

23-6658

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

ORIGINAL

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OFFICE OF THE CLERK  
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

WASHINGTON, D. C.

RICKY JOHNSON PETITIONER  
(Your Name)

vs.

STATE OF OHIO RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS, SIXTH CIRCUIT, OHIO  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI  
RICKY JOHNSON A.K.A. Under  
Rodney Knuckles #630-539  
(Your Name)

P.O. Box 7010  
(Address)

Chillicothe, Ohio 45601  
(City, State, Zip Code)

N/A  
(Phone Number)

RECEIVED

JAN 22 2024

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

(1)

QUESTION(S) PRESENTED

ASSIGNMENT OF ERROR:

PETITIONER, WAS DENIED THE RIGHT TO A FAIR, Kellogg v. Shoemaker, 46 F.3d 503, REVOCATION HEARING UNDER, Morrissey v. Brewer, 408 U.S. 471; AND, Gagnon, 411 U.S. 788, AND DENIED THE RIGHT TO "EFFECTIVE ASSISTANCE OF COUNSEL AT THE REVOCATION HEARING. AND, AT THE, INITIAL- REVIEW COLLATERAL PROCEEDINGS, A VIOLATION OF THE, SIXTH(6) AND, FOURTEENTH(14), AMENDMENT, OF THE U.S. CONSTITUTION, ART. 1 SEC. 10, OF THE OHIO CONSTITUTION, MARTINEZ v. RYAN, 132 S.Ct. 1309,

Respectfully Submitted

Bickey Johnson

PETITIONER

(2)

**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 judgment is the subject of this petition is as follows:

- 1 U.S. COURT OF APPEALS, Sixth Circuit  
OHIO, CASE NO # 23-3246, decision.
- 2 Ohio ATTORNEY General, DAVE YOST,  
30 E. BROAD ST. 23rd floor Columbus, Ohio  
43215. TO CLERK: please, file, time, stamp.

**RELATED CASES**

(3)

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## INDEX TO APPENDICES

APPENDIX A For Review: Decision of the U.S. Court  
of Appeals, Sixth Circuit Case No. #23-3246.  
APPENDIX B  
APPENDIX C  
Kellogg, Class member paper, attached.

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APPENDIX F

## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
1. Kellogg v. Shoemaker, 46 F.3d. 503	# 8,9,10,11.
2. Morrissey v. Brewer, 408 U.S.	# 8,9,10,11.
3. Gagnon v. Scarpelli, 411 U.S. 788	# 8,9,10,11.
4. Martinez v. Ryan, 132 S.Ct. 1309	# 10,11.

## STATUTES AND RULES

1. 28 USC. 2254	# 8-9-10-11
2. 28 USC. 2253(C)(2)	# 8,9,10,11.
3. 28 USC. 2244(d)(1)	# 8,9,10,11.
4. U.S.C. FED. R. CIV. PROC.	# 10,11,

## OTHER

N/A

(5)

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 A to the petition and is

reported at Case No. 23-3246; 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 N/A; 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 \_\_\_\_\_ to the petition and is

reported at N/A; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

reported at N/A; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

(6)

## JURISDICTION

### [ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_ → **Sep 11, 2023**

[✓] No petition for rehearing was timely filed in my case. **N/A**

[ ] 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 \_\_\_\_\_. **N/A**

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including **N/A** (date) on \_\_\_\_\_ (date) in Application No. **A** \_\_\_\_\_. **N/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 **N/A**. A copy of that decision appears at Appendix \_\_\_\_\_.  
\_\_\_\_\_

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

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including **N/A** (date) on **N/A** (date) in Application No. **A** \_\_\_\_\_. **N/A**

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

(7)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Provisions:

1 Sixth (a) AND Fourteenth Amendment  
OF the US. Constitution, Art. 1, Sec. 10  
OF the Ohio, Constitution.

Statutory Provisions:

1. 28 U.S.C. 2254.
2. 28 U.S.C. 2253(c)(2).
3. 28 U.S.C. 2244(d)(1).
4. U.S.C. FED. R. CIV. P.roc. 60(b)(6).

