

MAY 22 2023

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23-5748

IN THE

SUPREME COURT OF THE UNITED STATES

MAY 17, 2023

NO _____

JAMES M. HOLMAN

Petitioner,

-Vs.-

THE SUPREME COURT OF OHIO

Respondent

Petition for Writ of Certiorari
TO THE UNITED STATES COURT OF APPEALS
FOR THE SUPREME COURT OF OHIO

JAMES M. HOLMAN

#371-035

P.O.BOX 209

ORIENT, OHIO 43146

ORIGINAL

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List of Parties

☐ All Parties appear in the caption of the case on the cover page.

☒ The Supreme Court of Ohio 65 South Front Street, Columbus, Ohio 43215-3431

QUESTION(S) PRESENTED

1. The Supreme Court of Ohio failed to exercise its supervisory power in protecting/defending the 14th Amendment, which is the petitioner's constitutional right, when they denied his Prohibition and refuse to correct the results of a prior Jurisdictionally unauthorized action taken against the petitioner at the August 2016 premature parole eligibility hearing, when the Respondent(s) amended his court/ordered valid Judgment entry when they changed his eligibility date from 2018 to 2024.
2. The Supreme Court of Ohio failed to exercise its supervisory power in protecting/defending the 14th Amendment, which is the petitioner's constitutional right, when they ignored the fact that petitioner was entitled to a meaningful parole consideration hearing at the expiration of his minimal sentence which was April of 2018 and the petitioner never received that court ordered statutorily eligibility hearing in 2018 nor any other hearing to this present day, which they allowed a procedural due process violation of the 14th amendment.
3. The Supreme Court of Ohio failed to exercise its supervisory power in protecting/defending the 14th Amendment, O.R.C. Statute, Admin. R. & Applicable case law and statutory/regulatory requirements as it pertains to Petitioner case when they ruled in favor of the Respondent(s), allowing the breach of SENATE BILL NO 2 LAW O..R.C §2967.13 (A)(1)(C), causing an adverse legal interest, a dispute definite and concrete, not hypothetical or abstract in the petitioner's case.
4. The Supreme Court of Ohio failed to exercise its supervisory power in protecting/defending the 14th Amendment, which is the petitioner's constitutional right that is afforded to him ,when the Respondent(s) did not correct the results of a prior jurisdictionally unauthorized action at 2016 premature parole eligibility hearing, that was not meaningful or lawful, because Respondent Conceded in their reply brief to denying petitioner parole and continued his next parole hearing for 2024, which is 6 years beyond his court ordered expiration date April 2018. See (Brief of Respondent – appellee page.1 last paragraph 2022-0513).

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Decisions Below

The decision of the Supreme Court of Ohio is reported as of this
Writer’s knowledge. It is cited as A-B-C-D-E on page 8.

Jurisdiction

The Judgment of the Supreme Court of Ohio for the Tenth District Court of
Appeals was entered on March 9, 2023. Jurisdiction is conferred on the United States
Supreme Court under 28 U.S.C.§1254(1).

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The Amendment is enforced by Title 28 636 (b)(1)(c)

The Tenth District Court of Appeals adopted the report and recommendation
of the magistrate Judge as their own and the Tenth DCA did not issue a formal
decision overruling Petitioner’s objection to the Magistrate’s R&R and failed to
address the fact that Petitioner’s Substantial Rights were violated. The Supreme
Court of Ohio did not make a determination of Petitioner’s appeal, stating that the
petitioner failed to support his claim that the Respondent/APA unlawfully extended
his sentence.

STATEMENT OF THE CASE

This court has Jurisdiction to resolve the constitutional violation that was created by the Supreme Court of Ohio decisions to condition its ruling based of the Franklin County, 10th District Court of Appeals, who adopted the Magistrate Judge Report and Recommendation which violated petitioner's constitutional rights so severely that a certiorari to the United States Supreme Court is warranted to prevent a miscarriage of justice in the current case.

