APPENDIX

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOHN E. GARRETT,
(L-159088)
Plaintiff,

v.

RICHARD CLOUSE, CHIEF OF CORRECTIONS, LAKE CTY. JAIL

Defendants

No. 22 CV 5993

Judge Lindsay C. Jenkins

MEMORANDUM OPINION AND ORDER

Petitioner John E. Garrett, a pre-trial detainee at Lake County Jail, brings a *pro se* habeas corpus petition pursuant to 28 U.S.C. § 2241 challenging the entry of a no-bond order that was subsequently modified to a bond amount of $5 million in the Nineteenth Judicial Circuit Court, Lake County, Illinois. (Dkt. 9.) For the reasons below, the Court denies the habeas corpus petition and declines to issue a certificate of appealability.

I. Background

On March 1, 2016, Petitioner was arrested and charged with predatory criminal sexual assault of a victim under the age of 13 in Lake County, Illinois. (Dkt. 14, p. 14) (Criminal Case No. 16CF565). Bond was set at $200,000 with 10% to apply and several conditions were imposed, including that Petitioner shall have no contact with the minor victim, Z.H., her family, or her residence. *Id.* at 15. On March 16, 2016, Petitioner's bond was reduced to $100,000 with the same conditions previously set. *Id.* at 16. He posted bond and was released on March 23, 2016. *Id.* Petitioner was

subsequently indicted on two counts of predatory criminal sexual assault of a child under the age of 13. *Id.* at 152-53. The indictment provided that the State would be seeking a term of natural life imprisonment based on Petitioner's prior conviction for predatory criminal sexual assault of a child in Cook County, Illinois. *Id.*

On February 27, 2018, while released on bond, Petitioner was arrested and charged with seven additional counts of predatory criminal sexual assault involving Z.H., the same victim involved in the 2016 offenses, as well as two other female victims under the age of 13. *Id.* at 62, 154-158, 160-161. (Criminal Case No. 18CF444). On that same date, Petitioner's bond was revoked, and he was held without bond under both Case No. 16CF565 and Case No. 18CF444. *Id.* at 28, 63. He was indicted on seven new counts of predatory criminal sexual assault. *Id.* at 154-62. Like the 2016 indictment, the 2018 indictment provided the State would be seeking a natural life sentence. *Id.* at 160-61.

In January 2022, Petitioner's attorney was allowed to withdraw from the case, and Petitioner proceeded to represent himself *pro se* in both criminal matters. *Id.* at 50, 85. In March of that year, Petitioner filed a *pro se* motion for release on bail. *Id.* at 134-146. His motion challenged the no-bond order entered on February 27, 2018, contending that the failure to follow the statutory procedures before revoking his bail, as outlined in 725 ILCS 5/110-6 (West 2018), denied him due process of law. *Id.*

On March 30, 2022, a hearing was held on Petitioner's motion. *Id.* at 169-174. The trial court agreed with Petitioner's position—that a no-bond order should not have been entered in the absence of a petition from the State—and set an umbrella

bond in the amount of $5 million for both Case No. 16CF565 and Case No. 18CF444. *Id.* at 172. Petitioner, representing himself *pro se* at the hearing, requested the trial court reconsider the bond amount in light of his socioeconomic status and impose alternative, non-monetary conditions that could equally ensure his appearance in court. *Id.* at 173-174. The trial court rejected Petitioner's argument and ruled:

> As I indicated, Mr. Garrett, there is no reason that without a verified petition being filed and hearing that there should have been a no bond set, so the Court then looks at a number of different factors as set out in the statute: Your background, any priors. I look at the seriousness of the charges and the fact that you were out on bond and then alleged to have committed another offense with the same alleged victim. So based on all of those factors I continue to set bond, an umbrella bond in the amount of five million dollars.

Id. at 174.

Following the trial court's bond modification, Petitioner filed a *pro se* motion for review of bail order in the Appellate Court of Illinois. *Id.* at 97-102. He challenged the trial court's March 30, 2022 order setting bond at $5 million, arguing: (1) the bond amount was excessive in violation of the Eighth Amendment; and (2) given the earlier deprivation of due process in setting the no-bond order, "fairness" required a remedy that was more equitable than the trial court's modified bond order. *Id.* at 98-99. The Appellate Court denied Petitioner's motion for review, *id.* at 252, and subsequently denied Petitioner's *pro se* motion to reconsider. *Id.* at 253-260.

Petitioner then filed a *pro se* motion for leave to file a petition for writ of habeas corpus in the Supreme Court of Illinois. *Id.* at 264-269. He reraised his due process claim, arguing that the trial court violated his right to due process when it entered a

no-bond order without a petition and hearing on the matter, and that he was not given an adequate post-deprivation remedy to compensate him for the loss he endured as a result of the constitutional violation. *Id.* The Supreme Court of Illinois denied his motion. *Id.* at 263.

II. Habeas Corpus Petition

Petitioner now brings a § 2241 habeas corpus petition challenging the trial court's bond determination. (Dkt. 9.) His petition raises 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 and holding a hearing on the 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. *Id.* at 6.

In response to the habeas petition, Respondent argues Claim One is unexhausted, moot, and non-cognizable, and Claim Two is meritless. (Dkt. 14, p. 3-8.) Petitioner replied, maintaining that he suffered irreparable injury from the alleged due process violation that was not cured by the modified bond order, and that he should be released on his own recognizance with appropriate conditions. (Dkt. 17, p. 19-20.)

As explained below, the Court agrees with Respondent that Petitioner is not entitled to habeas relief on either of his claims.

A. Legal Standard

Because Petitioner is a pretrial detainee, his only source of habeas corpus relief is under § 2241. *See Jacobs v. McCaughtry*, 251 F.3d 596, 597 (7th Cir. 2001) (per curiam). His ability to obtain § 2241 relief, however, is extremely limited by the longstanding principle stated in *Younger v. Harris*, 401 U.S. 37 (1971), which, with very few exceptions, "requires federal courts to abstain from interfering with pending state proceedings." *Sweeney v. Bartow*, 612 F.3d 571, 573 (7th Cir. 2010). State courts must be permitted "to try state cases free from interference by federal courts." *Younger*, 401 U.S. at 43. "[W]hen the moving party has an adequate remedy at law and will not suffer irreparable injury," federal courts "should not act to restrain a criminal prosecution." *Id.* at 43-44.

Excessive bail is one of the limited number of claims cognizable in a § 2241 pre-trial petition. *United States ex rel. Garcia v. O'Grady*, 812 F.2d 347, 355 (7th Cir. 1987). But in reviewing the state court's bail determination, this Court may neither "substitute its opinion as to what an appropriate amount of bail should be nor decide what factor should be given the greatest weight." *Id.* In other words, it is not the role of this Court to "conduct a *de novo* bond hearing," as that "would [ ] represent an unwarranted interference in the operation of the state's criminal justice system" in violation of the *Younger* doctrine. *United States ex rel. Fitzgerald v. Jordan*, 747 F.2d 1120, 1133 (7th Cir. 1984) (citations omitted). Rather, the sole issue to be resolved by this Court is "whether the state judge has acted *arbitrarily* in setting that bail." *Id.* (internal quotation marks and citations omitted) (emphasis in original); *see also*

O'Grady, 812 F.2d at 357 (Easterbrook, J., concurring) ("The purpose of the language in *Fitzgerald* is not to set the district judge as an appellate tribunal over the supreme court of the state; ... [t]he search for 'arbitrariness' ... is designed to reduce the scope of federal review.").

B. Claim One: Petitioner's Due Process Claim

Petitioner's first claim challenges the February 27, 2018 no-bond order. (Dkt. 9, p. 6.) He contends that the decision to revoke his bond was arbitrary and was made without following the statutory procedures outlined in 725 ILCS 5/110-6, thereby depriving him of due process. *Id.* Specifically, he argues that a petition should have been filed and a hearing on that petition should have been held before his bond was revoked, and that the trial court "admitted" these omissions occurred "when it reversed the no bail order" at the hearing on March 30, 2022. *Id.*

As mentioned above, Respondent argues that Petitioner did not exhaust his available state-court remedies before presenting Claim One in his § 2241 petition,[1] that the claim is moot, and that the claim raises issues that are non-cognizable on

1 Respondent argues that Claim One is unexhausted because Petitioner's appeal should be construed as challenging only the state court's modified bond order entered on March 30, 2022, not the previous no-bond order entered on February 27, 2018. (Dkt. 14, p. 4.) The Court recognizes, however, that in Petitioner's motion for review of the bail order in the state appellate court, Petitioner seemingly argues that he was denied due process upon entry of the no-bond order, and that the trial court's modified bond order did not adequately remedy the due process violation. *Id.* at 97-99. He likewise raised his due process challenge in his motion for leave to file a petition for writ of habeas corpus in the state supreme court. *Id.* at 264-280. Petitioner thus appears to have consistently raised a due process challenge to the no-bond order; but whether his motion for leave to file a petition for writ of habeas corpus satisfies the exhaustion requirement presents a separate issue. *See O'Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999) (habeas corpus petitioner must "use the State's established appellate review procedures before he presents his claims to a federal court"); *United States ex rel. Shelton v. Cook Cnty. Jail Exec. Dir.*, No. 12 C 4665, 2012 WL 2374750, at *4 (N.D. Ill. June 20, 2012) (citing *Beacham v. Walker*, 896 N.E.2d 327, 332 (Ill. 2008)) ("The Illinois Supreme Court teaches that constitutional claims cannot be brought in an Illinois habeas corpus proceeding because constitutional claims do not fit into the[ ] permissible categories for Illinois habeas corpus."). Ultimately, this Court need not resolve the exhaustion issue because, as discussed, Claim One is moot.

federal habeas corpus review. (Dkt. 14, p. 4-6.) Because mootness affects the exercise of jurisdiction over the claim, the Court begins its inquiry there. *See Fed'n of Advert. Indus. Representatives, Inc. v. City of Chicago*, 326 F.3d 924, 929 (7th Cir. 2003).

Respondent contends that Claim One is moot because Petitioner's due process argument hinges on the trial court's February 27, 2018 no-bond order, which was subsequently modified at the bond hearing on March 30, 2022, to $5 million. (Dkt. 14, p. 5-6.) In his reply brief, Petitioner challenges Respondent's argument, contending there exists an "actual, ongoing case or controversy" because he has not yet been provided a "suitable post-deprivation remedy" for the alleged constitutional violation that occurred upon entry of the no-bond order. (Dkt. 17, p. 6-10.)

"In order for federal courts to retain jurisdiction over a case, there must be an 'actual, ongoing controvers[y].'" *Jackson v. Clements*, 796 F.3d 841, 843 (7th Cir. 2015) (quoting *Fed'n of Advert. Indus. Representatives*, 326 F.3d at 929). The absence of an ongoing case or controversy renders the claim moot and deprives this Court of subject matter jurisdiction over the claim. *Id.*

Petitioner does not challenge Respondent's position that he is no longer being denied pre-trial release, nor that he is currently subject to a $5 million bond. (Dkt. 17, p. 6.) Rather, he seems to be using Claim One as a vehicle to express his disappointment in the relief that he was given at the March 30, 2022 hearing (during which he argued his due process claim), contending that he should have been given a better remedy once the trial court acknowledged the error in entering a no-bond order without the State having filed a petition. *Id.* at 9. But Petitioner's disappointment in

the trial court modifying his bond to $5 million, rather than releasing him as he requested, does not create an "actual, ongoing controversy" as to the February 27, 2018 no-bond order.

As mentioned above, it is not the role of this Court to act as an "appellate tribunal" over the state court's bond determination at the March 30, 2022 hearing; it may only review the bond order under which Petitioner is currently being held for arbitrariness. *See O'Grady*, 812 F.2d at 357 (Easterbrook, J., concurring). 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.[2] *See Clements*, 796 F.3d at 843.

C. Claim Two: Petitioner's Excessive Bail Claim

Turning to Claim Two, Petitioner argues the modified bond order setting bond at $5 million was arbitrary and excessive. (Dkt. 9, p. 6.) He contends that the trial court's bond determination was arbitrary because it was made without proper consideration of the relevant, statutory factors, nor consideration of whether there

2 As stated above, mootness deprives this Court of jurisdiction over Claim One. *See Clements*, 796 F.3d at 843. However, had that not been the case, the claim is nevertheless non-cognizable on federal habeas corpus review. Claim One raises errors of state law, challenging the entry of the no-bond order on grounds that the applicable statutory processes as outlined under Illinois law, 725 ILCS 110-6, were not properly followed. (Dkt. 1, p. 6.) This Court has no authority to grant habeas relief based on errors of state law. *Estelle v. McGuire*, 502 U.S. 62, 67 (1991) ("We have stated many times that federal habeas corpus relief does not lie for errors of state law.") (internal quotation marks and citation omitted); *see also Smith v. Illinois*, No. 07 C 7048, 2008 WL 4951232, at *5 (N.D. Ill. Nov. 17, 2008) (petitioner's claim that he was "denied the bail hearing to which he was entitled to under Illinois law" appears to be "a state-law issue, not a federal constitutional claim.").

were alternative, less restrictive means that would assure Petitioner's appearance at court proceedings. (Dkt. 17, p. 13-18.)

As reiterated throughout this opinion, the sole question to be answered by this Court in reviewing an excessive bail claim is whether the state trial court acted arbitrarily in setting bond at $5 million. *Fitzgerald*, 747 F.2d at 1133; *see also Jackson v. Cir. Ct. of Cook Cnty.*, No. 18 C 5864, 2018 WL 6435654, at *3 (N.D. Ill. Dec. 7, 2018); *Miller v. Williamson Cnty. Corr. Ctr.*, No. 14 C 333, 2014 WL 1389629, at *4 (S.D. Ill. Apr. 9, 2014). This Court cannot reweigh the evidence and make its own bond determination. *Jackson*, 2018 WL 6435654, at *3 (citing *O'Grady*, 812 F.2d at 355; *Miller*, 2014 WL 1389629, at *5).

Although the state court's reasoning was not particularly lengthy in issuing the modified bond order, it is clear that the court was aware of the nature and circumstances surrounding the crimes with which Petitioner was charged and made the bond determination accordingly. (Dkt. 14, p. 169-174.) In rejecting Petitioner's request for a lesser-bond amount and alternative, non-monetary conditions, the state trial court explained that it was setting bond at $5 million based on Petitioner's background, prior offenses, the seriousness of the charges, and the fact that he was out on bond when he allegedly committed additional offenses against the same alleged victim. (Dkt. 14, p. 174.) These were more than sufficient bases for the trial court's bond determination. Petitioner is charged with multiple counts of predatory criminal sexual assault of a child, a very serious crime, and is alleged to have committed some of these offenses against the same victim, with whom he was

prohibited from contacting as a condition of release, while he was out on bond. Considering the seriousness of the charges and his history, as the state court did, the setting of bond at $5 million was not arbitrary. *See e.g., Jackson*, 2018 WL 6435654, at *3 (N.D. Ill. Dec. 7, 2018) (state court did not act arbitrarily in denying bond pending petitioner's retrial in light of the nature of the crime charged and the evidence presented at the first trial). Claim Two is therefore meritless and denied.

For all the reasons above, Petitioner is not entitled to § 2241 habeas corpus relief. His petition is therefore denied. (Dkt. 9.)

III. Notice of Appeal Rights and Certificate of Appealability

Petitioner is advised that this is a final decision ending his case in this Court. If he wishes to appeal, he must file a notice of appeal with this Court within 30 days of the entry of judgment. *See* Fed. R. App. P. 4(a)(1). Petitioner need not bring a motion to reconsider this Court's ruling to preserve his appellate rights. However, if he wishes the Court to reconsider its judgment, he may file a motion under Federal Rule of Civil Procedure 59(e) or 60(b). Any Rule 59(e) motion must be filed within 28 days of the entry of this judgment. *See* Fed. R. Civ. P. 59(e). The time to file a motion pursuant to Rule 59(e) cannot be extended. *See* Fed. R. Civ. P. 6(b)(2). A timely Rule 59(e) motion suspends the deadline for filing an appeal until the Rule 59(e) motion is ruled upon. *See* Fed. R. App. P. 4(a)(4)(A)(iv). Any Rule 60(b) motion must be filed within a reasonable time and, if seeking relief under Rule 60(b)(1), (2), or (3), must be filed no more than one year after entry of the judgment or order. *See* Fed. R. Civ. P. 60(c)(1). The time to file a Rule 60(b) motion cannot be extended. *See* Fed. R. Civ.

P. 6(b)(2). A Rule 60(b) motion suspends the deadline for filing an appeal until the Rule 60(b) motion is ruled upon only if the motion is filed within 28 days of the entry of judgment. *See* Fed. R. App. P. 4(a)(4)(A)(vi).

The Court declines to issue a certificate of appealability. *See Evans v. Cir. Ct. of Cook Cnty., Ill.*, 569 F.3d 665, 666 (7th Cir. 2009) (a certificate of appealability is required to appeal the denial of a § 2241 petition). Such a certificate is granted only where "reasonable jurists could debate whether . . . the petition should have been resolved in a different manner." *Arredondo v. Huibregtse*, 542 F.3d 1155, 1165 (7th Cir. 2008) (citing 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). Petitioner cannot make this showing.

IV. Conclusion

Petitioner's habeas corpus petition (Dkt. 9) is denied. Any pending motions are denied as moot. The Court declines to issue a certificate of appealability. The Clerk is instructed to enter a judgment in favor of Respondent and against Petitioner. Civil Case Terminated.

Enter: 22-cv-5993
Date: April 5, 2023

Lindsay C. Jenkins
United States District Court Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS

JOHN E. GARRETT,

Plaintiff(s),

v.

RICHARD CLOUSE, CHIEF OF CORRECTIONS, LAKE CTY. JAIL,

Defendant(s).

Case No. 22 C 5993
Judge Lindsay C. Jenkins

JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

☐ in favor of plaintiff(s)
and against defendant(s)
in the amount of $,

which ☐ includes pre–judgment interest.
☐ does not include pre–judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment.

Plaintiff(s) shall recover costs from defendant(s).

☐ in favor of defendant(s)
and against plaintiff(s)

Defendant(s) shall recover costs from plaintiff(s).

☒ other: The Court denies the habeas corpus petition [9] and declines to issue a certificate of appealability. Judgment in entered in favor of Respondent Richard Clouse, Chief of Corrections, Lake County, Jail and against Petitioner John E. Garrett.

This action was *(check one)*:

☐ tried by a jury with Judge presiding, and the jury has rendered a verdict.
☐ tried by Judge without a jury and the above decision was reached.
☒ decided by Judge Lindsay C. Jenkins on a motion.

Date: 4/5/2023

Thomas G. Bruton, Clerk of Court

/s/ Jackie Deanes, Deputy Clerk

16CF00000565 PEOPLE VS GARRETT 03/01/2016
SEX ACTIVE ROSSETTI, VICTORIA A.

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1

PARTIES

GARRETT, JOHN E. DEFENDANT

COUNT	CLASS	CHARGE INFORMATION	
1	PRED CRIM SEX ASLT/VICTIM <13	X 720 ILCS 5/11-1.40(A)(1)	OS
	03/01/2016 WARRANT ISSUED		
	03/30/2016 SUPERSEDED BY INDICT/INFO		
2	PRED CRIM SEX ASLT/VICTIM <13	X 720 ILCS 5/11-1.40(A)(1)	OS
	03/01/2016 WARRANT ISSUED		
	03/30/2016 SUPERSEDED BY INDICT/INFO		
1	PRED CRIM SEX ASLT/VICTIM <13	X 720 ILCS 5/11-1.40(A)(1)	
2	PRED CRIM SEX ASLT/VICTIM <13	X 720 ILCS 5/11-1.40(A)(1)	

CURRENT BOND

3235295	79,000.00 TEN	0.00 AVAILABLE	RELEASED	

BROWN, JOHN STATE'S ATTORNEY

MCGEE, KATHLEEN INTERESTED PARTY

DAY, STELLA STATE'S ATTORNEY

OUTSTANDING ACTIVITIES

03/02/2016 TRACK 2

FUTURE DATES AND EVENTS

04/11/2022 T710
JURY TRIAL SET

COURT APPEARANCES

03/02/2016 C120 09:00A
PRESENT

BISHOP, CHRISTEN L.	PRESIDING JUDGE
CORBIN, CHRISTOPHER C.	STATE'S ATTY
GARRETT, JOHN E.	DEFENDANT
STRATHMANN, RALPH A.	ATY-DEFENDANT

EVENTS

DEF PRESENT IN CUSTODY	YES PRESENT

16CF00000565 PEOPLE VS GARRETT 03/01/2016
SEX ACTIVE ROSSETTI, VICTORIA A.