**STATEMENT OF THE CASE:**

(1) On, 6-26-12, at Summit County Court of Common Pleas, Akron, Ohio, Petitioner was convicted of a community control violation, in cases: Case No. CR-10-04-1130; and Case No. CR12-03-0729; and sentenced to a five-year prison term.

(2) Petitioner, was on parole from a murder charge (Case No. CR-164-134) at the time, and was to have a Kellogg v. Shoemaker, 46 F.3d. 503, revocation hearing.

**REASONS FOR GRANTING PETITION:**

The Petition should be granted because the Petitioner was denied the right to a fair, Kellogg v. Shoemaker, 46 F.3d. 503 revocation hearing, under, Morrissey v. Brewer, 408 U.S. 471 and Gagnon v. Scarpelli, 411 U.S. 788 an, denied the effective assistance of counsel at the Kellogg, revocation hearing, and at the initial-review collateral proceedings.

(1) Petitioner, not knowing the law and times to file appeals, a friend filed for him two State Habeas Corpuses: (1) on October, 8<sup>th</sup>, of 2014, Case No. 9-14-0030; and (2) another to the Ohio Supreme Court of Ohio, on November 7<sup>th</sup>, of 2022, Case No. 22-1364. Both Habeas Corpuses, initial-review collateral proceeding was denied as time bar procedurally defective.

(2) Petitioner had filed a Federal Habeas Corpus to the U.S. District Court, 28 U.S.C. § 2254, Case No. 2:21-CV-790. The habeas was dismissed by the statute of limitations as time barred, 28 U.S.C. § 2244(d)(1), on August, 17<sup>th</sup>, of 2021.

(9)

(3) Petitioner has filed a Motion pursuant to USC Fed.Rules.Civ.Proc.R.60(b)(6) to the U.S. District, Ohio, to have his time barred habeas corpus reopened due to actual innocence of the parole violation under Morrissey v. Brewer, for an inappropriate, Kellogg v. Shoemaker, revocation hearing, and the denial of the effective assistance of counsel. The Case was dismissed, Case No. 2:21-CV-790.

(4) Petitioner, thereafter filed an appeal of his Motion pursuant to USC Fed.Rules.Civ.Proc. R.60(b)(6), requesting a certificate of appealability, pursuant to 28 U.S.C. § 2253(C)(2), Case No. 23-3246, in which he made a showing of the denial of due process constitutional right, “that the A.P.A. held an inappropriate, Kellogg, revocation in violation of due process of law under Morrissey v. Brewer, 408 U.S. 471 and Gagnon v. Scarpelli, 411 U.S. 788. The Sixth Circuit Court of Appeals error when they “never look at the fact that Petitioner is being held in violation of due process constitutional rights” and denied the certificate of appealability wrongly.

(5) Now, Petitioner, had this Writ of Certiorari to the U.S. Supreme Court to show that Petitioner has been denied his Sixth and Fourteenth Amendment rights of the United States Constitution, when he was denied a fair, Kellogg v. Shoemaker, revocation hearing, under, Morrissey v. Brewer, 92 S.Ct. 2593 and the effective assistance of counsel, under Gagnon v. Scarpelli, 411 U.S. 788.

**Petitioner will show that he was denied the right of due process of law and he should not have been denied a certificate of appealability.**

(1) On August 13, 2021, Petitioner if he wanted to be represented by the Ohio Public Defenders Office, Petitioner said, "Yes", he would like to be represented by their office at the Kellogg hearing. After Petitioner ask to be represented the hearing offices stated that "Petitioner has not been certified by the Ohio Public Defenders Office for representation at the *Kellogg* revocation hearing." There was **no reason** given to the Petitioner as to why he was not "certified" by the Public Defenders Office. Petitioner was denied counsel at his revocation hearing before it was started and forced to go on with the hearing without appointed counsel. This complete denial of counsel deprived the Petitioner his right to counsel at a revocation parole hearing, under *Gagnon v. Scarpelli*, 411 U.S. 788 and *Morrissey v. Brewer*, 408 U.S. 471 of the Sixth and Fourteenth Amendment of the United States Constitution. This issue is a violation of a Federal Constitutional right, therefore, a certificate of appealability should have been granted under 28 U.S.C. § 2253(C)(2).

