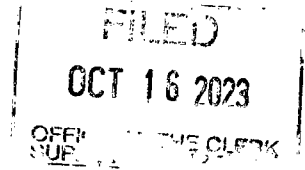


23-5885 ORIGINAL
NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

DONALD LEE KISSNER,
Petitioner,



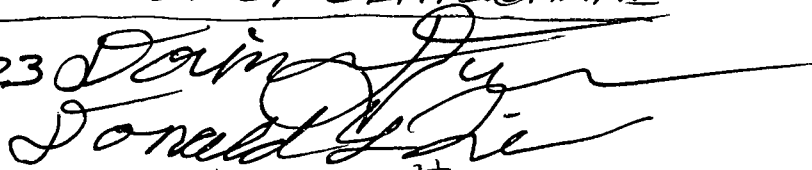
Vs.

HEIDI E. WASHINGTON, et al,
Respondents

On Petition for writ of certiorari to the
United States Court of Appeals for the Sixth
Circuit

PETITION FOR WRIT OF CERTIORARI

October 16, 2023


Donald L. Kissner #383562

Petitioner In Pro Se

Macomb Court/Fac

34625 26-Mile Rd

Lenox Twp. MI 48048

All Parties

Heidi E. Washington, Director MDOC

Brian Shipman, Chairman Mich. Parole Bd.

Greg Straub, Acting Administrator Mich. Parole Bd.

Jessica L. Kunitz, Parole Agent.

D. Casillas, Records office supervisor.

M. Walczak, warden.

P. Schreiber, Deputy warden.

D. Dunigan, Assist Deputy warden.

J. Houck, classification Director.

K. Wakefield, Food service Director.

S. Clark, Food service Director.

FNU Hulbert, Food service worker.

FNU Parson, Food service worker.

FNU Clark, correction officer.

Defendants.

QUESTIONS PRESENTED

- I. DID THE SIXTH CIRCUIT UNITED STATES COURT OF APPEALS ABUSE ITS DISCRETION WHEN IT CLAIMED MR. KISSNER'S APPEAL WAS FRIVOLOUS?
- II. DID THE WESTERN DISTRICT OF MICHIGAN COURT ABUSE ITS DISCRETION WHEN IT RESCREENED THE ALREADY SCREENED BY THE EASTERN DISTRICT COURT AND THEN DISMISSED AS FRIVOLOUS?
- III. WAS MR. KISSNER DENIED HIS DUE PROCESS OF LAW RIGHTS TO A PRELIMINARY PAROLE REVOCATION HEARING ~~WITHIN~~ TEN (10) DAYS PURSUANT TO MICH. COMP. L 791.239a(1)?
- IV. WAS MR. KISSNER DENIED HIS DUE PROCESS OF LAW RIGHTS TO A PAROLE REVOCATION -- FACT FINDING HEARING WITHIN FOURTY-FIVE (45) DAYS OF NOTICE OF VIOLATION OF PAROLE PURSUANT TO MICH. COMP. L 791.240a(3)?

- V. IS THE WESTERN DISTRICT OF MICHIGAN COURT CORRECT THE THE PETITIONER PROVIDED GREATER PROTECTION THEN PAROLE REVOCATION WHEN MR. KISSNER DID NOT VOLUNTARILY, KNOWINGLY, AND INTELLIGENTLY PLEA GUILTY TO NEW CHARGES WHICH WOULD THEN WAIVE HIS PAROLE REVOCATION RIGHTS?
- VI. COULD MR. KISSNER KNOWINGLY AND INTELLIGENTLY PLEA GUILTY IN THE UNDERLYING NEW CASE WHEN HE DID NOT KNOW THE COLLATERAL CONSEQUENCES OF RELINQUISHING HIS PAROLE REVOCATION RIGHTS?

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- I. Mr. Kissner signed a Parole violation notice and revocation hearing forms, Mr. Kissner however did not have have his preliminary hearing or his fact finding hearing pursuant to Mich. comp. L 791.239a (1); 791.240a(3)
- II. Did the Eastern District Court, District Judge Laurie J. Michelson conduct a Pre-Screen of Mr. Kissner's complaint properly Dismiss the only Defendant for failing to State a claim against Jessica Kunitz parole agent - Defendant

III. Did the Western District Magistrate Judge Sally J. Berens Abuse her Discretion when she Re-screened Mr. Kissner's complaint and then Dismissed the whole Complaint for failure to state a claim

IV. Did the Sixth Circuit United States Court of Appeals Abuse its Discretion when denying and dismissing Mr. Kissner's Appeal as Frivolous

REASONS FOR GRANTING THE WRIT

The court should Grant Certiorari to clarify the proper scope of Due process protection and reason why the lower court's decisions were clearly erroneous and abuse

CONCLUSION

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PETITION FOR WRIT OF CERTIORARI

Petitioner Donald L. Kissner respectfully requests the issuance of a writ of certiorari to review the judgment of the sixth circuit united states court of Appeals, and western District of Michigan.

DECISION BELOW

The decision of the united states court of Appeals for the sixth circuit is an unpublished at Kissner vs. Washington, et al, 2023 U.S App. Lexis 21069. The western District is unpublished at 2022 U.S Dist. Lexis 226055. The Eastern District is unpublished at 2022 U.S Dist. Lexis 192871.

JURISDICTION.

The sixth circuit united states court of Appeals entered its judgment on August 11, 2023.