OF WAUKEGAN POLICE DEPARTMENT
ATTORNEY GIVEN LEAVE TO FILE APPEARANCE YES PRESENT
BOND HEARING YES PRESENT
BOND SET YES PRESENT
10% OF $200,000.00 - DEF SHALL BE MONITORED BY PRETRIAL BOND SERVICES AND PAY $100 FEE - NO ALCOHOL - NO DRUGS - RANDOM TESTING AND CURFEW AT DISCRETION OF PRETRIAL - NO CONTACT WITH Z.H. (MINOR VICTIM), HER FAMILY, OR RESIDENCE UNTIL FURTHER ORDER OF COURT - NO CONTACT WITH CHILDREN UNDER 18 YEARS OF AGE - REFRAIN FROM POSSESSING A FIREARM OR OTHER DANGEROUS WEAPONS
TO BE SUPERVISED BY PRETRIAL SERVICES YES PRESENT
SET PRELIMINARY HEARING DATE YES PRESENT
TRACK DETERMINATION ORDER ENTERED YES PRESENT
REMAND YES PRESENT

03/07/2016 C120 09:00A
PRESENT
BISHOP, CHRISTEN L. PRESIDING JUDGE
ORI, TARA H. STATE'S ATTY
STRATHMANN, RALPH A. ATY-DEFENDANT

EVENTS
MOTION OF DEFENSE GRANTED
ORDER ENTERED YES ABSENT
THE COURT ORDERS THAT PRETRIAL SERVICES SHALL PROVIDE A BOND REPORT TO THE COURT ON 3-10-2016
DEFENDANT'S PRESENCE WAIVED YES ABSENT
DEFENDANT REMAINS IN CUSTODY YES ABSENT

03/10/2016 C120 09:00A
PRESENT
BISHOP, CHRISTEN L. PRESIDING JUDGE
DELEON, P.CAROLINA STATE'S ATTY
GARRETT, JOHN E. DEFENDANT
STRATHMANN, RALPH A. ATY-DEFENDANT

EVENTS
MOTION OF DEFENSE YES PRESENT
DEF PRESENT IN CUSTODY YES PRESENT
BOND REVIEW PARTIALLY HEARD PRESENT
BOND STANDS YES PRESENT
REMAND YES PRESENT

03/16/2016 C120 09:00A
PRESENT
BISHOP, CHRISTEN L. PRESIDING JUDGE

16CF00000565 PEOPLE VS GARRETT 03/01/2016
SEX ACTIVE ROSSETTI, VICTORIA A.

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CHESKEY, NICOLE A.	STATE'S ATTY
GARRETT, JOHN E.	DEFENDANT
STRATHMANN, RALPH A.	ATY-DEFENDANT

EVENTS

DEF PRESENT IN CUSTODY	YES PRESENT
BOND REVIEW	YES PRESENT
FURTHER BOND REVIEW	
BOND REDUCED	YES PRESENT
10% OF $100,000.00 WITH ALL CONDITIONS	PREVIOUSLY IMPOSED ON 03/02/2016
SET PRELIMINARY HEARING DATE	YES PRESENT
REMAND	YES PRESENT

03/23/2016 C120 10:30A
PRESENT

JOHNSON, CHARLES D.	PRESIDING JUDGE
LENZINI, KIMBERLY J.	STATE'S ATTY
GARRETT, JOHN E.	DEFENDANT
STRATHMANN, RALPH A.	ATY-DEFENDANT

EVENTS

PRELIMINARY HEARING	CONTINUED PRESENT
DEFENSE ANSWERS READY FOR HEARING	YES PRESENT
MOTION OF STATE	YES PRESENT
HEARING CONTINUANCE	GRANTED
OVER DEFENDANT'S OBJECTION	YES PRESENT
ORDER ENTERED	YES PRESENT

THE COURT HEREBY MODIFIES DEF'S BOND TO ALLOW DEF TO RETRIEVE HIS PERSONAL EFFECTS FROM HIS FAMILY'S RESIDENCE ON SATURDAY, MARCH 26TH, 2016 BETWEEN NOON - 4PM. DEF SHALL BE ESCORTED BY THE ZION POLICE DEPT - DEF MAY HAVE CONTACT WITH HIS WIFE DURING THAT TIME PERIOD FOR THE SOLE PURPOSE OF RETRIEVING HIS BELONGINGS - ALL OTHER CONDITIONS OF BOND REMAIN IN EFFECT

RELEASED ON CONTINUED BOND	YES PRESENT

03/23/2016 C120 09:00A
PRESENT

EVENTS

MOTION OF DEFENSE FOR BOND REVIEW	STRICKEN FROM CALL

03/30/2016 C120 10:30A
PRESENT

BISHOP, CHRISTEN L.	PRESIDING JUDGE

16CF00000565 PEOPLE VS GARRETT 03/01/2016
SEX ACTIVE ROSSETTI, VICTORIA A.

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	DYSON, TYLER	STATE'S ATTY
	GARRETT, JOHN E.	DEFENDANT
	STRATHMANN, RALPH A.	ATY-DEFENDANT

EVENTS

OVER STATE'S OBJECTION	YES PRESENT
MOTION OF DEFENSE	GRANTED
BOND MODIFIED	YES PRESENT
DEF MAY HAVE NON VIOLENT OR HARASSING CONTACT WITH DEF'S WIFE UNRELATED TO THE PENDING CHARGES - ALL OTHER CONDITIONS OF BOND REMAIN IN FULL FORCE AND EFFECT	
DEFENSE ANSWERS READY FOR HEARING	YES PRESENT
MOTION OF STATE	YES PRESENT
OVER DEFENDANT'S OBJECTION	YES PRESENT
PRELIMINARY HEARING	CONTINUED PRESENT

03/30/2016 C202 01:15P
PRESENT

SHANES, DANIEL B.	PRESIDING JUDGE

EVENTS

RETURN INDICTMENT	YES ABSENT
RETURNED BY THE DECEMBER 2015 TERM GRAND JURY	
BOND SET	YES ABSENT
ISSUE WARRANT	YES ABSENT
STAY WARRANT	YES ABSENT
SET ARRAIGNMENT DATE	YES ABSENT
STATE TO NOTIFY DEF,COUNSEL OF DATE	YES ABSENT

04/12/2016 C120 10:30A
PRESENT

EVENTS

PRELIMINARY HEARING	STRICKEN FROM CALL

04/13/2016 C205 09:00A
PRESENT

LEVITT, MARK L.	PRESIDING JUDGE
EITERMANN, COLLEEN	COURT REPORTER
BROWN, JOHN A.	STATE'S ATTY
GARRETT, JOHN E.	DEFENDANT
STRATHMANN, RALPH A.	ATY-DEFENDANT

EVENTS

ARRAIGNMENT	YES PRESENT
NOT GUILTY PLEA	YES PRESENT

5a

16CF00000565 PEOPLE VS GARRETT 03/01/2016
SEX ACTIVE ROSSETTI, VICTORIA A.

CASE MANAGEMENT CONFERENCE DATE SET MOTIONS TO BE FILED BY 1/23/18	YES PRESENT
SET BENCH TRIAL DATE MARCH 19, 2018	YES PRESENT
RELEASED ON CONTINUED BOND	YES PRESENT

01/23/2018 C205 09:00A
PRESENT

LEVITT, MARK L.	PRESIDING JUDGE
DEBOER, LAUREN	COURT REPORTER
NEWMAN, JAMES R.	STATE'S ATTY
GARRETT, JOHN E.	DEFENDANT
STRATHMANN, RALPH A.	ATY-DEFENDANT

EVENTS

CASE MANAGEMENT CONFERENCE	YES PRESENT
CONTINUE TO PREVIOUSLY SET TRIAL DATE	YES PRESENT
RELEASED ON CONTINUED BOND	YES PRESENT

02/13/2018 C205 09:00A
PRESENT

LEVITT, MARK L.	PRESIDING JUDGE
DEBOER, LAUREN	COURT REPORTER
GRINDEL, JASON	STATE'S ATTY
GARRETT, JOHN E.	DEFENDANT
STRATHMANN, RALPH A.	ATY-DEFENDANT

EVENTS

MOTION OF DEFENSE	YES PRESENT
SET STATUS DATE	YES PRESENT
ORDER ENTERED COURT HEREBY GRANTS DEFENDANTS "MOTION FOR SUPPLEMENTAL DISCOVERY-SUPREME COURT RULE 417". THE STATE SHALL TENDER ALL RULE 417 MATERIAL WITHIN 10 DAYS.	YES PRESENT
RELEASED ON CONTINUED BOND	YES PRESENT

02/27/2018 C205 09:00A
PRESENT

LEVITT, MARK L.	PRESIDING JUDGE
SHAYKIN, MARIE	COURT REPORTER
GRINDEL, JASON	STATE'S ATTY
GARRETT, JOHN E.	DEFENDANT
STRATHMANN, RALPH A.	ATY-DEFENDANT

EVENTS

STATUS	CONTINUED PRESENT

16CF00000565 PEOPLE VS GARRETT 03/01/2016
SEX ACTIVE ROSSETTI, VICTORIA A.

OF DISCOVERY		
BOND SET		YES PRESENT
NO BOND		
REMAND		YES PRESENT

02/27/2018 C120 01:30P
PRESENT

STRICKLAND, GEORGE D.	PRESIDING JUDGE
ORI, TARA H.	STATE'S ATTY
GARRETT, JOHN E.	DEFENDANT
STRATHMANN, RALPH A.	ATY-DEFENDANT

EVENTS

DEFENDANT IN CUSTODY ON OTHER CHARGES	YES PRESENT
BOND MODIFIED	YES PRESENT
DEF TO BE HELD WITHOUT BOND ON 16CF565 AND 18CF444 - DEF SHALL HAVE NO CONTACT WITH Z.H. (MINOR VICTIM), HER FAMILY, OR RESIDENCE UNTIL FURTHER ORDER OF COURT	
SET STATUS DATE	YES PRESENT
REMAND	YES PRESENT

03/02/2018 C120 09:00A
PRESENT

STRICKLAND, GEORGE D.	PRESIDING JUDGE
LEBOEUF, LISA	STATE'S ATTY
GARRETT, JOHN E.	DEFENDANT
STRATHMANN, RALPH A.	ATY-DEFENDANT

EVENTS

DEF PRESENT IN CUSTODY	YES PRESENT
STATUS	CONTINUED PRESENT
REMAND	YES PRESENT

03/19/2018 C205 09:00A
PRESENT

EVENTS

BENCH TRIAL	STRICKEN FROM CALL

03/19/2018 C205 09:00A
PRESENT

LEVITT, MARK L.	PRESIDING JUDGE
FRANGER, BARBARA	COURT REPORTER
GRINDEL, JASON	STATE'S ATTY
GARRETT, JOHN E.	DEFENDANT
STRATHMANN, RALPH A.	ATY-DEFENDANT

18CF00000444 PEOPLE VS GARRETT 02/27/2018
SEXPD ACTIVE ROSSETTI, VICTORIA A.

PARTIES

GARRETT, JOHN E. DEFENDANT

COUNT	CLASS	CHARGE INFORMATION	
1	PRED CRIM SEX ASLT/VICTIM <13	X 720 ILCS 5/11-1.40(A)(1)	OS
02/27/2018 WARRANT ISSUED			
03/28/2018 SUPERSEDED BY INDICT/INFO			
1	PRED CRIM SEX ASLT/VICTIM <13	X 720 ILCS 5/11-1.40(A)(1)	
2	PRED CRIM SEX ASLT/VICTIM <13	X 720 ILCS 5/11-1.40(A)(1)	
3	PRED CRIM SEX ASLT/VICTIM <13	X 720 ILCS 5/11-1.40(A)(1)	
4	PRED CRIM SEX ASLT/VICTIM <13	X 720 ILCS 5/11-1.40(A)(1)	
5	PRED CRIM SEX ASLT/VICTIM <13	X 720 ILCS 5/11-1.40(A)(1)	
6	PRED CRIM SEX ASLT/VICTIM <13	X 720 ILCS 5/11-1.40(A)(1)	
7	PRED CRIM SEX ASLT/VICTIM <13	X 720 ILCS 5/11-1.40(A)(1)	

STRATHMANN, RALPH ATY ON BEHALF OF

MCGEE, KATHLEEN INTERESTED PARTY

DAY, STELLA STATE'S ATTORNEY

OUTSTANDING ACTIVITIES

03/02/2018 TRACK 3

FUTURE DATES AND EVENTS

04/11/2022 T710
JURY TRIAL SET

COURT APPEARANCES

02/27/2018 C120 01:30P
PRESENT

STRICKLAND, GEORGE D.	PRESIDING JUDGE
ORI, TARA H.	STATE'S ATTY
GARRETT, JOHN E.	DEFENDANT
STRATHMANN, RALPH	ATY ON BEHALF OF

EVENTS

DEF PRESENT IN CUSTODY OF LAKE COUNTY SHERIFF'S OFFICE	YES PRESENT

8a

18CF00000444 PEOPLE VS GARRETT 02/27/2018
SEXPD ACTIVE ROSSETTI, VICTORIA A.

BOND HEARING	YES PRESENT
BOND SET	YES PRESENT
DEF TO BE HELD WITHOUT BOND ON 16CF565 AND 18CF444 - DEF SHALL HAVE NO CONTACT WITH Z.H. (MINOR VICTIM), HER FAMILY, OR RESIDENCE UNTIL FURTHER ORDER OF COURT	
STATUS OF ATTORNEY DATE SET	YES PRESENT
REMAND	YES PRESENT

03/02/2018 C120 09:00A
PRESENT

STRICKLAND, GEORGE D.	PRESIDING JUDGE
LEBOEUF, LISA	STATE'S ATTY
GARRETT, JOHN E.	DEFENDANT
STRATHMANN, RALPH A.	ATY-DEFENDANT

EVENTS

DEF PRESENT IN CUSTODY	YES PRESENT
STATUS OF ATTORNEY	YES PRESENT
ATTORNEY GIVEN LEAVE TO FILE APPEARANCE	YES PRESENT
SET PRELIMINARY HEARING DATE	YES PRESENT
TRACK DETERMINATION ORDER ENTERED	YES PRESENT
REMAND	YES PRESENT

03/21/2018 C120 01:30P
PRESENT

STRICKLAND, GEORGE D.	PRESIDING JUDGE
HELTON, JAMIE	STATE'S ATTY

EVENTS

ORDER ENTERED HIPPA	YES ABSENT

03/28/2018 C205 11:30A
PRESENT

LEVITT, MARK L.	PRESIDING JUDGE
HAYES, LOUISE B.	STATE'S ATTY

EVENTS

RETURN INDICTMENT RETURNED BY THE DECEMBER 2017 GRAND JURY	YES ABSENT
BOND SET DEFENDANT TO BE HELD WITHOUT BOND ALONG WITH 16CF565 AND 18CF444 ALL PREVIOUS CONDITIONS FROM 02/27/2018 SHALL REMAIN IN FULL FORCE AND EFFECT - CLERK OF THE COURT DIRECTED TO SEND NEW REMAND	YES ABSENT
SET ARRAIGNMENT DATE	YES ABSENT
STATE TO NOTIFY DEF,COUNSEL OF DATE	YES ABSENT

9a

18CF00000444 PEOPLE VS GARRETT 02/27/2018
SEXPD ACTIVE ROSSETTI, VICTORIA A.

03/29/2018 C120 10:30A
PRESENT

EVENTS

PRELIMINARY HEARING	STRICKEN FROM CALL

04/12/2018 C205 09:00A
PRESENT

LEVITT, MARK L.	PRESIDING JUDGE
EITERMANN, COLLEEN	COURT REPORTER
WALKER, LAUREN	STATE'S ATTY
GARRETT, JOHN E.	DEFENDANT
STRATHMANN, RALPH A.	ATY-DEFENDANT

EVENTS

DEF PRESENT IN CUSTODY	YES PRESENT
ARRAIGNMENT	YES PRESENT
NOT GUILTY PLEA	YES PRESENT
RECIPROCAL DISCOVERY ORDERED	YES PRESENT
CASE MANAGEMENT CONFERENCE DATE SET	YES PRESENT
MOTION OF DEFENSE	YES PRESENT
SET JURY TRIAL DATE	YES PRESENT
07/09/2018	
ADVISED OF TRIAL IN ABSENTIA	YES PRESENT
ADVISED OF SENTENCING IN ABSENTIA	YES PRESENT
REMAND	YES PRESENT

05/09/2018 C205 09:00A
PRESENT

POTKONJAK, THEODORE S.	PRESIDING JUDGE
CADRECHA, PATRICIA	COURT REPORTER
WALKER, LAUREN	STATE'S ATTY
STRATHMANN, RALPH A.	ATY-DEFENDANT

EVENTS

DEFENDANT'S PRESENCE WAIVED	YES ABSENT
MOTION OF STATE	CONTINUED ABSENT
SET PRE-TRIAL DATE	YES ABSENT
DEFENDANT REMAINS IN CUSTODY	YES ABSENT

05/10/2018 C205 09:00A
PRESENT

LEVITT, MARK L.	PRESIDING JUDGE
REPORTER, NO	COURT REPORTER
WALKER, LAUREN	STATE'S ATTY

18CF00000444 PEOPLE VS GARRETT 02/27/2018
SEXPD ACTIVE ROSSETTI, VICTORIA A.

STRATHMANN, RALPH A.		ATY-DEFENDANT

EVENTS

SUBPOENAED MATERIALS TENDERED	YES ABSENT
DEFENDANT REMAINS IN CUSTODY	YES ABSENT

05/16/2018 C205 09:00A
PRESENT

EVENTS

CASE MANAGEMENT CONFERENCE	STRICKEN FROM CALL

05/22/2018 C205 09:00A
PRESENT

LEVITT, MARK L.	PRESIDING JUDGE
DEMICCO, BARBARA	COURT REPORTER
WALKER, LAUREN	STATE'S ATTY
STRATHMANN, RALPH A.	ATY-DEFENDANT

EVENTS

DEFENDANT'S PRESENCE WAIVED	YES ABSENT
PRE-TRIAL	CONTINUED ABSENT
DEFENDANT REMAINS IN CUSTODY	YES ABSENT

05/23/2018 C202 11:30A
PRESENT

SHANES, DANIEL B.	PRESIDING JUDGE
HAYES, LOUISE B.	STATE'S ATTY

EVENTS

RETURN INDICTMENT	YES ABSENT
RETURNED BY THE APRIL 2018 GRAND JURY	
BOND SET	YES ABSENT
DEFENDANT TO BE HELD WITHOUT BOND - ALONG WITH 16CF565 AND 18CF444 ALL PREVIOUS CONDITIONS FROM 02/27/2018 SHALL REMAIN IN FULL FORCE AND EFFECT - CLERK OF THE COURT DIRECTED TO SEND NEW REMAND	
SET ARRAIGNMENT DATE	YES ABSENT
STATE TO NOTIFY DEF,COUNSEL OF DATE	YES ABSENT

05/30/2018 C205 09:00A
PRESENT

LEVITT, MARK L.	PRESIDING JUDGE
JOHNSON, JENNIFER	COURT REPORTER
WALKER, LAUREN	STATE'S ATTY
STRATHMANN, RALPH A.	ATY-DEFENDANT

IN THE NINETEENTH JUDICIAL CIRCUIT
COURT OF LAKE COUNTY, ILLINOIS

FILED
MAR 14 2022
Erin Cartwright Weinstein
CIRCUIT CLERK

People of the State of Illinois Plaintiff	16CF565 Case No. 18CF444
John Garrett Defendant	

denied
2-30-22
AM

MOTION FOR RELEASE ON BAIL

Now comes Defendant, John Garrett, Pro se, and hereby requests that the Court, pursuant to 725 ILCS 5/110-6 and in accordance with both the United States and Illinois Constitutions, enter an order releasing defendant on his own recognizance and place restrictive conditions as deemed appropriate and necessary. In support of this request, defendant states the following:

1) Defendant was arrested on March 1, 2016 and charged with 2 counts of Predatory Criminal Sexual Assault, (PCSA).

