

APPENDIX

EXHIBIT:

- (A) "NOTICE OF FILING AND PUBLICATION OF BRIEFING SCHEDULE"
filed December 01, 2015, in the United States Judicial Panel
on Multidistrict Litigation.
- (B) "ORDER DEEMING MOTION MOOT" issued by the United States Judi-
cial Panel on Multidistrict Litigation on December 09, 2015.
- (C) "PLAINTIFF'S OBJECTION TO DEFENDANT'S MOTION TO DISMISS AND
INTEGRAL PLAINTIFF'S SUMMARY JUDGMENT MOTION" filed on the
Federal District Court for the Central District of Utah, on
May 14, 2018.

EXHIBIT (A)

"NOTICE OF FILING AND PUBLICATION OF BRIEFING SCHEDULE" filed Dec. 01, 2015 in the United States Judicial Panel on Multidistrict Litigation.

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: MIGUEL BACILIO LITIGATION

MDL No. 2685

NOTICE OF FILING
AND PUBLICATION OF BRIEFING SCHEDULE

Today, the Judicial Panel on Multidistrict Litigation filed the following pleading: Motion of Pro Se, Plaintiff Miguel Angel Bacilio for transfer of Actions for coordinated or consolidated Pretrial Proceedings Pursuant to 28 U.S.C. § 1407.

All papers and correspondence filed with the Panel in this matter bear the docket number and Caption assigned by the Panel as noted above. Pleadings not exceeding a total of 10 pages, including exhibits, may be faxed to the Panel at (202) 502-2888; otherwise file an original and one copy of all pleadings by delivery or mail to:

Clerk of the Panel
United States Judicial Panel on Multidistrict Litigation
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, NE, Room 6-255, North lobby
Washington, DC 20002-8041

The briefing schedule is set as follows:

Response Due on or Before

12/22/15

Pro Se will be notified if/when this matter is scheduled for a hearing session before the Panel. Parties must file a response if they wish to participate in oral argument. Rule 6.1(f) requires any party or counsel in these actions to notify this office promptly of any potential tag-along in which that party is also named or which that counsel appears.

FOR THE PANEL:

/s/ Jeffery Luthi
Jeffery Luthi
Clerk of the Panel

"Conformed Copy"

EXHIBIT (B)

"ORDER DEEMING MOTION MOOT" issued by the United States Judicial
Panel on Multidistrict Litigation on Dec. 9, 2015

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: MIGUEL BACILIO LITIGATION

MDL No. 2685

(SEE ATTACHED SCHEDULE)

ORDER DEEMING MOTION MOOT

Before the Panel is a motion filed by pro se plaintiff Miguel Angel Bacilio seeking centralization of the actions on the attached schedule, pursuant to 28 U.S.C. § 1407, in a single federal district court for coordinated or consolidated pretrial proceedings. The Panel has now been advised that the Honorable Terry R. Means in an order filed on December 9, 2015, thus depriving this litigation of its multidistrict character.

IT IS THEREFORE ORDERED that the motion filed by Miguel Bacilio for transfer under 28 U.S.C. § 1407 is DEEMED MOOT.

FOR THE PANEL:

/s/ Jeffery Luthi

Jeffery N. Luthi
Clerk of the Panel

IN RE: MIGUEL ANGEL BACILIO LITIGATION

MDL No. 2685

SCHEDULE

DIST DIV. C.A. NO.

CASE CAPTION

TEXAS NORTHERN

TXN 4 15-00417

Bacilio v. Burns, et al.

UTAH

UT 2 15-00233

Bacilio v. Utah Department of Corrections
Board and Parole Members, et al.

EXHIBIT (C)

"PLAINTIFF'S OBJECTION TO DEFENDANT'S MOTION TO DISMISS AND INTEGRAL PLAINTIFF'S SUMMARY JUDGMENT MOTION"

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

MIGUEL ANGEL BACILIO	§	PLAINTIFF'S OBJECTION TO DEFENDANT'S
Plaintiff	§	MOTION TO DISMISS AND INTEGRAL
	§	PLAINTIFF'S SUMMARY JUDGMENT MOTION
	§	
	§	Case No. 2:15-CV-233-CW
	§	
CURTIS L. GARNER et al.	§	District Judge Clark Waddoups
Defendants		

COMES NOW, Miguel Angel Bacilio, Plaintiff pro-se in the above numbered and styled action, and prays this Honorable Court grant this Plaintiff's Objection To Defendant's Motion To Dismiss and Integral Plaintiff's Summary Judgment Motion pursuant to the Fed. Rules of Civ. Proc., rule 56. Defendant's in suit have failed to establish a bona fide defense to the allegations stated in the § 1983 complaint which are supported by record evidence of Utah State Criminal Cause No. 021904012ES and submitted pursuant to Fed. R. Evid. 401.