The facts of petitioner's case that are relevant to the instant Prohibition/Mandamus are stated herein. The Petitioner was arrested and imprisoned in the Franklin County Jail on Sept. 26, 1997. The Petitioner was indicted October 6, 1997, by the Franklin County Grand Jury for a (two count indictment). Count one 2903.02 Murder with a firearm specification, and Count two 2923.13

Having Weapons While Under Disability with a firearm specification. December 7, 1998, Petitioner, (by Bench Trial) was convicted of all Counts and specifications of the indictment and sentenced. See, (Ex.2 of Original Complaint) Petitioner sentences where journalized December 29, 1998:

"FIFTEEN (15) YEARS TO LIFE IMPRISONMENT as to count one and **TWELVE (12) MONTHS** as to count two, with count two be served **CONSECUTIVELY** to count one with an additional **THREE (3) YEARS ACTUAL INCARCERATION** for use of a firearm which is to be served **CONSECUTIVELY** and with prior to the sentence imposed for count one and served at **THE OHIO DEPARTMENT OF REHABILITATION AND CORRECTIONS**. This sentence shall be served **CONSECUTIVELY** to the 18-month sentence imposed in case No. 95CR-4421 See, (EX. 3& EX. 4 of Original Complaint)

The Petitioner was sentenced by trial court for total of *TWENTH (20) YEARS AND SIX MONTHS TO LIFE IN PRISON*. With the mandatory sentence impose by the trial court, the Petitioner was not to be considered eligible for release/a meaningful parole hearing until March of 2018. However, the Respondent(s) exceeded its jurisdiction/statutory authority and violated the order and Judgment Entry/Sentence impose by the Franklin County Court of Common Pleas Trial Court Judge Alan C. Travis, by considering the Petitioner for release/parole August 15, 2016 and issuing thee petitioner a continuance until 2024.

Said hearing and continuance violated O.R.C. 2967.13(A)(1)&(C), (as it relates TO THE Petitioner), for which the Respondent had a mandatory duty to administer pursuant to O.R.C. §2967.02(A) As the Respondent(s) discretion must yield to statutory or regulatory requirements. The Respondent further exceeded its

jurisdiction/statutory authority by denying the Petitioner a statutorily mandated meaningful parole consideration hearing in March of 2018⁷ issued by the trial court,

but also moving the Petitioners consideration for release/meaningful parole consideration hearing from March 2018, to August 2024 on August 26, 2016, without authorization from any order decree or judgment of a court with competent jurisdiction.

On June 3, 2020, the Petitioner filed a complaint for Writ of Prohibition/Mandamus in the 10th DCA, asking the Court to stop the Respondent's future unauthorized exercise actions and to correct/vacate the unlawful /unauthorized actions taken by the Respondent, i.e. "the void, illegal and contrary to law 8-year continuance until 2024 imposed by the Respondent in August of 2016." On November 19, 2021. The 10th DCA adopted the Magistrates R&R as their own April 14, 2022 and granted the Petitioner's writ (as far as a recalculating by

BOSCO & the OAPA on November 22, 2021), but dismissed the Petitioner's writ of mandamus and prohibition as moot. This Appeal of right followed. The 10th DCA did not issue a formal decision overruling Petitioner's objections to the Magistrates R&R because of the recalculation and because of no further relief has been or will be ordered by this court. See, April 14, 2022 Decision No. 20-AP-0303 {¶ 9 & ¶ 10}.

Reason for Granting the Writ

The Petitioner was sentenced by trial court for a total of *TWENTY (20) YEARS AND SIX MONTHS TO LIFE IN PRISON*. With the mandatory sentence imposed by the trial court, the Petitioner was not to be considered eligible for release/a meaning parole hearing until March of 2018. However, the Respondent exceeded its jurisdictions/statutory authority and breached the Order and Judgment Entry/Sentence imposed by the Franklin County Court of Common Please Trial Court Judge Alan C. Travis, by considering the Petitioner for release/parole August 15, 2016 and issuing Petitioner a continuance until 2024.

Said hearing and continuance violated O.R.C. 2967.13(A)(1) &(C), and Admin. Code 5120:1-03(parole eligibility), for the Respondent had a mandatory duty to administer pursuant to O.R.C. 2967.02(A). The Petitioner was entitled to a meaningful consideration hearing from the Respondent in 2018. The Petitioner never received his statutorily entitled hearing in 2018, Petitioner was denied the Constitutional right of due process. As the Respondent discretion must yield to statutory or regulatory requirements when executing a valid court ordered Judgment Entry See, *State ex rel. Fraley v. Ohio Dep't. of Rehab. & Corr., 2020 Ohio 4410*. The Respondent further exceeded its jurisdiction/statutory authority by denying the Petitioner statutorily mandated meaningful eligibility hearing in March of 2018, See (Judge J. DONNELLEY dissent case no. 2023 Ohio-692 see ¶16-19) issued by the trial court,

But also moving the Petitioner eligibility for release/meaningful parole consideration hearing from March 2018, to August 2024 on August 26, 2016, without

authorization from any order decree or judgment of a Court with competent jurisdiction.

