903.01 Aggravated Murder; §§2903.02 (B) Murder; §§ 2929.02 Imposing penalties for aggravated murder and murder; §§ Imposing sentence for aggravated murder; §§ 2945.74 Defendant may be convicted of lesser included offense; and Criminal Rule 31 (C) Verdict/Conviction of lesser offense.)) (As previously argued and presented in petitioner's constitutional claim number one.)

- 21. The State Legislatures has been permitting the Ohio Dep't' of Rehab. & Correction/Adult Parole Authority to make such determination, as previously argued. The Legislatures drafted the penalty/sentence shame referring to the maximum sentence using ambiguous catch phrase(s) "For Life" imprisonment; and "Life" imprisonment for the conviction of aggravated murder, and an ambiguous catch phrases "To Life" imprisonment; for the conviction of murder. (Aggravated murder also carry the penalty that's phrased "Life imprisonment without parole.") The Ohio of Rights/Ohio Constitution Article II, § 1 make(s) no reference to The Ohio Department of Rehabilitation & Correction Employees and The Ohio Department of Rehabilitation & Correction Adult Parole Authority/Parole Board and/or employees being Ohio legislative bodies of the State of Ohio Senate and/or State of Ohio Representatives.

22. The Ohio Dep't. of Rehab. & Correction Adult Parole Authority Parole Board is operating under the doctrine of judicial or quasi-judicial function(s), the act(s) of holding a hearing to decide

whether the Petitioner (Herman Harris, Jr.,) convicted of the crime murder as a lesser included offense , shall be held in confinement or granted parole constitutes an exercise of judicial or quasi-judicial power; it is precisely the acts which a judge performs when he pronounces sentence, and the hearing itself results in decisions which affect fundamental rights of the prisoner. The Ohio Constitution Art. II, § 1 prohibit the Ohio Dept. of Rehab. & Correction Adult Parole Auth. or Parole Board Members decision(s) deciding when Petitioner has served his maximum sentence/penalty that's phrased "To Life" imprisonment for the conviction of murder/murder as a lesser included offense.

#### **Oh. Const. Art. II, § 1**

*The legislative power of the state shall be vested in a general assembly consisting of a senate and house of representatives but the people reserve to themselves the power to propose to the general assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided. They also reserve the power to adopt or reject any law, section of any law or any item in any law appropriating money passed by the general assembly, except as hereinafter provided; and independent of the general assembly to propose amendments to the constitution and to adopt or reject the same at the polls. The limitations expressed in the constitution, on the power of the general assembly to enact laws, shall be deemed limitations on the power of the people to enact laws.*

23. The Ohio Constitution, (Article II, §§ 1) above makes no mentioning of The Ohio Dept. Of Rehab. & Correction or The Ohio Dept. Of Rehab. & Correction Adult Parole Auth. Parole Board Members being a part of the Ohio General Assembly, nor does the constitution permit the transferring of legislatures duties, this would be a violation of the separation of powers doctrine. The Legislative power in general includes the authority to make laws for the governance of the State. The Legislative powers is also subject to the doctrine of separation of powers, and the State Legislatures/Ohio General Assembly may not infringe on the constitutional prerogative of the executive or judicial branches of the State of Ohio Government, nor can the Legislative delegate its power to another State of Ohio Entity and/or transfer to other the essential legislative functions

with it is vested. See, Blden v. Union Cent. Life Ins. Co., 143 Ohio St. 329, 28 Ohio Op. 295, 55 N.E.2d 629 (1944).

24. The action(s) of The State of Ohio Department of Rehabilitation & Correction and/or The State of Ohio Department of Rehabilitation & Correction Adult Parole Authority/Parole Board deciding when a convicted offender has served his/her maximum sentence/penalty for the conviction of either aggravated murder; murder/murder as a lesser included offense and thereby terminating the maximum sentence/penalty pursuant to Ohio Revised Code § 2967.16 (A) Final release of [\*\*\*] prisoner. By and upon the constitutional validity of the act are two-fold:

(a) That the act is unconstitutional and void on its face, being in conflict with Section 1, Article II of the state Constitution in that the act delegates legislative power to the State of Ohio Department of Rehabilitation & Correction and/or to the State of Ohio Department of Rehabilitation & Correction Adult Parole Authority/Parole Board to decide when an convicted offender has served his/her maximum sentence/penalty by incarceration combined with parole supervision for the conviction of either aggravated murder; murder/murder as a lesser included offense and thereby terminating the maximum sentence/penalty pursuant to Ohio Revised Code § 2967.16 (A) Final release of [\*\*\*] prisoner. The action thereby terminating the maximum sentence/penalty pursuant to Ohio Revised Code § 2967.16 (A) taken effect by the transferring of legislative powers of the General Assembly; (b) that the act terminating the maximum sentence/penalty pursuant to Ohio Revised Code § 2967.16 (A) is unconstitutional and void because the operative effect thereof, as applied to the Petitioner is being applied in a discriminatory manner, and not being applied to offenders who has been denied the requested relief (parole), resulting in the lengthy incarceration and/or potential natural life sentence(s) for offender's convicted of murder/murder as a lesser included offense , and amounts to the loss of