2) After a pre-trial assessment was performed, defendant was deemed eligible for bail, and released on $100,000 bond on March 27, 2016. He was ordered to report to Pre-trial Services and comply with all conditions set forth by the Court, including but not limited to curfew.

3) On April 4, 2017 the condition of curfew was lifted by Pre-trial Services as it was deemed to be

successfully completed.

4) On February 23, 2018, the alleged victim, Z.H., alleged that another incident of sexual assault was committed by the defendant against her, while he was out on bail.

5) On February 27, 2018, a warrant pursuant to the new allegations was issued. The same day, while attending court for the original case, defendant was taken into custody and subsequently charged with 2 additional counts of PCSA. The original trial court, upon notice of the warrant, immediately, without a hearing, altered the bail to a no bail order. Later the same day and without following statutory procedure for conducting a revocation hearing, a no bail order was entered.

6) Subsequently on March 22, 2018 and April 4, 2018 respectively, Z.H.'s sisters, A.C. and E.C., alleged that they were also victims of sexual abuse by the defendant and 5 additional counts of PCSA were charged.

7) On April 12, 2018, defendant was arraigned on all 7 new charges.

8) Defendant contends that the procedure set forth in Section 110-6 of the bail statute (725 ILCS 5/110-6), was not followed prior to the trial court's orders denying the defendant bail. Thus, he has suffered extreme prejudice, due to the denial of his constitutional right to due process of law. As such, per statute, he must be immediately released on bail with appropriate conditions.

Statutory Procedure When Defendant On Bond And An Alleged Violation Occurs

As defendant was out on bond, when the new allegations, constituting new charges, were brought forth, 725 ILCS 5/110-6 controls. It specifically lays out the procedure to be followed prior to revoking a defendant's bail. Namely; (1) a verified application by the State stating facts or circumstances constituting a violation, (2) a hearing before the court for which the previous felony matter is pending, (3) where the alleged violation is a forcible felony, the court shall on the motion of the State or its own, revoke bail in accordance with the following provisions: (a) if the defendant is not admitted to bail the hearing shall be commenced within 10 days from the date the defendant is taken into custody or the defendant may not be held any longer without bail; (b) at the hearing the State has the burden of going forward and proving the violation by clear and convincing evidence; (c) upon a finding the State has met the aforementioned burden, the court shall revoke the bail and hold the defendant for trial without bail.

"In our opinion the constitutional right to bail must be qualified by the authority of the courts, as an incident of their power to manage the conduct of proceedings before them, to deny or revoke bail when such action is appropriate to preserve the orderly process of criminal procedure. This action must not be based on mere suspicion but must be supported by

sufficient evidence to show that it is required." People ex rel. Hemingway v Elrod, 60 Ill. 2d at 79, (1975).

"The State offers no rationale for ignoring the clear legislative directive applicable to this case... we do not question the power of the circuit court to deny bail, provided the proper procedures are followed and the necessary findings are made. Here, however, neither of these things occurred." People v Gil, 2019 IL App. (1st) 192419, (2019).

"A defendant who is properly entered into bond, recognizance or otherwise, is entitled to judicial praedure before being arrested or having the terms of his liberty modified." People v Beachem, 229 Ill. 2d 237, (2008).

Statutorily Required Remedy

In the instant case, there was no notice, no verified app. by the State and there was no hearing on the alleged violation. The State did not prove the violation by clear and convincing evidence. As defendant was not admitted to bail, the court was required to commence the hearing on the alleged breach within 10 days from the date defendant was taken into custody. Defendant has been held for 4 years without due process of law. As the proper procedures were not followed, the statute directs that," the defendant may not be held any longer without bail." 725 ILCS 5/110-6(f)(1)

Defendant requests that per statutory provision, he be released on bail with appropriate conditions

that will best assure appearance at trial and any necessary protection for the public.

The State may argue that a simple hearing will cure the error in this case. At which, they may show that a violation occurred, thereby eliminating any prejudice. Defendant asserts that a simple hearing is insufficient to remedy the outright failure of both the state and the Trial court to follow the legislative directive applicable to this case.

Defendant postulates that by being held for 4 years without the statutorily required procedures, he has been aggregiously denied his constitutional right to liberty, without due process of law, as clearly and unequivocally guaranteed by both the 5th and 14th Amendments. "... procedural due process is founded upon the notion that, prior to a deprivation of life, liberty, or property, a party is entitled to notice and opportunity for a hearing appropriate to the nature of the case." People v Cardona, 2013 IL 114076 at 22, (2013)

A violation of a constitutional right is a serious matter that must not be simply overlooked. "The essence of due process is "fundamental fairness." Due process essentially requires "fairness, integrity, and honor" in the operation of the criminal justice system, and in its treatment of the citizen's cardinal constitutional protections." People v McCawley, 163 Ill. 2d 414 at 441, (1994).

As a result of said constitutional violation, defendant has suffered extreme prejudice, including but not limited to; loss of his/her wife's pregnancy due to stress and anxiety; inability to support his children; destruction/loss of familial relationships, including divorce from his wife; loss of income; and inability to contribute to a meaningful defense. Most importantly, loss of his freedom. Collateral effects of defendant being held without bail include but are not limited to; loss of community ties; deterioration of mental, physical, and emotional health due to extremely minimal and limited healthcare; strain on family members both financially and emotionally, helping to support defendant.

Lack of Clear and Convincing Evidence

The State may protest that there is "clear and convincing evidence" that the defendant violated the conditions of his bail bond by violating a felony Statute of Illinois. Defendant asserts that there is not.

"While it has been defined as evidence which leaves the mind well satisfied of the truth of a proposition (citations), strikes all minds alike as being unquestionable (citation), or leads to but one conclusion (citation), proof by clear and convincing evidence has most often been defined as the quantum of proof which leaves no reasonable doubt in the mind of the trier of fact as to the truth of the proposition in question (citation)." In re Estate of Ragen, 79 Ill App 3d 8, (1979)

a) The primary alleged victim, Z.H., has clearly and

distinctly accused the defendant of sexual penetration, namely the penis into the vagina. Within a couple of days of each of these allegations, Z.H. was taken to the hospital and given a full SANE examination. No signs of trauma or sexual assault were found. In fact, it was noted by medical personnel that her hymen was fully intact and undamaged. A full grown adult having sexual intercourse with a 7yr. old or a 9 yr. old, respectively (age at which each of these allegations were brought), would most assuredly have left signs of trauma or damage to her sex organ. See People v Willer, 281 Ill. App. 3d at 945, (Medical Director testified that a prepubescent child would experience "lots of pain" if she were completely penetrated by an erect male penis as well as obvious trauma to the vaginal area where there has been full penetration and the hymen is torn.)

b) The primary alleged victim, Z.H., has not only recanted her statements on multiple occasions to multiple people but also in an interview with DCFS investigators, denied that these incidents occurred.

c) Concerning the other 2 alleged victims, there is no supposed physical evidence. Also, the defense intends to show at trial that these alleged victims have a reputation for untruthfulness.

d) There is also evidence to show that all 3 alleged victims have been exposed to elicit pornography on more than one occasion, by persons outside the household.

e) The State has tendered DNA evidence that it

intends to present at trial to show that defendant committed these offenses. The DNA evidence is not a match to defendant's DNA. Also, it was determined by the Northern Illinois Regional Crime Lab, not to be any bodily fluids, including semen. In fact, the amount of DNA that the lab was able to detect would be approximately less than the size of a pin head, (See DNA Expert Report-Exhibit A). The DNA was not a match to defendant but, "defendant and any paternally related male contributors cannot be excluded as a contributor..." Defendant has two sons who live in the same household as the alleged victims. Defense DNA expert concluded that, "In addition to direct or primary transfer, a secondary mechanism for such a small amount of DNA cannot be ruled out. A hypothetical would be the transfer of DNA in the unwashed laundry."

f) "The fact that a Grand Jury has returned an indictment does not mean that those charged therein are guilty of the offense." United States v Wortman, 26 F.D.R. 183, (1960)

g) Although we don't believe a conviction for a crime committed on release is a prerequisite to a [bond] forfeiture we do hold that mere indictment is not enough." United States v Vaccaro, 719 F. Supp. 1510, (1989)

h) "An indictment charges the defendant with action or failure to act contrary to the laws command. It does not constitute proof of the commission of the offense." Tot v United States, 319 U.S. 463, 466, (1963)

Eligibility for Release on Bail

From the beginning of the first case, defendant has been faced with a statutorily mandated sentence of life imprisonment, due to his prior conviction of PCSA, if found guilty of a subsequent charge of PCSA. In spite of this, the trial court, after a pretrial assessment, determined defendant was eligible for bail. "It is a general rule that an order granting bail after hearing is final and res judicata as to all questions except the amount." United States ex rel. Heikkinen v Gordon, 190 F.2d 16, (1950).

Also, defendant has never missed a required court appearance. Even when, prior to his appearance in court on February 27, 2018, defendant spoke with counsel concerning the new allegations and was informed he would most assuredly be remanded to custody, defendant chose to appear.

Defendant has 5 children, all in Lake County. Except for time in prison, he has been a resident of Lake County for the last 33 of 35 yrs. Most of defendant's close relatives reside in Lake County. All jobs that defendant has worked have been in Lake County. Defendant does not own a passport.

It is clear that defendant is not a flight risk and will appear at all required court dates, should he be released on bail.

Concerning protection of the community: the alleged victims in these cases, at the time, were defendant's step-daughters. The defendant's biological

sons, who lived in the same house as the alleged victims, have never been alleged nor even inferred as possible victims. During the time period of these alleged incidents, defendant was married to the alleged victim's mother, G.H. Defendant and G.H. have been divorced since July 2018 and defendant has ceased all contact with the alleged victims since February 2018.

The defendant is not alleged to have abused anyone other than his step-daughters, who lived with their Mother, defendant's then Wife. It is clear that defendant does not pose a risk to any person or the community, as he has no reason to be alone with children, if released on bail.

When defendant was previously on bail, he was subjected to curfew as a condition of release and successfully completed that requirement. It could be a condition of release, that defendant be put on curfew, house arrest or GPS monitoring, to ensure his compliance with any stay away orders. Also of note, defendant has never been charged with violating a condition of bail.

"The object of bail, of course, is to make certain the defendant's appearance in court and is not allowed or refused because of his presumed guilt or innocence. This action must be supported by sufficient evidence to show that it is required." People ex rel. Hemingway v Elrod, 60 Ill. 2d 80, 81, (1975).

"[Section 725 ILCS 5/110] reflects a strong preference that bail be available to criminal defendants to be released on their own recognizance with "monetary bail" set only when it is determined that no other conditions of release will reasonably assure the defendant's appearance in court, that the defendant does not present a danger to any person or the community and that the defendant will comply with all conditions of bond." People v Simmons, 2019 IL App (1st) 191253, (2019)

"There shall be a presumption that any conditions of release shall be non-monetary in nature and the court shall impose the least restrictive conditions or combination of conditions necessary to reasonably assure the appearance of the defendant for further court proceedings and protect the integrity of the judicial proceedings from a specific threat to a witness or participant... The court shall consider the defendant's socio-economic circumstance when setting conditions of release or imposing monetary bail." 725 ILCS 5/110-5(a-5)

"The amount of bail shall be: (1) sufficient to assure compliance with the conditions set forth in the bail bond... (2) not oppressive (3) considerate of the financial ability of the accused... 725 ILCS 5/110-5(b).

"By holding that the right to bail is not absolute we are not adopting the principle of preventive

detention of one charged with a criminal offense for the protection of the public..." People ex rel. Hemingway v Elrod, 60 Ill. 2d 74, (1975)

"Where it is shown that a competent court or grand jury has found probable cause to believe that a defendant has committed a serious crime while released pending adjudicating of a prior charge, the court which initially released him should be authorized, after appropriate hearing, to review and revise the conditions of his release or to revoke his release where indicated." ABA Standards Relating to Pretrial Release, (1962)

Instructively, the 2021 Amendment to the bail statutes, that goes into effect on January 1, 2023, abolished monetary bail. Specifically 725 ILCS 5/110-6(b)(4) states, "... may revoke the defendant's pretrial release only if it finds, after considering all relevant circumstances including, but not limited to, the court finds clear and convincing evidence that no condition or combination of conditions of release would reasonably assure the appearance of the defendant for later hearings or prevent the defendant from being charged with a subsequent felony. (5) In lieu of revocation, the court may release the defendant pretrial, with or without modification of conditions of pretrial release."

Supreme Court Rule 604(c) Info Concerning Defendant

1) Defendant currently has no liquid assets nor does he have any current income.

2) In the last 10 years, defendant has lived at:

2619 Elim Ave, 1713 Sheridan Rd., and 2107 Elim Ave, all of Zion IL as well as 2100 Alta Vista Dr. in Waukegan, IL. Defendant is currently unemployed but was previously employed by Paramount Staffing in Waukegan, IL since 2013.

3) Although currently unemployed, defendant was previously a Material Handler, Forklift Driver, Packaging Lead, an ASE certified Auto Mechanic, and a Quality Specialist.

4) Defendant is divorced. He has 5 biological children aged 18, 17, 16, 6 and 4.

5) Defendant was previously convicted of PCSA in 2006. Defendant has no other criminal history.

6) If released on bail defendant would endeavor to find employment to support himself and his children. As outlined above, defendant would attend all required court appearances, not pose a threat to any person or the community, and abide by all conditions set forth by the court.

Wherefore, defendant humbly prays this Honorable Court enter an order releasing him on his own recognizance and place restrictive conditions as deemed necessary and appropriate. Any other relief that may be required.

Respectfully Submitted,

John Garrett - Pro Se
L159088
P.O. Box 38
Waukegan, IL 60079

John E. Garrett

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109), the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

John Garrett
Print Name

John E. Garrett
Signature

enc. Exhibit A - DNA Expert Report
Exhibit B - In custody disciplinary records

Exhibit A

Helix Consulting
544 E Ogden Ave.
Suite 700-385
Milwaukee, WI 53202
414-395-3460 voice
414-376-6872 fax

November 16, 2016

Ralph Strathmann
33 N. County Street #200
Waukegan, Illinois 60085

RE: People vs. John Garrett
Lake County Circuit Court Case: 16-CF-565

Via email: raslaw@sbcglobal.net

Dear Mr. Strathmann,

I have reviewed 52 pages of DNA discovery materials from the Northern Illinois Regional Crime Laboratory (NIRCL), including reports, notes, memos and communiqués, various worksheets, DNA profiles and statistical calculations and their standard operating procedures manual. The following is a summary of my observations and expert opinions:

1. Semen was not detected on the underwear, vaginal swabs, anal swabs or buccal swabs.
2. Amylase, a marker for saliva, was not detected on the vaginal swab.
3. Amylase, was reportedly detected on the anal swab
    a. According to the NIRCL report of November 13, 2015: *Amylase was detected on anal swabs. Amylase is present in its highest concentration in saliva, however. it can also be found in other bodily fluids.*
    b. Not only can it be found in other body fluids, pancreatic amylase is found in high concentrations in feces. The test used in this case, the amylase diffusion test is so none specific that it has been replaced by many other labs by the more sensitive and specific immuno-diffusion test. In my expert opinion, a positive amylase test on an anal swab is meaningless and misleading.

25a

4. Despite the extraordinary sensitivity of the method[1] the vaginal swabs contained no detectable male DNA.
5. Again, neither acid phosphatase (a chemical marker for semen) not microscopic spermatozoa were detected.
6. Finally, a small amount of male DNA (0.0123 ng/µl)[2]was found on the underwear stain A. This tiny amount of DNA yielded a partial profile at 7 of the 17 genetics systems that were tested.
    a. Although John Garrett cannot be excluded as the source, nor can any paternally related male[3].
    b. DNA testing can't tell us how the male DNA got on the underwear. In addition to direct or primary transfer, a secondary mechanism for such a small amount of DNA cannot be ruled out. A hypothetical would be the transfer of Mr. Garrett's DNA in the unwashed laundry.

If you have additional questions, please contact me at 414-395-3460.

Sincerely,

Alan Friedman

Alan L. Friedman, PhD

[1] Quantitative real time PCR method using the ABI Quantifiler Duo kit, is sensitive down to at least 1 picogram per microliter. A single human cell contains 6 picograms DNA (sperm have 3 picograms)
[2] ng/µl is nanogram (1 billionth of a gram) per microliter (the approximate volume of a pin head)
[3] Paternally related males include Mr. Garrett's sons, full sibling brothers, father and paternal grandfather, paternal uncles and cousins.

SN

LakeCounty

Exhibit-B

FREEDOM OF INFORMATION ACT

Dear: John Garrett Date: May 24, 2021

This letter serves as the official response to your Freedom of Information Act request #22305, received on May 21, 2021, requesting:

"A copy of my disciplinary report while I have been incarcerated at LCJ. The month of 03/2016 as well as from 02/27/18 – present. Thank you."

Below is the response to your request:

We are unable to locate any disciplinary reports described in your request.

Please let me know if you have any questions or need anything further.

Cathy Karlstrand, Executive Assistant
Lake County Sheriff's Adult Corrections
29 S Martin Luther King Jr Ave
Waukegan, IL 60085

Freedom of Infor.

FOIA 2114
22-505

5/21/21
5/28/21

JOHN D. IDLEBURG
SHERIFF

OFFICE OF THE SHERIFF
Lake County, Illinois

25 S. Martin Luther King Jr. Ave.
Waukegan, Illinois 60085

Lake County Adult Correctional Center
Freedom of Information Request

Date 5/20/21

Requester Name John Garrett Inmate #L159088

I am requesting the following: A copy of my disciplinary report while I have been incarcerated at LCJ. The month of 03/2016 as well as from 02/21/18 – Present. Thank you.

Note: Your request may require a fee. If there is a fee associated with this request, you will be notified that there is a fee. If you do not have the money to pay the fee, you should narrow the scope of your request (you may do this by reducing the number of possible pages in your response. There is no fee waiver available for documents personally related to you.

Signature John Garrett

RECEIVED
MAY 21 2021
BY

The Freedom of Information Act allows 5 business days to respond to your request. Mailed responses may require additional days to reach you. Please take into account weekends and holidays. If you leave the facility before receiving your response, it will not be forwarded to you.

STATE OF ILLINOIS)
) SS:
COUNTY OF L A K E)

IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff,	
vs.	18CF444,16CF565
JOHN GARRETT, DEFENDANT.	

REPORT OF EXCERPT OF PROCEEDINGS had at the hearing of the above-entitled cause, before the Honorable VICTORIA ROSSETTI, Judge of said court, on the 30TH day of MARCH, 2022 , at the hour of approximately 1:30 o'clock P.M.

PRESENT:

HON. ERIC RINEHART,
State's Attorney of Lake County,
BY: LAUREN WALKER,
Assistant State's Attorney,
On behalf of the People;

JOHN GARRETT, PRO SE

Barbara Franger, Official Court Reporter

EXCERPT

THE DEFENDANT: So this was a rather lengthy motion. Basically my argument is when I was remanded into custody on February 27 of 2018 the procedures that are set out in the bond statutes were not followed, specifically the statutes outlined -- I am trying to find the page here, an order for my bail to be revoked a verified application by the State, a hearing before the Court, and then the Court was after the hearing revoked the bail with the following provisions. It talks about the bail hearing must be commenced within ten days, and if it's not completed the defendant may no longer be held any longer without bail.

THE COURT: I will stop you right there. I want to ask the State a question. Ms. Walker, was a verified petition filed?

MS. WALKER: A petition was not filed. If I can give a background though on this case when you're ready.

THE COURT: Yes, I do not understand how no bond was set.

MS. WALKER: What I do know is that the defendant was on bond in the 16 CF 565 case. He posted a cash bond. He posted on it. He was given conditions of bond, no contact with the victim as well as any minor children. He posted that, I believe, March 16 of 2016. So he was on bond for the 16 CF case. An information warrant was issued on February 27 of 2018, again, for the offenses of predatory criminal sexual assault in that he committed the offense against the same victim in the 16 CF case.