STATEMENT OF THE CASE

On August 20, 2020 Mr. Kissner was drugged by Shannon L. Boudro and caused him to become suicidal. Mr. Kissner ended up naked covered in gasoline and lighter fluid trying to set himself on fire. The victim -- Boudro called 911 to which the 911 dispatch officer sent two Durand City Police Officer's to the scene. This was officer Joseph M. Orr, and Luke Rogers, The for an unknown reason handcuffed Mr. Kissner placed him in a patrol car for his safety, failed to seek medical help and then proceeded to question and conduct an investigation.

An hour and 45 minutes after they placed Mr. Kissner in the patrol car they took him to the Shiawassee County Jail to which jail staff refused to accept Mr. Kissner. The officer's then took Mr. Kissner to Owosso Memorial Hospital. The officer's filed a petition for mental health examine. Mr. Kissner was then involuntarily hospitalized by

Dr. Zariski. The officer's filed a police report with the assistant shiawassee county prosecutor christopher G. Brown who moved for charges. On August 31, 2020 Parole Agent Jerry Dennis informed Mr. Kissner of charges to which Mr. Kissner showed up to the Shiawassee County Jail and went in with parole agent Dennis.

Parole Agent Jerry Dennis returned at 07:30 hours On September 1, 2020 to have Mr. Kissner sign his notice of parole violation and return to M.D.O.C jurisdiction to await a parole revocation hearing. Mr. Kissner was then arraigned before a District Judge at 15:30 hours.

Mr. Kissner was given a bond but because of the parole violation he was put on a parole detainer-hold and therefore not allowed to bondout. Mr. Kissner's girlfriends spoke to Parole Agent Jerry Dennis who said that: "he can bondout in Forty-Five (45) days if they do not could the parole revocation hearing.

Parole Agent Jerry Dennis was then transferred and Parole Agent Jessica Kunk was assigned to Mr. Kissner. Parole Agent Kunk never informed Mr. Kissner nor responded to Mr. Kissner kits or letter's. In March of 2021 Parole Agent Kunk came to see Mr. Kissner to have him sign for new parole violation charges.

Mr. Kissner asked about Parole Agent Dennis and why he hasn't had any hearings and when could he bond out of jail. Parole Agent Kunk said "Dennis is gone, No bond, and You'll sit here until your found guilty, and NO hearings for you".

NOW other then the September 1, 2020 arraignment Mr. Kissner did not set one foot in a courtroom until Dec. 14, 2020, this was well beyond the Ten (10) day preliminary hearing pursuant to Mich.

Comp. L 791.239a(1). Furthermore, this was beyond the Forty-Five (45) days for a fact finding hearing, pursuant to Mich. comp. L 791.240a(3). There is no paperwork as to this violation or notice to the M.D.O.C. Director pursuant to Mich. comp. L 791.238 et seq.

The western District of Michigan, magistrate Judge Sally J. Berens said that:

"under Michigan Law, 'when a parolee is arrested on a new criminal offense, he is held on a parole detainer until he is convicted or not.'^①

FOOTNOTE ONE

See Kissner vs. Washington, et al, 2022 U.S Dist. Lexis 226055 *19-22. The question became how long and what would happen by delays? Mr. Kissne

did not enter a courtroom until Dec. 14, 2020,
and did not take a plea until July of 2021.

END FOOTNOTE

The sixth circuit united states court of Appeals
Judge Thapar said that, as Magistrate Judge points
out, Mr. Kissner had been arrested and had
therefore received greater due process than
otherwise required for a parolee. see e.g. *Morrissey*
vs. Brewer, 408 U.S. 471, 484-489 (1972); *Moody vs. Daggett*,
429 U.S. 78, 86 (1976) ⁽²⁾.

FOOTNOTE TWO

Mr. Kissner was not arrested. Mr. Kissner was
told of a parole violation warrant, he showed up to
the county jail to meet his Parole Agent Jerry Dennis.
The next day he signed his notice of parole violation.
He signed for his hearing to be held in Ten (10)
day's and request for paper work for said

preliminary hearing. The Magistrate Judge is incorrect on the greater protection than otherwise as the law required a hearing within Ten(10) days, see Mich. Comp. L 791.239 a(1). That would have required the preliminary hearing to be held on September 11, 2020 or before. This did not happen.

END FOOTNOTE

I. Mr. Kissner signed a parole violation notice and revocation hearing forms, Mr. Kissner however did not have his Preliminary hearing or a fact finding hearing as required pursuant to Mich. Comp. L 791.239 a(1); 791.240 a(3).

The Director of M.D.O.C Heidi E. Washington was supposed to be informed of Mr. Kissner's

violation of parole and to have him returned to the jurisdiction to await his hearings. See Mich. Comp. L. 791.238 et seq; 791.239a(1), and 791.240a(3).

As such as seen by statute Mr. Kissner should have been returned to the jurisdiction as he would have been treated as an escaped prisoner. Mr. Kissner had warrants for new charges, however, he turned himself into Parole Agent Jerry Dennis and signed parole forms and was supposed to be returned to the M.D.O.C. This was before Parole Agent Dennis was transferred and Parole Agent Jessica Kunk was assigned to the issue, then revocation hearing just ended and was not allowed to bond out and sat in jail until October 5, 2021. Thus, in jail for over a year without the statutory hearing pursuant to Mich. Comp. L. 791.239a(1).

II. Did the Eastern District Court, District Judge Laurie J. Michelson conduct a Pre-screen of Mr. Kissner's complaint properly dismiss the only Defendant for failing to state a claim against Jessica Kunik parole agent - Defendant.