The reply proffered by the Defendants in suit amount to nothing more than Scatter-Gun-Obfuscation of the subject matter which presumes the employment of stoppels of law that legally have no application in the instant recovery at bar. In short, there is no real dispute as to the salient facts. In support of this contention, Plaintiff would show:

I

The main issue in suit is concerned with the specific performance of the plea agreement brokered by the State of Utah and represented in the judgment of the State Criminal Court. This contract stated in specific language that the accused was to be given cre-

dit for time served. Plaintiff suffered the onerous harm of imprisonment of seven years before being involuntarily released to Texas' jurisdiction. There is no evidence in the record that bequeats upon the Parole Board any discretion to deny Plaintiff such performance. In like manner, Utah's Code Ann. § 77-27-5, which Defendants allege confers such authority, fail to evidence the specific language imbuing the Board with any such authority.

II.

Defendant's reliance of the "favorable termination" aspect of the Heck Bar is similarly misplaced and has no bearing in the recovery cause at bar. Plaintiff does not call into question the validity of his conviction or sentence in the manner contemplated in the *Heck v. Humphrey*, 512 US 477(1994). Plaintiff contends that where habeas corpus is foreclosed to him where he has served the entirety of his sentence, even to the erroneous satisfaction of the State Parole Board.

The United States Supreme Court makes provision in such cases where habeas corpus is inapplicable. See *Muhammed v. Close*, 540 US 749, n.2(2004), citing *Spencer v. Kemma*, 523 US 1(1999).

"Recognizing, without deciding, that '[m]embers of the court' have expressed the view that unavailability of the habeas for other reasons may also dispense with the Heck requirement."

III.

Estoppels of law such as the State Res-Judicata effect of the Heck Rule or the Statute of Limitations require the judgment of a Court of Competent Jurisdiction for their enactment in any circumstance in law. Such circumstance is non-existent in the cause at bar particularly where the jurisdiction of the State Court ended upon expiration of the sentence. Plaintiff contends that the

issue of mistake of law can be invoked where the Bad-Faith treatment on the part of the prisoner advocate which benefitted the Parole Board. Plaintiff contends that none of the aforementioned issues are sufficient in law to merit dismissal of the recovery. Even the redoubtable **Heck** Court opined:

"But if the District Court determines that the Plaintiff's action, even if successful will not demonstrate the invalidity of any outstanding Criminal Judgment against the Plaintiff, the action should be allowed to proceed..."

IV.

Plaintiff contends that the Parole Board's misinterpretation of Plaintiff's sentence is contrary to 18 U.S.C. § 3585-Calculatation of a term of imprisonment:

(b) A Defendant shall be given credit towards the service of a term of imprisonment for any time he has spent in detention prior to the date the sentencing commences...

Where the Utah Criminal Court specifically enumerated the Texas Detainer as the sole reason to deny bail to the accused and in doing so, kept him incarcerated; this implicated the period of the time when the Detainer was imposed and the time sentence was rendered.

V.

A Detainer which is a request filed by a Criminal Justice Agency (being in this cause, the State of Texas) with the Utah Dep't of Corrs where the Plaintiff (Bacilio) was incarcerated asking the State of Utah to hold Plaintiff for the (Texas) agency or to notify Texas when the release of the Plaintiff was imminent. **Reed v. Farley**, 114 S.Ct. 2291(1994). The State of Texas did not travel to the State of Utah to take Plaintiff back to Texas to face charges of alleged adjudication probation violation for a hearing and

determination. The State of Utah officials (in addition of the State of Texas not picking the Plaintiff up) held Plaintiff too long which exceeded the length of the Plaintiff's Utah sentence and exceeding Plaintiff's probationary period after Dec. 12, 2007. In *Rigo Manufacturing Company v. Thomas*, 458 S.W. 2d 180 (Tex. Crim. App. 1970) the Supreme Court stated:

"The mere filing of a motion or application to revoke probation will not interrupt the running of the term of probation, but to interrupt the running of the term of probation, the use of diligence in procuring the arrest warrant is required and mandatory."

There is no showing of due diligence by the State of Texas to be found in the record, nor is there any justifiable reason shown for their failure and negligence to execute the warrant.