That information warrant was issued on February 27 of 2018. He appeared in bond Court on February 28 of 2018 in front of Judge Strickland with private counsel Ralph Strathmann on that date.

The record as I could tell from CRIMS and the Court minutes was not clear if a motion regarding the no bond -- if the defense waived that notice for petition to be filed or not. All I know is that in Court on the 28th of February that Judge Strickland did issue the no bond at that time as to both cases and made it an umbrella.

The defendant then was indicted on the new charges in 18 CF 444. Those indictments were returned. Judge Levitt kept the no bond warrant with

a no bond. Additional counts were then filed on the 18 CF case. Those indictments were returned on May 23 of 2018. It appears Judge Shanes also kept the no bond at that time as well. That being said because the record is not clear as to what happened down in bond Court originally when it was originally set, and there is no petition on file, I do have a petition because -- that being said defendant had private counsel this whole time and has not been raised. I do have a petition I can file today regarding this issue.

THE COURT: Well, that does not take care of the issue that is before us where no bond was set without any verified petition being filed, and so with regards to the issue of no bond Mr. Garrett is correct; it cannot be a no bond. So at this time I am setting bond in the amount of $5 million and that will be an umbrella bond with regard to both cases.

MS. WALKER: Thank you.

THE DEFENDANT: May I respond?

THE COURT: Yes.

THE DEFENDANT: So as I detailed in the motion just to backtrack a bit, the trial Court when the warrant was issued February 27th, Your Honor, Judge Levitt upon the notice of the warrant immediately

issued no bond, and then later on that afternoon I was in bond Court as Ms. Walker mentioned.

I did notice on the minutes that I received from the clerk of the Court minutes there was -- it does give a mention of a Petition to Revoke, but there is nothing in the file. There is nothing. There is no copy. There is nothing of that sort.

So I will stress as the statute says -- with all due respect, it says if the defendant is not admitted to bail, the hearing shall be commenced within 10 days from the day he's taken into custody or the defendant may not be held any longer without bail.

Then as I detailed at the end of the motion about the provisions of the other bail statute where it talks about in setting the bail amount it must be in accordance with the socioeconomic status of the defendant, and I lay this all out. As we all know, I have been incarcerated for four years without this due process.

And, you know, I have suffered various different things. I won't get into those. They're laid out in the motion as everyone can see. But I would respectfully ask the Court take notice of the statutes, and it talks about the non-monetary and just

modification of the conditions. As I mentioned in there I was previously on curfew, you know. I used to be on GPS. I could be on house arrest, whatever seems necessary, but as I said the five million dollars essentially is a no bail order because that's something unattainable, with all due respect, so there are various cases -- I don't have them in front of me -- the cases discuss that a bond order with an extremely high amount of bond order is essentially a no bond order. So respectfully I ask that you consider the statute and consider case law and precedent discussing the amount of the bond.

THE COURT: As I indicated, Mr Garrett, there is no reason that without a verified petition being filed and hearing that there should have been a no bond set, so the Court then looks at a number of different factors as set out in the statute: Your background, any priors. I look at the seriousness of the charges and the fact that you were out on bond and then alleged to have committed another offense with the same alleged victim. So based on all of those factors I continue to set bond, an umbrella bond in the amount of five million dollars.

STATE OF ILLINOIS)
) SS:
COUNTY OF LAKE)

I, Barbara Franger, Official Shorthand Reporter of the Circuit Court of Lake County, do hereby certify that I reported in shorthand the evidence had in the above-entitled cause and that the foregoing is a true and correct transcript of all the evidence heard.

Official Shorthand Reporter
Circuit Court of Lake County
RPR, CSR #084-001803

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Appellate Courts.

Instructions ▾	☐ THIS APPEAL INVOLVES A MATTER SUBJECT TO EXPEDITED DISPOSITION UNDER RULE 311(a).
Check the box to the right if your case involves custody, visitation, or removal of a child.	
Enter the appellate court case number.	Appellate Case No.: 22-0120
Just below "In the Appellate Court of Illinois," enter the number of the appellate district where the appeal was filed.	IN THE APPELLATE COURT OF ILLINOIS Second District
If the case name in the trial court began with "In re" (for example, "In re Marriage of Jones"), enter that name. Below that, enter the names of the parties in the trial court, and check the correct boxes to show which party filed the appeal ("appellant") and which party is responding to the appeal ("appellee").	In re People of the State of Illinois **Plaintiff/Petitioner** *(First, middle, last names)* ☐ Appellant ☑ Appellee v. John Garrett **Defendant/Respondent** *(First, middle, last names)* ☑ Appellant ☐ Appellee
To the far right, enter the trial court county, trial court case number, and trial judge's name.	**Appeal from the Circuit Court of** Lake **County** **Trial Court Case No.:** 16CF565, 18CF1444 **Honorable** Victoria Rossetti **Judge, Presiding**

RECEIVED
APR 14 2022
JEFFREY H. KAPLAN
APPELLATE COURT 2nd DISTRICT

FILED
APR 14 2022
JEFFREY H. KAPLAN
APPELLATE COURT 2nd DISTRICT

MOTION
FOR REVIEW OF BAIL ORDER

In 1, check the box that identifies who is filing the *Motion*.

1. ☐ Plaintiff/Petitioner-Appellant ☐ Plaintiff/Petitioner-Appellee
   ☑ Defendant/Respondent-Appellant ☐ Defendant/Respondent- Appellee

In 2, state specifically what you want the court to give you (e.g., "35 more days to file my brief"). This should be a short statement. You will give your reasons in the next section.

2. State what you want the court to do for you: Defendant humbly prays this Honorable Court enter an order releasing him on his own recognizance and place restrictive conditions as deemed necessary and appropriate. In the alternative, setting bail at a reasonable amount, such as was previously ordered by the Trial Court, namely $100,000.

36a

Enter the Case Number given by the Appellate Court Clerk:_____

In 3, write down the reasons why the court should give the relief you are asking for (e.g. "I need more time to finish and file my brief, because [insert reasons]").

3. State the reasons why the court should do what you have asked it to do:

As the Trial Court found on March 30, 2022, both the State and the Court didn't follow the statutory procedure required prior to denying defendant bail and he has been incarcerated for 4 yrs. without due process of law. The Court subsequently ordered bail be entered in the amount of $5,000,000. Defendant argues two reasons for the grant of relief he has asked for: 1) In entering the excessive amount of bail, the Trial Court violated another one of defendant's Constitutional Rights. The Eighth Amendment right to a bail amount that is not excessive." Bail is excessive when set at an amount higher than necessary to insure the appearance of the accused at trial. (CITATION) Because the practical effect of excessive bail is the denial of bail, logic compels the conclusion that the harm the

(continued on pg. 3)

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

I certify that everything in the *Motion* is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign by hand and print your name.

Enter your complete current address and telephone number.

/s/ John E. Garrett
Your Signature

P.O. Box 38
~~Street~~ Address

John Garrett - L159088
Print Your Name

Waukegan, IL 60079
City, State, ~~ZIP~~

N/A
Telephone

Eigth Amendment aims to prevent is the unnecessary deprivation of pretrial liberty. (CITATION) Morever, the right of an accused to freedom pending trial is inherent in the concept of a liberty interest protected by the due process clause of the Fourteenth Amendment." Meechaicum v. Fountain, 696 F.2d 790, (1983). See also 725 ILCS 5/110-5(b). Referencially, as of January 1, 2023, monetary bail is abolished. Perhaps, if defendant would have waited 10 mths., he may very well have been released on his own recognizance. 3) Based on the significant time defendant has been denied his constitutional right to liberty, without due process of law, he asserts that "fairness" requires an equitable and just remedy. Not preventive detention. "... the scope of the remedy is determined by the nature and extent of the constitutional violation." Milliken v Bradley, 418 U.S. 717, (1974). (See also United States v. Montalvo-Murillo, 495 U.S. 711, at 730, (1990), Justice Stevens, J. dissent-"with technical rules, above all others, it is imperative that we adhere strictly to what we have stated the rules to be. A technical rule with equitable exceptions is no rule at all. Three strikes is out. The State broke the rules here, and must abide by the result." quoting Jones v. Thomas, 491 U.S. 376, 396 (1989) (dissenting opinion)). Defendant is charged with multiple counts of Predatory Criminal Sexual Assault. As of March 30, 2022, only monetary conditions was ordered.

Enter the Case Number given by the Appellate Clerk:_____

PROOF OF SERVICE

In 1a, enter the name, mailing address, and email address of the party or lawyer to whom you sent the document.

In 1b, check the box to show how you sent the document, and fill in any other information required on the blank lines.

CAUTION: If the other party does not have a lawyer, you may send the document by email only if the other party has listed their email address on a court document.

1. I sent this document:

a. To:

Name: Clerk of the Appellate Court
First *Middle* *Last*

Address: 55 Symphony Way, Elgin, IL 60120
Street, Apt # *City* *State* *ZIP*

Email address: _____

b. By:
- ☐ Personal hand delivery
- ☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

_____
Address of Post Office or Mailbox

- ☐ Third-party commercial carrier, with delivery paid for at:

_____
Name (for example, FedEx or UPS) and office address

- ☐ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
- ☐ Email *(not through an EFM or EFSP)*
- ☑ Mail from a prison or jail at:

Lake County Adult Correctional Center
Name of prison or jail

In c, fill in the date and time that you sent the document.

c. On: April 7, 2022
Date

At: 8:00 ☐ a.m. ☑ p.m.
Time

In 2, if you sent the document to more than 1 party or lawyer, fill in a, b, and c. Otherwise leave 2 blank.

2. I sent this document:

a. To:

Name: Clerk of the Court
First *Middle* *Last*

Address: 18 N. County St. Waukegan, IL 60085
Street, Apt # *City* *State* *ZIP*

Email address: _____

b. By:
- ☑ Personal hand delivery - through LCACC staff
- ☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

_____
Address of Post Office or Mailbox

- ☐ Third-party commercial carrier, with delivery paid for at:

_____
Name (for example, FedEx or UPS) and office address

Enter the Case Number given by the Appellate Court Clerk: _____

- ☐ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
- ☐ Email *(not through an EFM or EFSP)*
- ☐ Mail from a prison or jail at:

_____
Name of prison or jail

c. On: April 8, 2022
Date

At: 9:00 ☑ a.m. ☐ p.m.
Time

In **3**, if you sent the document to more than 2 parties or lawyers, fill in **a**, **b**, and **c**. Otherwise leave **3** blank.

3. I sent this document:

a. To:

Name: Lauren Middle Walker
First *Last*

Address: 18 N. County St. Waukegan IL 60085
Street, Apt # *City* *State* *ZIP*

Email address: _____

b. By:
- ☐ Personal hand delivery
- ☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

_____
Address of Post Office or Mailbox

- ☐ Third-party commercial carrier, with delivery paid for at:

_____
Name (for example, FedEx or UPS) and office address

- ☑ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP) from the Clerk of the Court
- ☐ Email *(not through an EFM or EFSP)*
- ☐ Mail from a prison or jail at:

_____
Name of prison or jail

c. On: April 8, 2022
Date

At: 9:00 ☑ a.m. ☐ p.m.
Time

If you are serving more than 3 parties or lawyers, fill out and file 1 or more *Additional Proof of Service* forms with this form.

Enter the Case Number given by the Appellate Clerk:_____

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign by hand and print your name.

I certify that everything in the Proof of Service is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

/s/ John E. Garrett
Your Signature

John Garrett
Print Your Name

NO. 2-22-0120

IN THE

APPELLATE COURT OF THE STATE OF ILLINOIS

SECOND JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 19th Judicial Circuit,
Plaintiff-Appellee,	)	Lake County, Illinois.
	)	
-vs-	)	No. 16 CF 565; 18 CF 444
	)	
JOHN GARRETT,	)	Honorable
	)	Victoria Rossetti,
Defendant-Appellant.	)	Judge Presiding.

PEOPLE'S OBJECTION TO DEFENDANT'S MOTION SEEKING RELEASE OR REDUCTION OF BAIL

Now come the People of the State of Illinois, by Eric F. Rinehart, State's Attorney of Lake County, Edward R. Psenicka, Deputy Director, and Lynn M. Harrington, Staff Attorney, State's Attorneys Appellate Prosecutor, and object to defendant's motion asking this Court to review the trial court's order denying his motion for release on bail, modifying his bail revocation, and setting his bail at $5 million.

IN SUPPORT THEREOF, IT IS AVERRED THAT:

1. Defendant appeals from the trial court's March 30, 2022, order *modifying* his bond, and not the February 27, 2018, order *revoking* his bond, as he erroneously asserts. Therefore, the section of the bond modification statute that defendant relies upon in his motion on appeal is inapplicable because it relates to bond revocations. See 720 ILCS 5/110-6(f), (f)(1). Instead, the relevant statute at issue here pertains to bond modifications. 720 ILCS 5/110-6(a). As will be set out in this

objection, the trial court did not abuse its discretion in modifying defendant's bond status from its revoked status to $5 million with 10% to apply.

2. In this case defendant was charged in 16 CF 565 with two counts of Predatory Criminal Sexual Assault of a Minor (PCSA) for: (1) knowingly touching his penis with minor Z.H.'s vagina; and (2) knowingly touching Z.H.'s vagina for the purpose of sexual gratification or arousal. (Ex. G). After he posted bail, defendant *went back to Z.H.'s home and victimized her again.* His bond was revoked and he was charged in 18 CF 444 with two more counts of the PCSA of Z.H. for knowingly touching his penis to Z.H.'s vagina. (Ex. G). He was also charged with three counts of the PCSA of another minor, A.C., for: (1) knowingly touching his penis to A.C.'s mouth (two counts); and (2) knowingly touching his penis to A.C.'s anus (one count). (Ex. G). Finally, defendant was charged with another two counts of the PCSA of another minor, E.C., for knowingly placing his penis in E.C.'s vagina. (Ex. G). All seven of the counts in 18 CF 444 occurred while defendant was on bond in 16 CF 565. On March 20, 2022, the trial court heard defendant's motion to be released on his own recognizance. Instead, the trial court modified defendant's bond revocation and set bond at $5 million. The People assert that the trial court absolutely did not abuse its discretion in setting a very high bond for defendant in order to protect these victims and the community in general from him.

3. The People initially note that there is no record on appeal currently in this case. Therefore, the undersigned will be filing a Motion to Produce the Record simultaneously with this objection. For the purpose of this objection, however, the People request that this Court take judicial notice of the documents contained in the Appendix: (1) portions of the Case Information Sheets, the entire document of which in located in this Court's file (Exhibit A); (2) the Lake County Circuit Clerk's Office court case details (Exhibits B through D, https://circuitclerk.lakecountyil.gov/publicAccess/

html/common/index.xhtml); (3) a filed copy of the remand order from Lake County indicating that defendant's bond was modified on March 30, 2022 and set at $5 million (Exhibit E); (4) defendant's motion for "release on bail" (Exhibit F); and (5) the indictments in both cases (Exhibit G). Upon information and belief, any remaining information provided in this objection can be found in the record for this Court's review after the Motion to Produce the Record has been granted.

4. On March 1, 2016, an arrest warrant was issued for defendant in case 2016 CF 565 based upon two counts of predatory criminal sexual assault of a victim under age 13. 720 ILCS 5/11-1.40(A)(1) (West 2016). (Ex. A, p. 1). The next day, bond was set at $200,000 with 10% to apply with the condition that defendant have no contact with the minor victim, Z.H., her family or residence. (Ex. A, pp. 1-2; Ex. B, p. 10). On March 16, 2016, defendant's bond was lowered to $100,000 with the same conditions of bond. (Ex. A, pp. 2-3; Ex. B, p. 10). On March 23, 2016, defendant was released on bond. (Ex. B, p. 10). Defendant was indicted on those offenses on March 30, 2016. (Ex. A, p. 1; Ex. G). At the end of each count in the indictment it was noted that, pursuant to 720 ILCS 5/11-1.4(b)(2), if defendant was convicted of one count of PCSA it was mandated that he be sentenced to a term of natural life imprisonment since prior to the commission of the instant offense, defendant was previously convicted of PCSA of a child in Cook County, Illinois.

5. Defendant was out on bond when he was charged via information on February 27, 2018, in 18 CF 444 with committing predatory criminal sexual assault of a child under the age of 13 with the same victim, Z.H., on February 19, 2018. (Ex. A, p. 25; Ex. C, p. 1; Ex. D, p. 3). On February 27, 2018, defendant's bond was revoked and he was held without bond on 16 CF 656 and 18 CF 444. (Ex. A, p. 15).

6. On March 28, 2018, defendant was indicted on *five new counts of PCSA of a Minor*. Count I stated that around February 19, 2018, defendant knowingly touched his penis to Z.H.'s vagina. (Ex. G). Count II stated that between January 1, 2017 and December 31, 2017, defendant knowingly touched his penis to Z.H.'s vagina. (Ex. G). Count III stated that between August 27, 2017, and February 27, 2018, defendant knowingly touched his penis to minor A.C.'s mouth. (Ex. G). Count IV alleged that between August 27, 2017 and February 27, 2018, defendant, in a separate and distinct act, knowingly touched his penis to A.C.'s mouth. (Ex. G). Count V noted that between August 27, 2017 and December 31, 2017, defendant knowingly touched his penis to minor A.C.'s anus. (Ex. G).

7. On May 23, 2018, defendant was indicted on *two additional new counts* of PCSA in 18 CF 444 against another minor, E.C. (Ex. D, p. 2; Ex. G). Count VI alleged that between February 16, 2017 to February 15, 2018, defendant knowingly placed his penis in minor E.C.'s vagina. (Ex. G). Count VII stated that between February 16, 2017, to February 15, 2018, defendant knowingly placed his penis in E.C.'s vagina. (Ex. G). At the end of both counts VI and VII, it was noted that the People would be seeking a sentence of natural life imprisonment pursuant to 720 ILCS 5/11-1.40(b)(1.2) if the defendant was convicted of PCSA of a child committed against two or more persons, regardless of whether the offenses occurred as the result of the same act or of several related or unrelated acts.

8. On March 14, 2022, defendant filed a "Motion for Release on Bail," however, in the body of the motion defendant actually requested that he be released on his own recognizance. (Ex. G). On March 30, 2022, the trial court denied defendant's motion, but modified his bond from its earlier revoked status and set it at $5 million with 10% to apply. (Ex. E).

9. On April 14, 2022, defendant filed a motion for appellate review of the trial court's March 30, 2022, order denying his motion requesting the trial court to release him on his own recognizance pursuant to Illinois Supreme Court Rule 604(c) (eff. July 1, 2017). On appeal, defendant asks this Court to review the order denying his motion and either release him on his own recognizance with restrictive conditions or, in the alternative, to reduce the amount of his bail to $100,000 or any other amount deemed reasonable.

10. The People strenuously object to defendant's motion asking this Court to grant the relief he was denied in the trial court (release on his own recognizance) or, in the alternative, that a "reasonable bail" be set in this case, for example, the $100,000 bail that was set back on March 16, 2016, before he committed *seven sexual assaults of children under the age of 13 while he was on bond in a case involving two counts of sexually assaulting a child under the age of 13.*

11. This Court reviews the trial court's setting of a bail amount for an abuse of discretion. See *People v. Simmons*, 2019 IL App (1st) 191253, ¶ 9. Thus, the trial court's determination of bail will not be disturbed unless it was arbitrary, fanciful or unreasonable or where "no reasonable person would agree with the position adopted by the trial court." *Id.* (quoting *People v. Becker*, 239 Ill. 2d 215, 234 (2010)).

12. The trial court did not abuse its discretion in arriving at a $5 million bond amount (10% to apply) in this case. Even without a transcript of the hearing (which the People will be requesting in their motion to Produce a Record, filed simultaneously with this objection), it is very obvious why the trial court set defendant's bail at a high amount based upon the procedural history of this case. Amazingly, after defendant posted 10% of his $100,000 bail, he went on to *commit seven new PCSAs of minors while out on bond.* Two of those offenses involved the same little girl that he

sexually assaulted in 2015, which formed the basis for the two counts of PCSA in 16 CF 565. Five of those counts involved *two new victims, girls who were also under the age of 13 when they were sexually assaulted.* (Ex. G). If anything, the trial court here was generous in giving defendant any bail at all; it is extremely clear that defendant is a danger to these children and well as *any other children* in the community if he is allowed to walk the streets again before his trial. The trial court, having access to the indictments in this case, also knew that defendant had been convicted of PCSA of a minor previously in Cook County. (Ex. G).