E.D Michigan District Judge Laurie J. Michelson on October 21, 2022 heard a motion filed by Mr. Kissner. In hearing said motion the Hon. Michelson explained: "Kissner is proceeding in forma pauperis, and, under the Prison Litigation Reform Act of 1996 (PLRA), the court is required to dismiss an in forma pauperis complaint before service on a defendant if it determines that the complaint fails to state a claim upon which relief can be granted." Kissner vs. Washington, et al, 2022 U.S. Dist. Lexis 192871 *3-4. Hon. Michelson, went on to say that: "Kissner has failed to allege facts

Showing that Kunik was personally involved in the alleged unconstitutional conduct."

In *Kissner vs. Washington, et al*, 2022 U.S Dist, Lexis 192871 *5-6. The Hon. Michelson said: "For the reasons given, Kissner's motion to correct the record (ECF No. 8) is granted, the original complaint (ECF No. 1), and August 29 filing (ECF No. 6) are collectively the operation complaint, and the Clerk's Office is ordered to reinstate the defendants named in the original complaint; pursuant to the court's responsibility to screen Kissner's complaint, the claims against Jessica Kunik are dismissed without Prejudice, and for the convenience of the parties and witnesses, this case is transferred to the United States District for the Western District of Michigan. see APPENDIX - A.

III. Did the Western District Magistrate Judge Sally J. Berens Abuse her Discretion when she Re-Screened Mr. Kissner's complaint and the Dismissed the whole complaint for failure to state a claim.

In Kissner vs. Washington, et al, 2022 U.S Dist. Lexis 226055 *18-27, Magistrate Judge Sally J. Berens explained how it believes that Mr. Kissner failed to plead a plausible claim... "with regard to the remaining claims and parties, having conducted the review by the Prison Litigation Reform Act, the court determines that Plaintiff's complaint will be dismissed for failure to state a claim..." See APPENDIX - B.

The Hon. Laurie J. Michelson had already done the screen pursuant to Prison Litigation Reform Act. Thus, why did the Magistrate Judge rescreened Mr. Kissner's complaint. See APPENDIX - A.

IV. Did the Sixth circuit united states court of Appeals Abuse its Discretion when Denying and Dismissing Mr. Kissner's Appeal as Frivolous.

On August 11, 2023 The Honorable Thapar of the Sixth circuit united states court of Appeals stated: "Kissner seeks review of frivolous issues. Accordingly, this court Denies Kissner's motion for leave to proceed in forma pauperis on Appeal.

unless Kissner pays the \$505 filing fees to the District court within 30 days of the entry of this order, the appeal will be dismissed for want of prosecution". See APPENDIX-C.

The first thing is that Honorable Thapar failed to give time to seek review of the order to this Court challenging his decision and the Magistrate Judge's order. Furthermore, the order by the Honorable Thapar was not a "Quorum" pursuant to 28 U.S.C § 46.

The Western District of Michigan and the Sixth Circuit United States Court of Appeals analysis of Mich. Comp. L 791.238 et seq; 791.239a et seq; 791.240a et seq; Moody vs. Daggett, 429 U.S. 78 (1976); Gagnon vs. Scarpelli, 411 U.S. 778 (1973); Morrissey vs. Brewer, 408 U.S. 471 (1972); Mich. Ct. R. 6.302 et seq; Brady vs. United States, 397 U.S. 742 (1970); Boykin vs. Alabama, 395 U.S. 238 (1969); Marchibroda vs. United States, 368 U.S. 487 (1962).

REASON FOR GRANTING THE WRIT

This Court should Grant certiorari to clarify the proper scope of Due Process protection and

Reason why the lower court's decisions were clearly erroneous and abuse.

This court should Grant review in this case to provide guidance on the Sixth circuit United States Court of Appeals and Western District of Michigan decisions' are "clearly Erroneous" and upon the clear deprivation of rights.

The Western District of Michigan Magistrate Judge Sally J. Berens abuse her discretion when erroneously ruling on and dismissing Mr. Hissner's complaint for failure to state a plausible claim. see Hill vs. Lappin, 630 F.3d 468, 471 (6th. cir. 2010) quoting Ashcroft vs. Iqbal, 556 U.S. 662, 678 (2009). "Clear Error exist where the reviewing court is left with a definite and firm conviction that the Trial court made a mistake". See e.g., People vs. Armstrong, 490 Mich 281, 289 (2011); United States vs. U.S. Gypsum Co., 333 U.S. 364, 395 (1948). When a court's conclusion is founded on an "erroneous understanding of the factual record," this "alone constitutes an abuse of discretion requiring reversal". Ortiz vs. City of Chicago, 656 F.3d 523, 537 (7th. cir. 2011). The court's reviews a District court's order Dismissing for failure to state a claim

de novo. see e.g., *Smith vs. Kentucky*, 36 F.4th 671, 674 (6th Cir. 2022).

Mr. Kissner upon learning of charges turned himself into Parole Agent Jerry Dennis at 10:30 pm on August 31, 2020. On September 1, 2020 at 7:30 am Parole Agent Dennis had Mr. Kissner sign his parole violation paper work and notice of rights involved. Parole Agent Dennis informed Mr. Kissner that he would be transported to the M.D.O.C to get the hearings done. But that he would let Mr. Kissner bond out after Forty-Five days.

Now Mich. comp. L 791.239a provides in pertinent part:

(1). "Within Ten (10) days after an arrest for an alleged violation of parole, the parolee shall be entitled to a preliminary hearing to determine whether there is probable cause to believe that the condition of parole have been violated or a fact finding hearing be held pursuant to Mich. comp. L 791.240a".