liberty without "procedure due course of law", and" equal protection and benefits of law" in violation of Sections 2, and 16, Article I, Ohio Constitution, and Section 1, Fourteenth Amendment, Constitution of the United States. The acts of the Ohio Department of Rehabilitation & Correction Adult Parole Authority/Parole Board are null and void because they are repugnant to Article II, Sec. 1 of the Constitution of the State of Ohio, in that they amount to a delegation of legislative power to the State Legislatures/ The Ohio General Assembly and violates, Weems v. United States, 217 U.S. 349, 378-382; Furman v. Ga., 408 U.S. 238, 92 S.Ct. 2726 (1972). Section I, Amendment 14, to the Constitution of the United States of America which provides that" no state shall deprive any person of property without due process of law." The Petitioner has been subjected the infliction of "psychological torture"; "abuse of powers"; "cruel & unusual" punishment and lengthier incarceration inflicted by the Ohio Dept. of Rehab. & Correction Adult Parole Auth. Parole Board. See Furman v. Ga. (1972), 92 S.Ct. 2726; and Weems v. United States (1910), 217 U.S. 349, 30 S.Ct. 544, 54 L.Ed. 793; Solem v Helm (1983), 463 U.S. 277, 284, 103 S.Ct. 3001, 3006, 77 L.Ed.2d 637, 645.

**Constitutional Claim No. III: The State Legislature's/Ohio General Assembly conduct of "abuse of powers" abused its legislative power(s) by transferring and/or delegating its legislative powers and/or authority and/or duties and/or responsibilities to the Ohio Dept. of Rehab. & Correction Adult Parole Authority and/or Parole Board to decide when the prisoner convicted of murder, (including petitioner) has served his/her maximum "To Life" imprisonment sentence, for the conviction of murder, in direct violations of Ohio Bill of Rights: Article II, §§ I, and Ohio Bill of Rights: Article I, §§ 2, and 9, further violations of the Fourteenth Amendment to the United States Constitution.**

**Petitioner incorporates paragraphs (1) through (25).**

**26.** The Ohio Constitution makes no reference to the Ohio Dept. of Rehab. & Correction employees and/or The Ohio Dept. of Rehab. & Correction Adult Parole Authority/Parole Board

being members of the State Senate and/or The Ohio General Assembly, see **Ohio Const. Article II, §§ I**, that provides the following in part:

**Oh. Const. Art. II, § 1**

*The legislative power of the state shall be vested in a general assembly consisting of a senate and house of representatives but the people reserve to themselves the power to propose to the general assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided. They also reserve the power to adopt or reject any law, section of any law or any item in any law appropriating money passed by the general assembly, except as hereinafter provided; and independent of the general assembly to propose amendments to the constitution and to adopt or reject the same at the polls. The limitations expressed in the constitution, on the power of the general assembly to enact laws, shall be deemed limitations on the power of the people to enact laws.*

**27.** The Ohio Constitution (Article II, § 1), above making no mentioning of The Ohio Dept. Of Rehab. & Correction Adult Parole Auth., or Parole Board Members being part of the Ohio General Assembly, nor does the constitution permit the transferring of legislatures duties, this would be a violation of the separation of powers doctrine. The Legislative power in general includes the authority to make laws for the governance of the State. The Legislative powers is also subject to the doctrine of separation of powers, and the State Legislatures/Ohio General Assembly may not infringe on the constitutional prerogative of the executive or judicial branches of the State of Ohio Government, nor can the Legislative delegate its power to another State of Ohio Entity and/or transfer to other the essential legislative functions with it is vested.

**28.** In the present case the State Legislatures delegate its power to another State of Ohio Entity the Ohio Dept. of Rehab. & Correction and/or The Ohio Dept. Of Rehab. & Correction Adult Parole Auth., and/or the State Legislatures/Ohio General Assembly transferred to The Ohio Dept. of Rehab. & Correction and/or The Ohio Dept. Of Rehab. & Correction Adult Parole Auth. the essential legislative functions to decide when an offender has served his/her maximum sentence/penalty “For Life” imprisonment; “Life” imprisonment and “To Life” imprisonment for an offender convicted of aggravated murder; murder and murder as a lesser included offense. Also