13. In his motion, defendant claims that the procedure set forth in section 110-6 of the Code of Criminal Procedure of 1963 (Code) was not followed prior to the trial court's order denying him bail on February 27, 2018. 720 ILCS 5/110-6 (West 2018; version eff. Jan. 1, 2018 to Dec. 31, 2018). Without specifically citing to the section, defendant refers to the content of section 110-6(f) and (f)(1) of the Code when he argues that the People did not prove the violations that occurred while he was on bond by clear and convincing evidence or commence that hearing on the alleged breach within 10 days from the date he was taken into custody. (Ex. F, 3).

14. This claim is meritless. In this case, defendant is appealing from the trial court's order dated March 30, 2022, modifying his bail from its revoked status to $5 million with 10% to apply. (See Ex. E). Therefore, the issue of whether the trial court properly complied with sections 110-6(f) and (f)(1) of the Code (revoking bail) on February 27, 2018, is not ripe for appeal and this Court does not have jurisdiction to decide that issue.

15. Instead, section 110-6(a) of the Code applies to situations where bail is being granted after it has been revoked. 720 ILCS 5/110-6(a) (West 2018; version eff. Jan. 1, 2019 to Dec. 31, 2022). That section provides that a trial court may grant bail where it has previously been revoked

or denied. *Id.* Defendant is required to present a verified application setting forth in detail any new facts not known or attainable at the time of the previous revocation, and if the court grants bail where it has been previously revoked, the court shall state on the record of the proceedings the finding of facts and conclusions of law upon which the order is based. *Id.* Again, even without a transcript of the March 30, 2022 hearing, it is abundantly clear that the trial court did not abuse its discretion in modifying defendant's bond from its revoked status to $5 million when he had previously been convicted of PCSA of a minor in Cook County, had committed two offenses of PCSA in 16 CF 565 and committed *an additional seven offenses* of PCSA in 18 CF 444 when he was out on bond on the first two PCSAs. Given his history of re-offending, coupled with an earlier conviction of PCSA, the court's order modifying defendant's bond to $5 million was not arbitrary, fanciful or unreasonable or one where no reasonable person would agree with the position adopted by the trial court.

WHEREFORE, for all these reasons, the People object to defendant's motion asking this Court to release him on his own recognizance or, in the alternative, to set bail at a "reasonable amount," such as his $100,000 bail that was set before his committed seven additional PCSAs while out on bond. The People further request that if this Honorable Court grants their motion to produce the record, that they be given leave to amend this objection if necessary after the review of such.

Respectfully submitted,

Eric F. Rinehart
State's Attorney
Lake County
Waukegan, Illinois 60085
(847) 377-3000

Edward R. Psenicka
Deputy Director

By /s/ Lynn M. Harrington
Lynn M. Harrington
Staff Attorney
State's Attorneys
Appellate Prosecutor
2032 Larkin Avenue
Elgin, Illinois 60123
(847) 697-0020
2nddistrict.eserve@ilsaap.org

STATE OF ILLINOIS)
) SS
COUNTY OF KANE)

VERIFICATION

Under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Code of Civil Procedure, I certify that the above statements are true to the best of my knowledge and belief.

/s/ Lynn M. Harrington
Lynn M. Harrington

ILLINOIS APPELLATE COURT
SECOND DISTRICT

55 SYMPHONY WAY
ELGIN, IL 60120
(847) 695-3750

May 2, 2022

John E. Garrett
Reg. No. L159088
Lake County Adult Correctional Center
P.O. Box 38
Waukegan, IL 60079

RE: People v. Garrett, John E.
Appeal No.: 2-22-0120
County: Lake County
Trial Court No.: 16CF565, 18CF444

The court has this day, May 02, 2022, entered the following order in the above entitled case:

Appellant's request for additional transcripts is denied. In light of the transcript for March 30, 2022, appellant's motion for review of bail order is denied pursuant to appellee's response. THIS ORDER IS FINAL AND SHALL STAND AS THE MANDATE OF THE COURT. (McLaren, Hutchinson, Schostok, JJ.)

Jeffrey H. Kaplan
Clerk of the Court

cc: Lake County Circuit Court
Lynn Marie Harrington

APPELLATE CASE NO: 2-22-0100

IN THE APPELLATE COURT
OF ILLINOIS, SECOND DISTRICT

People of the State of Illinois Plaintiff/Petitioner/Appellee	Appeal from the Circuit Court of Lake County
v.	Trial Court Case No: 16CF565, 18CF444
John Garrett Defendant/Respondent/Appellant	Honorable Victoria Rossetti Judge, Presiding

MOTION TO REINSTATE APPEAL AND
RECONSIDER DENIAL OF MOTION TO REVIEW BAIL ORDER

Now comes Defendant, John Garrett, Pro Se, and moves this Honorable Court to reinstate his appeal and reconsider its denial of his Motion to Review Bail Order. In support of this request, defendant states the following:

1) On March 14, 2022, in accordance with Supreme Court Rule 604(c), defendant filed a Motion for Release on Bail in the trial court, as a prerequisite to his interlocutory appeal to this court, seeking relief from the No Bail Order set on February 27, 2018. He requested to be released on his own recognizance with restrictive conditions as deemed necessary.

2) On March 30, 2022, the trial court conducted a hearing on defendant's motion. The court found that there incorrectly was a no bail order, inferring that

both the previous trial court and the State did not follow the statutorily required procedure detailed in 725 ILCS 5/110-6(f), in order to deny bail. (See R2-4). The court immediately reversed the No Bond Order and set a $5 million bond. Defendant urged the trial court to consider his financial situation, relevant statutes, as well as the fact that his constitutional right to due process was violated for over 4 yrs. The trial court denied defendant's request.

3) On April 14, 2022, defendant filed a Motion for Review of Bail Order in this court.

4) On April 19, 2022, the State filed its Objection to defendant's motion and requested a Report of Proceedings (transcripts) from March 30, 2022. The transcript was subsequently filed with this court.

5) On May 2, 2022, this court denied defendant's motion in light of the transcript and pursuant to the State's Objection.

6) Defendant disagrees with this decision based on a factual review of both the State's objection and the transcript. Defendant lists 2 reasons for this conclusion as follows:

a) First, the State argued that defendant erroneously asserted appeal from the February 27, 2018 order revoking his bond, when he actually appealed from the March 30, 2022 order modifying his bond and this court did not have jurisdiction.

Defendant contends that this court did have jurisdiction to decide issues stemming from the February 27, 2018 order and further into and including the March 30, 2022

order. This is because of the process that is required prior to filing an appeal of this nature. Supreme Court Rule 604(c)(1) provides in pertinent part: "Before conviction a defendant may appeal to the Appellate Court from an order setting, modifying, revoking, denying, or refusing to modify bail or the conditions thereof. As a prerequisite to appeal the defendant shall first present to the trial court a written motion for the relief to be sought on appeal." (emphasis added). It says nothing of what happens when the trial court modifies its previous order. Defendant was appealing the denial of bail and the resulting 4 yrs. after that denial from February 27, 2018. As a result of the motion filed in the trial court, prior to his appeal, the trial court found that defendant's claim of noncompliance by the State and trial court with statutory requirements was correct, and granted defendant bail. It however, set an excessively high amount, considering that defendant was deprived of his liberty for 4 yrs. without due process. In fact, it refused to address that issue at all." The constitutional guarantee of procedural due process applies to governmental deprivation of a legitimate "property" or "liberty" interest within the meaning of the Fifth or Fourteenth Amendment. It requires that any such deprivation be accompanied by minimum procedural safeguards, including some form of notice and a hearing." Mitchell v W.T. Grant Co., 416 U.S. 600, 624, (1974). In this case, that guarantee was not fulfilled, thus requiring a remedy equal to the deprivation suffered. Neither the

[redacted]

trial court nor this court have addressed the issue before them. Defendant concedes that he was represented by counsel when the constitutional violation occurred, however, defendant is unaware of any reason why counsel would allow this injustice to stand without ever addressing it. Defendant can only reason that due to counsel's ineffective assistance, did the situation persist). Thus, in order to remedy this deprivation, the only available and suitable option was to release defendant on his own recognizance with appropriate conditions.

b) Secondly, the State claimed that Section 110-6(a) applied to defendant's appeal and not Section 110-6(f) as defendant stated. As evidenced by the denial of his motion, this Honorable Court agrees.

Defendant contends that the State's argument in this instance is flawed. The reference to statute by the State is missing a pertinent point. Section 110-6(a) in its entirety states: Upon verified application by the State or the defendant or on its own motion the court before which the proceeding is pending may increase or reduce the amount of bail or may alter the conditions of the bail bond or grant bail where it has been previously revoked or denied. If bail has been previously revoked pursuant to subsection (f) of this section or if bail has been denied to the defendant pursuant to subsection (e) of section 110-6.1 or subsection (e) of Section 110-6.3 [725 ILCS 5/110-6.1 or 725 ILCS 5/110-6.3], the defendant shall be required to present a verified application setting forth in detail any new facts not known

or obtainable at the time of the previous revocation or denial of bail proceedings. If the court grants bail where it has been previously revoked or denied, the court shall state on the record of the proceedings the findings of facts and conclusion of law upon which such order is based." 725 ILCS 5/110-6(a). As the trial court ruled, bail was not revoked pursuant to Section 110-6(f). Neither was it denied pursuant to subsection e of Section 110-6.1 or subsection e of Section 110-6.3. In fact, no statute was followed prior to revoking or denying defendant bail. As such, the State's argument does not and cannot overcome the issue in this case, which is why defendant appealed to this court, that he was denied his liberty for over 4 yrs. without due process of law, and he must be afforded a remedy for that constitutional violation. "Once a constitutional violation is found, a federal [or state] court is required to tailor 'the scope of the remedy' to fit 'the nature and extent' of the constitutional violation." 418 U.S., at 744; Swann, supra, at 16." Dayton Bd. of Education v. Brinkman, 433 U.S. 406 at 420, (1977). Once again, the State has completely ignored this constitutional violation and objected* to giving the defendant the relief he requested, the only available remedy, in this particular case, release from custody on bail, with restrictive conditions.

WHEREFORE, Defendant humbly prays this Honorable Court will reinstate his appeal and reconsider its decision to deny his Motion to Review Bail Order, and further, find that defendant was in fact denied his liberty without due process of law for over 4 yrs., thus he must be

[redacted]

afforded release on his own recognizance with restrictive conditions. Any other relief this court deems necessary.

Respectfully Submitted,

John E. Garrett

(*) Also of note, the State in its objection stated that defendant "went back to Z.H.'s home and victimized her again." and that "he went on to commit seven new PCSAs of minors while out on bond." These statements are highly inflammatory and presumptive. While these charges are extremely serious, they are simply allegations at this point in time. The Supreme Court of the United States has said, "This Court has declared that one accused of a crime is entitled to have his guilt or innocence determined solely on the basis of the evidence introduced at trial, and not on grounds of official suspicion, indictment, continued custody, or other circumstances not adduced as proof at trial." Taylor v Kentucky, 436 U.S. 478, (1978) Defendant has not been convicted in either one of these cases. Defendant is innocent until proven guilty. In defendant's view, it is very unproffesional to interject one's personal opinion of another party in these pleadings. Defendant respectfully requests that the State refrain from doing so in the future.

John E. Garrett - Pro Se
L159088
P.O. Box 38
Waukegan, IL 60079

VERIFICATION

Under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Code of Civil Procedure, I certify that the above statements are true to the best of my knowledge and belief.

John E. Garrett

PROOF OF SERVICE

I sent this document to:

- Clerk of the Appellate Court, 55 Symphony Way, Elgin, IL 60120 by mail from the Lake County Jail on May 18, 2022 at 9:00pm.
- Clerk of the Circuit Court, 18 N. County St, Waukegan, IL 60085 by hand delivery from the Lake County Jail Staff on May 19, 2022 at 9:00am.
- Lynn Harrington, Appellate Prosecutor, 2032 Larkin Ave, Elgin, IL 60123 by mail to and from the Clerk of the Appellate Court on May 18, 2022 at 9:00 pm.

Under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Code of Civil Procedure, I certify that everything in this proof of service is true and correct.

John E. Garrett

[redacted]

ILLINOIS APPELLATE COURT
SECOND DISTRICT

55 SYMPHONY WAY
ELGIN, IL 60120
(847) 695-3750

June 1, 2022

John E. Garrett
Reg. No. L159088
Lake County Adult Correctional Center
P.O. Box 38
Waukegan, IL 60079

RE: People v. Garrett, John E.
Appeal No.: 2-22-0120
County: Lake County
Trial Court No.: 16CF565, 18CF444

The court has this day, June 01, 2022, entered the following order in the above entitled case:

Appellant's motion to reinstate and reconsider is denied.

Jeffrey H. Kaplan
Clerk of the Court

cc: Lynn Marie Harrington

M14776

COPY

IN THE

SUPREME COURT OF ILLINOIS

John E. Garrett, Petitioner v. People State of Illinois, John D. Idleburg, Warden, and Hon. Victoria Rossetti, Respondents	)	Habeas Corpus

MOTION BY PETITIONER FOR LEAVE TO FILE A PETITION FOR WRIT OF HABEAS CORPUS

John E. Garrett
#L159088
Lake County Jail
P.O. Box 38
Waukegan, IL 60079

59a

CASE NO._____

IN THE SUPREME COURT OF ILLINOIS

John E. Garrett

Plaintiff

v.

People of the State of Illinois

Sherriff, John D. Idleburg

Judge, Victoria Rossetti

Respondents

AN ORIGINAL ACTION UNDER ARTICLE VI

SECTION 4(a) OF THE ILLINOIS CONSTITUTION

MOTION FOR LEAVE TO FILE PETITION

John E. Garrett - Pro Se

L159088

P.O. Box 38

Waukegan, IL 60079

MOTION FOR LEAVE TO FILE PETITION

(Ill. Sup. Ct. R 381)

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TABLE OF AUTHORITIES CITED

Cases (Alphabetical Order)

Constitution

RELIEF SOUGHT

Plaintiff moves this Court for leave to file the Petition enclosed with this Motion.

GROUNDS FOR RELIEF

Jurisdiction

1. This is a petition requesting a Writ of Habeas Corpus.
2. This action is alleging that Plaintiff is being held in violation of the United States Constitution.
3. This is an original action as authorized by the Illinois Constitution, Article VI, Section 4(g).

Purpose of the Proposed Action

4. Plaintiff has exhausted all other available remedies seeking the relief he has requested.
5. The petition details Plaintiff is being held in violation of the 5th and 14th Amendments of the U.S. Constitution.
6. The petition prays that this Court will ascertain that his right to liberty, without due process, has been violated for over 4 yrs.
7. The prayer suggests that relief be granted by releasing Plaintiff on his own recognizance, with conditions deemed necessary and appropriate, pending trial.

Direct Precedents Invoking Original Jurisdiction of this Court

8. In 1930 a Petitioner successfully invoked original jurisdiction in this Court seeking habeas corpus relief for the purpose of obtaining a setting of reasonable bail, after the municipal court judge in fixing bail expressly stated, "If I thought he would get out on that I would make it more." This Court concluded that the amount of $50,000 could have no other purpose than to make it impossible for petitioner to give the bail and detain him in custody, and was unreasonable. Further, it held that the municipal court had no justification to disregard

petitioner's constitutional right to be admitted to reasonable bail. People ex rel. Sammons v. Snow, 340 Ill. 464, 171 N.E. 8, (1930).

9. In 1934 a Petitioner successfully invoked original jurisdiction in this Court seeking a Writ of Habeas Corpus challenging the amount of bond required in relation to his appeal. This Court found that the fixing of the appeal bond at $7,700 was unreasonable, oppressive and in disregard of the rights of the relator. It clearly deprived him of his statutory right to appeal and insured his confinement in the county jail for a year. People ex rel. Smith v. Blaylock, 357 Ill. 23, 191 N.E. 206, (1934).

10. In 1975 a Petitioner successfully invoked original jurisdiction in this Court seeking leave to file a Writ of Habeas Corpus. Petitioner was charged with murder. At the hearing to set bail, the trial court found that he was not entitled to bail. The sole issue of law was whether petitioner, who was charged with murder but not potentially subject to the death penalty if convicted, was entitled to bail as a matter of right under Ill. Const. art I § 9, (1970). People ex rel. Hemingway v Elrod, 60 Ill. 2d 74, 322 N.E. 2d 837, (1975).

Need for Aid of this Court

11. The trial court in this case found that as Plaintiff was out on bond, statute required that his bond may be revoked in accordance with applicable procedures, namely, a verified petition and a hearing after which, and only then, could a No Bail order be entered. The question of law to be considered is, whether the trial court, when it entered a No Bail order, thereby

depriving Plaintiff of his liberty, without following statutory procedure (that required filing of a verified petition and a hearing prior to that deprivation), was an arbitrary denial of his fundamental interest in liberty pending trial, and therefore violated his right to due process of law as guaranteed by both the 5th and 14th Amendments of the Constitution of the United States. Further, that Plaintiff has been held for over 4 yrs. after said violation, without an equitable remedy.

12. As a result of this constitutional violation, Plaintiff has suffered extreme prejudice. There is no adequate post-deprivation remedy available, to provide equivalent compensation for the loss, the constitutional violation incurred. Plaintiff has exhausted all other available avenues of asserting this deprivation. Including filing a motion in the trial court, an interlocutory appeal in the Appellate Court and a motion for reconsideration in the same Appellate Court. Throughout all proceedings not a single court has recognized that a constitutional violation occurred, much less, the need to provide a remedy for such a violation.

CONCLUSION

For the reasons stated, the motion for leave to file the petition should be granted.

Respectfully Submitted,

Dated: June 29, 2022

John E. Garrett

64a

PROOF OF SERVICE

I sent this document to:

Clerk of the Supreme Court, 200 E Capitol Ave, Springfield, IL 62701
By: Mail from Lake County Adult Correctional Center (LCACC)
On: June 29, 2022 at 8:00pm

Attorney General Kwame Raoul, 100 W. Randolph St. 12th Floor, Chicago, IL 60601
By: Mail from LCACC
On: June 29, 2022 at 8:00pm

Judge Victoria Rossetti, 18 N. County St., Waukegan, IL 60085
By: Hand delivery, through LCACC staff
On: June 30, 2022 at 9:00am

Sheriff, John D. Idleburg, 29 S. Martin Luther King Jr. Ave, Waukegan, IL 60085
By: Mail from LCACC
On: June 29, 2022 at 8:00pm

I certify that everything in the Proof of Service is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

John E. Garrett - Pro Se
L159088
P.O. Box 38
Waukegan, IL 60079

John E. Garrett
Signature

65a

CASE NO._____

IN THE SUPREME COURT OF ILLINOIS

John E. Garrett
Plaintiff

v.

People of the State of Illinois
Sheriff, John D Idleburg
Judge, Victoria Rossetti
Respondents

AN ORIGINAL ACTION UNDER ARTICLE VI
SECTION 4(a) OF THE ILLINOIS CONSTITUTION

PETITION FOR WRIT OF HABEAS CORPUS

John E. Garrett - Pro Se
L159088
P.O. Box 38
Waukegan, IL 60079

PETITION FOR WRIT OF HABEAS CORPUS

Questions Presented For Review

1. Is Plaintiff entitled to immediate relief by way of a Writ of Habeas Corpus, when a constitutional violation of his rights is discovered and brought forth?
2. Did the trial court violate Plaintiff's constitutional right to due process, when it arbitrarily denied him his liberty without notice or hearing?
3. What adequate post-deprivation remedy will provide equivalent compensation for the loss the constitutional violation incurred?

Relief Sought

Plaintiff prays for a Writ of Habeas Corpus directed to Sherriff John D. Idleburg and to the Honorable Judge Victoria Rossetti, directing and commanding them to present him to this Court, so that it may review this petition and his incarceration and find that, due to the constitutional violation of Plaintiff's right to due process of law before depriving him of his liberty, grant him bail on his own recognizance with conditions deemed necessary and appropriate.

