

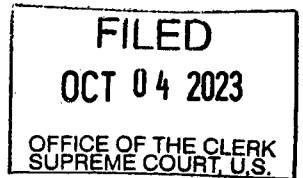
23-5775

ORIGINAL

No. \_\_\_\_\_

IN THE

SUPREME COURT OF THE UNITED STATES



\_\_\_\_\_  
SUVAD DARDAGAN

— PETITIONER

(Your Name)

vs.

\_\_\_\_\_  
KWAME Y. RAOUL

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

\_\_\_\_\_  
APPELLATE COURT OF ILLINOIS, THIRD JUDICIAL DISTRICT

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

PETITION FOR WRIT OF CERTIORARI

\_\_\_\_\_  
Suvad Dardagan

(Your Name)

Western Illinois Correctional Center

\_\_\_\_\_  
2500 Route 99 South

(Address)

\_\_\_\_\_  
Mt. Sterling, ILLINOIS 62353

(City, State, Zip Code)

\_\_\_\_\_  
N/A

(Phone Number)

## QUESTION PRESENTED

- I. The Fourth Amendment of the United States Constitution, apt of being jurisdictional in and of itself, requires Warrants issued upon probable cause, supported by oath or affirmation, naming the person or things to be seized. Petitioner has never been accused of a crime that would trigger the Fourth Amendment requirement for issuance of a warrant for his arrest, and no testimony was given under oath, providing the name of the petitioner, nor probable cause for his arrest.

Whether in the absence of a judicial determination of probable cause the executive branch of the state government lacks a legal authority to seek a charging instrument upon a nonexistent offense?

LIST OF PARTIES

PETITIONER:

Suvad Dardagan  
Western Illinois Correctional Center  
2500 Route 99 South  
Mt. Sterling, ILLINOIS 62353

RESPONDENT:

Kwame Y. Raoul  
Attorney General of Illinois  
100 West Randolph Street, 12th Floor  
Chicago, ILLINOIS 60601-3218

RESPONDENT:

Brittany Greene  
Warden  
Western Illinois Correctional Center  
2500 Route 99 South  
Mt. Sterling, ILLINOIS 62353

## LIST OF PARTIES

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

RUSSEL K. BENTON  
Assistant Attorney General  
100 West Randolph Street, 12th Floor  
Chicago, Illinois 60601-3218  
(773) 590-6954  
eserve.criminalappeals@ilag.gov

## RELATED CASES

- Dardagan v. Nicholson, 19 MR 1996, Circuit Court of Will County, Illinois. Judgment entered July 9, 2021.
- Dardagan v. Nicholson, 2022 IL App (3d) 210313-U, Appellate Court of Illinois, Third Judicial District. Judgment entered September 28, 2022.
- Dardagan v. Nicholson, No. 129383, Supreme Court of Illinois. Judgment entered May 24, 2023.

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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 D 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 Appellate Court of Illinois, Third District court appears at Appendix A 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).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was May 24, 2023.  
A copy of that decision appears at Appendix D.

☒ A timely petition for rehearing was thereafter denied on the following date:  
July 28, 2023, and a copy of the order denying rehearing  
appears at Appendix E.

☐ 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

Ill. Const. 1970, art. VI, §9:

App.I, p. 5

Circuit Courts shall have original jurisdiction of all justiciable matters except when the Supreme Court has original and exclusive jurisdiction relating to redistricting of the General Assembly and to the ability of the Governor to serve or resume office. Circuit Courts shall have such power to review administrative action as provided by law.

U.S.C.A. CONST. Am. IV:

App.I, p. 5

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.

U.S.C.A. CONST. Am. XIV:

App.I, p. 5

No State shall 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.

Ill. S. Ct., Rule 721(c)

App.I, p. 6

U.S.C.S. Fed. Rules Crim. Proc., Rule 3

App.I, p. 4-5

720 ILCS 5/1-3

App.I, p. 4

720 ILCS 5/1-5

App.I, p. 4

720 ILCS 5/1-6

App.I, p. 7

735 ILCS 5/2-615(b)

App.I, p. 6

735 ILCS 5/10-124

App.I, p. 6-7

### **Ill. Sup. Ct., R 315**

Illinois State Rules and Local Federal Rules Reflect Changes Received through August 23, 2023.

**IL - Illinois Local, State & Federal Court Rules   Illinois Supreme Court  
Rules   Article III. Civil Appeals Rules   Part B. Appeals from the Appellate Court  
to the Supreme Court**

Rule 315. Leave to Appeal from the Appellate Court to the Supreme Court.

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**(a) *Petition for Leave to Appeal; Grounds.*** Except as provided below for appeals from the Illinois Workers' Compensation Commission division of the Appellate Court, a petition for leave to appeal to the Supreme Court from the Appellate Court may be filed by any party, including the State, in any case not appealable from the Appellate Court as a matter of right. Whether such a petition will be granted is a matter of sound judicial discretion. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered: the general importance of the question presented; the existence of a conflict between the decision sought to be reviewed and a decision of the Supreme Court, or of another division of the Appellate Court; the need for the exercise of the Supreme Court's supervisory authority; and the final or interlocutory character of the judgment sought to be reviewed.

Document: 720 ILCS 5/1-3

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## 720 ILCS 5/1-3

Statutes current with legislation through Public Act 103-188 of the 2023 Regular Session of the 103rd General Assembly.

**Illinois Compiled Statutes Annotated Chapter 720 CRIMINAL OFFENSES (§§ 5/1-1 – 690/4.5) CRIMINAL CODE (§§ 5/1-1 – 5/49-6) Criminal Code of 2012 (Titles I – V) Title I. General Provisions (Arts. 1 – 3) Article 1. Title and Construction of Act; State Jurisdiction (§§ 5/1-1 – 5/1-8)**

### 720 ILCS 5/1-3 Applicability of common law

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No conduct constitutes an offense unless it is described as an offense in this Code or in another statute of this State. However, this provision does not affect the power of a court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order or civil judgment.

