

ORIGINAL

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SUPREME COURT, U.S.

In the Supreme Court of the United States

JOHN E. GARRETT, PETITIONER

v.

RICHARD CLOUSE, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

John E. Garrett – Pro Se

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United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted January 29, 2024
Decided January 30, 2024

Before

MICHAEL B. BRENNAN, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 23-1877

JOHN E. GARRETT,
Petitioner-Appellant,

Appeal from the United States District
Court for the Northern District of Illinois,
Eastern Division.

v.

No. 22 CV 5993

RICHARD CLOUSE,
Respondent-Appellee.

Lindsay C. Jenkins,
Judge.

ORDER

John Garrett has filed a notice of appeal from the denial of his petition under 28 U.S.C. § 2254, which we construe as an application for a certificate of appealability. We have reviewed the final order of the district court and the record on appeal and find no substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

Accordingly, we **DENY** the request for a certificate of appealability.

137a

QUESTIONS PRESENTED

1. *Is notice and a hearing required, prior to depriving one of his liberty pending trial and does said liberty qualify as a substantive and/or procedural component of the Due Process Clause?*
2. *In cases involving arbitrary deprivation of liberty, at what point is the deprivation complete and the Due Process Clause violated and what must be done to correct this constitutional violation?*
3. *What qualifies as excessive bail under the Eighth Amendment and what considerations does due process require when determining what amount of bail is required in cases of revocation?*

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In the Supreme Court of the United States

No. _____

JOHN E. GARRETT, PETITIONER

v.

RICHARD CLOUSE, RESPONDENT

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT*

PETITION FOR A WRIT OF CERTIORARI

John E. Garrett respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The denial of the *Seventh Circuit Court of Appeals* to issue a certificate of appealability, 23-1877, (App., *infra*, 137a), is unreported. The denial of the *District Court, Northern District of Illinois* to issue a writ of habeas corpus, 22-CV-5993, (App., *infra*, 118a-129a), is reported at 2023 U.S. Dist. LEXIS 59836. The *Illinois Supreme Court's* order denying leave to file a Petition for Writ of Habeas Corpus, M.D. 14776, (App., *infra*, 78a), is

unreported. The denial of the *Illinois Appellate Court, Second District*, to review bail order, 2-22-0120, (App., *infra*, 50a, 58a), is unreported.

JURISDICTION

On October 31, 2022, Petitioner filed a Petition for a Writ of Habeas Corpus in the United States District Court, Northern District of Illinois. On May 8, 2023, Petitioner filed a Notice of Appeal and/or Request for Certificate of Appealability in the Seventh Circuit Court of Appeals. The judgment of the court of appeals was entered on January 30, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant provisions of Illinois Compiled Statutes, Article 110 – Bail, 725 ILCS 5/110, are reproduced in the appendix to this petition (App., *infra*, 138a–140a).

CONSTITUTIONAL PROVISIONS INVOLVED

The *Preamble* provides that, “We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.” U.S. Const. Preamble.

Article VI, Clause 2, provides that, “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Const. Article VI.

The *Fifth Amendment* provides that, “No person shall ...be deprived of life, liberty, or property, without due process of law;” U.S. Const. Amend. V.

The *Eighth Amendment* provides that, “Excessive bail shall not be required,” U.S. Const. Amend. VIII.

The *Fourteenth Amendment* provides that, “No State shall ...deprive any person of life, liberty, or property, without due process of law.” U.S. Const. Amend. XIV.

STATEMENT

The prevention of deprivation of one’s liberty, without Due Process, is of such importance, that it is addressed not once, but twice in the United States Constitution. In both instances, it is established with such force, that the immutable necessity for its protection, is undeniable. Other than a person’s life, no other right is held to be more sacred.

The right to bail is not a Constitutional guarantee. When however, it is determined that a criminal defendant is eligible, bail must be set at a reasonable amount.