see Refer to **OTHER**. [October 6<sup>th</sup>, 2014 Correspondence - Mr. John Fenlon/Ohio Assistant State Public Defender/Intake Section quoting: The General Assembly chose not to set a specific term as the penalty of Murder. It decided to set and minimum and maximum term. It has left it to the Ohio Parole Board to make the ultimate release decision somewhere between those points."] With the operational effects of having no right to parole before serving the maximum court imposed sentence/penalty (as previously presented to this Court) the petitioner's maximum sentence now has the potential/possibility of becoming a natural life sentence at the pure discretion of The Ohio Dept. of Rehab. & Correction and/or The Ohio Dept. Of Rehab. & Correction Adult Parole Auth./Parole Board. See; Inmates of Orient Correctional Institute v. Ohio State Adult Parole Authority, 929 F.2d 233 (6<sup>th</sup> Cir. 1991); Wagner v. Gilligan, 609 F.2d 866, 867 (6th Cir. 1979). In the State of Ohio, the Supreme Court of Ohio has held that the criminal offense murder, (Ohio Revised Code § 2903.02) is a lesser included offense of aggravated murder. However, with the drafting of the present sentencing/penalties for the criminal offenses of aggravated murder and murder containing the catch phrases "For Life" imprisonment; "Life" imprisonment; and "To Life" imprisonment in conjunction with the Ohio Revised Code § 2967.03 Parole statute being drafted using an operative verb "may" . . . grant a parole to any prisoner is permissive, not mandatory. All of these facts combined creates a possible natural life maximum sentence/penalty for the petitioner. An identical potential possible natural life maximum sentence /penalty for offenders convicted of aggravated murder. (See Jago v. Curn, 454 U.S. 14) The operational effect(s) of the Ohio Adult Parole Authority Parole Board is clear the decisionmaker "can *deny* the requested relief for any constitutionally permissible reason or for no reason at all." *Id.* (quoting Connecticut Bd. of Pardons v. Dumschat, 452 U.S. 458, 467, 69 L. Ed. 2d 158, 101 S. Ct. 2460 (1981). The ambiguous catch phrases "For Life;" "Life;" and "To Life" Imprisonment maximum phrased

sentence(s)/penalties are the vehicles employed to extend the Petitioner's term of incarceration leading to lengthy and/or lengthener, and/or a potential natural life sentence, for offenders convicted of either criminal offense's ranging from aggravated murder to murder and murder as a lesser included offense

29. "Where the '[maximum]' sentence which the court might impose is cruel and unusual within the prohibition of a bill of rights, the fault is in the law and not in the sentence, and if there is no other law under which sentence can be imposed it is the duty of the court to declare the law void. Where sentence cannot be imposed under any law except that declared unconstitutional or void, the case cannot be remanded for new sentence but the judgment must be reversed with directions to dismiss the proceedings." Weems v. United States (1910), 217 U.S. 349, 30 S.Ct. 544, 54 L.Ed. 793 holding in part:

"Time works changes, brings into existence new conditions and purposes. Therefore, a principle to be vital must be capable of wider application than the mischief which gave it birth. This is peculiarly true of constitutions. They are not ephemeral enactments, designed to meet passing occasions. They are, to use the words of Chief Justice Marshall, "designed to approach immortality as nearly as human institutions can approach it." The future is their care and provision for events of good and bad tendencies of which no prophecy can be made. In the application of a constitution, therefore, our contemplation cannot be only of what has been but of what may be. Under any other rule a constitution would indeed be as easy of application as it would be deficient in efficacy and power. Its general principles would have little value and be converted by precedent into impotent and lifeless formulas. Rights declared in words might be lost in reality. The proscription of cruel and unusual punishments forbids the judicial imposition of them as well as their imposition by the legislature. Weems v. United States, 217 U.S. 349, 378-382; also Furman v. Ga., 92 S.Ct. 2726 (1972). The generality of a law inflicting [ \*\* ] punishment is one thing. What may be said of the validity of a law on the books and what may be done with the law in its application do, or may, lead to quite different conclusions."

32. In Layman terms what's being said of the constitutional validity of the State of Ohio criminal sentencing /penalties for the conviction of aggravated murder; murder/ murder as a lesser included offense where the statutes make reference to the maximum sentence/penalty using catch

phrases "For Life" imprisonment; "Life" imprisonment; and "To Life" imprisonment is unconstitutional in its application, offenders convicted of either criminal offenses of aggravated murder; murder/murder as a lesser included offense must appear before the Ohio Dept. Of Rehab. & Correction Adult Parole Auth. Parole Board in order to obtain a possible relief (parole) the operational effect(s) of an adult parole board empowers the Ohio Dept. Of Rehab. & Correction Adult Parole Auth./Parole Board, with essential legislative function(s) to decide when an offender has served his/her maximum sentence/penalty "For Life" imprisonment; "Life" imprisonment and "To Life" imprisonment for offender(s) convicted of aggravated murder; murder and murder as a lesser included offense (including petitioner). This leads to lengthy and/or lengthener and/or potential natural life sentence(s) by the pure discretion of the Ohio Adult Parole Board, where Ohio prisoners serving indefinite sentence(s) have no constitutional or statutory right to parole before serving the maximum court imposed sentence and/or before the expiration date of a valid court imposed sentence and the decisionmaker "can *deny* the requested relief for any constitutionally permissible reason or for no reason at all." *Id.* (quoting Connecticut Bd. of Pardons v. Dumschat, 452 U.S. 458, 467, 69 L. Ed. 2d 158, 101 S. Ct. 2460 (1981); Wagner v. Gilligan, 609 F.2d 866, 867 (6th Cir. 1979); and Inmates of Orient Correctional Institute v. Ohio Adult Parole Auth., (C.A. 6, 1991), 929 F.2d 233; Jago v. Curen (1981), 454 U.S. 14.

