

No. 23-6473 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
DEC 12 2023
OFFICE OF THE CLERK

Joseph Bergeron --- PETITIONER

VS.

Paul Schnell, Commissioner of Corrections, et., al. --- RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

- 1.) Can the Minnesota Judicial system deny *Informa Pauperis* to impoverished *Pro Se* litigant as a means to obstruct Judicial fairness?

LIST OF PARTIES

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

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 judgement is the subject of this petition is as follows:

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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 state courts:

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

reported at Bergeron v. Bosch, et. al., Case No. A23-0491; or,
[] has been designated for publication but is not yet reported; or,
 is unpublished

The opinion of the Washington County District Court appears at Appendix B to the petition and is

reported at Bergeron v. Comm'r of Corrections Paul Schnell, and Warden Guy Bosch, Court File No. 82-CV-23-565..; or,
[] has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from state courts:

The date on which the highest state court decided my case was 19 September 2023. A copy of that decision appears at Appendix C.

[] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A _____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Right to Due Process – Substantive and Procedural

U.S. Const. Amd. XIV

Minn. Const. Art. 1, §7

The Minnesota Department of Corrections provides no readily available access to much of the U.S. code, the CFR (Code of Federal Regulations), nor does it provide access to Federal District or Circuit Court authorities.

STATEMENT OF THE CASE

Appellant filed a “Writ of Mandamus with the Minnesota district court in Washington county to enforce clearly established nondiscretionary law that the Minnesota Commissioner of Corrections has violated. District court Judge Galler granted Appellant’s *Informa Pauperis* and set the action to proceed. District court Judge Jaunita Freeman later vacated Judge Galler’s *Informa Pauperis* grant, then dismissed Appellant’s “Writ of Mandamus as frivolous.

Appellant then appealed Judge Jaunita Freeman’s decision to the Minnesota Court of Appeals clearly showing that his Petition was not frivolous seeking to reverse Judge Freeman’s removal of his *Informa Pauperis*. The Minnesota Court of Appeals Judge Susan L. Segal then erroneously asserted that Appellant did not file a request for *Informa Pauperis* with the court of appeals within the 14-day requirement. Appellant then filed a Motion for Reconsideration showing that he did file an *Informa Pauperis* application within the 14-day requirement. Judge Segal denied the motion and then required Appellant to pay the filing fee knowing he had no means to do so, a blatant obstruction of justice.

The Minnesota Supreme Court denied review on 19 September 2023; see *Bergeron v. Bosch*, 2023 Minn. LEXIS 458

INTRODUCTION

The Due Process Clauses of the 14th Amendment (U.S. Const. Amd. XIV) and Minn. Const. Art. 1, §7 are intended to ensure that no one in this nation is deprived of life, liberty, or property without due process of law. “The Due Process clause provides that [n]o state shall ... deprive any person of life, liberty or property, without due process of law”. Amdt. 14§, The clause “centrally concerns the fundamental fairness of government activity”. *N.C. Dept. of Revenue v. Kimberly Rice Kaestner 1992 Family Trust*, 139 S. Ct. 2213 (2019). “The due process protection provided under the Minnesota Constitution is identical to the due process[s] guaranteed under the Constitution of the United States” *State v. Krause*, 817 N.W. 2d. 136, 144 (Minn. 2012)

Procedural Due Process is what process is necessary before a person can be deprived of life, liberty, or property.

“Parolee’s must be accorded due process in “any” revocation Proceedings” *Ohio Adult Parole Auth. v. Woodard*, 323 U.S. 272, 293 (1998) (Emphasis Added)

“[P]rocedures for the Revocation of Supervised Release shall provide Due Process of Law for the inmate”. Minn. Stat. §244.05, Subd. 2, (1988);

“Substantive Due Process embodies our fundamental protection from arbitrary government action.” (citing *Boutin v. Lafleur*, 591 N.W. 2d. 711, 716 (Minn. 1999); *Zinermon v. Burch*, 494 US 113, 125 (1998); U.S. Const. Amd. V, XIV; Minn. Const. Art. 1, § 7 and *Wolff v. McDonnell*, 418 US 539 (1974).

1.) Can the Minnesota Judicial system deny *Informa Pauperis* to impoverished *Pro Se* litigant as a means to obstruct Judicial fairness?

Petitioner has filed two previous Writ of Mandamus Petitions with the Washington County, Minnesota clerk’s office asserting both procedural and substantive due process

violations. In both cases Appellant raised the issue that if the Commissioner of Corrections found reason to reimprison beyond 90 days (*Bergeron v. Comm'r of Corr.*, 2019 Minn. App. Unpub. LEXIS 37) and 6 months (*Bergeron v. Comm'r of Corr.* 2022 Minn. App. LEXIS 86), a release date and revocation sentence is still required; MN Prom. R. 2940.3800 (2019) (emphasis added); “Offenders who have violated the conditions of parole or supervised release and who have been returned to institutional status **shall** be assigned a release date and term of reimprisonment: … “. Both Minnesota District and Appellate Courts ignored the issue and made no determinations on it, because of this judicial failure Appellant was required to raise it alone in a third Writ of Mandamus Petition. The MN Commissioner of Corrections, nor the MN Judicial department does not have any discretion as the Mandatory **shall** is impervious to judicial discretion. See *Lexecon v. Hynes*, 523 US 26, 140 L. Ed. 2d. 62, 118 S. Ct. 956 (1998) (emphasis added); “Clarifying that “mandatory language such as “shall” creates an obligation impervious to official discretion.