The Texas Code of Criminal Procedure, Article 51.13, § 21 states:

"The governor may recall his warrant of arrest or may issue another warrant whenever he deems proper. Each warrant issued by the governor **SHALL EXPIRE** and be of no effect when not executed within one year from the day thereof."

The State of Utah in (addition to the State of Texas not picking the Plaintiff up) held Plaintiff too long which exceeded the length of Plaintiff's Utah sentence and exceeded Plaintiff's probationary period from Texas. (Said term of probation ended Dec. 12, 2007). When the State of Texas failed to comply with the requirements established by law to extend its jurisdiction. The State of Utah should have released Plaintiff on Dec. 01, 2011 considering that Plaintiff's sentence had ceased to operate by discharge day-for-day.

Plaintiff had a deferred adjudication probation in and for the State of Texas at the time in question as it was alleged that

Plaintiff violated the terms of said probation. In the State of Texas, the Court of Criminal Appeals held in *Prior v. State*, 795 SW 2d 179 (Tex. Ct. Crim. App. 1990), the Court noted that the provisions for both "regular probation" and "deferred adjudication probation" refer to Art. 42.12, § 8, Tex. Code Crim. Proc., for the procedures to follow upon an allegation that the probationer has violated the terms of probation. Art. 42.12, § 8, supra, provides in part:

(a) At any time during the probationary period the court may issue a warrant for violation of any conditions of the probation and cause the Defendant to be arrested by the probationer officer, police officer or other officer with the power of arrest may arrest such defendant without a warrant upon order of the judge of such court to be noted on the docket of the court. A probationer so arrested may be detained in the County jail or other appropriate place of detention until he can be taken before the court. Such officer shall forthwith report such arrest and detention to such court. If the defendant has not been released on bail, or motion by the defendant the court shall cause the defendant to be brought before it for a hearing within 20 days of filing said motion, and after a hearing without jury, may either continue, modify or revoke probation...

Art. 42.12, § 8, tracing the history of cases interpreting the predecessor to Art. 42.12 § 8, beginning with *Fennell*, 248 SW 2d 727, we recognized that:

"This court has consistently... held that where a probationer has violated the terms of probation imposed under Art. 42.12, § 7 [regular probation] and a motion to revoke containing.... allegations [that the probationer has violated his probationary terms] is filed, the provisions of Art. 42.12 § 8, apply, and jurisdiction to revoke the probation is preserved when the motion is filed and the *capias* is issued prior to the expiration of the probationary period followed by due diligence to apprehend the probationer and to hear and determine the contention in the motion. *Prior*, slip. op. at 8.

We then concluded that to apply the provisions of Art. 42.12 § 8, differently with regard to deferred adjudication probation under Art. 42.12, § 3d, would render the jurisdictional implica-

tion of Art. § 8, ineffective as to § 3d even though the legislature has specifically provided that § 8 applies to § 3d under the same circumstances as § 7, (i.e upon the violation of the probation conditions), Prior, slip, op at 9. We therefore specifically held:

[A] court has jurisdiction to revoke deferred adjudication probation imposed pursuant to Art. 42.12, § 3d, supra, after the probationary period has expired as long as both a motion alleging a violation of probationary terms is filed and a capias of arrest warrant is issued prior to the expiration of probationary term followed by due diligence to apprehend the probationer and to hear and determine the allegations in the motion. Id.

Despite Plaintiff's deferred adjudication probation, the violations thereby alleged, and the timely detainer lodged by the State of Texas with the State of Utah in the case Sub-Judice. The State of Texas via the court with jurisdiction to revoke Plaintiff's deferred adjudication probation pursuant to Art. 42.12 § 3d, the State of Texas never followed up by due diligence to apprehend Plaintiff (as the probationer) nor to hear and determine the allegation(s) in any such motion. There was assurance that if the legal procedures had been followed, Plaintiff have been brought to trial before the expiration of his probationary term. On April 28, 2010 a pro se letter was filed on record on the Criminal District Court No. 1, of Tarrant County, Texas, where Plaintiff notified the Texas Courts of the unconstitutional proceedings of the Utah Board of Pardons and Paroles. "That letter was ignored and no action was taken by the Texas Court or the Probation Department.