### History

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P.A. 79-1360.

▼ Annotations

Notes

Document: 720 ILCS 5/1-5

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**720 ILCS 5/1-5**

Statutes current with legislation through Public Act 103-188 of the 2023 Regular Session of the 103rd General Assembly.

**Illinois Compiled Statutes Annotated Chapter 720 CRIMINAL OFFENSES (§§ 5/1-1 – 690/4.5) CRIMINAL CODE (§§ 5/1-1 – 5/49-6) Criminal Code of 2012 (Titles I – V) Title I. General Provisions (Arts. 1 – 3) Article 1. Title and Construction of Act; State Jurisdiction (§§ 5/1-1 – 5/1-8)**

**720 ILCS 5/1-5 State criminal jurisdiction.**

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- (a)** A person is subject to prosecution in this State for an offense which he commits, while either within or outside the State, by his own conduct or that of another for which he is legally accountable, if:
- (1)** the offense is committed either wholly or partly within the State; or
  - (2)** the conduct outside the State constitutes an attempt to commit an offense within the State; or
  - (3)** the conduct outside the State constitutes a conspiracy to commit an offense within the State, and an act in furtherance of the conspiracy occurs in the State; or
  - (4)** the conduct within the State constitutes an attempt, solicitation or conspiracy to commit in another jurisdiction an offense under the laws of both this State and such other jurisdiction.
- (b)** An offense is committed partly within this State, if either the conduct which is an element of the offense, or the result which is such an element, occurs within the State. In a prosecution pursuant to paragraph (3) of subsection (a) of Section 9-1 [720 ILCS 5/9-1], the attempt or commission of a forcible felony other than second degree murder within this State is conduct which is an element of the offense for which a person is subject to prosecution in this State. In homicide, the "result" is either the physical contact which causes death, or the

Document: 720 ILCS 5/1-6

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**720 ILCS 5/1-6**

Statutes current with legislation through Public Act 103-188 of the 2023 Regular Session of the 103rd General Assembly.

**Illinois Compiled Statutes Annotated Chapter 720 CRIMINAL OFFENSES (§§ 5/1-1 – 690/4.5) CRIMINAL CODE (§§ 5/1-1 – 5/49-6) Criminal Code of 2012 (Titles I – V) Title I. General Provisions (Arts. 1 – 3) Article 1. Title and Construction of Act; State Jurisdiction (§§ 5/1-1 – 5/1-8)**

**720 ILCS 5/1-6 Place of trial.**

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**(a) Generally.**

Criminal actions shall be tried in the county where the offense was committed, except as otherwise provided by law. The State is not required to prove during trial that the alleged offense occurred in any particular county in this State. When a defendant contests the place of trial under this Section, all proceedings regarding this issue shall be conducted under Section 114-1 of the Code of Criminal Procedure of 1963 [725 ILCS 5/114-1]. All objections of improper place of trial are waived by a defendant unless made before trial.

**(b) Assailant and Victim in Different Counties.**

If a person committing an offense upon the person of another is located in one county and his victim is located in another county at the time of the commission of the offense, trial may be had in either of said counties.

**(c) Death and Cause of Death in Different Places or Undetermined.**

If cause of death is inflicted in one county and death ensues in another county, the offender may be tried in either county. If neither the county in which the cause of death was inflicted nor the county in which death ensued are known before trial, the offender may be tried in the county where the body was found.

Document: 735 ILCS 5/10-124

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**735 ILCS 5/10-124**

Statutes current with legislation through Public Act 103-188 of the 2023 Regular Session of the 103rd General Assembly.

**Illinois Compiled Statutes Annotated Chapter 735 CIVIL PROCEDURE (§§ 5/1-101 – 30) Code of Civil Procedure (Arts. I – XXII) Article X. Habeas Corpus (§§ 5/10-101 – 5/10-137)**

**735 ILCS 5/10-124 Causes for discharge when in custody on process of court**

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If it appears that the prisoner is in custody by virtue of process from any court legally constituted, he or she may be discharged only for one or more of the following causes:

1. Where the court has exceeded the limit of its jurisdiction, either as to the matter, place, sum or person.
2. Where, though the original imprisonment was lawful, nevertheless, by some act, omission or event which has subsequently taken place, the party has become entitled to be discharged.
3. Where the process is defective in some substantial form required by law.
4. Where the process, though in proper form, has been issued in a case or under circumstances where the law does not allow process to issue or orders to be entered for imprisonment or arrest.
5. Where, although in proper form, the process has been issued in a case or under circumstances unauthorized to issue or execute the same, or where the person having the custody of the prisoner under such process is not the person empowered by law to detain him or her.
6. Where the process appears to have been obtained by false pretense or bribery.
7. Where there is no general law, nor any judgment or order of a court to authorize the process if in a civil action, nor any conviction if in a criminal proceeding. No court, on the

return of a habeas corpus, shall, in any other matter, inquire into the legality or justice of a judgment of a court legally constituted.

## History

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P.A. 82-280.

### ▼ Annotations

#### Notes

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##### **Editor's Notes**

This section was Ill.Rev.Stat., Ch. 110, ¶ 10-124.

#### CASE NOTES

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##### **In General**

##### **Actual Restraint Necessary**

##### **Applicability**

##### **—In General**

##### **—Act or Event**

##### **—Clemency**

##### **—Extended Sentence**

##### **—Illustrative Cases**

##### **—Insanity**

##### **—Judgment and Detention**



## Document: USCS Fed Rules Crim Proc R 3

## USCS Fed Rules Crim Proc R 3

Current through changes received September 1, 2023.