33. Having no constitutional or statutory right to parole before serving the maximum court imposed sentence and/or before the expiration date of a valid court imposed sentence opens the door for the abuse of power, discrimination, vengeance, and mental suffering inherent in the punishment inflicted by the unconstitutional conduct of parole board member(s) conducting parole board hearing(s). As *Wilkerison v. Utah* suggests, when a severe punishment is inflicted "in the great majority of cases" in which it is legally available, there is little likelihood that the State is

inflicting it arbitrarily. If, however, the infliction of a severe punishment is "something different from that which is generally done" in such cases, *Trop v. Dulles*, 356 U.S., at 101 n. 32, there is a substantial likelihood that the State, contrary to the requirements of regularity and fairness embodied in the Clause, is inflicting the punishment arbitrarily. This principle is especially important today. There is scant danger, given the political processes "in an enlightened democracy such as ours," *id.*, at 100, that extremely severe punishments will be widely applied. The more significant function of the Clause, therefore, is to protect against the danger of their arbitrary infliction. The infliction here is being imposed by the operational effect(s) of the Ohio Department of Rehabilitation & Correction and/or Ohio Department of Rehabilitation & Correction Adult Parole Authority/Parole Board. Thus, these discretionary statutes are unconstitutional in their operation, by the act(s) State Legislatures/Ohio General Assembly delegating its power to another State of Ohio Entity the Ohio Dept. of Rehab. & Correction and/or The Ohio Dept. Of Rehab. & Correction Adult Parole Auth., and/or the State Legislatures/Ohio General Assembly transferred to The Ohio Dept. of Rehab. & Correction and/or The Ohio Dept. Of Rehab. & Correction Adult Parole Auth. the essential legislative functions to decide when an offender has served his/her maximum sentence/penalty "For Life" imprisonment; "Life" imprisonment and "To Life" imprisonment for an offender convicted of aggravated murder; murder and murder as a lesser included offense. Also see Refer to **OTHER**. They are pregnant with discrimination and discrimination is an ingredient not compatible with the idea of equal protection of the laws that is implicit in the ban on "cruel and unusual" punishments. (*Furman v. Ga.*, 92 S.Ct. 2726.)" Any law which is nondiscriminatory on its face may be applied in such a way as to violate the Equal Protection Clause of the Fourteenth Amendment. *Yick Wo v. Hopkins*, 118 U.S. 356" Judicial enforcement of the Clause, then, cannot be evaded by invoking the obvious truth that legislatures

have the power to prescribe punishments for crimes. That is precisely the reason the Clause appears in the Bill of Rights. The difficulty arises, rather, in formulating the "legal principles to be applied by the courts" when a legislatively prescribed punishment is challenged as "cruel and unusual." In formulating those constitutional principles, we must avoid the insertion of "judicial conception[s] of . . . wisdom or propriety," Weems v. United States, 217 U.S., at 379, yet we must not, in the guise of "judicial restraint," abdicate our fundamental responsibility to enforce the Bill of Rights. Were we to do so, the "constitution would indeed be as easy of application as it would be deficient in efficacy and power. Its general principles would have little value and be converted by precedent into impotent and lifeless formulas. Rights declared in words might be lost in reality." Id., at 373. The Cruel and Unusual Punishments Clause would become, in short, "little more than good advice." Trop v. Dulles, 356 U.S., at 104 and Board of Education v. Barnette, 319 U.S. 624, 638 (1943). Also see O'Neil v. Vermont, 144 U.S. 323, the Eighth Amendment of the Constitution of the United States protects against punishments which inflict torture and " against all punishments which by their excessive length. "The whole inhibition is against that which is excessive in the bail required or fine imposed, or punishment inflicted. See State v. Forbes et al., 62 Ohio St.2d 370; 406 N.E.2d 499, 1980 Ohio Lexis 760; 16 Ohio Op.3d 416; United States v. Bass (1971), 404 U.S. 336, 348; Salem v. Liquor Control Comm. (1973), 34 Ohio St.2d 244, 246; Grayned v. Rockford (1972), 408 U.S. 104, at pg. 108 and 114; Colten v. Ky. (1972), 407 U.S. 104, at pg. 110; United States Civil Service Comm. V. National Assn of Letter Carriers (1973) 413 U.S. 548, at pgs. 577-579; State v. O'Mara (1922), 105 Ohio St. 94 para. One of the syllabus; Rx Parte Fleming (1930), 123 Ohio St. 16, 20; United States v. Teemer, supra, (214 F.Supp. 952); United States v. Harris (D.C. Va. 1967), 275 F.Supp. 161; Weems v. United States (1910), 217 U.S. 349; and Furman v. Ga., 92 S.Ct. 2726, (1972).