Unavailability of Relief in Other Courts

No other court can grant the relief sought by this petition because:

1. On March 30, 2022, the 19th Judicial Circuit Court, Lake County, IL, Judge Victoria Rossetti found that a No Bail Order was improperly entered where no petition to revoke was filed nor a hearing

held prior to the entry of that order. The court reversed the No Bail order, entering a $5,000,000 bail, which is an excessive amount that does not comport with the express purpose of bail, namely, to ensure appearance in court and the protection of the public. The court also refused to address the constitutional violation of plaintiff's rights. A transcript of these proceedings is attached in the Appendix, pg. 63.

2. On May 2, 2022, the Appellate Court, 2nd District, Elgin, IL, denied plaintiff's motion to review bail order. Issues raised include; arbitrary denial of Plaintiff's pre-trial liberty without due process of law and the entry of an excessive bail amount after granting bail. A copy of this motion and the subsequent order is attached in the Appendix, pg. 17 and 70.

3. The motion for reconsideration was denied by the Appellate Court, 2nd District, Elgin, IL, on June 1, 2022. Appendix, pg. 78.

Unsuitability of Any Other Form of Relief

No other form of relief will be sufficient to provide equivalent compensation for the loss the constitutional violation incurred because liberty lost and its detrimental effects cannot be returned or repaid, only can liberty be regained.

List of Parties in Court Below

John E. Garrett - Plaintiff

People of the State of Illinois / Sherriff John D. Idleburg / Judge Victoria Rossetti - Respondents

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Table of Authorities Cited

Jurisdictional Statement

This Court has jurisdiction to issue the requested writ under 735 ILCS 5/10-101 and Supreme Court Rule 381.

Citations of Lower Court Decisions

The decision of the 19th Judicial Circuit Court is set out in the transcript attached to this petition on pgs. 63-69 of the Appendix.

The decisions of the Appellate Court, 2nd District, are set out in the written orders attached to this petition on pgs. 70 and 78 of the Appendix.

Controlling Provisions, Statutes and Regulations

The 5th Amendment to the United States Constitution provides: "No person shall... be deprived of life, liberty, or property, without due process of law;"

The 14th Amendment to the United States Constitution provides: "No State shall... deprive any person of life, liberty, or property, without due process of law;"

Article I, Section 2 of the Illinois Constitution provides: "No person shall be deprived of life, liberty, or property without due process of law nor be denied the equal protection of the laws."

Section 725 ILCS 5/110-6(b) of the compiled statutes of the State of Illinois provides: "... where the alleged offense committed on bail is a forcible felony in Illinois..., revoke bail pursuant to the appropriate provisions of subsection (e) of this section.

Section 725 ILCS 5/110-6(e) of the compiled statutes of the State

of Illinois provides: "When the defendant is charged with a felony offense and while free on bail is charged with a subsequent felony offense and is the subject of a proceeding set forth in Section 109-1 or 109-3 of this Code [725 ILCS 5/109-1 or 725 ILCS 5/109-3], upon filing of a verified petition by the State alleging a violation of Section 110-10(a)(4) of this Code, the Court shall without prior notice to the defendant, grant leave to file such application and shall order the transfer of the defendant and the application without unnecessary delay to the court before which the previous felony matter is pending for a hearing as provided in subsection (b) or this subsection of this Section...
Section 725 ILCS 5/110-6(f) of the compiled statutes of the State of Illinois provides: "Where the alleged violation consists of the violation of one or more felony statutes of any jurisdiction which would be a forcible felony in Illinois... and the defendant is on bail for the alleged commission of a felony, ... the court shall, on the motion of the State or its own motion, revoke bail in accordance with the following provisions: (1) The court shall hold the defendant without bail pending the hearing on the alleged breach; however, if the defendant is not admitted to bail the hearing shall be commenced within 10 days from the date the defendant is in custody or the defendant may not be held any longer without bail, unless delay is occasioned by the defendant... (2) At a hearing on the alleged violation the State has the burden of going

forward and proving the violation by clear and convincing evidence...(3) Upon a finding by the court that the State has established by clear and convincing evidence that the defendant has committed a forcible felony..., the court shall revoke the bail of the defendant and hold the defendant for trial without bail.

Statement of the Case and Governing Facts

J.G. was released on bond for case no. 16CF565 on March 19, 2016. On February 27, 2018, while still out on bond, pursuant to a warrant, while attending court, he was remanded to custody and charged with additional crimes. When ordering J.G. to be remanded to custody, the trial judge revoked his bail and immediately entered a No Bail order. There was no statutorily required Petition to Revoke, nor a hearing on said petition was completed prior to the deprivation of J.G.'s liberty. Subsequent to that No Bail order, various judges agreed and continued that order without any further process. As a result, J.G. has been held for over 4yrs. without due process of law. Appendix, pg. 68.

On March 14, 2022, in accordance with Supreme Court Rule 604(c), J.G. filed a Motion for Release on Bail in the trial court, as a prerequisite to his interlocutory appeal to the Appellate Court, seeking relief from the No Bail order set on February 27, 2018. He requested to be released on his own recognizance with restrictive conditions as deemed necessary. Appendix, pg. 1.

On March 30, 2022, the trial court conducted a hearing on

J.G.'s motion. The trial court found there incorrectly was a No Bail order, confirming that both the previous trial court and the State did not follow the statutorily required procedure prior to revoking bail. The court immediately reversed the No Bail order and set a $5,000,000 bail. J.G. urged the trial court to consider his financial situation, relevant statutes, as well as the fact that his constitutional right to due process of law before depriving him of his liberty, was violated for over 4 yrs. The trial court denied defendant's request. Appendix pg. 68.

On April 14, 2022, J.G. filed a Motion for Review of Bail Order in the Appellate Court, 2nd District. On May 2, 2022, in light of the transcript and pursuant to the State's objection denied his motion. Appendix pg. 70.

On May 23, 2022, J.G. filed a Motion to Reconsider in the Appellate Court, 2nd District. The Appellate Court denied his request. Appendix pg. 78.

J.G. has suffered extreme prejudice as a result of this constitutional violation of his rights. (Appendix pg. 6.) There is no adequate post-deprivation remedy available to provide equivalent compensation for the loss the constitutional violation incurred. Not a single court has recognized that a constitutional violation even occurred, much less, the need to provide a remedy. If a writ is not granted in this case, the perpetuation of denial of J.G.'s constitutional rights will continue, with no end in sight.

Argument

1. Arbitrary Denial of J.G.'s Liberty

When the trial court in this case remanded J.G. to custody, it was constitutionally and statutorily required to hold a hearing prior to taking his liberty. It did not. "A defendant who is properly entered into bond, recognizance or otherwise, is entitled to judicial procedure before being arrested or having the terms of his liberty modified." People v. Beachem, 229 Ill. 2d 237 at 250, (2008). This case is similar in nature to People v. Gil, 2019 IL App (1st) 192419, in which the State and trial court did not follow statutorily required procedures. The requested relief was granted.

2. Liberty is the Only Available Remedy

The trial court in this case, once made aware of J.G.'s liberty was arbitrarily denied for over 4 yrs. should have immediately released him on his own recognizance, with appropriate conditions. It did not. Instead, it completely ignored the need to remedy this violation and once again violated J.G.'s constitutional rights, by setting an excessive bail amount. "The essence of due process is "fundamental fairness." Due process requires "fairness, integrity, and honor" in the operation of the criminal justice system, and in its treatment of the citizen's cardinal constitutional protections." People v. McCauley, 163 Ill. 2d 414 at 444, (1994). "... procedural due process is founded upon the notion that, prior to a deprivation of life, liberty, or property, a party is entitled to notice and opportunity for a hearing appropriate to the nature of the case." People v. Cardona, 2013 IL

114076 at P22. J.G. has been denied his liberty without due process of law for over 4 years. This situation must be remedied with equivalent compensation for the prejudice suffered. The only available remedy is liberty.

Conclusion

For the reasons stated, J.G. prays that this Honorable Court will grant the requested Writ of Habeas Corpus and direct the 19th Judicial Circuit Court, Honorable Judge Victoria Rossetti and the Sherriff of Lake County, John D. Idleburg, to immediately present him to this Court, so that it may review his incarceration and that, due to the constitutional violation of Plaintiff's right to due process of law before depriving him of his liberty, the remedy of bail on his own recognizance with conditions deemed necessary and appropriate, is the only remedy.

Dated: June 29, 2022

Respectfully submitted,

John E Jarrett

Declaration Under Penalty of Perjury

I placed this petition in the Lake County Jail system on June 29, 2022 at 8:00pm.

I declare under penalty of perjury that I am the Plaintiff, I have read this petition and the information contained therein is true and correct. I understand that a false statement of a material

fact may serve as the basis for prosecution for perjury.

Dated: June 29, 2022 John E. Garrett

John E. Garrett - Pro Se
L159088
P.O. Box 38
Waukegan, IL 60079

PROOF OF SERVICE

I sent this document to:

Clerk of the Supreme Court, 200 E Capitol Ave, Springfield, IL 62701
By: Mail from Lake County Adult Correctional Center (LCACC)
On: June 29, 2022 at 8:00 pm

Attorney General Kwame Raoul, 100 W. Randolph St. 12th Floor,
Chicago, IL 60601
By: Mail from LCACC
On: June 29, 2022 at 8:00pm

Sheriff John D. Idleburg, 29 S. Martin Luther King Jr. Ave,
Waukegan, IL 60085
By: Mail from LCACC
On: June 29, 2022 at 8:00pm

Judge Victoria Rossetti, 18 N. County St., Waukegan, IL 60085
By: Hand delivery, through LCACL staff
On: June 30, 2022 at 9:00am

I certify that everything in the Proof of Service is true and correct. I understand that making a false statement on this form is perjury and has penalties as provided by law under 735ILCS 5/1-109.

John E. Garrett
Print Name

John E. Garrett
Signature

SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721

CYNTHIA A. GRANT
Clerk of the Court

(217) 782-2035
TDD: (217) 524-8132

September 27, 2022

FIRST DISTRICT OFFICE
160 North LaSalle Street, 20th Floor
Chicago, IL 60601-3103
(312) 793-1332
TDD: (312) 793-6185

John E. Garrett
Reg. No. L159088
Lake County Adult Correctional Center
P.O. Box 38
Waukegan, IL 60079

THE COURT HAS TODAY ENTERED THE FOLLOWING ORDER IN THE CASE OF:

M.D.014776 - Garrett v. People

Motion by petitioner for leave to file a petition for writ of habeas corpus is denied.

Very truly yours,

Cynthia A. Grant

Clerk of the Supreme Court

cc: Attorney General of Illinois - Criminal Division

MBH

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

UNITED STATES DISTRICT COURT

for the

NORTHERN DISTRICT OF ILLINOIS

John E. Garrett
Petitioner

v.

John D. Idleburg
Respondent
(name of warden or authorized person having custody of petitioner)

22cv5993
Judge Manish S. Shah
Magistrate Judge Maria Valdez
PC 14
RANDOM

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: John E. Garrett
   (b) Other names you have used: N/A
2. Place of confinement:
   (a) Name of institution: Lake County Adult Correctional Center
   (b) Address: 39 S. Martin Luther King Jr. Ave
   Waukegan IL 60085
   (c) Your identification number: L 159058
3. Are you currently being held on orders by:
   ☐ Federal authorities ☑ State authorities ☐ Other - explain:

RECEIVED
OCT 31 2022 SMB
THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

4. Are you currently:
   ☑ A pretrial detainee (waiting for trial on criminal charges)
   ☐ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime
   If you are currently serving a sentence, provide:
   (a) Name and location of court that sentenced you:
   (b) Docket number of criminal case:
   (c) Date of sentencing:
   ☐ Being held on an immigration charge
   ☐ Other *(explain)*:

Decision or Action You Are Challenging

5. What are you challenging in this petition:
   ☐ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

79a

☑ Pretrial detention
☐ Immigration detention
☐ Detainer
☐ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
☐ Disciplinary proceedings
☐ Other *(explain)*:

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: 19th Judicial Circuit Court, 18 N. County St. Waukegan, IL 60085

(b) Docket number, case number, or opinion number: 16CF565, 18CF444

(c) Decision or action you are challenging *(for disciplinary proceedings, specify the penalties imposed)*:

Petitioner was out on bond for case 16CF565 when pursuant to a warrant was remanded to custody and charged in 18CF444. On the day of remand, bail was revoked without a Petition to Revoke nor a hearing on said Petition prior to entry of a No Bail Order. Petitioner has been denied due process for over 4 yrs. (cont.)

(d) Date of the decision or action: February 27, 2018

Your Earlier Challenges of the Decision or Action

7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

☑ Yes ☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: 19th Judicial Circuit Court, Judge Victoria Rossetti, Waukegan, IL

(2) Date of filing: March 14, 2022

(3) Docket number, case number, or opinion number: 16CF565, 18CF444

(4) Result: Motion granted in part, denied in part.

(5) Date of result: March 30, 2022

(6) Issues raised: Statutory procedure in 725 ILCS 5/110-6 was not followed prior to Trial Court's order denying Defendant bail. In the instant case, no Notice, no verified Petition to Revoke nor a Hearing on the alleged violation was held prior to the modification of Defendant's terms of liberty. Nor was the violation proven by clear and convincing evidence. This is a violation of Defendant's right to Due Process as guaranteed by both the 5th and 14th Amendments.

(b) If you answered "No," explain why you did not appeal:

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

☑ Yes ☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: Appellate Court of Illinois, 2nd District, Elgin, IL

(2) Date of filing: April 14, 2022

(3) Docket number, case number, or opinion number: 2-22-0120

(4) Result: Motion denied

(5) Date of result: May 2, 2022

(6) Issues raised: ① Denial of Defendant's constitutional right to Due Process. ② Violation of 8th Amendment right to bail amount that is not excessive.

(b) If you answered "No," explain why you did not file a second appeal:

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☑ Yes ☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: Supreme Court of Illinois, Springfield, IL

(2) Date of filing: July 5, 2022

(3) Docket number, case number, or opinion number:

(4) Result: Motion for Leave to File Writ of Habeas Corpus, denied

(5) Date of result: September 27, 2022

(6) Issues raised: 1) Is Plaintiff entitled to immediate relief by way of a Writ of Habeas Corpus when a constitutional violation of his rights is discovered and brought forth? 2) Did the Trial Court violate Plaintiff's constitutional right to Due Process when it arbitrarily denied him his liberty without notice or hearing? 3) What adequate post-deprivation remedy will provide equivalent compensation for the loss the constitutional violation incurred?

(b) If you answered "No," explain why you did not file a third appeal:

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☐ Yes ☑ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☐ Yes ☐ No

If "Yes," provide:
(1) Name of court:
(2) Case number:
(3) Date of filing:
(4) Result:
(5) Date of result:
(6) Issues raised:

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☐ Yes ☑ No

If "Yes," provide:
(1) Name of court:
(2) Case number:
(3) Date of filing:
(4) Result:
(5) Date of result:
(6) Issues raised:

(c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence:

11. **Appeals of immigration proceedings**

Does this case concern immigration proceedings?

☐ Yes ☑ No

If "Yes," provide:

(a) Date you were taken into immigration custody:

(b) Date of the removal or reinstatement order:

(c) Did you file an appeal with the Board of Immigration Appeals?

☐ Yes ☐ No

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If "Yes," provide:

(1) Date of filing:

(2) Case number:

(3) Result:

(4) Date of result:

(5) Issues raised:

(d) Did you appeal the decision to the United States Court of Appeals?

☐ Yes ☑ No

If "Yes," provide:

(1) Name of court:

(2) Date of filing:

(3) Case number:

(4) Result:

(5) Date of result:

(6) Issues raised:

12. **Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☐ Yes ☑ No

If "Yes," provide:

(a) Kind of petition, motion, or application:

(b) Name of the authority, agency, or court:

(c) Date of filing:

(d) Docket number, case number, or opinion number:

(e) Result:

(f) Date of result:

(g) Issues raised:

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: Prior to the deprivation of my Liberty, I was not afforded Due Process as required by the 5th and 14th Amendments when the Trial Court revoked bail, it did not follow statutory procedure.

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

On February 27, 2018, prior to revoking bail, no notice, verified application for Petition to Revoke nor hearing was held on the alleged violation. The State did not prove the violation by clear and convincing evidence. My liberty was arbitrarily taken from me. The Trial Court admitted these facts on March 30, 2022 when it reversed the NO BAIL Order but refused to address the constitutional violation.

(b) Did you present Ground One in all appeals that were available to you?

☑ Yes ☐ No

GROUND TWO: The Trial Court when entering a $5,000,000 bond amount entered an amount that was excessive.

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

The Trial Court admitted that a No Bail Order was improperly entered previously but further violated my constitutional rights by entering an excessive bail amount in violation of the 8th Amendment, without considering my financial circumstances and that my Due Process rights were violated previously.

(b) Did you present Ground Two in all appeals that were available to you?

☑ Yes ☐ No

GROUND THREE:

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

(b) Did you present Ground Three in all appeals that were available to you?

☐ Yes ☐ No

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GROUND FOUR:

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

(b) Did you present Ground Four in all appeals that were available to you?

☐ Yes ☐ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:

Request for Relief

15. State exactly what you want the court to do: Find that, the Trial Court arbitrarily denied Petitioner his fundamental interest in liberty pending trial, thereby violating his Constitutional right to Due Process. Further that he must be released on his own recognizance, pending trial.

Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

10/25/22 @ 8:30pm

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date: 10/25/22

John E. Garrett

Signature of Petitioner

Signature of Attorney or other authorized person, if any

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS

JOHN E. GARRETT (L-159088),	)	
	)	
Petitioner,	)	
	)	Case No. 22 C 5993
v.	)	
	)	Hon. Manish S. Shah
RICHARD CLOUSE,	)	
Chief of Corrections,	)	
Lake County Jail,	)	
	)	
Respondent.	)	

ORDER

Respondent shall answer or otherwise respond to the habeas corpus petition [9] by January 26, 2023. Petitioner shall reply by March 2, 2023.

STATEMENT

Petitioner John E. Garrett, a Lake County Jail detainee, has filed a habeas corpus petition under 28 U.S.C. § 2241 challenging the revocation and modification of his bail in the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois. (Dkt. 9.) He has paid the $5.00 filing fee. Pending before this Court is the initial review of the habeas corpus petition under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts.*

Rule 4 requires this Court to examine the petition and supporting exhibits, and to dismiss a petition if it "plainly appears" that Petitioner is not entitled to relief. If the petition is not dismissed, the Court then orders Respondent to respond to the petition. *See* Rule 4.

Section 2241 relief for a pretrial detainee is limited by *Younger v. Harris*, 401 U.S. 37 (1971), which, with very few exceptions, "requires federal courts to abstain from interfering with pending state proceedings." *Sweeney v. Bartow*, 612 F.3d 571, 573 (7th Cir. 2010). The general rule is that Petitioner must proceed with his claims through the regular state criminal proceedings, and may raise claims through a 28

* Although this case is brought under 28 U.S.C. § 2241, the Court is permitted to apply the Rules Governing Section 2254 Cases in the United States District Courts to the instant action. *See* Rule 1(b) (allowing application of rules to non § 2254 habeas corpus cases); *Poe v. United States*, 468 F.3d 473, 477 n.6 (7th Cir. 2006).

U.S.C. § 2254 federal habeas corpus petition only after a state conviction. *Id.* Only constitutional claims that may become moot if not raised before trial can be brought by a pretrial detainee in a § 2241 petition. *Id.* Claims of excessive bail are among the very few claims allowed in a pretrial habeas corpus petition. *See United States ex rel. Garcia v. O'Grady*, 812 F.2d 347, 352 (7th Cir. 1987).

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. *See O'Grady*, 812 F.2d at 352. Respondent is thus ordered to answer or otherwise respond to the habeas corpus petition.

Petitioner is instructed to file all future papers concerning this action with the Clerk of Court in care of the Prisoner Correspondent. Any paper that is sent directly to the Judge or otherwise fails to comply with these instructions may be disregarded by the Court or returned to the Petitioner.