**USCS Federal Rules Annotated    Federal Rules of Criminal Procedure    Title II.**  
**Preliminary Proceedings**

## Rule 3. The Complaint

The complaint is a written statement of the essential facts constituting the offense charged.  
 Except as provided in Rule 4.1, it must be made under oath before a magistrate judge or, if none is reasonably available, before a state or local judicial officer.

## History

As amended April 24, 1972, eff. Oct. 1, 1972; April 22, 1993, eff. Dec. 1, 1993; April 29, 2002, eff. Dec. 1, 2002; April 26, 2011, eff. Dec. 1, 2011.

## ▼ Annotations

## Notes

**HISTORY; ANCILLARY LAWS AND DIRECTIVES****Other provisions:**

**Notes of Advisory Committee.** The rule generally states existing law and practice, 18 U.S.C. [former] § 591 [see § 3041] (Arrest and removal for trial); *United States v Simon* (D.C.Pa. 1916) 248 F. 980; *United States v Maresca* (D.C.N.Y. 1920) 266 F. 713. It eliminates, however, the requirement of conformity to State law as to the form and sufficiency of the complaint. See, also, Rule 57(b).

**Notes of Advisory Committee on 1972 amendments.** The amendment deletes the reference to "commissioner or other officer empowered to commit persons charged with offenses against the United States" and substitutes therefor "magistrate."

The change is editorial in nature to conform the language of the rule to the recently enacted Federal Magistrates Act. The term "magistrate" is defined in rule 54.

The Rule is amended to conform to the Judicial Improvements Act of 1990 [ P.L. 101-650, Title III, Section 321] which provides that each United States magistrate appointed under section 631 of title 28, United States Code, shall be known as a United States magistrate judge.

**Notes of Advisory Committee on 2002 amendments.** The language of Rule 3 is amended as part of the general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic and no substantive change is intended, except as described below.

The amendment makes one change in practice. Currently, Rule 3 requires the complaint to be sworn before a "magistrate judge," which under current Rule 54 could include a state or local judicial officer. Revised Rule 1 no longer includes state and local officers in the definition of magistrate judges for the purposes of these rules. Instead, the definition includes only United States magistrate judges. Rule 3 requires that the complaint be made before a United States magistrate judge or before a state or local officer. The revised rule does, however, make a change to reflect prevailing practice and the outcome desired by the Committee — that the procedure take place before a federal judicial officer if one is reasonably available. As noted in Rule 1(c), where the rules, such as Rule 3, authorize a magistrate judge to act, any other federal judge may act.

**Notes of Advisory Committee on 2011 amendments.** Under the amended rule, the complaint and supporting material may be submitted by telephone or reliable electronic means; however, the rule requires that the judicial officer administer the oath or affirmation in person or by telephone. The Committee concluded that the benefits of making it easier to obtain judicial oversight of the arrest decision and the increasing reliability and accessibility to electronic communication warranted amendment of the rule. The amendment makes clear that the submission of a complaint to a judicial officer need not be done in person and may instead be made by telephone or other reliable electronic means. The successful experiences with electronic applications under Rule 41, which permits electronic applications for search warrants, support a comparable process for arrests. The provisions in Rule 41 have been transferred to new Rule 4.1, which governs applications by telephone or other electronic means under Rules 3, 4, 9, and 41.

## NOTES TO DECISIONS

## I. IN GENERAL

## 1. Generally

## 2. Function of complaint

## Document: USCS Fed Rules Crim Proc R 4

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### USCS Fed Rules Crim Proc R 4

Current through changes received September 1, 2023.

#### USCS Federal Rules Annotated Federal Rules of Criminal Procedure Title II. Preliminary Proceedings

#### Rule 4. Arrest Warrant or Summons on a Complaint

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**(a) Issuance.** If the complaint or one or more affidavits filed with the complaint establish probable cause to believe that an offense has been committed and that the defendant committed it, the judge must issue an arrest warrant to an officer authorized to execute it. At the request of an attorney for the government, the judge must issue a summons, instead of a warrant, to a person authorized to serve it. A judge may issue more than one warrant or summons on the same complaint. If an individual defendant fails to appear in response to a summons, a judge may, and upon request of an attorney for the government must, issue a warrant. If an organizational defendant fails to appear in response to a summons, a judge may take any action authorized by United States law.

**(b) Form.**

**(1) Warrant.** A warrant must:

- (A)** contain the defendant's name or, if it is unknown, a name or description by which the defendant can be identified with reasonable certainty;
  - (B)** describe the offense charged in the complaint;
  - (C)** command that the defendant be arrested and brought without unnecessary delay before a magistrate judge or, if none is reasonably available, before a state or local judicial officer; and
  - (D)** be signed by a judge.
- (2) Summons.** A summons must be in the same form as a warrant except that it must require the defendant to appear before a magistrate judge at a stated time and place.