Before this Court are three critically important questions that have far reaching implications. Their determination can adversely affect the liberty so desperately fought for at the founding of this great nation. Specifically, what protections must be afforded persons accused of a crime. The application of constitutional rights, as applied to pretrial detainees, require clear and precise instruction as to what process or procedure must be implemented, when substantial deprivations of a person's liberty are at stake. Arbitrary denial of liberty cannot stand to comport with due process. Neither can implementation of excessive bail in direct violation of the Eighth Amendment.

The *Fifth Amendment* provides, "No person shall ...be deprived of life, liberty, or property, without due process of law;" U.S. Const. Amend. V

The *Fourteenth Amendment* provides, "No State shall ...deprive any person of life, liberty, or property, without due process of law;" U.S. Const. Amend. XIV

The *Eighth Amendment* provides, "Excessive bail shall not be required," U.S. Const. Amend. VIII

“In the substantive due process analysis, it is the State's affirmative act of restraining the individual's freedom to act on his own behalf-through incarceration, institutionalization, or other similar restraint of personal liberty-which is the "deprivation of liberty" triggering the protections of the Due Process Clause...” DeShaney v. Winnebago County Department of Social Services, 489 U.S. 189, 200 (1989).

The first question is: *Is notice and a hearing required, prior to depriving one of his liberty pending trial and does said liberty qualify as a substantive and/or procedural component of the Due Process Clause?*

“Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified. Common justice requires that no man shall be condemned in his person or property without notice and an opportunity to make his defense.” Baldwin v. Hale, 1 Wall US 223, 233 (1864).

The second question is: *In cases involving arbitrary deprivation of liberty, at what point is the deprivation complete and the Due Process Clause violated and what must be done to correct this constitutional violation?*

“In other contexts, however, including criminal cases and most cases *involving a deprivation of liberty*, the deprivation is complete, and the Due Process Clause has been violated, when the loss of

liberty occurs. In those contexts, any postdeprivation state procedure is merely a remedy; because it does not provide the predeprivation process that is "due," it **does not** avoid the constitutional violation." *Albright v. Oliver*, 510 U.S. 266, 315-316 (1994), (emphasis added).

The final question is: *What qualifies as excessive bail under the Eighth Amendment and what considerations does due process require when determining what amount of bail is required in cases of revocation?*

"Like the ancient practice of securing the oaths of responsible persons to stand as sureties for the accused, the modern practice of requiring a bail bond or the deposit of a sum of money subject to forfeiture serves as additional assurance of the presence of an accused. Bail set at a figure higher than an amount reasonably calculated to fulfill this purpose is "excessive" under the Eighth Amendment." *Stack v. Boyle*, 342 U.S. 1, 5 (1951).

In this case, Petitioner's bail was arbitrarily revoked and a no-bond order was entered, in violation of Due Process. Further, when he brought forth this violation, the trial court, recognizing that a procedural violation occurred, reversed the no-bond order but ignored the constitutional violation. The Appellate Court, the Illinois Supreme Court, and the District Court for the Northern District of Illinois, have erroneously and brazenly ignored Petitioner's pleas for recognition of the irreparable injury that he has

suffered as a result of the violation of his constitutional rights, for the past 6 years. Further, the State has acted in bad faith throughout these proceedings, vehemently denying that petitioner's constitutional rights were violated. The issues presented to this Court are plainly and unambiguously of constitutional dimension and require resolution, of an equal magnitude.

State Proceedings

1. Petitioner was arrested on March 1, 2016 and charged with various offenses. After a pretrial assessment and multiple bail hearings, Petitioner was deemed eligible to be released on bail. On March 19, 2016, Petitioner posted bail in the amount of \$100,000 with 10% to apply and was released. (App., *infra*, 1a–4a). On February 27, 2018, while still out on bond and attending a scheduled court appearance, the trial court judge was notified by the state that the Petitioner had a pending warrant on new and additional charges. Immediately, upon notification of the pending warrant, the trial court judge, revoked Petitioner's bail and entered a No Bail order. (App., *infra*, 5a–6a) There was no statutorily required Petition to Revoke (see 725 ILCS 5/110-6), nor was a hearing on said petition completed, prior to the taking of Petitioner's liberty. Subsequent to that bail order, various judges of the 19th Judicial Circuit Court, agreed and continued that order without any further process. (App., *infra*, 7a–10a).