ENTER:

Date: December 1, 2022

Manish S. Shah, U.S. District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS—EASTERN DIVISION

JOHN E. GARRETT (L-159088), Petitioner, v. RICHARD CLOUSE, Chief of Corrections, Lake County Jail. Respondent.	Case No. 22 CV 5993 Hon. Manish S. Shah

RESPONSE TO PETITIONER'S HABEAS CORPUS PETITION

NOW COMES Respondent RICHARD CLOUSE, Chief of Corrections, Lake County Jail, through Lake County State's Attorney Eric F. Rinehart, and his assistants Karen D. Fox and Jamie Helton, and in Response to Petitioner's habeas corpus petition ("Petition"), states as follows:

I. INTRODUCTION

The Petition was filed under 28 U.S.C. § 2241 and alleges the following: 1) the Petitioner was held in violation of Due Process when he was held without bond, and 2) his current bond of $5,000,000 is excessive. Dkt. #9, Petition, p. 6. First, the issue of whether the Petitioner was *previously* held on no bond in violation of Due Process is not ripe as there is no case or controversy as to a prior decision to hold the Petitioner without bond when the Petitioner is now being held on bond. Respectfully, this Court's remedy in response to a valid § 2241 Petition is regarding the constitutionality of the Petitioner's *current* bond, not to decide whether there was a previous violation of state statute or the constitutionality of a prior bond decision not in existence at the time the Petitioner filed this petition. And Petitioner's current bond is certainly not excessive given the circumstances present. Therefore, the Petition must be denied.

II. STATEMENT OF FACTS

The Petitioner has two criminal cases pending in the Nineteenth Judicial Circuit Court of Lake County, Illinois. The Petitioner is currently charged with two counts of Predatory Criminal

Sexual Assault of a Child (16 CF 565) with one minor victim. (A-140-141). On March 16, 2016, the Court set the Petitioner's bond at $100,000. (A-004). The Petitioner was able to post the required bond and was released from custody. (A-004).

The Petitioner was subsequently charged with seven additional counts of Predatory Criminal Sexual Assault (18 CF 444). (A-142-150). In 18 CF 444, it is alleged that while on bond in 16 CF 565, the Petitioner again committed Predatory Criminal Sexual Assault, revictimizing the same minor victim from 16 CF 565 and victimizing two additional minors. (*Id.*). On February 26, 2018, when brought before the circuit court for the first time for the 18 CF matter, the circuit court ordered the Petitioner held without bond on both the 16 CF and 18 CF matters. (A-050-051).

In indictments filed in the 16 CF and 18 CF cases, the State requested a sentence with a term of natural life based on the Petitioner's prior conviction for Predatory Criminal Sexual Assault of a Child and if the Petitioner is convicted of Predatory Criminal Sexual Assault of a Child committed against two or more persons. (A-140-141, A-148-149).

On March 14, 2022, the Petitioner filed a Motion for Release on Bail in circuit court. Dkt. #9, p. 10-25. In said Motion, the Petitioner asked the circuit court to release him on his own recognizance with restrictive conditions. *Id.* at p. 10. The Petitioner alleged that when the circuit court ordered him held without bond, it violated state statute, namely 725 ILCS 5/110-6, and thus his right to due process was violated. *Id.* at p. 11. Specifically, the Petitioner alleges that a verified petition was not filed by the State and there no was hearing, both being requirements of the statute. *Id.* at 12.

On March 30, 2022, after a hearing on Petitioner's Motion for Release on Bail, the circuit court modified the Petitioner's bond from no-bond to $5 million. (A-039-040, A-075, A-160). In setting the Petitioner's bond at $5 million, the circuit court considered several factors, including the seriousness of the charges and that the Petitioner was out on bond and alleged to have

committed another offense with the same victim. (A-162). The Petitioner is currently being held in the Lake County Jail on that bond. (A-002, A-050).

After the Court set the Petitioner's bond at $5 million, he filed a Motion for Review of Bail Order in the Illinois Appellate Court. (A-085-090). In this Motion, the Petitioner asked the Appellate Court to release him on his own recognizance and put in place appropriate restrictive conditions, or in the alternative, to set a reasonable bond amount, i.e., $100,000. (A-085). The Petitioner argued that the State and circuit court did not follow statutory procedures, violating due process, and further argued that his $5 million bond is excessive. (A-086-087). The Appellate Court entered an order stating that it was denying Petitioner's Motion for Review of Bail Order in light of the transcript for the circuit court's hearing on Petitioner's Motion for Release on Bail. (A-240).

The Petitioner then filed a Motion for Leave to File a Petition for Writ of Habeas Corpus in the Supreme Court of Illinois. (A-252-349). The Petitioner again asked to be released on his own recognizance with conditions. (A-255). The Petitioner asked the Illinois Supreme Court to consider whether the circuit court's denial of bail by not following statutory procedures violated his due process rights. (A-257). The Illinois Supreme Court denied the Petitioner's Motion for Leave to File a Petitioner for Writ of Habeas Corpus. (A-251).

The Petition now pending before this Court was filed his under 28 U.S.C. § 2241, alleging that the Petitioner was held in violation of Due Process and that his current bond of $5 million is excessive. Dkt. #9, Petition, p. 6.

III. THE PETITIONER'S EXHAUSTION OF REMEDIES

Pursuant to § 2254, Rule 5(b), the Respondent includes the following section regarding the Petitioner's required exhaustion of remedies.[1] Section 2254 requires a petitioner to exhaust

[1] Although this Rule pertains to § 2254, the Court may apply § 2254 rules to § 2241 petitions. § 2254, Rule 1.

remedies available in state courts before a federal habeas corpus petition may be granted. 28 U.S.C. § 2254. This requirement has been construed to be a requirement of § 2241 petitions. *Hudson v. Chicago Police Dep't*, 860 F. Supp. 521, 523 (N.D. Ill. 1994).

Here, Illinois Supreme Court Rule 604(c) provides a process by which a criminal defendant may appeal an order setting, modifying, revoking, denying, or refusing to modify bail or bond conditions. Ill. Sup. Ct. R. 604(c). The Rule states that as a prerequisite, the defendant must file a written motion to the trial court for the relief sought in the appeal. *Id.* In the appeal, the criminal defendant must state the date of the order. Ill. Sup. Ct. R. 604(c)(2)(ii).

The Petitioner did in fact file a motion in the circuit court. Dkt. #9, p. 10-25. The Petitioner alleged that when the circuit court ordered him held without bond, it violated state statute and thus his right to due process was violated. *Id.* at p. 11. The Petitioner alleges that a verified petition was not filed by the State and there no was hearing, both being requirements of the statute. *Id.* at 12. After a hearing on this Motion, the circuit court modified the Petitioner's bond to $5 million. (A-039-040, A-075, A-160). Thereafter, the Petitioner filed a Motion for Review of Bail Order in the Illinois Appellate Court. (A-085-090). Thus, the Petitioner's appeal should be construed as challenging the circuit court's order modifying the Petitioner's bond. The Petitioner filed a Motion for Leave to File a Petition for Writ of Habeas Corpus to the Illinois Supreme Court, (A-252-348), which was denied. (A-249).

Thus, the Petitioner has not exhausted his remedies as to the no-bond decision as the circuit court's order (to which he appealed) modified the bond from no-bond to $5 million. For this and the other reasons set forth below, the no-bond decision is not ripe for decision by this Court.

However, the Petitioner seemingly refers to his argument that the $5 million bond is excessive and/or arbitrary in his filings to the Illinois Appellate Court and the Illinois Supreme Court, and thus he has likely exhausted his remedies on this issue. (A-086-087, A-267).

IV. ARGUMENT

A. The Petitioner's Prior No-Bond Does Not Present a Case or Controversy for This Court

The Petitioner argues that one ground of his Petition is that he was not afforded due process when the trial court revoked bail and statutory procedure was not followed. Dkt. #9, p. 6.

As background, in February 2018, when the Petitioner went before the circuit court for the first time on his 18 CF case, which alleged that while on bond for Predatory Criminal Sexual Assault he again committed Predatory Criminal Sexual Assault with the *same* victim and victimized two additional minors, the circuit court set the Petitioner's bond at no-bond. The Petitioner's bond stayed a no-bond until March 2022, when it was modified to $5 million after the Petitioner filed a Motion for Release on Bail in circuit court. The Petitioner argues that the no-bond was a violation of his constitutional right to due process, that state statute requires the State to file a verified petition and there to be a hearing before a defendant can be denied pretrial release. 725 ILCS 5/110-6.1. While it may be accurate that state statute does impose these requirements, the Petitioner is not currently being denied pretrial release. His bond was $5 million at the time the Petitioner appealed his bond to the Illinois Appellate Court and Illinois Supreme Court, and, in fact, it is currently his bond amount today.

"Under Article III of the Constitution, federal courts may adjudicate only actual, ongoing cases or controversies." *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477 (1990). For this Court to have jurisdiction, the Petitioner "must continue to have a 'personal stake in the outcome' of the lawsuit[.]" *Lewis*, 494 U.S. at 478, quoting *Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983). Here, the Petitioner's challenge to a bond decision no longer in effect does not present a case or controversy for this Court to decide. For example, in *Spencer*, the Supreme Court found that there was no case or controversy present in a § 2241 Petition regarding a parole revocation decision

when there were no continuing collateral consequences from the revocation and the incarceration incurred from that decision was over. *Spencer v. Kemna*, 523 U.S. 1 (1998).

Whether the Petitioner has an avenue other than a petition for writ of habeas corpus to challenge the prior alleged deprivation of his constitutional rights is irrelevant. See *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973) (discussing alternative causes of action).

Here, the only case or controversy present before this Court is the constitutionality of the Petitioner's *current* $5 million bond.

B. Whether the Circuit Court Violated State-Law Procedures is Not Cognizable as a Federal Habeas Corpus Claim

As this Court explained in its December 1, 2022, order, "[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." Dkt. #10, p. 2, citing *U.S. ex rel. Garcia v. O'Grady*, 812 F.2d 347, 353 (7th Cir. 1987). Therefore, even if state court procedures for revoking pretrial release were violated, the only question before this Court is whether the Petitioner's current $5 million bond was excessive or arbitrary.

C. The Petitioner's Current Bond is Not Excessive or Arbitrary

The Petitioner next argues that his $5 million bond is excessive in violation of the 8th Amendment and that his due process rights were violated. Therefore, the question before this Court is whether the Petitioner's $5 million bond is excessive or arbitrary. Clearly, given the circumstances present, it is not.

"[T]he only issue to be resolved by a federal court presented with a habeas corpus petition that complains of excessive bail is whether the state judge has acted arbitrarily in setting that bail." *U.S. ex rel. Fitzgerald v. Jordan*, 747 F.2d 1120, 1133 (7th Cir. 1984). The circuit court's determination of bail should not be disturbed unless it was made in an "arbitrary manner." *Jordan*, 747 F. 2d at 1134. The Seventh Circuit reversed the decision of a District Court granting a writ of

habeas corpus in a challenge to a petitioner's bond amount being set close to the street-value of drugs in the petitioner's possession at the time of arrest when charged with drug-related offenses. *U.S. ex rel. Garcia v. O'Grady*, 812 F.2d 347 (7th Cir. 1987). In so holding, the Seventh Circuit stated, "A federal court should neither substitute its opinion as to what an appropriate amount of bail should be nor decide what factor should be given the greatest weight, in the absence of a constitutional violation." *O'Grady*, 812 F.2d at 355.

In *Jordan*, the Seventh Circuit commented on proper considerations before the trial court, i.e., seriousness of the charge and the strength of State's case. The Illinois Code of Criminal Procedure lists various factors a court shall consider when determining the amount of bail or conditions of pretrial release to "reasonably assure" the defendant's appearance, the safety of others, or the likelihood of compliance with bond conditions. 725 ILCS 5/110-5.[2] The factors include: the nature and circumstances of the offense, the likelihood of conviction, the sentenced the defendant faces from a conviction, the weight of the evidence, whether there is motivation for the defendant to flee, prior convictions, and the defendant's past conduct. *Id.*

In March 2022, the Petitioner filed a Motion before the circuit court asking to be released on his own recognizance with conditions, alleging that when the circuit court held him without bond, it violated state statute. A transcript of the hearing on the Petitioner's Motion can be found at A-157-163. The circuit court modified the Petitioner's bond from no-bond to $5 million. (A-160).

The circuit court judge stated:

> THE COURT: As I indicated, Mr Garrett, there is no reason that without a verified petition being filed and hearing that there should have been a no bond set, so the Court then looks at a number of different factors as set out in the statute: Your background, any priors. I look at the seriousness of the charges and the fact that you

[2] This statute was amended by Ill. P.A. 101-652, which was to have an effective date of January 1, 2023. However, the effective date is currently stayed by the Illinois Supreme Court. Therefore, this Response will discuss the statute in effect prior to P.A. 101-652 and in effect at the time of the March 2022 hearing regarding the Petitioner's bond.

> were out on bond and then alleged to have committed another offense with the same alleged victim. So based on all of those factors I continue to set bond, an umbrella bond in the amount of five million dollars. (A-162).

Clearly, the circuit court considered factors present in state statute, including the Petitioner's criminal history (to which he has a prior conviction for Predatory Criminal Sexual Assault), the nature and circumstances of the offense, and the Petitioner's alleged past conduct in committing the same serious offense while on bond for that same offense with the same victim.

This Petitioner has a prior conviction for Predatory Criminal Sexual Assault, was *out on bond* for a very serious felony offense (for which the State indicated its position that the Petitioner serve a prison sentence of natural life), and is alleged to have committed the *same serious offense for which he was on bond* with *the same victim* and victimizing *two additional victims* (for which the State again indicated its position that the Petitioner serve a prison sentence of natural life). This Court should refrain from substituting its own opinion of the amount of bond unless there is a constitutional violation. And here, there is none. The Petitioner's current $5 million bond is far from excessive or arbitrary given these circumstances.

V. CONCLUSION

For the foregoing reasons, the Petition must be denied. WHEREFORE, the Respondent respectfully requests that this Court deny the Petition and for such other relief that the Court deems just.

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Respectfully submitted,
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State's Attorney of Lake County

By: /s/Jamie Helton
Assistant State's Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS

JOHN E. GARRETT (L-159088),

Petitioner,

v.

RICHARD CLOUSE,
Chief of Corrections,
Lake County Jail,

Respondent.

Case No. 22 CV 5993

Hon. Manish S. Shah

PETITIONER'S REPLY TO RESPONDENT'S RESPONSE
TO PETITIONER'S HABEAS CORPUS PETITION

NOW COMES Petitioner JOHN GARRETT Pro Se, and in reply to Respondent's response to Petitioner's Habeas Corpus Petition, states the following:

I. INTRODUCTION

In his response, the Respondent stated that the Petition must be denied. Respondent listed 3 primary reasons for denial of said petition. First, that Petitioner's previous no bond does not present a case or controversy for this Court. Second, whether the Circuit Court violated state-law procedures is not cognizable as a Federal Habeas Corpus claim. Finally, that Petitioner's current bond is not excessive or arbitrary. As Petitioner will demonstrate, Respondent's arguments not only fail but completely miss the scope of these proceedings. Also, from the record in this case it is clear that this Court is the only Judiciary willing to remedy the outright and utter disregard for Petitioner's constitutional rights perpetrated over 5 years ago without any attempt at a suitable post-

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deprivation remedy. As such, Petitioner's Writ of Habeas Corpus should be forthwith granted and further Petitioner should be released on his own recognizance, pending trial.

II. CLARIFICATION OF FACTS

Respondent stated that, "On February 26, 2018, when brought before the circuit court for the first time for the 18CF matter, the circuit court ordered the Petitioner held without bond on both the 16CF and 18CF matters." (Dkt. 14, p. 2). Other than a mistaken date, this statement is true. However, the Respondent excluded a critical fact directly preceeding this statement. That on February 27, 2018 while attending court for the 16CF case, the Circuit Court, made aware of a warrant for new charges, summarily revoked Petitioner's bond without any further process. (Dkt 14, p. A15-16). Later that afternoon, a different Judge proceeded to then continue that order for no bond. On March 28, 2018 and May 23, 2018 the Circuit Court again continued the no-bond order. (Dkt 14, p. A-51-53). In total, 3 Judges over the course of 3 months agreed to and continued the no-bond order.

Respondent further stated that, "On March 30, 2022, after a hearing on Petitioner's Motion for Release on Bail, the Circuit Court modified the Petitioner's bond from no-bond to $5 million." (Dkt 14, p. 2). That statement is true. However, again the Respondent excluded a critical fact concerning that statement. Namely, that when the Circuit Court modified the no bond to $5 million, it did so without a proper bail hearing, stated no reason as to why or what reasoning it used to arrive at that amount. It cited no statute. Referenced no findings by clear and convincing evidence that

Petitioner violated a condition of release. Nor did it weigh the factors listed in State statute 725 ILCS 5/110-6, to support a finding that no condition or combination of conditions will reasonably assure defendant's presence at trial and safety of the public. (Dkt 14, p. A160). It wasn't until after Petitioner reminded the Court of it's duty to follow statutorily mandated procedures, as well as the fact that, for over 4 years he was detained in violation of his constitutional right to due process, did the Court ignore that fact and compulsorily recited statutory language, intimating that it had weighed the factors for determining the appropriate amount of bail, thus arriving at the $5 million. (Dkt 14, p. A160-162).

III EXHAUSTION OF REMEDIES

Respondent states that, "Thus, the Petitioner has not exhausted his remedies as to the no-bond decision as the circuit court's order (to which he appealed) modified the bond from no-bond to $5 million." (Dkt 14, p. 4). Petitioner does not agree with this statement. Petitioner appealed to the Appellate Court as controlled by Illinois Supreme Court Rule 604(c) which plainly states the following; "Before conviction a defendant may appeal to the Appellate Court from an order setting, modifying, revoking, denying, or refusing to modify bail or the conditions thereof. As a prerequisite to appeal the defendant shall first present to the trial court a written motion for the relief to be sought on appeal... (2) Procedure. The appeal may be taken at any time before conviction by filing a verified motion for review in the Appellate Court." Clearly, as detailed in the Rule, ANY TIME BEFORE

conviction, a defendant may appeal an order...denying... bail. As a PREREQUISITE...the defendant shall first present to the Trial Court a written motion for the relief to be sought. This is precisely what Petitioner did. He was appealing the no-bond order from February 27, 2018. As required by Rule, prior to that appeal, he filed a motion in the Circuit Court for the relief to be sought on appeal. (Dkt 14, p. A122-A139). The Rule says nothing of what happens when the Circuit Court modifies a previous order. Petitioner specifically detailed the constitutional violation committed on February 27, 2018 in his motion, which the Circuit Court recognized but refused to provide a suitable post-deprivation remedy. In fact, the Circuit Court again violated Petitioner's constitutional rights by entering an arbitrary and excessive bail amount. (Dkt 14, p. A160). Further, in his appeal to the Appellate Court, 3rd District, Petitioner detailed both constitutional violations committed on February 27, 2018 and March 30, 2022, which said Court summarily dismissed without a complete review of the facts. Thereafter, Petitioner filed an original action in the Supreme Court of Illinois, pursuant to Supreme Court Rule 381. A Petition for Leave to File a Writ of Habeas Corpus, again, detailing the constitutional violations, which was summarily denied without any reasons stated. Even if Petitioner was unable to appeal the February 27, 2018 order because his bail was modified from no-bond to $5 million on March 30, 2022, the Original Action in the Supreme Court, addressed the constitutional violations, which said court had jurisdiction to review by way of a Writ of Habeas Corpus.

"The Due Process Clause provides that certain substantive rights-

life, liberty, and property - cannot be deprived except pursuant to constitutionally adequate procedures. The right to due process is conferred, not by legislate grace, but by constitutional guarantee. Cleveland Bd of Educ. v Loudermill, 470 U.S. 532, 541, (1985).

Clearly, Petitioner has sufficiently exhausted his remedies in the State Court.

IV. ARGUMENT

A. Circuit Court's Arbitrary Revocation and Denial of Bail Violated Petitioner's Constitutional Right to Due Process

There is no doubt that the Circuit Court arbitrarily revoked and denied Petitioner bail on February 27, 2018. In fact, Respondent seemingly concedes this point." the circuit court set the Petitioner's bond at no-bond... The Petitioner argues that the no-bond was a violation of his constitutional right to due process, that state statute requires the State to file a verified petition and there be a hearing before a defendant can be denied pretrial release... While it may be accurate that state statute does impose these requirements... Therefore, even if state court procedures for revoking pretrial release were violated." (Dkt 14, p. 5, 6). More importantly, the Circuit Court, on hearing Petitioner's Motion for Release on Bail definitively conceded the point. "Well, that does not take care of the issue that is before us where no bond was set without any verified petition being filed, and so with regards to the issue of no bond Mr. Garrett is correct, it cannot be a no bond." (Dkt. 14, p. A163). "As I indicated, Mr. Garrett, there is no reason that without a verified petition being filed and hearing that there should have been a no bond set." (Dkt 14, p. A163).