**(c) Execution or Service, and Return.**

- (1) By whom.** Only a marshal or other authorized officer may execute a warrant. Any person authorized to serve a summons in a federal civil action may serve a summons.
- (2) Location.** A warrant may be executed, or a summons served, within the jurisdiction of the United States or anywhere else a federal statute authorizes an arrest. A summons to an organization under Rule 4(c)(3)(D) may also be served at a place not within a judicial district of the United States.
- (3) Manner.**
  - (A)** A warrant is executed by arresting the defendant. Upon arrest, an officer possessing the original or a duplicate original warrant must show it to the defendant. If the officer does not possess the warrant, the officer must inform the defendant of the warrant's existence and of the offense charged and, at the defendant's request, must show the original or a duplicate original warrant to the defendant as soon as possible.
  - (B)** A summons is served on an individual defendant:
    - (i)** by delivering a copy to the defendant personally; or
    - (ii)** by leaving a copy at the defendant's residence or usual place of abode with a person of suitable age and discretion residing at that location and by mailing a copy to the defendant's last known address.
  - (C)** A summons is served on an organization in a judicial district of the United States by delivering a copy to an officer, to a managing or general agent, or to another agent appointed or legally authorized to receive service of process. If the agent is one authorized by statute and the statute so requires, a copy must also be mailed to the organization.
  - (D)** A summons is served on an organization not within a judicial district of the United States:
    - (i)** by delivering a copy, in a manner authorized by the foreign jurisdiction's law, to an officer, to a managing or general agent, or to an agent appointed or legally authorized to receive service of process; or
    - (ii)** by any other means that gives notice, including one that is:
      - (a)** stipulated by the parties;
      - (b)** undertaken by a foreign authority in response to a letter rogatory, a letter of request, or a request submitted under an applicable international agreement; or
      - (c)** permitted by an applicable international agreement.
  - (4) Return.**
    - (A)** After executing a warrant, the officer must return it to the judge before whom the defendant is brought in accordance with Rule 5. The officer may do so by reliable electronic means. At the request of an attorney for the government, an unexecuted warrant must be

## STATEMENT OF THE CASE

The Illinois Attorney General conceded the fact that the petitioner, Suvad Dardagan, has never been accused of nor arrested for the charges alleged in the charging document, returned by the grand jury on July 13, 1999. (See APPENDIX ("App.") H)

The filing of the instant State Habeas Corpus Petition was solely based on an affidavit from the Cook County State's Attorney's Office (CCSAO), attached to the complaint as EXHIBIT ("Ex.") B, ¶ 7), addressing the court: "[T]here was no complaint or arrest report submitted to the court on June 18, 1999, as the court hearing on that date was Mr. Dardagan's bond hearing." (App.F; Ex. B, ¶ 7)

On July 3, 2019, petitioner filed the complaint in the circuit court, Dardagan v. Nicholson, 19 MR 1996 (2019) (Will County, Illinois), attacking the venue of the circuit court of Cook County. (App.F, ¶¶ 3-6)

On May 4, 2020, the Illinois Attorney General, Kwame Raoul, through and by his assistant, Russell Benton, filed a motion to dismiss addressing the court: "[P]laintiff was convicted in the circuit court of Cook County on four counts of predatory criminal sexual assault, and ultimately sentenced to an aggregated prison term of 90 years." (App.G, p.1) "[P]laintiff's allegation that there was no complaint filed against him is untrue. The affidavit in his complaint noted that the appropriate charging documents were filed against him on July

13, 1999. See Compl. Exh. B, ¶ 6." (App.G, p. 4)

"[P]laintiff's complaint alleges events that occurred prior to his conviction, namely that the CCSAO failed to properly indict him." (App.G, p. 5)

On February 9, 2021, petitioner filed a "LEGAL ARGUMENT" in support of the instant complaint, and attached thereto the record from June 18, 1999, court proceeding as Ex.C, (App.H, C) and a copy of of two criminal complaints and an arrest report, (App.H, Ex. D) both appear to be filed on June 18, 1999. (See also App.H, pp. 11-12)

After reviewing the record from June 18, 1999, court proceeding, (App.H, Ex. C) and after a thorough examination of the documents, which appear to be filed on June 18, 1999, (App.H, Ex. D) the trial court rendered a judgment to dismiss instant State Habeas Corpus Petition, with prejudice. (App.C)

On appeal, the same record from June 18, 1999, (App.H, Ex. C) and documents, which appear to be filed on June 18, 1999, (App.H, Ex. D) were presented before the Appellate Court of Illinois, Third District, the Court concluded that: "[T]he undisputed facts of record and settled legal authorities indicate Dardagan's arguments are fabricated." Dardagan v. Nicholson, 2022 IL App (3d) 210313, ¶ 16. (App.A, p. 8) Judgment AFFIRMED.

On October 18, 2022, a Motion for Rehearing was filed, (App.K) and on November 7, 2022, Motion for

Rehearing was denied. (App.B)

On February 21, 2023, the petitioner filed a Petition for Leave to Appeal (PLA), seeking a discretionary review by the supreme court. (App.L) On March 20, 2023, the petitioner filed a Supplemental Petition for Leave to Appeal. (App.M) Petition for Leave to Appeal was denied on May 24, 2023, (App.D)

On June 28, 2023, the petitioner filed a Motion for Rehearing. (App.N) On July 28, 2023, the Motion for Rehearing was denied. (App.E)

#### CONTACT INFORMATION

The final decision was made by the state court of last resort on July 28, 2023. The petitioner is given 90 days to file a Petition for Writ of Certiorary. The petitioner's access to law library is limited to minimum, giving him a small window of opportunity to timely file instant petition before the United States Supreme Court, having not enough time to contact an attorney to represent him.

The list of the broadcasting news and media and of the potential attorney who is willing to represent petitioner in this matter, is attached hereto as APPENDIX X. (App.X)

## REASONS FOR GRANTING THE PETITION

Petitioner, Suvad Dardagan, sought a discretionary review in the Illinois Supreme Court pursuant to Ill. S. Ct., Rule 315. Leave to Appeal from the Appellate Court to the Supreme Court, the decision entered in Dardagan v. Nicholson, 2022 IL App (3d) 210313-U, in the existence of conflict between decision sought to be reviewed and the Supreme Court decision in People v. Gilmore, 63 Ill.2d 23, 26-27 (1976).

Whether this case qualifies for a discretionary review in the United States Supreme Court pursuant to Supreme Court Rule 10. Considerations Governing Review on Certiorary, depends on whether: "(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals." U.S. S. Ct., Rule 10(b) (Eff. Jan. 1, 2023).