(2). "Prior to the Preliminary hearing, the

'accused' parolee shall be given written notice of the 'charge', time, place, and purposes of the preliminary hearing^③.

FOOTNOTE THREE

The written notice applies to all. "Due process requires that a criminal Defendant's are to be given adequate 'Notice' of the nature of the charges against them". See e.g., XIV Amdt, Mich. const. of 1963, art 1, § 17; Cole vs. Arkansas, 333 U.S. 196, 201 (1948); Oyler vs. Boles, 368 U.S. 448, 452 (1962)

END FOOTNOTE

(3). At the preliminary hearing the "accused" parolee is entitled to the following rights:

(a). Disclosure of the evidence against him or her^④

FOOTNOTE FOUR

The "accused" parolee is entitled to a disclosure and/or discovery of Materials. see e.g., Mich. ct. R 6.201 et seq; Criminal Law Deskbook P. 5.02, and 5.03; Beasley vs. United States, 491 F.2d 687, 689 (6th.

cir. 1974); *Kyles vs. Whitley*, 514 U.S. 414, 432-433, 439-441 (1995); *Brady vs. Maryland*, 373 U.S. 83, 87 (1963); 18 U.S.C. § 3500.

END FOOTNOTE

(b). The right to testify and present relevant witnesses and documentary evidence⁽⁵⁾.

FOOTNOTE FIVE

This is clearly "an official proceeding" pursuant to *People vs. Kissner*, 292 Mich App 526, 536-537 (2010) (quoting Mich. comp. L 750.483a(1)(a)). The right to testify see *Rock vs. Arkansas*, 483 U.S. 44, 52-53 (1987). This is also the right to be heard. see e.g., VI, XIV Amdt's; Mich. const. of 1963, art 1, §§ 13, 17, 20; *In re Rood*, 483 Mich 73, 92 (2009); *Goldberg vs. Kelly*, 397 U.S. 254, 267 (1970); *Grannis vs. Ordean*, 234 U.S. 385, 394 (1914). The right to present witnesses and documentary evidence is the basic rights to present a defense. see e.g., VI, XIV Amdt's; Mich. const. of 1963, art 1, §§ 13, 17, 20; *Chambers vs. Mississippi*, 410 U.S. 284, 299 (1973); *Washington vs. Texas*, 388 U.S. 14, 19 (1967); *Mathews vs. Eldridge*, 424 U.S. 319 (1976).

Relevant evidence is found in Fed. R. Evid. § 401, Mich. R. Evid. § 401.

END FOOTNOTE

(c). The right to confront and cross-examine adverse witnesses⁽⁶⁾, unless the person conducting the preliminary hearing finds on the record that the witness may be subjected to risk of harm if he or she identity is revealed.

FOOTNOTE SIX

See e.g., VI Amdt, Mich. Const. of 1963, art 1, § 20; Higgins vs. Renico, 470 F.3d 624, 634 (4th Cir. 2004) (quoting Davis vs. Alaska, 415 U.S. 308, 316 (1974)).

END FOOTNOTE

Mich. Comp. L. 791.240a provides in pertinent part:

(3). within Forty-Five (45) days after a paroled prisoner has been returned or is available for

return to a state correctional Facility under accusations of a parole violation other than conviction for a felony or misdemeanor. The Prisoner is entitled to a fact finding hearing^④ on the charges. The fact finding hearing shall be conducted only after the accused parolee has a reasonable amount of time to prepare a defense.

FOOTNOTE SEVEN

Parole revocation proceedings are contested cases under the "Administrative Procedures Act," Mich. comp. L. 24.201 et seq; In re Parole of Bivings, 242 Mich App 363, 369 (2000), see also Jones vs. Dep't. of Corr., 468 Mich 646, 652 (2003). This can only be seen as an "Official Proceeding". People vs. Kissner, 292 Mich App 526, 536-537 (2010) defining Mich. comp. L 750.483a(1)(a).

END FOOTNOTE

(4). If, before a fact-finding hearing

begans, the accused parolee alleges that he or she is indigent and request that an attorney be appointed to represent him or her, the parole board member or attorney hearing officer who will conduct the hearing shall determine whether the accused parolee is indigent...⁽⁸⁾

— — — — —

FOOTNOTE EIGHT

Critical case Law. See e.g., Powell vs. Alabama, 287 U.S. 45, 53, 71 (1932); Mempa vs. Rhay, 389 U.S. 128 (1967); Morrissey vs. Brewer, 408 U.S. 471, 489 (1972); People vs. Kitley, 59 Mich App 71 (1975); Montejo vs. Louisiana, 556 U.S. 778, 786 (2009); Martinez vs. Ryan, 566 U.S. 1, 12-18 (2012); Missouri vs. Frye, 566 U.S. 134, 140 (2012); Turner vs. United States, 885 F.3d 949, 953 (6th Cir. 2018); People vs. Hieu Van Hoang, 328 Mich App 45, 49 (2019)

END FOOTNOTE

— — — — —

(5). An accused parolee shall be given written notice⁽⁹⁾ of the charges against him or her and the time, place, and purpose of the fact-finding

hearing, the accused parolee may be represented by a retained or appointed attorney⁽¹⁰⁾ under Subsection (4) and is entitled to the following:

FOOTNOTE NINE & TEN

Notice see e.g., *Cole vs. Arkansas*, 333 U.S. 196, 201 (1948); *Oyler vs. Boles*, 368 U.S. 448, 452 (1962). Counsel See e.g., *Powell vs. Alabama*, 287 U.S. 45, 53, 71 (1932); *Mempa vs. Rhay*, 389 U.S. 128 (1967); *Morrissey vs. Brewer*, 408 U.S. 471, 489 (1972); *Gagnon vs. Scarpelli*, 411 U.S. 778, 790 (1973).