“In sum, the use of ‘explicitly mandatory language’ in connection with the establishment of ‘specified substantive predicates’ to limit discretion, forces a conclusion that the state has created a liberty interest.” *Kentucky DOC v Thompson*, 490 US 454, 109 S. Ct. 1904 (1989). (Emphasis Added); The “State creates a protected Liberty Interest by placing Substantive limitations on official discretion”. (*Olim v. Wakinekona*, 461 US 238, 103 S.Ct. 1741, 75 L.Ed.2d 813 (1983).

“The Commissioner of Corrections **shall** promulgate rules for the placement and supervision of inmates serving a supervised release term. These rules **shall** also provide standards and procedures for the revocation of supervised release, and **shall** specify the period of revocation for “each” violation of supervised release. Procedures for the revocation of supervised release **shall provide due process of law** for the inmate.” Minn. Stat. § 244.05 Supervised Release Term, subd. 2; Rules (1988). (Emphasis added)

“2940.0200 Purpose: The purpose of this chapter is to establish the policies, procedures, rules, regulations, and guidelines which **will**

govern the operation of the hearings and release unit established within the Department of Corrections by the Commissioner in order to discharge the responsibilities established by law." MN Promulgated Rules, Chapter 2940; Department of Corrections, Hearings and Release Unit. (2019) (Emphasis Added)

Appellant has a clear liberty interest that has been violated by the Minnesota Commissioner of Corrections and the Minnesota Judicial system. Despite this fact the Minnesota Supreme Court denied review on both cases, see; *Bergeron v. Schnell*, 2019 Minn. LEXIS 152, and *Bergeron v. Comm'r of Corr.*, 2022 Minn. LEXIS 421.

Because both the *Bergeron* 37, and *Bergeron* 86 decisions ignored the issue that a release date and revocation sentence is required by law, Appellant remains indefinitely reimprisoned contrary to clearly established law, a clear and obvious violation of both federal and state due process protections.

In the instant action, Appellant filed a 3rd Writ of Mandamus Petition (Court file # A23-0491) on the issue that a release date and revocation sentence is required, (See MN Prom. R. 2940.3800) the very issue that both *Bergeron* 37, and *Bergeron* 86 ignored. "There is no doubt that an issue determined in an appeal will not be reexamined on a second appeal of the same case. But it is only questions that were decided which become law of the case". *Peterson v. Basf. Corp.*, 675 N.W. 2d. 57. 65-66 2004 Minn. LEXIS 59; quoting *Cayse v. Foley Bros., Inc.*, 260, S. Ct. Minn. 248, at [*254] (1961); "... it applies to questions decided but not to questions which are raised and not determined, and questions not decided may be considered on a second appeal". *Standard Lithographing Co., v. Twin City Motor Speedway Co.*, 145 at [*10] S. Ct. (1920).

History:

- 1.) On 8 February 2023 Washington County District Court Judge Gregory Galler granted Appellant's Motion to proceed *In Forma Pauperis*. (See Appendix D)

2.) On 27 February 2023 Washington County District Court Judge Jaunita Freeman vacated Judge Galler's *Informa pauperis* grant, and then dismissed Appellant's Writ of Mandamus with prejudice. She erroneously held that Appellant's Writ was frivolous with no basis in law or fact. (See Appendix D)

3.) It is a fact that Appellant is indefinitely reimprisoned contrary to clearly established law that requires a "release date and revocation sentence", MN Prom. R. 2940.3800.

4.) Appellant filed notice of appeal with an application to proceed *Informa Pauperis* with the MN Appellate Court stating that District Judge Freeman had erred in vacating the *Informa Pauperis* grant and showing that his Writ was obviously not frivolous.

5.) On 3 April 2023 Appellant received the courts Order indicating filing and scheduling; *Bergeron v. Bosch, et al.* Case No. A23-0490.

6.) On 28 April 2023 MN Appellate Court Judge Susan L. Segal issued an Order directing Appellant to pay the court filing fee, that he had not filed a Motion for *Informa Pauperis* with the Appellate Court. (See Appendix E)

7.) On 3 May 2023 Appellant filed a "Motion for Reconsideration" showing that he had filed a Motion to proceed *Informa Pauperis* with the Appellate Court within the 14-day requirement. (See Appendix F)

8.) On 10 May 2023 the Appellate Court Clerk returned Appellant's Motion stating that "Motions for Reconsideration" are not allowed in the Court of Appeals. (See Appendix G)

9.) On 16 May 2023 Appellant resent his "Motion for Reconsideration" to the MN Appellate Court clerk citing authority indicating that a "Motion for Reconsideration" is allowed in the Appellate Court. (See Appendix H)