Moreover, not only was the Petitioner's hearing held in 2016 though the Trial Court's sentence, order/entry stated it should be held in March 2018, as it would be the only way for the Petitioner to fully serve his minimum sentence of 20 years to life. The Respondent moved the Petitioner's lawful eligibility hearing from March of 2018 to August 2024, without holding a hearing for the Petitioner in March of 2018 See (Judge J. DONNELLY dissent case no. 2023-ohio-692 ¶. 16-19)

When the respondent continued the Petitioner's hearing in 2016 to 2024 it added an additional 6 and half years to the Petitioner's minimum sentence imposed by the Trial Court.

"P16 as the Per curium opinion States, Appellant James M. Holman, became eligible for parole on April 1, 2018. Nevertheless, Holman has not received the parole hearing to which he has been Statutorily entitled since he became eligible for parole (2018). See "(2023-OHIO-692)". Petitioner was deprived of his due process rights when the OAPA/BOSCO amended his judgment entry from 20 half years to life to 26 and half years to life. Petitioner, was treated unfairly in the non-meaningful parole hearing of 2016, because Respondent did not have the authority, nor jurisdiction to parole/release Holman in 2016, amended his court ordered mandated eligibility consideration hearing of 2018, which is a United States Constitutional right or an Ohio Constitutional right that is afforded to the Petitioner.

5. (P17) *"In fairness to the parole board, it did hold a hearing in August of 2016, approximately 19 months before Holman became eligible for parole, meaning that at the time of the hearing, the parole board could not have granted parole. That does not strike me as an adequate or meaningful parole hearing. When it denied Holman parole in 2016 the board set the next parole- consideration hearing for August 2024- a date more than 6 years after Holman became eligible for parole see. (2023-ohio-692).*

Petitioner, was sentenced under Senate Bill No 2 and not eligible for good days/time O.C.R.2967.13 (A), (1) & (C). A court ordered Judgment Entry that was breached by the Respondent, knowingly or unknowingly. However, it may be, the Respondent had/has a mandatory duty to execute Petitioner's Judgment/entry and sentence under SENATE BILL NO 2 LAW. Therefore, the said hearing in August of 2016 clearly violated Petitioner's due process rights and the said hearing was not meaningful in any lawful manner, because the Respondents in no way could have parole Petitioner nor amended his sentenced according to his Court Order Judgment Entry. Article III of the United States Constitution uses the term, cases and controversies, to define the Judicial Power see:(Stern v. Marshal, 564 U.S.462).

The basic inquiry is whether the conflicting contentions of the parties present a real, substantial controversy between parties having adverse legal interest, a dispute definite and concrete, not hypothetical or abstract

“(P18) ...But the circumstances related to Holman changed between the day of that premature parole hearing in 2016 and the day when he actually became eligible for a parole in March of 2018 – whether the changes were to Holman’s benefits is unknown because no parole hearing has been held since he became eligible for parole see. (2023-OHIO-692 ¶16,17,18. Petitioner concede, to the fact that the Respondent (OAPA/BOSCO) can hold a premature hearing. A premature parole hearing consists of a parole board member or members scheduling a hearing to discuss with an inmate his or her current status, and if the inmate is doing good, keep up the good progress and if the board wants him or her to complete more programming, than that is what’s discuss in this premature hearing and the last thing that would be said is, we will see you at your appointed schedule eligibility hearing date, that’s a premature hearing. A premature hearing will not lie. A premature hearing will not amend a Court Ordered Valid Sentenced, which is what the Respondent has done to the Petitioner at the unauthorized, no meaningful and unconstitutional parole eligibility hearing in August of 2016.

The Respondent has ran afoul making the Trial Court’s sentenced, order/entry a nullity and give non-affect to the criminal rules, statute and applicable case law mandated by the Judicial Branch. When in Ohio Crimes are statutory as are the penalties therefore and the only sentence a trial court may impose is provided by Statute provided law. The Respondent has ignored a Judicial Court Order Entry, and violated Petitioner’s right of due process, acting as if they operate with unfettered power, giving themselves Jurisdiction over the judicial branch to see Petitioner for consideration for parole/any convicted criminal in the State of Ohio, despite what the lawful order of the Trial Court states and move the eligibility date to whenever the Respondent’s sees fit.