END FOOTNOTES

(a). Full Disclosure of the evidence against him or her⁽¹¹⁾

FOOTNOTE ELEVEN

Disclosure -- Discovery. see e.g., *Mich. Ct. R.* 6.20) et seq.; 1 Criminal Law Deskbook P. 5.02, and 5.03; 18 U.S.C. § 3500; *Beasley vs. United States*, 491 F.2d 687, 689 (6th Cir. 1974); *Kyles vs. Whitley*, 514 U.S.

419, 432-433, 439-441 (1995); Brady vs. Maryland
373 U.S. 83, 87 (1963).

END FOOTNOTE

(b). To testify and present relevant witnesses
and documentary evidence.⁽¹²⁾

FOOTNOTE TWELVE

SEE FOOTNOTE FIVE.

END FOOTNOTE

(c). To confront and cross-examine adverse
witnesses unless the person conducting the fact
finding hearing finds on the record that a risk
of harm if he or she identity is revealed.⁽¹³⁾

FOOTNOTE THIRTEEN

Mich. Const. of 1963, art I, § 20; VI Amdt; Higgins
vs. Renico, 470 F.3d 624, 634 (6th Cir. 2004) (quoting
Davis vs. Alaska, 415 U.S. 308, 316 (1974)).

END FOOTNOTE

(d). To present other relevant evidence in mitigation of the charge.

(6). "A fact finding hearing may be postponed for cause beyond the Forty-Five (45) days limit on the written request of the parolee, the parolee's attorney... ."

The Magistrate Judge Sally J. Berens legal conclusion that because Mr. Kissner was held on new criminal charges as well, which he was arraigned on September 2, 2020 at 15:30 hours. The preliminary examination was not held until Dec. 14, 2020. The Magistrate Judge determined that Mr. Kissner was afforded greater Due process protection. Kissner vs. Washington, et al, 2022 U.S Dist. Lexis 226055 *19-24, aff'd 2023 U.S App. Lexis 21069 *7-8.

The Magistrate Judge and circuit Judge decision's are clearly erroneous as a matter of law, they are based on erroneous conclusions and thus are an abuse of discretion and

an actual question of law as a matter of law. Mr. Kissner turned himself into Parole Agent Jerry Dennis who took him into the Shiawassee county jail for holding until paperwork and transport could be done. Parole Agent Dennis had Mr. Kissner sign paperwork the next day and said that transport would be on the way. This never happened.

Furthermore, Magistrate Judge and circuit Judge conclusion that Mr. Kissner received greater protection is misplaced, and clearly erroneous, this being because Mr. Kissner sat in jail from August 31, 2020 to Dec. 14, 2020 before having a Preliminary Examination this is well beyond Ten (10) days for preliminary hearing, and the Forty-Five (45) days for fact finding hearing. Then Mr. Kissner did not take a plea until July 2021 which was almost a year after he sign his parole paperwork. The Ten (10) or Forty-Five (45) days is for speedy conduct.

The Magistrate Judge and circuit Judge further misplaced and erroneous that taken a plea that his rights were protected greater than other protected parole revocation hearings, this is clearly erroneous

as at "NO TIME DURING" The plea proceedings did Judge Matthew J. Stewart, Assistant Prosecutor Christopher G. Brown, or Defense counsel Steven R. Ellis ask or say "do you understand that by taken this plea he hereby waive your parole revocation rights pursuant to Mich. Comp. L. 791.239a(1); 791.240a(3)

These decisions by these two are clearly erroneous and a clear abuse of discretion. The decision to dismiss Mr. Kissner complaint was clear abuse of discretion based on erroneous analysis of the facts and law. "When a court's conclusion is founded on an 'erroneous' understanding of the factual record, this alone constitutes an abuse of discretion requiring reversal." *Ortiz vs. City of Chicago*, 656 F.3d 523, 537 (7th Cir. 2011). See also *People vs. Armstrong*, 490 Mich 281, 289 (2011); *Kuback vs. State*, 934 N.E.2d 1138, 1144 (Ind. 2010); *United States vs. U.S. Gypsum Co.*, 333 U.S 364, 395 (1948); *Ex parte Reed*, 100 U.S 13, 23 (1879).

Furthermore the conclusion is genuinely misplaced on other grounds;

First, The criminal court appointed counsel pursuant to VI. Amdt; Mich. const. of 1963, art 1, §§ 13, 20. This was for the

New criminal charges. Magistrate Judge and affirming Circuit Judge failed to understand the correct application of law: "The sixth Amendment right, however, 'is offense specific'; It cannot be invoked once for all future prosecution's, for it does not attach until a prosecution has commenced" ⁽¹⁴⁾ see e.g., *McNeil vs. Wisconsin*, 501 U.S. 171, 175-176 (1991); *Texas vs. Cobb*, 532 U.S. 162, 167-168 (2001); *United States vs. McAuliffe*, 490 F.3d 526, 539-540 (6th Cir. 2007).

FOOTNOTE FOURTEEN

In *People vs. Kissner*, 292 Mich App 526, 536-537 (2011) (define Official Proceedings as "commencement to its conclusion").