Constitutional Claim No.IV: THE TRIAL SENTENCING COURT FAILED TO INFORM PETITIONER ON RECORD PRIOR TO SENTENCING THAT THE UNDEFINED MAXIMUM SENTENCE "TO LIFE" IMPRISONMENT SENTENCE HAS THE POTENTIAL OF BECOMING A NATURAL LIFE SENTENCE AT THE PURE DISCRETION OF THE OHIO DEPT. OF REHAB. & CORRECTION ADULT PAROLE AUTH./ADULT PAROLE BOARD, AND THE PAROLE BOARD, OPERATES UNDER THE DOCTRINE POWER(S)/DISCRETIONARY AUTHORITY MEANING YOU HAVE NO RIGHT TO PAROLE BEFORE SERVING THE MAXIMUM COURT IMPOSED SENTENCE "TO LIFE" IMPRISONMENT, AND IF PAROLE IS NEVER GRANTED YOU WILL BE INCARCERATED FOR THE REMAINDER OF YOUR NATURAL LIFE. THE SENTENCING COURT FAILURE TO ADVISE, VIOLATED PETITIONER'S "EQUAL PROTECTION OF LAWS" AND "PROCERDURAL DUE COURSE OF LAW" "PROCERDURAL DUE PROCESS OF LAW" UNDER THE OHIO BILL OF RIGHTS: ARTICLE I, §§ 2, 9, and 16, AND THE FOURTEENTH AMENDMENT 'CLAUSE' TO THE UNITED STATES CONSTITUTION.

35. The Montgomery County Common Pleas Court/Sentencing Court; Court-Appointed Counsel(s), The Montgomery County Public Defender's Office, The Ohio Public Defender's Office, at no time explained to petitioner that the undefined maximum sentence "To Life" Imprisonment had the potential of becoming a natural life sentence at the pure discretion of the Ohio Dept. of Rehab. & Correction Adult Parole Auth. Parole Board. In the State of Ohio, because parole is not certain to occur, at parole board hearings Ohio's Common Pleas Court Trial Courts and Sentencing Courts Judges are not required to explain it as part of the maximum possible penalty. See Layne v. Ohio Adult Parole Auth., 97 Ohio St.3d 456, 2002 Ohio 6719, 780 N.E.2d 548; and Hill v. Lockhart (1985), 474 U.S. 52, 56, 106 S.Ct. 366, 88 L.Ed.2d 203. In the instant case, because of the gravity of the penalty, the "To Life" Imprisonment maximum sentence which has not been defined with clarity by the Ohio State Legislative Body "procedural due course of law" and "procedural due process of law" mandates clarity of the maximum penalty "To Life" Imprisonment. This inaction by the Ohio State Legislative Body will continue to have an effect upon the Petitioner's future life, liberty, and pursuit of happiness as guaranteed by both the United States and the Ohio Constitution's.

36. Petitioner prays this Court finds that the Petitioner's Claims are well taken and hereby Petitioner Writ of Certiorari on the Constitutional Issues Claim No. I through IV be well taken and grants Petitioner's Writ of Certiorari.

#### STATEMENT OF THE CASE

The facts of this case arise from the Montgomery County Court of Common Pleas in Case No. 92-CR-907 where the Petitioner was indicted on four counts: Count #1 Agg. Burglary a violation of Ohio Revised Code §2911.11 (A)(1); Counts #2, #3 Agg. Robbery a violation of Ohio Revised Code §2911.01(A)(2); and Count #4 Agg. Murder a violation of Ohio Revised Code §2903.01 w/ six (6) Death Penalty Specifications. The trial court found Herman Harris, Jr., (hereto after Petitioner) Not Guilty of Count #1 Agg. Burglary; Count #2 Petitioner was found Guilty of a lesser included offense of Grand Theft (two prior convictions) and the specification of prior aggravated felony conviction; on Count #3 Not Guilty of Agg. Robbery; and on Count #4 of the indictment Guilty of a lesser included offence of Murder, and the Petitioner was sentence on count #2 to be imprisoned for a term not less than Four Years no more than Ten Years, and on count #4 no less than 15 Years "To Life" Imprisonment to be served consecutive to count #2.

The Petitioner as of right challenged the Montgomery County Court of Common Pleas decision to the 10<sup>th</sup> District Court of Appeals for Franklin County for a Writ of Habeas Corpus under original action to overturn Petitioner of the indictment in Montgomery County Common Pleas Court, because Petitioner has challenged the Constitutionality of Ohio Life Sentence(s). The 10<sup>th</sup> District Court of Appeals refused to accept jurisdiction due to that fact that Petitioner did not reside within the court jurisdiction and the case was dismissed without prejudice. In filing the Habeas Corpus in the 9<sup>th</sup> District Court of Appeals, Petitioner has challenged the Constitutionality of Ohio Life Sentence(s), and The Supreme Court of Ohio those Courts decisions is in error and threatens the sound structure of both State and Federal Constitutions.