This case qualifies for a discretionary review based on jurisdictional grounds: no state or federal government sought a warrant for the petitioner's arrest, and there is no record that he was arrested without a warrant. "In the absence of appearance or acquiescence by the State, a judgment entered by a court having no jurisdiction over either the cause or the party is absolutely void." United States v. Bell (1896), 163 U S 662, 669. (App.L, p. 9)

The jurisdiction, once challenged, is to be proven, not by the court, but by the party attempting to assert jurisdiction. Maxfield v Levy, 4 U.

S. 330 (1797). The burden of proof of jurisdiction lies with the asserter. The court is only to rule on the sufficiency of the proof tendered. McNutt v. General Motors Acceptance Corp., 298 U.S. 178 (1936). (App.M, p. 3)

Petitioner claims that "The State's Attorney of Cook County never filed a criminal complaint in the circuit court of Cook County to commence a criminal action against petitioner Suvad Dardagan, pursuant to Gerstein v. Pugh, 420 U S 103 (1975)." (App.F, ¶5) The Attorney General responded that "The CCSAO affirmed in an affidavit that it had sent plaintiff a copy of the 'arrest report' and the 'charging documents' from July 13, 1999, but that July (error- June) 18, 1999, was the date of plaintiff's bond hearing and no charging document was filed on that date. (App.G, p. 2) The affidavit referenced in his complaint noted that the appropriate charging documents were filed against him on July 13, 1999. (App.G, p. 4)

Petitioner filed a "LEGAL ARGUMENT" (App.H) in support of the complaint, providing the court with the record from June 18, 1999, (App.H, Exh.C), and a copy of two criminal complaints, as well a copy of an arrest report, which appear to be filed on June 18, 1999. (App.H, Exh.D; also, compare Exh.C to Exh.D) A conviction obtained through the use of false evidence, known to the officers of the court and representatives of the State to be such, must fail. Napue v. Illinois, 330 U.S. 264, 269 (1959). (App.H, p. 14)

After a thorough examination of the record from

June 18, 1999, (App.H, Exh.C), and after reviewing two criminal complaints and an arrest report, which appear to be filed on June 18, 1999, (App.H, Exh.D), and after a careful consideration of the complaint and the answer to the complaint, the appellate court concluded that: "Here, the Attorney General is correct that the record and Dardagan's own exhibits indicate his arguments on appeal are entirely without merit. For example, the affidavit from the Cook County State's Attorney plainly demonstrate that Dardagan was provided the arrest report and charging documents from July 13, 1999." Dardagan, 2022 IL App (3d) 210313, ¶ 16.

The appellate court further held that "an order of habeas corpus will be entered only if (1) the prisoner was incarcerated under a judgment of a court that lacked subject matter or personal jurisdiction, or (2) an occurrence after the prisoner's conviction entitles him or her to a release from prison. Beacham v. Walker, 231 Ill.2d 57-58 (2008). Here, personal jurisdiction was acquired by the circuit court of Cook County when Dardagan, undisputedly, appeared on charges of four counts of predatory criminal sexual assault under section 12-14.1(a)(1) of the Criminal Code of 1961. Subject matter jurisdiction was also acquired since the charges of predatory criminal sexual assault under section 12-14.1(a)(1) of the Criminal Code of 1961 were 'justiciable matter[s].' As such, Dardagan was not incarcerated under a judgment of a court that lacked jurisdiction. See Beacham, 231 Ill.2d at 58." Dardagan, 2022 IL App (3d) 210313, ¶¶ 13-14.



On appeal, petitioner addressed the appellate court: "If the counsel had initiated an action in the circuit court, he was required to produce:

1. the identity of the prosecuting authority, authorized by the Supreme Court Rule 721(c)-Practice of Law, to commence and prosecute a criminal charge in the circuit court;
2. the identity of the complainant, as a fundamental prerequisite to accuse a person of the commission of a criminal offense;
3. the identity of an arresting officer, as a fundamental prerequisite to establish the name of the person arrested; the date; place, and county of the arrest; and most importantly:
4. to preserve the record of the violation of the Criminal Code of 1961." (App.I, pp. 11-12)

The Fourth Amendment of the United States Constitution provides:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation describing the place to be searched, and the persons or things to be seized." U.S.C.A. CONST. Am. IV; Giordenello v. United States, 241 F.2d 575, 580 (1957). (App.I, p. 21; see also App.L, p. 6)

"For a warrant to be issued upon a complaint probable cause must appear from the complaint, and, of course, probable cause is inherent in an indictment or information. \*\*\* The commission of a crime must be shown by the facts positively stated before a commissioner has jurisdiction to issue a warrant of arrest. \*\*\* A United States Commissioner acts in a judicial capacity and should issue a warrant only upon competent evidence. The facts and not the complainant's conclusion from the facts, should have been before the commissioner. Worthington v. United States, 6 Cir., 166 F.2d 557, 565. What was said by the First Circuit in Giles v. United States, 1st Cir., 248 F. 208, 214, is true here:

"In this case, as no facts were put before the commissioner, he was ousted from his judicial function, and remitted to a performance purely perfunctory. The prohibition agent was an applicant, affiant, in effect the judge of the existence of probable cause, and the officer serving the writ. This is a very dangerous amalgamation of powers." Giordenello, 241 F.2d at 581.

"United States Commissioners are inferior officers. Go-Bart Importing Co. v. United States, 282 U.S. 344, 352, S.Ct. 153, 156, 75 L.Ed. 374. They have such authority only as is conferred upon them by valid statute or rule. Their authority to issue warrants of arrest is that prescribed by rules 3 and 4(a), F.R. Crim. Proc.:

'Rule 3. The Complaint

The complaint is a written statement of the essential facts constituting the offense charged. It

shall be made upon oath before a commissioner or other officer empowered to commit persons charged with offenses against the United States.' (Emphasis supplied.)