END FOOTNOTE

Mr. Kissner signed his parole revocation paperwork and notice thereof. That was nine hours before being arraigned on new criminal charges. The point in time when he signed his parole violation paperwork that started the commencement in that proceedings and cannot be voided by new criminal charges being commenced nine hours later. Now appointed counsel Steven A. Ellis was appointed only for the charges. Not anything to do with the parole matter.

Mr. Kissner parole proceedings commenced at 07:30 hours and criminal proceedings commenced at 15:00 hours. Mr. Kissner did not formally set foot in a courtroom for any hearings until Dec. 14, 2020 which is beyond statutory requirements for parole revocation. See e.g., *Moody vs. Daggett*, 429 U.S. 78 (1976); Mich. Comp. L. 791.240a(3); Mich. Dept. of Corr., Policy Directive (PD) 03.03.130 §§ (E) and (M).

The magistrate Judge and circuit Judge had decided that as a part of my plea of guilty on July of 2021 to new criminal charges that Mr. Kissner knew of the "collateral consequences" that was that he would waive his parole revocation pursuant to statutory law. This is misplaced as Judge Matthew J. Stewart, nor assistant prosecutor Christopher G. Brown, nor Defense counsel Steven R. Ellis at "NOTIME" during the plea proceedings pursuant to Mich. Ct. R 6.302 et seq Asked about parole issues nor stated by pleading guilty that Mr. Kissner's parole revocation rights would end or be waived.

The criminal court nor any any court could legally accept a plea of guilty pursuant to Mich. Ct. R 6.302(A),

(C), and (D) ⁽¹⁵⁾.

FOOTNOTE FIFTEEN

Mich. Ct. R 6.302 (C) states "A Voluntary Plea", (D) states "A Accurate Plea". In Michigan is known as Boykin - Jaworski rights.

END FOOTNOTE

Mich. Ct. R 6.302 (A) provides:

"The court may not accept a plea of guilty or nolo contendere unless it is convinced that the plea is understanding, voluntary, and accurate..."

Due process demands that Mr. Kissner plea must be voluntarily, knowingly, and intelligently made. V, XIV Amdt, Mich. Const. of 1963, art 1, § 17. see case law from the Supreme court of U.S and Michigan. Marchibred vs. United states, 368 U.S 487 (1962); Boykin vs. Alabama, 395 U.S 238 (1969); Brady vs. United states, 397 U.S 742 (1970); Marshall vs. Lonberger, 459 U.S 422, 431-432 (1983); Mabry vs. Johnson, 467 U.S 504, 508 (1984); Bousley vs. United states, 523 U.S 614, 618 (1998); People vs. Jaworski, 387 Mich 21 (1972); People vs. Johnson, 386 Mich 305 (1971); In re Valle, 364 Mich 471 (1961).

In *Brady vs. United States*, 397 U.S. 742, 748 (1970). The court explained:

"The plea is more than an admission of past conduct, it is the Defendant's consent that Judgment of conviction may be entered without a Trial, a waiver of his rights⁽¹⁶⁾ before a jury or a judge, waiver of his constitutional rights, not only must be voluntary, but also must be knowing, and intelligent act done with sufficient awareness of the relevant circumstances and likely consequences."

— — — — —

FOOTNOTE SIXTEEN

A waiver has been defined as the intentional relinquishment or abandonment of a known right". This must be again voluntary, knowingly, and intelligently done. See e.g., *People vs. Kowalski*, 489 Mich 488, 503 (2011); *People vs. Carter*, 462 Mich 206, 215 (2008); *Johnson vs. Zerbst*, 304 U.S. 458, 464 (1938) (Emphasis Added). Mr. Kissner was not aware of the collateral consequences when he pled guilty, "that he would be waiving his 'rights to parole, relocation hearing.'" See e.g., *Lee vs. United States*, 582 U.S. 357, 367 (2017); *Padilla vs. Kentucky*, 559 U.S. 356 (2010); *INS vs. St. Cyr*, 553 U.S. 289, 322-323 (2001); *People vs. Guyton*, 2023 Mich. Lexis 1103 *2-3, 13-21; Mich.

ct. R 6.302 (BX3Xa) through (i).

END FOOTNOTE

In *In re Valle*, 364 Mich 471, 477 (1961), The Michigan Supreme Court explained:

"A plea 'must be entirely voluntary by one competent to know the consequences', and should not be 'induced by fear, misapprehension, persuasion, promises, inadvertence, or ignorance'".

Oral advisement of the Boykin rights on the record⁽¹⁷⁾ "is designed to assist the District Judge in making the Constitutionally required determination that a Defendant's guilty plea is truly voluntary. *McCarthy vs. United States*, 394 U.S. 459, 465 (1969).

FOOTNOTE SEVENTEEN

"'NO WHERE' in the Boykin-Jaworski rights or in Mich. Ct. R 6.302 (BX3Xa) through (i), Does it say that by pleading guilty do you waive the collateral consequences to the statutory and constitutional rights to a parole revocation hearing". (Emphasis Added).

END FOOTNOTE.

As the court explained in the case of a defective waiver of the rights to counsel: "This case graphically illustrates that a mere routine inquiry -- asking of several standard questions followed by the signing of a standard written waiver of counsel -- may leave a judge entirely unaware of the facts essential to an informed decision that an accused has executed a valid waiver of his rights to counsel. *Von Moltke vs. Gilles*, 332 U.S. 705, 724 (1948).