A Writ of Prohibition may issue to correct the result of a prior jurisdictionally unauthorized action “(i)f an inferior tribunal patently and unambiguously lack(ed) jurisdiction”. Prohibition is an extraordinary writ issuing from a court of Superior jurisdiction and directed to an inferior tribunal, commanding the lower court to cease abusing or usurping judicial functions, (84-ohiost. 3d 70, 1998-ohio-275,701 N.E. 2d 1002,1998). As such, the writ of prohibition tests the subject matter jurisdiction of the lower court and will issue only in cases of necessity arising from the inadequacy of other remedies. Id. In order to obtain a writ of prohibition Relator must establish that (1) the Respondent, Judge, tribunal or Administrative body is about to exercise Judicial or Judicial or Quasi-Judicial power, (2) the exercise of that power is unauthorized by law, and (3) denying the write will result in an injury for which no other adequate remedy exists, in the ordinary course of law.72 Ohio St. 3d 289,649 N.E. 2d 1205.

On November 22, 2021, 23 years after Petitioner was convicted and sentenced the Respondent/Bosco changed the records pertain to Petitioner, *a new sentence computation has been corrected to SHOW his parole eligibility date as April 1, 2018. Before the correction, his parole eligibility date was calculated as September 18, 2016 See (exhibit A pg.2 #4).*

The Kiosk online records today have no mention of any hearing taking place in August 2016, there is no mention of any hearing in August 2018. The computer only mention a hearing schedule for 2024.

Prohibition will not lie, to limit or prohibit the exercise of discretion by a court having jurisdiction over the subject matter and parties before it, and is not a remedy intended to correct or anticipate mistakes by a lower court in deciding question that are within its jurisdiction.

It's been over 7 years since Petitioner's right to due process was violated, at the non-meaningful eligibility hearing which ran afoul against a Valid Court Ordered Judgment Entry, which all Courts speaks through its Judgment Entry. Petitioner prays that this Honorable Supreme Court of the United States grant his writ of Certiorari. Petitioner, filed a writ of habeas corpus 20-AP-0303 in 2019, and Prohibition and Mandamus 2022-Ohio-0513, 2023-ohio-692, and Petitioner has found no relief in any of these normal course of action where a decision could have been made, in the lower Fourth District Court of Appeals, the 10th District Court of Appeals, and no relief was found for Petitioner's injuries in the Ohio Supreme Court.

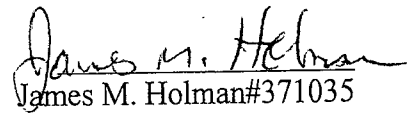
- A. FOURTH DISTRICT: Writ of Habeas Corpus 19CA11-OHIO-2019
- B. Appeal The Ohio Supreme Court 2020-OHIO-874
- C. TENTH DISTRICT 20AP-0303
- D. Appeal The Ohio Supreme Court 22-OHIO-0513
- E. The Ohio Supreme Court Decision 2023-OHIO-692

Petitioner, has never asked for another parole hearing, another parole hearing almost 6 years beyond his statutorily entitled eligibility date of March 2018, cannot and should not be the normal course of remedy for the Respondent's actions. Petitioner, believes that there will be no course of fairness or adequacy, and any meaningful remedy with the Respondent, because Petitioner has fought the Respondent on these issues since 2019 until now seeking justice against the Respondent. 14th Amendment Sec1. {Citizens of the United States} all person born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the States wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any States deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Conclusion

The Respondent could have rectified petitioner's situation, but chose not to. Petitioner prays for The United States Supreme Court to grant his writ of Certiorari, with a speedier/release and all other relief due to Petitioner for his injuries, right of due process being violated and the sanctioning of a non-meaningful parole eligibility hearing of August 2016 and amending Petitioners Court Ordered Judgment Entry, depriving Petitioner of his statutorily entitled eligibility hearing of March 2018, breaching Ohio SENATE BILL NO 2 Law, and adding 6 years to Petitioners minimal sentence and not honoring applicable statute, administration rules and case law. All citizens, all genders, all ethnics, bond or free, and convicted murders have the right of due process afforded to them and the expectation of a meaningful parole/eligibility consideration hearing. Petitioner, prays for relief in The United States Supreme Court with the granting of his Writ of Certiorari, a speedier/release and all other relief due to Petitioner. See (Graham v. Broglin, 922F. 3d 81)

Respectfully submitted,


James M. Holman #371035
P.C.I. P.O. Box 209
Orient, Ohio 43146
Petitioner, (*pro se*)