'Rule 4. Warrant or Summons upon Complaint

(a) Issuance. If it appears from the complaint that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall issue to any officer authorized by law to execute it.' (Emphasis supplied.)

Thus, 'probable cause' must appear 'from the complaint' itself, and the 'essential facts' must be stated in the complaint. In the safeguarding of such fundamental rights, the rules wisely leave nothing to speculation nor to oral testimony as to what was before the commissioner." Giordenello, 241 F.2d at 582.

In People v. Curtis, 132 Ill.App.3d 241 (Ill.App. 1st Dist. 1985); (App.K, p. 7; App.L, p. 6-7; and in App.M, p. 2), the Court held:

"When an arrest warrant is sought in a felony case, a felony complaint is presented by an assistant State's Attorney to a judge in the circuit court. In addition to naming the State as a plaintiff, the felony complaint names the accused as a defendant and charges that he has committed a specified felony offense. The judge must examine under oath the complainant and any witnesses presented by the assistant State's Attorney. If it appears to the judge, from his examination of the complaint and the testimony of the witnesses, that there is probable cause to believe that the accused committed the offense, the judge shall issue the warrant." People v. Curtis, 132 Ill.App.3d 241 (Ill.App. 1st Dist. 1985).

complainant and the witnesses presented by the assistant State's Attorney and the contents of the complaint, that the person charged committed the offense, the judge will approve the filing of the complaint naming the person charged as the defendant, and the judge will issue a warrant for the defendant's arrest." Id. at 246-47.

In People v. Macon, 920 N.E.2d 1224 (Ill.App.1st Dist. 2009); (App.K, p. 7; and App.L, pp. 10-11) the Court described the difference between an adversarial proceeding for a judicial determination of probable cause ["June 18, 1999"], and commencement of a criminal prosecution upon a charging instrument ["July 13, 1999"]. Macon, 920 N E 2d at 1227; "A complaint could only be an initiation of adversarial proceedings affording a right to counsel if the complaints were filed by the State's Attorney. The courts were evaluating the actions of the State by looking at what documents had been filed rather than looking at what was occurring at the certain stages in the prosecutorial process that would require the accused be represented by an attorney. The right to counsel is a protection that has most recently been revisited by the United States Supreme Court in Rothgery v. Gillespie County, 554 U.S. 191 (2008). Rothgery holds that the right to counsel is triggered by the initiation of adversarial proceedings. Rothgery, 554 U.S. at 202-03; (the right to counsel applies at preindictment preliminary hearing at which 'the sole purposes ... are to determine whether there is sufficient evidence against

the accused to warrant presenting his case to the grand jury, and, if so, to fix bail if the offense is bailable.') Rothgery, 554 U.S. at 203." Macon, 920 N.E.2d at 1227-28. However, what commences prosecution in tolling the statute of limitations is not analogous to what initiates adversarial proceedings for right to counsel purposes. The tolling of the statute of limitations occurs when the State commences prosecution, and the attachment of right to counsel occurs when the State initiates adversarial proceedings. Although both of these occasions occur at the earlier stage of criminal proceedings and they appear as though they may be the same, they are not. Macon, 920 N.E.2d at 1228.

The appellate court held "Section 10-124 of the Code provides that a prisoner may be released on a ground when the circuit court lacks subject matter or personal jurisdiction." Dardagan, 2022 IL App (3d) 210313, ¶13.

This holding overrules Gilmore, 63 Ill 2d at 26-27; is in conflict with People v. Hughes, 2012 IL 112817, 983 N.E.2d 439 (IL 2013); and contradicts subsection (3) of section 10-124 of the Code of Civil Procedure; 735 ILCS 5/10-124(3) (West 2020).

In Illinois, the supreme court established that two types of jurisdiction apply to criminal cases: (1) State criminal jurisdiction, which is strictly statutory; Gilmore, 63 Ill.2d at 26-27, 29; and (2) subject matter jurisdiction, which is strictly

constitutional. Hughes, 2012 IL 112817, ¶¶20-21.

According to Gilmore, the State criminal jurisdiction has no existence aside a judicial finding of probable cause; see Giordenello, 241 F.2d 581-82 (F.R. Crim. Proc., Rule 3); Curtis, 132 Ill.App.3d at 246-47; Macon, 920 N.E.2d at 1227 (citing Rothgery, 554 U.S. at 202-03).

Gilmore was presented in the circuit court App. H, p. 5; before the appellate court App.I, p. 22 and App.K, p. 10; and before the supreme court in App.L, p. 7; App.M, p. 2 and App.N, p. 2.

In Gilmore, the Court held: "The circuit courts have jurisdiction in all cases involving offenses which fall within the ambit of section 1-5 of the Criminal Code." Gilmore, 63 Ill.2d at 26. Further, the Court described that three components of probable cause must appear on the face of a complaint before any proceedings are instituted in a circuit court: (1) a violation of the Criminal Code under the scope of section 1-3; 720 ILCS 5/1-3; Gilmore, 63 Ill.2d at 27; (2) the name of the person subject to prosecution in this State for a violation of the Criminal Code under the scope of section 1-5; 720 ILCS 5/1-5; Gilmore, 63 Ill.2d at 26; and (3) the name of the circuit court of the county in which a violation of the Criminal Code occurred under the scope of section 1-6. 720 ILCS 5/1-6, (West 2020).