## REASON FOR GRANTING THE PETITION

The State Courts has decided an important question of federal law that has not been, but should be, settled by this Court (U.S. Supreme Court), and the State Courts has decided an important federal question in a way that conflicts with Relevant Decisions of this (U.S. Supreme Court) Weems v. United States, 217 U.S. 349, 378-382; and Furman v. Ga. 408 U.S. 238 this case is of great importance, because it affects every prisoner in the State of Ohio (including Petitioner), that has been convicted of either aggravated w/out death specification(s); and murder/murder is a lesser included offense of aggravated murder where the maximum sentence are only reference using catch phrase's " "LIFE WITHOUT PAROLE ELIGIBILITY"; "LIFE" IMPRISONMENT ; "FOR LIFE" IMPRISONMENT; and "TO LIFE" IMPRISONMENT. Offenders convicted of Agg. Murder w/out death specification(s), and Murder/Murder as a lesser included offense are eligible for parole consideration, and must appear before the Ohio Dept. of Rehab., & Correction Adult Parole Authority/Parole Board in order to obtain the requested relief (parole). However, as presented to this U.S. Supreme Court Ohio's prisoners, (including Petitioner) serving an INDEFINITE PRISON SENTENCE(S) has no Statutory Rights, and no Constitutional Rights to parole before serving the MAXIMUM COURT IMPOSED SENTENCE and/or BEFORE THE EXPIRATION DATE OF A VALID SENTENCE. In the State of Ohio, the State Legislators/Ohio General Assembly has failed to define in reasonable clarity the specific number of years that totals and/or equals a "LIFE" IMPRISONMENT; "FOR LIFE" IMPRISONMENT; and "TO LIFE" IMPRISONMENT maximum sentence being served in full by prison incarceration when the requested relief (parole) has been denied by Ohio Dept. of Rehab. & Correction Adult Parole Auth. Parole Board, and the State Legislators/Ohio General Assembly has failed to define in reasonable clarity the specific number of years that totals and/or equals a "LIFE" IMPRISONMENT; "FOR LIFE" IMPRISONMENT; and "TO LIFE" IMPRISONMENT maximum sentence being served in full by prison incarceration combined with parole supervision. Therefore, these sentences imposed for Agg. Murder w/out death

specification(s); murder/murder as a lesser included offense that are only referred to using catch phrases “LIFE” IMPRISONMENT; “FOR LIFE” IMPRISONMENT; and “TO LIFE” IMPRISONMENT all having the operational effect(s) of becoming a lengthy incarceration, and/or lengthier incarceration and/or a potential /possible NATURAL LIFE prison term at the pure discretion of Ohio Dept. of Rehab. & Correction Adult Parole Auth. Parole Board. These sentences using the above catch phrases operates to continue individual(s) incarceration, these catch phrase sentences serve no penal or legislative purpose were a life sentence with reasonable clarity may be imposed w/out using catch phrases.

This cause presents four critical issues for the future of Ohio Sentencing Laws as it pertains to those citizens who are convicted of murder and murder as a lesser included offense of agg. murder that makes reference to the maximum sentence using such catch phrases having no clarity. (**i.e. Ohio Revised Code §§ 2929.02, and 2929.03 OHIO PRACTICE Katz & Giannelli Ohio Criminal Laws and Rules 2012 pg. 601-603.**)

Common Law case decision(s) State v. Deem, 533 N.E.2d 294 is undermined and inoperable by the operational effect(s) of the following fact. Having no right to parole upon serving the minimum sentence, and the maximum sentence “To Life” Imprisonment has the potential of becoming a lengthy and/or lengthener term of incarceration for offender’s convicted of murder as a lesser included offense (including Petitioner) and/or a potential natural life prison term. Applying the operational effect(s) and facts as presented; (a) The State Legislatures/Ohio General Assembly has failed to define with reasonable clarity, the specific number of years that totals and/or equals “LIFE” IMPRISONMENT ; “FOR LIFE” IMPRISONMENT; and “TO LIFE” IMPRISONMENT maximum sentence being served in full by prison incarceration when the requested relief (parole) has been denied by Ohio Dept. of Rehab. & Correction Adult Parole Auth. Parole Board, and the State Legislators/Ohio General Assembly has failed to define in reasonable clarity the specific number of years that totals and/or equals a “LIFE”