Once a parole is granted and the prisoner is released from prison on parole status, that parolee gains a protected interest in continued liberty. *In re Parole of Haeger*, 294 Mich App 549, 574 (2011). Limited due process requirements, including to the notice and opportunity to be heard, applying to the loss of liberty occasioned by parole revocation. *Jones vs. Dep't. of Corr.*, 468 Mich 646, 652 (2003). See also *Morrissey vs. Brewer*, 408 U.S. 471, 484-489 (1972); *Moody vs. Daggett*, 429 U.S. 78, 86 n.7 (1976).

Mr. Kissner was not allowed bond or to bond out of jail pursuant to Mich. comp. L 769.11b; Mich. const. of 1963, art. I, § 15, VIII Amdt. Because of a parole hold-detainer that was only supposed to be in place until the hearing was held pursuant to Mich. comp. L 791.239a(1), (2), and (3). The hold was put in place on September 1, 2020 which would have not gone beyond November of 2020. Mr. Kissner however, sat in jail from August 31, 2020 to October 5, 2021. The court held

In *Moody vs. Daggett*, 429 U.S. 78, 80 (1976) "n1. This constitutional issue has divided the court of Appeals. Three of the circuits have concluded that a parolee convicted of crime committed while on parole is 'entitled to a due process hearing promptly⁽¹⁸⁾ upon issuance of the parole violator warrant and detainer'"

In *Dent vs. West Virginia*, 129 U.S. 114, 123 (1889); The Court explained:

"We think a person's liberty is equally protected, even when the liberty itself is a statutory creation of the state.⁽¹⁹⁾ The touchstone of due process is protection of the individual against arbitrary action of government."

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FOOTNOTE EIGHTEEN & NINETEEN.

In *Klopfer vs. North Carolina*, 386 U.S. 213, 226 (1967), The court explained:

"The court held that the state's were required by Due process clause of the Fourteenth Amendment to provide a Defendant with a 'prompt' hearing because the right to a speedy trial is one of the basic rights preserved by our constitution"

There is more than just constitution and

statutory creation that are protected, you have Court Rules, Administrative Rules, etc.

END FOOTNOTES

In the statutes Mich. comp. L's. 791.238 et seq; 791.239a et seq; 791.240a et seq; 769.11b are not resolving the questions above of the statutory construction⁽²⁰⁾, the court must first look to the language of the statute itself and if the statutory language is unclear or ambiguous, to the Legislature holdings. *Toibb vs. Radloff*, 501 U.S. 157, 161 (1991); *Blum vs. Stenson*, 465 U.S. 886, 896 (1984). see also *Walton vs. Hammons*, 192 F.3d 590, 593-594 (6th Cir. 1999) (quoting *West Virginia Univ. Hosp's Inc. vs. Casey*, 499 U.S. 83, 98 (1991); *Group Life & Health Ins. Co., vs. Royal Drug Co. Inc.*, 440 U.S. 205, 210 (1979); *Parker-Hannifin Corp. vs. Commissioner of Internal Revenue*, 139 F.3d 1090, 1095 (6th Cir. 1998)). The intent of Congress is presumed from an expression of the ordinary meaning of the words used. *Morales vs. Trans World Airlines*, 504 U.S. 374, 383 (1992); *Securities Industry Ass'n vs. Board of Governors*, 468 U.S. 137, 149 (1984). The plain meaning

of a statute is determined by reviewing "the particular statutory language at issue, as well as the language and design of the statute as a whole". *K Mart Corp. vs. Cartier, Inc.*, 486 U.S. 281, 291 (1988). The Court must consider the "Parole statutes" pursuant to Mich. Comp. L 791.238 et seq; 791.239a et seq; 791.240a et seq; 791.241 et seq, "full Text", language as well as punctuation, structure and subject matter. *United States Nat'l Bank vs. Independent Ins., Agents of Am. Inc.*, 508 U.S. 439, 455 (1993) (Internal quotations omitted). "Absent a clearly expressed Legislative intention to the contrary, that language must ordinarily be regarded as conclusive". *Consumer Product safety Commission vs. GTE SYLVANIA, Inc.*, 447 U.S. 102, 108 (1980). see also *Dunn vs. CFTC*, 519 U.S. 465, 470 (1997) ("Absent any 'indication that doing so would frustrate congress's clear intention or yield patent absurdity, our obligation is to apply the Statute as Congress wrote it'").

FOOTNOTE TWENTY

In Michigan; "The interpretation of a statute or Court rule is a question of law that we review de novo. *People vs. Olney* (on Remand), 333 Mich App 575,

580 (2020); *People vs. Clement*, 254 Mich App 387, 389-390 (2002); *CAM Constr. vs. Lake Edgewood condominium Ass'n*, 465 Mich 549, 553 (2002). "The goal when interpreting statutes is to give effect to Legislative Intent by examining the plain language of the words of the statute." *People vs. Olney (on Remand)*, 333 Mich App 575, 581 (2020); *Wilcoxon vs. Wayne Co. Neighborhood Legal Serv's*, 252 Mich App 549, 553 (2002). unambiguous language in a statute must be enforced as written. *People vs. Olney*, 333 Mich App 575, 581 (2020); *CAM Constr. vs. Lake Edgewood condominium Ass'n*, 465 Mich 549, 554 (2002). The same is used on Constitutional and Administrative Rules.