As to the first component, or jurisdiction over a criminal offense, the Court held that "An examination of the statutory scheme shows clearly that failure to charge an offense does not serve to deprive the circuit court of jurisdiction. On the

contrary, the relevant statutes draw a clear distinction between the absence of jurisdiction and the failure to state an offense. Section 1-3 of the Criminal Code provides: 'No conduct constitutes an offense unless it is described as an offense in this Code, or in another statute of this State.' 720 ILCS 5/1-3." Gilmore, 63 Ill.2d at 27.

As to the second component, or jurisdiction over a person accused of a crime, the Court reflected on the statutory provisions under section 1-5 of the Criminal Code, which provides:

"§ 1-5. State Criminal Jurisdiction

(a) A person is subject to prosecution in this State for an offense which he commits, while either within or outside the State, by his own conduct or that of another for which he is legally accountable, if:

(1) The offense is committed either wholly or partly within the State." Gilmore, 63 Ill.2d at 26.

In criminal cases, an analysis of personal jurisdiction has two components: first, "whether an applicable state rule or statute confers personal jurisdiction over the defendant; and second, whether assertion of such jurisdiction accords with the constitutional principles of due process." Data Disc, Inc. v. System Technology Associates, Inc., 557 F.2d 1280, 1286 (1977); in reference to App.H, p. 9 (in the circuit court); App.I, p. 28 (in the appellate court); and in App.M, p. 5 (before the supreme court).

As to the first inquiry, the applicable statute

in the State of Illinois are sections 5/1-3; 5/1-5 and 5/1-6 of the Criminal Code. Gilmore, 63 Ill.2d at 26-27; accord to Curtis, 132 Ill.App.3d at 246-47; see also F.R. Crim. Proc., Rules 3 and 4(a); in Giordenello, 241 F.2d at 581-82.

As to the second inquiry, the exercise of personal jurisdiction must meet due process standards. National Union Fire Ins. of Pittsburgh v. Aerohawk Aviation, Inc., 259 F.Supp.2d 1096, 1103 (under due process of the Fourteenth Amendment, the accused has right to a judicial determination of probable cause before any proceedings are instituted against him. U.S.C.A. CONST. Am. XIV: Id.); see App.H, pp. 8-9 (circuit court); App.I, p. 28 (appellate court) and App.M, p. 5 (supreme court).

According to Curtis, the State surrenders to the personal jurisdiction by filing of a felony complaint, naming the State as a "plaintiff". Curtis, 132 Ill.App.3d at 246.

In Illinois, a State's Attorney, as the representative of the People of the State of Illinois, has a duty to "commence and prosecute all actions, suits, indictments and prosecutions, civil and criminal, in the circuit court of his county in which the people of the State may be concerned." People v. Pankey, 94 Ill.2d 12, 16 (1983).

In this case, the appellate court concluded that the supreme court's decision in Beacham v Walker, 231 Ill.2d 51 (2008), applies as a standard of review of dismissal of the complaint. Dardagan, 2022 IL App (3d) 210313, ¶ 12.



In Beacham's case, the facts and allegations of criminal offenses presented before the court, were procedurally the opposite to this instant case. In this case, there is no record that the State sought a warrant for the petitioner's arrest. Rather, the record reflects no name of an arresting officer or his or her testimony under oath before a judge for judicial determination of probable cause required by Gilmore. See App.H, Exh.C and Exh.D; compare to Gilmore, 63 Ill.2d at 26-27; and Macon, 920 N.E.2d 1227-28; see also Curtis, 132 Ill.App.3d at 246-47; and Giordenello, 241 F.2d at 581-82.

In People v. Beacham, 189 Ill.App.3d 483, 485 (Ill.App. 1st Dist. 1987), the record reveals that on May 11, 1986, at a Mother's Day party at Huskies' Lounge in Chicago, County of Cook, Beacham shot and killed Will James and shot and crippled Frank James. Beacham, 189 Ill.App.3d at 485. The State filed a felony complaint in the Cook County circuit court, and sought an arrest warrant, naming the State as a Plaintiff, and naming Reginal Beacham as a defendant. Following arrest, Beacham appeared before a committing judge at a bond hearing. Id. According to Gilmore, all three components of probable cause naturally came into existence at the time criminal offenses were committed: (1) murder and attempted murder were violations of the Criminal Code under the scope of section 1-3; 720 ILCS 5/1-3; Gilmore, 63 Ill.2d at 27; (2) Reginald Beacham was named as a person subject to prosecution for violations of the Criminal Code under the scope of section 1-5 of the Criminal Code; 720 ILCS 5/1-5; Gilmore, 63 Ill. 2d at 27. The State's complaint in this case, filed on May 18, 1986, in Cook



only when a court either exceeds its jurisdiction or has simply not acquired jurisdiction." Hughes, 2012 IL 112817, ¶ 84. (App.H, pp. 6-7; App.I, p. 26; App.K, pp. 12-13; and App.L, p. 2)

After the decision on direct appeal, Beacham filed numerous applications in state and federal courts. After convictions and sentences for murder and attempted murder were affirmed, state habeas corpus petitions were denied, and federal habeas corpus petition was dismissed, Beacham filed complaint for state habeas corpus, asserting that consecutive sentence for attempted murder was void and that he was entitled to immediate release. Beacham, 231 Ill.2d at 51. The circuit court dismissed complaint on pleadings, and petitioner appealed. Beacham, 231 Ill.2d at 51. The appellate court reversed and remanded. Beacham, 231 Ill.2d at 51. The supreme court reversed the judgment of the appellate court, and affirmed the judgment of the circuit court. Beacham, 231 Ill.2d at 51. The Court held:

"[W]e are called upon to review the circuit court's ruling on section 2-615 motion to dismiss. A Section 2-615 motion to dismiss challenges the legal sufficiency of a complaint based on defects apparent on its face. [Beacham, 231 Ill.2d at 57]. We review de novo an order granting or denying a section 2-615 motion, accepting as true all wellpleaded facts and all reasonable inferences that may be drawn from those facts. [Beacham, 231 Ill.2d at 58]. Habeas corpus provides relief only

on the grounds specified in section 10-124 of the Code of Civil Procedure; 735 ILCS 5/10-124 (West 1996). It is well established that an order of habeas corpus is available only to obtain the release of a prisoner who has been incarcerated under a judgment of a court that lacked jurisdiction of subject matter or the person of the petitioner, or where there has been some occurrence subsequent to the prisoner's conviction that entitles him to release. [Beacham, 231 Ill.2d at 58]."Dardagan, 2022 IL App (3d) 210313, ¶ 12.