**Petitioner was denied a fair *Kellogg* revocation hearing.**

(1) The liberty of a parole cannot be revoked without affording a minimum of due process protection, due process requires, (1) written notice of the claim violation of parole; (2) the right to appointed counsel; (3) the right to have the *Kellogg*, hearing held under the requirements of, *Morrissey v. Brewer*, 408 U.S. 471, Counsel, under, *Gagnon v. Scarpelli*, 411 U.S. 788.

(2) At the *Kellogg*, revocation hearing Petitioner was denied the right of due process of law because the revocation was held (1) without a written notice of the claim violation of parole;

(11)

(2) the right to have the appointment of counsel at the *Kellogg* hearing; (3) and denied the right to have the *Kellogg* hearing held under the requirements of *Morrissey v. Brewer*, 408 U.S. 471 and *Gagnon v. Scarpelli*, 411 U.S. 788. After the Parole Board Hearing Officer and the Ohio Public Defenders Office denied the Petitioner the right to counsel, as “not being certified by [their] office,” the hearing denied the Petitioner, all the other requirement for a fair *Kellogg* hearing. The actions of the revocation hearing officer resulted in a denial of the minimum due process protection as established in the Fourteenth Amendment to the United States Constitution. Further, the denial of any meaningful counsel was a Sixth Amendment violation of the Petitioners right to counsel at a proceeding in which he is entitled to counsel. Therefore, it was an error for the Sixth Circuit Court of Appeals to deny a certificate of appealability when these constitutional issue exist. Petitioner’s parole was revoked with “no written sanction of parole violations, as jurists would debate that there is a constitutional violation here.

#### Ineffective Assistance of Counsel:

In *Martinez v. Ryan*, 132 S.Ct. 1309, the U.S. Supreme Court held that procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the States initial-review collateral proceeding there was no counsel or counsel in that proceeding was ineffective.

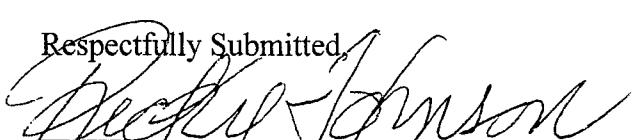
(1) There was ineffective assistance of counsel at the Petitioner’s *Kellogg*, revocation trial when he was denied counsel; therefore, it was no effective counsel at the *Kellogg*, trial and no counsel at none of the initial-review collateral proceedings. By Petitioner being denied appointed counsel at the *Kellogg* hearing there was no counsel to appeal his *Kellogg* hearing within the time to have his federal habeas corpus filed and cause Petitioner to be barred by

the Statute of limitations 28 U.S.C. § 2244(d)(1). Therefore, that the cause of all the procedural defaults is that there was no counsel, Petitioner's procedural defaults should be excused and this case heard on the merits because of these constitutional deprivations of the Sixth and Fourteenth Amendments of the United States Constitution and Article 1, Section 10 of the Ohio Constitution under, inappropriate *Kellogg*, revocation hearing, Morrissey v. Brewer, 408 U.S. 471; Gagnon v. Scarpelli, 411 U.S. 788; and Martinez v. Ryan, 132 S.Ct. 1309. It would be a fundamental miscarriage of justice to hold Petitioner in prison when he is actually innocent of parole violations.

### CONCLUSION

Petitioner respectfully requests that this Honorable Court hear the merits of this case and dismiss the inappropriate *Kellogg v. Shoemaker*, revocation hearing. Or in alternative grant this Petitioner any other relief he is due pursuant to State and Federal law and the constitutions of Ohio and the United States.

Respectfully Submitted,

  
\_\_\_\_\_  
Rodney Knuckles  
Inmate #A630-539  
Ross Correctional Institution  
16149 State Route 104  
Chillicothe, Ohio 45601