IMPRISONMENT; “FOR LIFE” IMPRISONMENT; and “TO LIFE” IMPRISONMENT maximum sentence being served in full by prison incarceration combined with parole supervision; (b) Ohio prisoners serving indefinite prison sentence(s) has no Statutory and no Constitutional Rights(s) to parole before serving the maximum court imposed sentence Inmates v. State Adult Parole Auth., 929 F.2d 233 (6<sup>th</sup> Cir. 1991); Jago v. Van Curen, 454 U.S. 14, 70 L.Ed.2d 13, 102 S.Ct. 31 (1981); Wagner v. Gilligan, 609 F.2d 867 (6<sup>th</sup> Cir. 1979); State Ex Rel. McKee v. Cooper, 320 N.E.2d 286; Whitker v. Maxwell (1966), 217 N.E.2d 233; Olim v. Wakinekona, 461 U.S. 238, 249, 75 L.Ed. 2d 813, 103 S.Ct. 1741 (1983); Connecticut Bd. Of Pardons v. Dumschat, 452 U.S. 458, 467, 69 L.Ed. 2d 158, 101 S.Ct. 2460; Mayes v. Trammell, 751 F.2d 175, 178 (6<sup>th</sup> Cir. 1984); Beard v. Livesay, 798 F.2d 874, 877 (6<sup>th</sup> Cir. 1986); Hewitt v. Helms, 459 U.S. 460, 472, 74 L.Ed.2d 675, 103 S.Ct. 864 (1983); Kentucky Dept. of Corrections v. Thompson, 490 U.S. 454, 463, 104 L.Ed.2d 506, 109 S.Ct. 1904 (1989); King v. Dallman (Ohio App.12<sup>th</sup> Dist. 1993), 619 N.E.2d 66; State Ex Rel. Ferguson v. Ohio Adult Parole Auth. (1989), 544 N.E.2d 674; State Ex Rel. Blake v. Shoemaker (1983), 446 N.E.2d 169; State Ex Rel. Newman v. Lowery (1952), 105 N.E.2d 643; Meachum v. Fano, 427 U.S. 215, 224 (1976); Morrissey v. Brewer, 408 U.S. 471, 481 (1972); Bd. Of Regents v. Roth, 408 U.S. 564, 571-572 (1972); Bishop v. Wood, 426 U.S. 341 (1976); Wolff v. McDonnell, 418 U.S., at 556; Greenholtz v. Inmates of the Nebraska Penal & Correctional Complex, et al., 442 U.S. 1, 99 S.Ct. 2100, 60 L.Ed.2d 668 (1979); Id., 99 S.Ct., at 2014; accord Bell v. Kentucky Parole Board, 556 F.2d 805, 808 (6<sup>th</sup> Cir. Cert. denied 434 U.S. 960, 98 S.Ct. 429, 54 L.Ed.2d 320 (1977); Trop v. Dulles, 356 U.S., at 111, 78 S.Ct., at 603, 604. At the time of Petitioner’s conviction (November 17<sup>th</sup>, 1993) to the present date of petitioning the U.S. Supreme Court for redress of the undefined maximum sentence “to life” imprisonment the maximum sentence has no clarity and is only identified using the catch phrase “to life” imprisonment; and (c) the present penalty /sentence “to life” imprisonment for the conviction of murder/murder as a lesser included offense subjects Petitioner, to the abuse of power by the State Legislatures/Ohio General Assembly, and The Ohio Dept. of Rehab. & Correction Adult Parole

Authority/Parole Board, and psychological torture by cruel & unusual punishment inflicted by former member(s) of the Ohio Adult Parole Authority/Parole Board inflicting lengthy and/or increased terms of incarceration of pointless suffering serving no penal purpose more effective than a clearly defined life sentence with clarity. Weems v. United States, 217 U.S. 349, 378-382; & Furman v. Ga. 408 U.S. 238.

The Petitioner, have a created liberty interest created by state statute, see **Ohio Revised Code**

**§2901.04(A) Rules of Construction** providing in part:

**“{§}ection of the Revised Code defining [\*\*\*\*] [\*\*] penalties shall be Strictly Construed against the state, and liberally construed in favor of the accused”.**

The above state statute (Ohio revised Code §2901.04(A)) Rules of construction mandates Ohio's life sentences be clearly defined with clarity in layman term(s) of understanding.

Ohio Prisoner's under like circumstances that have been convicted of murder/murder as a lesser included offense of aggravated murder with a maximum sentence phrased “to life” imprisonment, and served his/her minimum sentence for parole eligibility and was granted the requested discretionary relief (parole) by the adult parole board, and later grants the parolee his/her **final release** pursuant to **Ohio Revised Code §2967.16(A) Final release of paroled prisoner**. The Ohio Dept. of Rehab. & Correction Adult Parole Authority has made a legislative decision terminating the remaining balance of the court imposed maximum sentence “to life” imprisonment, (see **Ohio Revised Code §2967.01 (E), (I), and (K) Whitaker v. Maxwell 1966**), **6 Ohio St.2d 202, 35 0.0.2d 313, 217 N.E.2d 233**). The maximum sentence “to life” imprisonment does not change because an offender has been granted the requested relief (parole). However, once the Authorities (Ohio Dept. of Rehab. & Correction Adult Parole Authority) has granted the final release the maximum sentence “to life” imprisonment, has changed by the operational effect of termination, because the punishment ends. Of further interest see State Ex Rel. McKee v. Cooper, 320 N.E.2d 286, here the Supreme Court held in part:

“[P]arole is not a full release, nor is it a form of leniency. Rather, it is the conditional Extension of certain freedoms \*\*\*\*\*, to a person who has already served a period of Time in a correctional institution.”