In *Lynch v. State*, 502 SW.2d 740(Tex. Crim. App. 1973) the court stated:

"The mere filing of a motion to revoke probation, without more will not sustain an order revoking probation. Thus it is incumbent upon the part of the party seeking to invoke the jurisdiction to show that the trial court had jurisdic-

tion over the subject matter of the probationer at the time of the hearing, in order to obtain a valid order of revocation. Failure to carryout the burden will result in fundamental error."

On cross-examination, Jeremy Thompson a probationer officer who was not was not an eye witness to the allegations of the violations of the terms of probation testified that no steps were taken by him or the probation department to secure Plaintiff's presence in the trial court either before or after the probatinary period expired (RR at 27). The burden then shifted to the State, who only managed to float suggestions as to why Plaintiff was not apprehended during his probationary period.

THE REQUIREMENTS OF THE TEXAS COURTS

Texas Code of Criminal Procedure, Art. 42.12 § 5(c) states:

"On expiration of a community supervision period imposed under subsection (a) of this section, if the judge has not proceeded to adjudication of guilt, the judge **SHALL DISMISS THE PROCEEDINGS AGAINST THE DEFENDANT AND DISCHARGE HIM.**"

VI.

Exhibit (E) shows where the Utah Board of Pardons and Paroles exercising a non-existent jurisdiction stated: "The Board of Pardons granted you credit for time served from 12/4/2006 until 8/16/2007; however from 8/17/2007 until 8/7/2009 the credit will be applied to your Texas sentence." No Texas sentence existed at the time of this ruling, and the Texas courts were divested of "ALL JURISDICTION" for their failure to comply with the requirements established by law to extend its jurisdiction.

Furthermore, after the original hearing for consideration on the matter of Miguel Angel Bacilio UDC# 192696 on the 4th day of May, 2010, the Board made the following decision and order. "Pursuant

to Utah Administrative Code R671-205, the Board grants credit for time served from 12/4/2002 (date of arrest on Utah's warrant) to 8/16/2007 (date Texas lodged the detainer)." The Utah's Administrative Code R671-205 states in a clear and unequivocal language that an accused is not entitled to credit for time served for time spent in a hospital or a mental institution, otherwise by law he is entitled for any time spent in custody awaiting trial. Plaintiff was under the auspices of the Salt Lake County Jail until August 12, 2009 the date he was transferred to the Utha Department of Corrections.

The Utah Board of Pardons violated the Separation of Powers Doctrine by holding Plaintiff (under the guise of a detainer) beyond his time of the sentence imposed by the judiciary so as to deny Plaintiff due process, 18 USC § 4203(b)(1).

The Parole Board in holding Plaintiff beyond his maximum release date conspired to allow the State of Utah to collect Federal Funds concerning Plaintiff's sustenance; all illegally in direct contravention of the False Claims Act, 18 USC §§ 286-287. Black's Law Dictionary 10th Ed. at Pg. 719, False Claims Act. "A Federal Statute establishing Civil and Criminal penalties against persons who bill the government falsely, deliver less to the government than represented, or use a fake record to decrease an obligation to the government." 18 USC §§ 286-287; 31 USC §§ 3729-3733, the Act may be enforced by the Attorney General or by a private person in a QUI-TAM action.

PRAYER

WHEREFORE, PREMISES CONSIDERED, having shown that there is no

fact matter issues raised by defendants sufficient in law which merits dismissal of this recovery, Plaintiff pray this Honorable Court to continue this suit unto the discovery stage where he may develop further his case. Plaintiff further pray this Honorable Court to appoint counsel in protection of his rights and that further, it grant any such remedy as justice requires.

Miguel Angel Bacilio
Miguel Angel Bacilio, TDCJ#1912589
Plaintiff Pro-Se
Stevenson Prison
1525 FM 766
Cuero, Texas 77954

VERIFICATION

I, Miguel Angel Bacilio, declare, (certify, verify or state) under penalty of perjury that the foregoing document is true and correct.

Miguel Angel Bacilio
Miguel Angel Bacilio, TDCJ#1912589

CERTIFICATE OF SERVICE

I, Miguel Amgel Bacilio, Plaintiff, certify that a copy of the foregoing document was ailed, via the United States Postal Service to Meb Anderson (10227) Assistant Utah Attorney General representing Defendants of this § 1983 Action 2:15-cv-233-cw, Curtis L. Garner et al. 160 east 300 south, sixth floor, P.O. Box 140856, Salt Lake City, Utah 84114-0856 on this 14th day of May 2018.

Miguel Angel Bacilio
Miguel Angel Bacilio, TDCJ# 1912589

**Additional material
from this filing is
available in the
Clerk's Office.**