END FOOTNOTE

The meaning of a statute's words can be "enlightened by their context and the contemporaneous legislative history" as well as the historical context of the statute. *Walton vs. Hammons*, 192 F.3d 590, 594 (6th Cir. 1999) (quoting *Edwards vs. Aguillard*, 482 U.S. 578, 594-595 (1987), where the statute is unambiguous and the plain language clear, the inquiry ends and the court does not review underlying legislative history and intent to determine the appropriate constitution. *Connecticut Nat'l Bank vs. Germain*, 503 U.S. 249, 254 (1992); *Robin*

vs. united states, 449 U.S. 424, 430 (1981). see also united states vs. Ron Pain Enter's, Inc, 489 U.S. 235, 241 (1989) ("where ... The statute's language is plain, 'the sole function of the court's is to enforce it according to its terms'").

where particular language is used in one section of a statute, but omitted from another, it is presumed that congress did so intentionally, and not inadvertently. *BED vs. Resolution Trust Corp.*, 511 U.S. 531, 537 (1994); *Russello vs. united states*, 464 U.S. 16, 23 (1983). see also *Lynch vs. Johns - Manville Sale Corp.*, 710 F.2d 1194, 1197 (6th. cir. 1983) "It is a fundamental rule of statutory construction that inclusion in one part of a congressional intent that the exclusion was not inadvertent"). Every word in the statute is presumed to have a meaning, and the court must give effect to all the words to avoid an interpretation which would render words superfluous or redundant. *Lopez-Soto vs. Hawayek*, 175 F.3d 170, 173 (1st. cir. 1999); *Ruiz vs. Estelle*, 161 F.3d 814, 820 (5th. cir. 1998). However, the court cannot rely on literal language of the statute where such reliance would lead to absurd result or an interpretation which is inconsistent with the intent

of congress. *Appleton vs. First Nat'l Bank of Ohio*, 42 F.3d 791, 801 (6th. cir. 1995).

A liberty interest protectible under the Fourteenth Amendment may arise only when implicated by the Constitution, or a state law or regulation. *Hewitt vs. Helms*, 459 U.S. 460, 469 (1983); *Meachum vs. Fano*, 427 U.S. 215, 226 (1976). A prisoner has no inherent constitutional right to be housed in a particular institution. *Meachum vs. Fano*, 427 U.S. 215, 469 (1976), or to enjoy a particular security classification. *Montanye vs. Haymes*, 427 U.S. 236, 242 (1976).

A state, by its own actions, may create liberty interest protected by the Due process clause. *Hewitt vs. Helms*, 459 U.S. 460, 469 (1983); *Bills vs. Henderson*, 631 F.2d 1287, 1291 (6th. cir. 1980); *Dent vs. West Virginia*, 129 U.S. 114, 123 (1889). The supreme court described when the action of a state will create such an interest. *Ollm vs. Wakinekena*, 461 U.S. 238, 249 (1983).

"These cases demonstrate that a state creates a protected liberty interest by placing substantive limitations of officials discretion. An inmate must

show 'that particularized standards or criteria guide the state's decisionmakers'; *Connecticut vs. Board of Pardons vs. Dumschat*, 452 U.S. 458, 467 (1981). (Brennan, J., concurring), If the decisionmaker is not "required to base its decisions on objective and defined criteria", but instead "can deny the requested relief for any constitutionally permissible reason or for no reason at all; *ibid*, The state has not created a constitutionally protected liberty interest, *Connecticut Board of Pardons vs. Dumschat*, 452 U.S. 458, 466-467 (1981) (opinion of the court). See also *Vitek vs. Jones*, 443 U.S. 480, 488-491 (1980) (summarizing cases.)".

Prison officials may also create liberty interest by Policy statement, Regulations, or other official promulgations. *Walker vs. Hughes*, 558 F.2d 1247, 1255 (6th. Cir. 1977). The Plaintiff's, However, must have a "legitimate claim of entitlement to the interest, not merely a unilateral expectation of it". *Bills vs. Henderson*, 631 F.2d 1287, 1292 (6th. Cir. 1980). The criteria for making this determination are explained. *Bills vs. Henderson*, 631 F.2d 1287, 1292-1293 (6th. Cir. 1980):

"where statutes or prison policy statements have limited the prison officials discretion by imposing a specific prerequisite to the forfeiture of benefits or favorable living conditions enjoyed by a prisoner, an expectation or entitlement has been created which cannot be taken away without affording the prisoner certain Due process rights."

"It is well settled that the Fifth Amendment's Due process clause encompasses Equal protection principles [of the Fourteenth Amendment]." *Mathews vs. De Castro*, 429 U.S. 181, 182 n.2 (1976). See also *Weinberger vs. Salfi*, 422 U.S. 749, 768-770 (1975). The essence of Equal protection is that similarly situated persons be treated alike. *City of Cleburne vs. Cleburne Living Center*, 473 U.S. 432, 439 (1985), classification implicating a suspected class, such as race, or burdening a fundamental right are subject to a strict scrutiny analysis. *City of Cleburne vs. Cleburne Living Center*, 473 U.S. 432, 440 (1985). See also *Clark vs. Jeter*, 486 U.S. 456, 461 (1988). Classifications which burden neither a fundamental right nor targets a suspected class will be upheld so long as they bear a rational relationship to

a legitimate objective. *Romer vs. Evans*, 517 U.S. 620, 631 (1996); *Heller vs. Doe*, 509 U.S. 312, 319-320 (1983). see also *Vick Wo vs. Hopkins*, 118 U.S. 356, 368-369, 373-374 (1886).

Mr. Kissner prays that this court
Grant writ of certiorari and decide
the proper law in this matter.

Date. October 12, 2023 mailed October 16, 2023

Respectfully submitted


Donald L. Kissner #383462

Petitioner In Pro se

Macomb Court/Fac

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