Procedural Due Process of Laws and Procedural Due Course of Laws, and the Equal Protections Clause of the Fourteenth Amendment to the U.S. Constitution mandates the equal application of termination the maximum sentence “to life” imprisonment based upon good institutional behavior, and obeying the Administrative Rules & Regulations adopted by the Ohio Department of Rehabilitation & Correction. Without question this application of law is in direct violation of **Ohio Bill of Rights, Article I, §§2, 9, and 16 and Ohio Constitution Bill of Rights, Ohio Constitution, Article II, § I** and further violations of the **Eighth and Fourteenth Amendments to the United States Constitution, also State v. Bodyke, 126 Ohio St.3d 266; State v. McDonald, 509 N.E.2d 57 (Ohio 1987); State v. Forbes et al., 62 Ohio St.2d 370, 406 N.E.2d 499; United States v. Bass (1971), 404 U.S. 366, 348; Salem v. Liquor Control Comm. (1973), 34 Ohio St.2d 244, 246; State v. O’Mara, 105 Ohio St. 94 paragraph one of the syllabus, and Ex Parte Fleming (1930), 123 Ohio St. 16, 20; United States v. Teemer, supra, (214 F.Supp. 952); United States v. Harris (D.C. Va. 1967), 275 F. Supp. 161; Furman v. Georgia, 92 S.Ct. 2727 (1972); and Weems v. United States (1910), 217 U.S. 349**, in Weems this Court acknowledge that it could not substitute its judgment for that of the legislature, but was limited to determination or whether the statute of the issue violated the Constitution. The Court explained: “\*\*\*

“[P]rominence is given to the power of the legislature to define crimes and their punishment. We disclaim the right to assert a judgment against that of the legislature of the expediency of the laws or the right to oppose the judicial power to the legislative power to define crimes and fix their punishment, unless that power encounters in its exercise a constitutional prohibition. In such case not our discretion but our legal duty, strictly defined and imperative in its direction, is invoked. Then the legislative power is brought to the judgment of a power to it for the instant.” (Emphasis added.) *Id* at 378-379.

**Petitioner's Appendix Other** written communication's to The office of the Ohio Public Defender John Fenlon, Assistant State Public Defender Intake Section October 6<sup>th</sup>, 2014 #427767 v1 – Harris, Herman Itr. 10-6-14 demonstrates that the State of Ohio State Legislators/Ohio General Assembly had transferred its legislative duty on to another State Entity Ohio's Department of Rehabilitation & Correction Adult Parole Authority and/or Parole Board to decide when a convicted offender has served his/her maximum sentence "to life" imprisonment for the conviction of murder/murder as a lesser included offense. Somewhere between the minimum sentence and natural life. This Supreme Court has made it clear that Petitioner must have a legitimate claim of entitlement to release Board of Regents v. Roth, 408 U.S. 546, 577, 92 S.Ct. 2701, 2709, 33 L.Ed.2d 548 (1972) (Emphasis Supplied). In the present case at bar State law (**Ohio Revised Code §2901.04 (A) Rules of Construction**; and **Ohio Revised Code §2967.16 (A) Final Release of [\*\*\*\*] Prisoner**) has created the "legitimate claim of entitlement."

Petitioner feels complied to inform this U.S. Supreme Court that parole is not what the Petitioner seeks, a parole Petitioner has no right too, the Petitioner seeks his immediate release as permitted and/or authorized pursuant to **Ohio Revised Code §2901.04 (A) Rules of Construction**, combined with the operational effect(s) of the sentence and/or penalty being in violation of the **Eighth and Fourteenth Amendments of the United States Constitution**, and **State Constitution**.

### CONCLUSION

The petition for writ of certiorari should be granted, because the State of Ohio Legislative has yet to determine or define with reasonable clarity to the term of a maximum sentence "To Life" imprisonment in which the Adult Parole Authority has no legislative duty or Constitutional authority to render such vital decisions under the doctrine of the separation of powers under the Ohio Bill of Rights Article II, Section 1

and the United States Constitutional Amendments of the Eight "cruel & unusual" punishment and the Fourteenth Amendments for "due process of law clause / procedural due process/ due course of law, and the equal protection under the law clauses" in which these Amendments are fundamentally guarantee under said Constitutional provisions to protect its citizens from government overreach and abuse. The decisions of the Court of Appeals and the Ohio Supreme is in error and threatens the sound structure of both State and Federal Constitutions and undermines presidents of this Honorable Court (Weems v. United States, 217 U.S. 349, 378-382; and Furman v. Georgia, 408 U.S. 238, 92 S.Ct. 2726 (1972) and the Federal Sixth Circuit Court of Appeals.

This operation of law cannot stand and the Petitioner prays this U.S. Supreme Court exercise its constitutional legal duty prohibiting this unconstitutional practice of lengthy incarcerations.

The petition for a writ of certiorari should be granted.

**Respectfully Submitted,**

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