2. Four years later, on January 26, 2022, petitioner proceeded Pro Se. On March 14, 2022, in accordance with Illinois Supreme Court Rule 604(c), he filed a *Motion for Release on Bail* in the trial court, as a required prerequisite to his interlocutory appeal, seeking relief from the no-bond order set on February 27, 2018. He requested to be released on his own recognizance, with restrictive conditions as deemed necessary, arguing that his constitutional rights were violated when his bail was arbitrarily revoked. (App., *infra*, 11a–28a). On March 30, 2022, the trial court conducted a hearing on the motion. The court found that, there incorrectly was a no-bond order, confirming that, both the previous trial court and the State did not follow the statutorily required procedure prior to revoking defendant’s bail. The court immediately reversed the no-bond order and set bail at \$5,000,000. Petitioner urged the court to consider his financial situation, relevant statutes, as well as the fact that his liberty was arbitrarily taken without due process of law, over 4 years prior. The court denied his request. (App., *infra*, 29a–35a).

4. On April 14, 2022, Petitioner filed a *Motion for Review of Bail Order* in the Appellate Court, Second District. (App., *infra*, 36a). On May 2, 2022, the appellate court ruled that, “In light of the transcript for March 30, 2022, appellant’s motion for review of bail order is denied pursuant to the appellee’s response.” (App., *infra*, 50a). On May 23, 2022, Petitioner filed a *Motion to Reinstate*

Appeal and Reconsider Denial of Motion to Review Bail Order in the Appellate Court, Second District. (App., *infra*, 51a). On June 1, 2022, the court denied the motion. (App., *infra*, 58a).

5. On June 30, 2022, Petitioner filed a *Motion for Leave to File Petition* and a *Petition for a Writ of Habeas Corpus* in the Illinois Supreme Court. (App., *infra*, 59a – 77a). That motion was denied on September 27, 2022 without any statement of the reasons. (App., *infra*, 78a).

District Court and 7th Circuit Court of Appeals Proceedings

6. On October 31, 2022, Petitioner filed a *Petition for a Writ of Habeas Corpus* in the United States District Court, Northern District of Illinois, raising two claims: 1) his due process rights were violated where his bond was arbitrarily revoked without affording him all statutorily-mandated procedures under Illinois law, including the filing of a petition to revoke and a hearing on that matter; and 2) the trial court acted arbitrarily in modifying the no-bond order to \$5 million as it was an excessive amount that was set without consideration of either Petitioner's financial circumstances or the previous deprivation of due process. (App., *infra*, 79a – 86a, 121a). On December 1, 2022, Judge Manish S. Shaw, upon initial review of the habeas petition, ruled that, "Although a violation of state-law procedures is not cognizable as a federal habeas corpus claim, *petitioner's claims* for arbitrary denial of bail and for an excessive

bail amount are cognizable.” (emphasis added), (App., *infra*, 87a). On April 5, 2023, Judge Lindsay C. Jenkins, issued a Memorandum Opinion and Order, denying the habeas petition, stating as to claim one, “Because Petitioner is no longer being held without bond, his claim as to the February 27, 2018 no-bond order is moot, and the court is without jurisdiction to review it.” As to claim two, “Considering the seriousness of the charges and his history, as the state court did, the setting of bond at \$5 million was not arbitrary.” Further, the court declined to issue a certificate of appealability. (App., *infra*, 118a – 129a).

7. On May 8, 2023, Petitioner filed a Notice of Appeal and/or Request for Certificate of Appealability in the Seventh Circuit Court of Appeals. (App., *infra*, 130a). On January 30, 2024, the court denied the request stating, “We have reviewed the final order of the district court and the record on appeal and find no substantial showing of the denial of a constitutional right.” (App., *infra*, 137a).

REASONS FOR GRANTING THE PETITION

A. The 7th Circuit Court of Appeals has sanctioned a departure from the accepted and usual course of judicial proceedings by the lower courts, as to call for an exercise of this Court’s supervisory power.