This holding is in conflict with Hughes.

According to Hughes, in criminal cases, subject matter jurisdiction is nonjurisdictional in nature and rather renders a judgment of a circuit court voidable not void for lack of jurisdiction. Hughes, 2012 IL 112817, ¶ 29. In Beacham, the supreme court reversed the decision of the appellate court and affirmed the judgment of the circuit court in view of the record of probable cause hearing in accord to Gilmore, 63 Ill.2d at 26-27.

Gilmore was reaffirmed in People v. Benitez, 169 Ill.2d 245 (1990). (See App L, pp. 14-15) The Court noted that the defendant was never properly charged with an offense on basis of lack of subject matter jurisdiction. The initial indictment failed to name him and the second indictment was not valid because the State failed to follow accepted methods for amending the indictment. Benitez, 169 Ill.2d at 255.

The Court held: "[W]e disagree that this issue may be resolved on jurisdictional grounds. Defendant fails to acknowledge the principle of Illinois jurisprudence, in effect since this court's decision in People v. Gilmore (1976), 63 Ill.2d 23, 26, that jurisdiction is not conferred by an information or indictment, but rather by constitutional provisions. Accordingly, a charging instrument which fails to charge an offense does not deprive the circuit court of jurisdiction. (Gilmore, 63 Ill.2d at 27.) The holding in Gilmore has often been reaffirmed by this court. See, e.g., In re M. M. (1993), 156 Ill.2d 53, 74 (reaffirmation of Gilmore); People v. Pankey, 94 Ill.2d 12, 17, 26-27 (a three justice plurality reaffirms Gilmore). We reaffirm Gilmore today. Therefore, the invalid indictment in this case did not deprive the circuit court of jurisdiction." Benitez, 169 Ill.2d at 255-56. (App.L, p. 14)

In Beacham, the Court described that rather the lack of subject matter jurisdiction does not form a ground for release from custody, through section 10-124 of the Code of Civil Procedure. Section 10-124 reads in a pertinent part as follows:

"If it appears that the prisoner is in custody by virtue of process from any court LEGALLY CONSTITUTED, he or she may be discharged only for one or more of the following causes:

1. Where the court has exceeded the limit of its

jurisdiction, either as to the matter, place, sum or person. (In reference to Hughes, 2012 IL 112817 at ¶ 84) and

3. Where the process is defective in some substantial form required by law. (In reference to Gilmore, 63 Ill 2d at 26-27; also Curtis, 132 Ill.App.3d at 246-47; see also F.R. Crim. Proc., Rules 3 and 4(a); Giordenello, 241 F. 2d at 581-82)

According to the supreme court, the opinion in Hughes reflects that a lack of the circuit court's subject matter or personal jurisdiction is not cognizable by section 10-124 of the Code. In Hughes, Justice Freeman dissenting, delivered the opinion:

"Today's decision upholds a conviction upon a plea for which no criminal charge was actually before the trial court. Hughes, 2012 IL 112817, ¶ 74. \*\*\* As such, the court holds that defendant's conviction is merely voidable, not void. Hughes, 2012 IL 112817, ¶ 81. \*\*\* This holding finds no support in Illinois law. In Illinois, jurisdiction is conferred by the Constitution. Pursuant to article VI, section 9, of our constitution, the circuit court has jurisdiction over all 'justiciable matters.' This means that there must be a justiciable matter in existence before subject matter jurisdiction attaches. In Illinois, it is the State's Attorney, as representative of the People of the State of Illinois, who is empowered to commence and prose-

cute criminal cases in which the People of the State may be concerned. People v. Pankey, 94 Ill.2d 12, 16, 445 N.E.2d 284, 67 Ill.Dec. 804 (1983). The decision whether to initiate any criminal prosecution at all as well as to choose which of several charges shall be brought are the functions within the exclusive discretion of the State's Attorney. *Id.* As such, a justiciable matter is created when the State levels charges against a criminal defendant and files them in the circuit court. (Hughes, 2012 IL 112817, ¶ 82.) \*\*\* More troubling than this; however, is the fact that today's opinion gives our circuit courts the power to enter judgment and impose a prison sentence on a criminal charge that does not exist. This is an extraordinary result." (Emphasis added.) Hughes, 2012 IL 112817, ¶ 87.

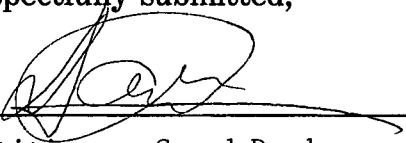
In this case, the petitioner provided the trial court with the record that exists in regard to the State criminal jurisdiction, June 18, 1999. (App. H, Exh.C) The record undisputedly reveals that the State never created a justiciable matter to invoke subject matter jurisdiction of the circuit court. No witness was called to testify on June 18th, and no person was qualified to appear before the grand jury, and testify in regard to the charges against petitioner.

No court can create a jurisdiction where none existed. Petitioner was prosecuted and convicted by an illegally constituted court having no prosecutor nor an accuser nor the record of his arrest.

### **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

  
\_\_\_\_\_  
Petitioner, Suvad Dardagan.

Date: October 2, 2023