10). On 19 May 2023 despite legal authority holding that a “Motion for Reconsideration” is allowed in the Appellate Court, the clerk again returned my Motion to me unfiled, stating it was not allowed. (See Appendix I)

11.) On 23 May 2023 Minnesota Appellate Court Judge Susan L. Segal issued an Order dismissing Appellant’s action. In her Order she mischaracterized Appellant’s “Motion for Reconsideration” as a “Motion for Rehearing” and then implicated Minn. R. Civ. App. P. 140.01 to support the rejection of Appellant’s initial Motion for Reconsideration, see Order at 4., and 5. (See Appendix A)

Appellate court Judge Segal went on to point out non-fatal issues with the “Application to proceed *Informa Pauperis*” with the MN Appellate Court. Despite this captioning issue Appellant did file a “Application to proceed *Informa Pauperis* within the 14-day period, see Order at 2. (Appendix A). Regardless of the court’s problems with captioning, it was clearly aware that Appellant was unable to pay the filing fee.

Appellant’s appellate action (MN Ct. App. #A23-0491) in the Minnesota Court of Appeals contested the MN District court Judge Juanita Freeman’s erroneous decision to vacate Judge Galler’s grant of *Informa Pauperis*, it raised no other issues. Judge Freeman points to the *Bergeron* 86 opinion at #7., as support for her decision to dismiss Appellant’s Writ. The Appellate court opined that: the (*Bergeron v. Roy*, 2017 Minn. App. Unpub. LEXIS 590) court did not hold that Commissioner of Corrections “violated statutes and regulations when reincarcerating him”. This is a bit of a mischaracterization, given the final judgment enforcement was not provided. But the court clearly held that the Commissioner is bound and obligated by those rules and regulations; “... it does not excuse the commissioner from compliance with Minn. R. 2940.3500-4500 ... “ *Id.* at [*13]. The Minnesota Supreme Court states: “the [DOC] Department **must** follow judicial precedent”,

State ex rel. Ford v. Schnell, 933 N.W. 2d. 393, n. 12 (M. S. Ct. 2019). Must is mandatory language; see *Hewitt v. Helms*, 456, U.S. 460 (1983); Minn. Stat. § 645.44, subd. 15a Must is mandatory. "Broad discretion is not unbound discretion ... drew bounds of the Departments discretion by prohibiting it from failing to abide by its own policies" *State Ex Rel. Young v. Schnell*, 956 N.W. 2d. 652, 670, HN 16 (MN S. Ct. 2021). "Parolee's must be accorded due process in "any" revocation Proceedings" *Ohio Adult Parole Auth. v. Woodard*, 323 U.S. 272, 293 (1998) (Emphasis Added)

Appellant's action is clearly not frivolous as it raises an issue though previously raised, it was ignored by both appellate courts, thus it is ripe for adjudication. Because it is an unexplored nondiscretionary legal issue, district court Judge Freeman erred when vacating Judge Galler's IFP grant and then dismissing Appellant's Writ of Mandamus as frivolous. "... a district court abuses its discretion when its decision is against the facts in the record."

City of N. Oaks v. Sarpal, 797 2d. 18, [*24] (S. Ct. MN 2011). "... it is emphatically the province and duty of the judicial department to say what the law is". *Perez v. Mortg. Bankers Ass'n*, 135 S. Ct. 1199 (2015); "no mere omission ... which may seem wise to have specifically provided for, justifies any judicial addition to the language of the statute".

Jones v. Bock, 127 S. Ct. 910, at 921 (2007)(quoting *United States v. Goldenberg*, 168 US 95 (1897). A "defendant tried by a partial judge is entitled to have his conviction set aside, no matter how strong the evidence against him. *Tumey v. Ohio*, 273 US 510, 535, 71 L. Ed. 749, 47 S. Ct. 437 (1927); *Arizona v. Fulminante*, 499 US 279, 308, 113 L. Ed. 2d. 302, 111 S. Ct. 1246 (1991).

Clearly the Minnesota Judicial system has shown extreme partiality in their decision-making and as such Appellant is entitled to have their holdings vacated.

The law is clear, Appellant's right to due process has been violated, "Substantive due process is violated where no matter how much procedure is used, the state is not entitled to

REASONS FOR GRANTING THE PETITION

Minnesota State Courts have so far departed from the accepted and usual course of judicial proceedings that the very "Rule of Law" has been compromised requiring the United States Supreme Court to exercise its supervisory power.

CONCLUSION

Clearly the law and precedent forbid the Minnesota Commissioner of Corrections from reimprisoning inmates who have been placed on supervised released, indefinitely. The Minnesota judicial systems refusal to enforce the law is an obvious abuse of discretion that violates both Federal and State due process protections, moreover its imposition of a required court filing fee that Appellant obviously could not pay is a clear obstruction of justice and an abuse of discretion so poisonous and toxic that United States Supreme Court review is imperative, without such the Minnesota Appellate Courts abandonment of the rule of law will stand, judicial integrity in jeopardy. Without U.S.S.C. intervention the MN DOC will continue to violate the law and the holdings of this Court, with full support of the Minnesota Judicial System.

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 12 December 2023