All lower courts involved in decisions of this case, have continually and unmistakably departed from the limitations and

requirements that the Due Process Clause demands. Further, the 7th Circuit Court of Appeals sanctioned this behavior by determining in this case that no denial of a constitutional right occurred. This is incorrect, as two different constitutional rights were violated;

- 1) Petitioner's substantial right to due process, protected by both the Fifth and Fourteenth Amendments, was violated when his bond was arbitrarily revoked over 6 years ago. As this Court stated in *Foucha*, "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Foucha v. Louisiana*, 504 U.S. 71, 81 (1992).
- 2) In reversing the previous court's error of entering a no-bond order, the 19th Judicial Circuit Court entered an excessive bail amount, without considering the financial means of defendant or alternative conditions, in direct violation of the Eighth Amendment. As this Court stated in *Rodriguez*, "The Eighth Amendment forbids "excessive bail." It does so in order to prevent bail being set so high that the level itself (rather than the reasons that might properly forbid release on bail) prevents

provisional release.” *Jennings v. Rodriguez*, 583 U.S. 281, 331 (2018) (Breyer, J., dissenting).

Clearly, Petitioner’s constitutional rights have been violated. The prior decisions concerning the violation of those rights by the lower courts, were made by departing from the accepted and usual course of judicial proceedings and sanctioned by the 7th Circuit Court of Appeals, so as to call for an exercise of this Court’s supervisory power.

B. This case presents questions important to the administration of criminal justice.

“Judicial supervision of the administration of criminal justice in the Federal courts implies the duty of establishing and maintaining civilized standards of procedure and evidence.” *McNabb v. United States*, 318 U.S. 332, 340 (1943).

This case involves constitutional questions of substantive rights “implicit in the concept of ordered liberty...” *Palko v. Connecticut*, 302 U.S. 319, 325 (1937). If in fact Petitioner’s rights were violated as he claims, then what does the lack of correction to these violations reflect upon the Judiciary in its administration of criminal justice. These questions have the potential to affect every citizen held to answer for a crime. Further, this case raises serious questions as to the requirements,

which the Due Process Clause imposes on the conduct of proceedings by the State, when a person's liberty is at stake.

C. Courts cannot abdicate their constitutional responsibility to delineate and protect fundamental liberties.

Throughout this entire case, not a single court has agreed that Petitioner's constitutional rights were violated, much less, the need to remedy said violations. Petitioner has endeavored at every level to clearly and unequivocally object to the arbitrary taking of his liberty, as well as the setting of an excessive bail amount, all to no avail. The constitution is not to be used at will, or in consideration of. It is, and always has been, the Supreme Law of the land. As expressly provided by the Constitution itself, "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, ***shall be the supreme Law of the Land;*** and the ***Judges in every State shall be bound thereby,*** any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. Article VI, Clause 2 (emphasis added).

There is no denying that all Judges are duty and oath bound to protect and enforce the Constitution and the rights it bestows upon its citizens. In this case, they have not.

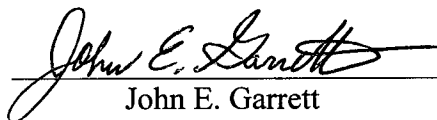
D. No other procedure or process will present the issues needing resolution, to the courts, as this is the ultimate, court of last resort.

Petitioner has attempted at every subsidiary level of the Judiciary, for the past 2 years, to have his claims heard and addressed. All without success. Meanwhile, he languishes in jail, in violation of the Constitution. This petition is his final chance to reverse the deprivation of his liberty, which was arbitrarily taken from him, over 6 years ago. For without the intercession and supervisory power of this court, the purpose of the Constitution to; "secure the Blessings of Liberty," as to Petitioner, falls short. See U.S. Const. Preamble.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

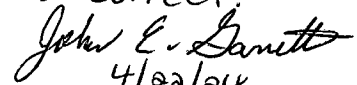

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Placed in institutional
mail on 4/22/24 @ 6:35pm.
Postage paid - first class.
I declare under penalty of
perjury that the foregoing is
true and correct.

4/22/24

In Custody of:
Lake County Jail

Currently housed in:
McHenry County Jail
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2200 N. Seminary Ave
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