"Where a person has been entitled to release on bail, it's

arbitrary revocation is unconstitutional.... In the absence of such a hearing without notice and without a statement of reasons, the revocation of petitioner's bail cannot be held to comport with due process." King v Zimmerman, 632 F. Supp. 271, 276, (1986).

"When substantive deprivations of liberty interests are involved, due process is violated at the moment the intentional injury to the interest occurs. The existence of a postdeprivation hearing, therefore, is irrelevant to whether the state has deprived a prisoner of liberty without due process of law." McRorie v. Shimoda, 795 F.2d 780, 786, (1986).

Sufficed to say the Circuit Court on February 27, 2018 revoked and denied Petitioner bail contrary to the mandates of procedural due process, thereby violating his constitutional rights. The Circuit Court on March 30, 2023 failed to provide a suitable post-deprivation remedy and again violated Petitioner's constitutional rights by entering an excessive bail amount, again without following the mandates of procedural due process.

B. Circuit Court's Arbitrary Revocation of Petitioner's Bail Created a Constitutional Violation Which the State was Required to Provide a Suitable Post-deprivation Remedy

The Respondent argues that because Petitioner's bond was modified from a no-bond to $5 million, Petitioner is no longer being denied pretrial release. (DKt 14, p.5). While this is true, it does not and cannot account for the arbitrary denial of Petitioner's Liberty for over 4 years prior to the change of no-bond to $5 million. Respondent attempts to argue that this change effectively eliminated the constitutional violation. In support of this stand, Respondent erroneously references Lewis

v. Cont'l Bank Corp., 494 U.S. 472, 477, (1990). (Dkt 14, p. 5). That case deals with a lawsuit and has no relation to the current case before this Court, specifically dealing with liberty interests and constitutional violations. Even if this Court were to follow the Respondent's precedent, a constitutional violation in connection with pretrial liberty is most assuredly an 'actual ongoing case or controversy,' as Petitioner has not been convicted of the pending charges nor has he been provided a suitable post-deprivation remedy.

"The Liberty Interest at stake is actual liberty - the right of a person who has not been convicted of a crime to be free from detention prior to trial. There is no dispute that this is a fundamental liberty interest protected by the Due Process Clause, for purposes of both procedural and substantive due process." Hill v. Hall, 2019 U.S. Dist LEXIS 173758 at 24.

"When [Petitioner] finally, by means of Habeas Corpus, came before the State Supreme Court, he obtained the judgement holding that he should have been released five years earlier. This was remedial or post-deprivation relief in part at least, but it did not satisfy the Logan, Morrissey, and Matthews line of cases that require a hearing before the rights are taken away." Haygood v. Younger, 769 F.2d 1350, 1358, (1985).

Considering Petitioner has been denied his liberty without due process for over 5 years, no suitable post-deprivation remedy can be provided. Petitioner can only be restored to his standing prior to the constitutional violation, namely, liberty.

"In certain circumstances, a state can cure what would otherwise be an unconstitutional deprivation of life, liberty, or property by providing

adequate post-deprivation remedies." Zimmerman v. City of Oakland, 255 F. 3d 734, 737, (2001).

"For intentional, as for negligent deprivations of property [liberty] by state employees, the state action is not complete until and unless it provides or refuses to provide a suitable post-deprivation remedy." Hudson v Palmer, 468 U.S. 517, 533 (1984).

"Liberty, however, is not restorable or replaceable; a liberty deprivation is is permanent." McRorie v. Shimada, 795 F.2d 780, 786, (1986).

The Respondent again erroneously refers to a case, dealing with parole revocation where there were no continuing collateral consequences from the revocation and the incarceration incurred from that decision was over. Spencer v Kemna, 523 U.S. 1, (1998). (Dkt 14, p. 6). While parole revocation is an analogous situation to bail revocation, as they both involve curtailment of constitutionally protected liberty interests, the Spencer case is distinguishable from the case currently before this Court. Before the Spencer Court, the Petitioner was challenging a decision that if overturned had no bearing on his current situation or standing. In fact, the Court ruled that his arguments were moot as he had already been released again on parole. Thus, the fact that his prior sentence, for which he was on parole for had expired and he was no longer in custody for that case, caused him to no longer have an Article III case or controversy. Petitioner's case is entirely different from Spencer. Petitioner is a pretrial detainee who has not been convicted of the charges pending, nor has he been released since the arbitrary revocation of his liberty over 5 years ago.

"There can be little argument that one's interest in remaining free on bail is within the contemplation of the liberty or property language of the 14th Amendment. The deprivation of liberty that follows bail revocation

condemns one to "suffer grievious loss" because it may imperil the suspect's job, interrupt his source of income, and impair his family relationships. Although both bail and parole are conditional liberties, a bailee has a greater liberty interest because, unlike a parolee, a bailee has not been convicted and the presumption of innocence is still attached." Wall v Dauphin County, 2006 U.S. Dist. LEXIS 1349 at 13. (Citations omitted).

In the current case Petitioner has been arbitrarily deprived of his liberty for over 5 years, without due process. The State, Circuit Court, the Appeals and Supreme Court of Illinois, have done nothing to correct this situation, by providing an adequate post-deprivation remedy. In that time, Petitioner has suffered extreme prejudice, including, but not limited to: loss of his Wife's pregnancy from stress and anxiety; inability to support his Wife and children including 5 biological and 3 step-children; destruction / loss of familial relationships, including divorce from his Wife and separation from his children; loss of income; loss of all his material possessions; inability to contribute to a meaningful defense; and loss of his freedom. Collateral effects include but are not limited to: loss of community ties; deterioration of mental, physical, and emotional health; and strain on family members both emotionally and financially, helping to support Petitioner. Clearly, Petitioner most certainly has an ongoing 'case or controversy' and definitely has a 'personal stake in the outcome of this case'.

Comparably, in Moffett, the Seventh Circuit stated, "where it is practicable and hence constitutionally required that the State provide a predeprivation hearing, the availability of postdeprivation remedies will not be a defense to a §1983 action. In such a case, the State has

failed to provide due process precisely because the only remedy available has come after the deprivation has occurred. Since the State has failed to provide a constitutionally required predeprivation hearing, the constitutional violation is complete at the time the deprivation occurs. By failing to provide the requisite, predeprivation hearing, the State official has deprived the plaintiff of a constitutionally protected interest without due process of law and the four elements of a §1983 due process action described in Parratt are complete... In cases where the right asserted does not depend on the procedural protections accorded the plaintiff, the availability of a post deprivation hearing is no defense, since the constitutional violation exists independent of the procedures for redressing the deprivation that are available. By violating such substantive rights, the state actors deprive persons of constitutional rights irrespective of the procedures employed, and the constitutional violation is complete at the time of the deprivation... In both situations, the plaintiff has been denied something he or she is constitutionally entitled to - a predeprivation hearing or the right to be free from some form of substantive governmental misconduct. As a result, the four elements of a §1983 due process claim are present. Someone (1) acting under color of state law has (2) deprived the plaintiff of (3) a constitutionally protected interest (4) without due process of law. Once that happens, §1983 is available, whether or not there are also postdeprivation state remedies." Begg v. Moffett, 555 F. Supp. 1344, 1361-65 (1983).

C. The Circuit Court's Violation of State-Law Procedures is Cognizable as a Federal Habeas Corpus Claim

The Respondent attempts to use this Court's words to fit his flawed

reasoning by not fully quoting the statement the Court issued in it's order. Respondent excluded the word, although, which entirely changes the meaning of the sentence. The correct quote is, "Althagh a violation of state-law procedures is not cognizable as a federal habeas corpus claim, petitioner's claim for arbitrary denial of bail and for an excessive bail amount are cognizable." (DKt. 10, p. 2). The state-law procedures that the Circuit Court violated directly affected Petitioner's liberty interest. An interest that is constitutionally protected.

"Pretrial detention implicates a liberty interest and thus may not be imposed contrary to the mandates of procedural due process. United States v. Delker, 757 F.2d 1390, 1397, (1985).

"The idea behind procedural due process - including in the context of a state-created liberty interest - is that the interest cannot be taken away arbitrarily." Memphis A. Phillip Randolph Inst. v. Hargett, 482 F.Supp3d 673, 683.

Concerning cognizability of a violation of state law procedures as a Federal Habeas Corpus Claim, see Arevalo v. Hennessy, 882 F.3d 763, (2018). That case concerned a Petition for a Writ of Habeas Corpus challenging the conditions of pretrial detention in relation to the Younger abstention doctrine. In his petition, Arevalo argued that the Trial Court violated state law and his federal constitutional rights to equal protection and due process by requiring monetary bail without making the findings required for an order of pretrial detention. The Court of Appeals determined that issues concerning pretrial bail proceedings are distinct from the criminal trial. See Stack v. Boyle, 342 U.S. 1, 12, (1951). ("an order fixing bail can be reviewed without halting the main trial - its issues are entirely independent of the issues to be tried.") also Atkins v Michigan, 644

F.2d 543, 549, (1981) ("the issue of whether the right to bail has been denied is collateral to and independent of the issues to be tried.") Further, the Court found that the Younger abstention doctrine also did not apply because the case fits squarely within the irreparable harm exception. "It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.' Deprivation of physical liberty by detention constitutes irreparable harm. We have applied the irreparable harm exception when "full vindication of the right necessarily requires intervention before trial." Here the Petitioner has been incarcerated for over six months without a constitutionally adequate bail hearing. His case easily falls within the irreparable harm exception to Younger." (Citations omitted) Id at 767. The Court granted the writ. The Arevalo case is analogous to the current case before this Court. It too involves the violation of State law specifically concerning the deprivation of constitutional rights.

As the Circuit Court noted, state law procedures with constitutional implications, concerning pretrial release, the Supreme Court in Carey stated, "Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property." Carey v. Piphus, 435 U.S. 247, 259, (1978). In Zinerman it further stated, "In procedural due process claims, the deprivation by state action of a constitutionally protected interest in life, liberty, or property is not in itself unconstitutional what is unconstitutional is the deprivation of such an interest without due process of law." Zinerman v. Burch, 494 U.S. 113, 125, (1990). Clearly a violation of state-law procedures concerning unconstitutionally

protected rights, is cognizable as a Habeas Corpus claim.

D. Current Bond is Excessive and Arbitrary in Violation of the Eighth Amendment

Even assuming arguendo, that on March 30, 2022 the Circuit Court weighed the factors it alleged that it did, the entire proceeding was constitutionally inadequate for 2 reasons. 1) As Petitioner was out on bail prior to his arbitrary revocation, a bond revocation hearing was required to be conducted in accordance with 725 ILCS 5/110-6 in order to perfect revocation, it was not; and 2) The amount the Circuit Court entered was arbitrary and excessive in relation to the express purpose of bail, namely, appearance of the accused.

1) Bond Revocation Hearing

Since Petitioner was previously out on bail, due process requires an adversary hearing to determine if a violation occurred. If it is determined that a violation occurred, before detention can be ordered, a finding that no condition or combination of conditions can reasonably assure the accused's presence at trial, must be entered. (See 725 ILCS 5/110-6). This has never been done.

In Wilks, the 7th Circuit clarified the standard of review for revocation of bond when the arrestee is alleged to have violated conditions of release. It explained that the "defendant's interest in his personal liberty" and the government's interest in public safety and defendant's appearance in Court are "identical in both contexts." Id at 847. The Court stated when a defendant on pretrial release is alleged to have violated the conditions thereof, the Government may move to revoke release under

18 USC §3142. In which case the Court is required to revoke release and order detainment if, after a hearing, the Court "(1) finds that there is - (a) probable cause to believe that the person committed a Federal, State, or local crime while on release; or (b) clear and convincing evidence that the person has violated any other condition of release; and (2) finds that (a) based on the factors set forth in section 3142(g) of [Title 18], there is no condition or combination of conditions of release that will assure that the person will not flee or pose a danger to the safety of any other person or the community; or (b) the person is unlikely to abide by any condition or combination of conditions of release." §3148(b) The Court ruled that the judge did not find by clear an convincing evidence that Wilks violated a condition of release. Additionally, the judge failed to explain why detention was needed according to the criteria contained in §3148(b)(2)(A) or (B). The Court explained that a finding of a release condition violation alone is insufficient to permit revocation; there must also be findings under §3148(b)(1) and (b)(2) before release may be revoked. The judge merely found that Wilks had violated the order authorizing the trip and then recited the statute. Recitation of statutory language "devoid of any discussion, analysis, or explanation as to why the court concluded that the criteria for release had not been met" cannot justify detention after conviction, much less pretrial detention when the presumption of innocence remains. (See United States v. Swanquist, 125 F.3d 573, 575, (1997)). Finally, the Court stated that the judge did not weigh the factors listed in §3142(g) to support

a finding that detention was necessary to achieve reasonable assurance that Wilks would appear before the court as required and to safeguard public welfare. Accordingly, the Court reversed the judge's order and remanded for further proceedings consistent with its opinion. See United States v. Wilks, 15 F.4th 842, (2021).

Applying the standard adopted by the 7th Circuit in the Wilks case to the Petitioner's case before this Court, it is clear that the Circuit Court on February 27, 2018 followed none of the statutorily mandated procedures outlined in 725 ILCS 5/110-6 for revocation of bail. It summarily revoked bail without any further process. The Circuit Court again on March 30, 2022 did not follow the statutorily mandated procedures to perfect the previous revocation of Petitioner's bail. In fact, after recognizing that a no-bond order was arbitrarily entered on February 27, 2018, the Circuit Court pulled an excessive and arbitrary amount out of thin air. It stated, without hesitation or thought, "it cannot be a no bond. So at this time, I am setting bond in the amount of $5 million and that will be an unbridled bond with regard to both cases." (Oct 14, p. A-160). The Court was done talking. It did not even conduct a proper bail hearing. It stated no reason as to why or what it considered. It cited no statute. Referenced no findings by clear and convincing evidence that Petitioner violated a condition of release. Nor did it weigh the factors listed in 725 ILCS 5/110-6 to support a finding that no condition or combination of conditions will reasonably assure defendant's presence at trial and safety of the public.

"By requiring the government to follow appropriate procedures when its agents decide to 'deprive any person of life, liberty or property,' the Due Process Clause promotes fairness in such decisions." Daniels v Williams, 474 U.S. 327, 331, (1986).

Only after Petitioner reminded the court of its duty to follow statutorily mandated procedures, as well as, the fact that for over 4 years he was detained in violation of his constitutional right to due process, did the court, (sidestep the constitutional violation), compulsorily recite statutory language, intimating that it had weighed the factors for determining the necessary amount of bail.

2) Arbitrary Amount of Bail

The Supreme Court has determined that, "Bail set at a figure higher than amount reasonably calculated to [assurance of the presence of the accused] fulfill this purpose is "excessive." Stack v. Boyle, 342 U.S. 1, 5 (1951). In Meechaicum, the 2nd Circuit stated "The Eighth Amendment's prohibition against excessive bail "is the foundation of a bail system which, by conditioning release on the offer of financial security, seeks to reconcile the defendant's interest in, and society's commitment to, pretrial liberty with the need to assure the defendant's presence at trial. Because the practical effect of excessive bail is the denial of bail, logic compels the conclusion that the harm the Eighth Amendment aims to prevent is unnecessary deprivation of pretrial liberty... Thus bail may not be denied "without the application of a reasonably clear legal standard and the statement of a rational basis for the denial." Meechaicum v Fountain, 696 F.2d 790, 792. (1983). (Citations omitted).

The Respondent refers to state statute 725ILCS 5/110-5 concerning, "factors a court shall consider when determining the amount of bail or conditions of pretrial release to "reasonably assure" the defendant's appearance, the safety of others, or the likelihood of compliance with bond conditions." (Dkt 14, p. 7). This statute is for the initial setting of bail in a defendant's case. When a defendant is ALREADY on pretrial release and alleged to have violated a condition of said release, 725ILCS 5/110-6 controls. It specifically details the steps to modify the conditions or revoke bail altogether when a violation of bond conditions is alleged and found, after a hearing, to have occurred. This is not what occurred in Petitioner's case. Even if this Court were to follow the Respondent's incorrect application, the Respondent left out the remaining factors to be considered when determining the amount of bail and the conditions of release. Specifically, "there shall be a presumption that any conditions of release shall be nonmonetary in nature and the court shall impose the least restrictive conditions or combination of conditions necessary to reasonably assure the appearance of the defendant for further court proceedings and protect the integrity of the judicial proceedings from a specific threat to a witness or participant... The court shall consider the defendant's socio-economic circumstance when setting conditions of release or imposing monetary bail." 725 ILCS 5/110-5(a-5). "The amount of bail shall be: (1) sufficient to assure compliance with the conditions set forth in the bail bond... (2) not oppressive (3) considerate of the financial ability of the accused..." 725 ILCS 5/110-5(b). (Statute in effect on March 30, 2022).

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The Court did not consider these statutorily required factors. Further, petitioner was previously on a curfew as a condition of release and successfully completed that requirement. This condition could have been reinstated or even upgraded to house arrest or GPS monitoring to assure compliance with any stay away orders. This possibility was never even considered. As outlined in Petitioner's original motion to the circuit court, filed on March 14, 2022, Petitioner is not a flight risk and will appear at all required court dates. (See Dkt 14, p. A-130). Thus, as there is clear evidence that Petitioner will attend all court dates, including trial, the need for such an exorbitant amount of bail is not needed. Also, concerning the need for protection of the public, there is clear evidence that the Petitioner is not a risk to anyone. (See Dkt 14, p. A-130 - 133). To assure this conclusion, any of the above listed conditions could be required.

Justice Butler in Motlow stated, "The Eighth Amendment provides that "excessive bail shall not be required." This implies and therefore safeguards, the right to give bail at least before trial. The purpose is to prevent the practical denial of bail by fixing the amount so unreasonably high that it cannot be given. The provision forbidding excessive bail would be futile if magistrates were left free to deny bail." United States v Motlow, 10 Fed 657, 659, (1926).

It is evident that the Circuit Court on March 30, 2022 entered a constitutionally arbitrary and excessive bail amount when it despotically arrived at the amount of $5 million.

E. Appropriate Remedy

From the record in this case, it is clear that the Nineteenth Judicial Circuit Court on February 27, 2018, deprived Petitioner of his liberty, by arbitrarily revoking and denying bail, violating his right to due process of law as guaranteed by both the Fifth and Fourteenth Amendments of the United States Constitution. That said Court perpetrated further deprivations of his constitutional rights on March 30, 2022, when it reversed the erroneous no-bond order and entered an arbitrary and excessive amount of $5 million. Further, the Appellate Court, 2nd District and The Supreme Court of Illinois blatantly and willfully chose to ignore Petitioner's claims that his constitutional rights were and are being violated. Finally, the State throughout this entire litigation has acted in bad faith with respect to the substantive merits of Petitioner's claims. Throughout State Court litigation and before this Court, the State has repeatedly denied that Petitioner did not receive constitutionally adequate due process during the revocation of bail and the subsequent proceedings. The Circuit Court, the Appeals and Supreme Courts of Illinois, and the State, all have been implicit and in accord with the absolute and utter disregard for Petitioner's constitutional rights.

In Rodriguez, Justice Breyer in his dissent, sums up the controversies of this case when he stated, "The Fifth Amendment says that "no person shall be... deprived of life, liberty, or property without due process of law." To hold him without bail is to deprive him of bodily "liberty." And, where, there is no bail proceeding, there has been no bail-related "process" at all. The Due Process Clause-

itself reflecting the language of the Magna Carta - prevents arbitrary detention. Indeed, "freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action..." 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. See Carlson v Landon, 342 U.S. 524, 545, 72 S.Ct. 525, 96 L.Ed. 547 (1952) (explaining that the English clause from which the Eighth Amendment was copied was understood to provide that bail shall not be excessive in those cases where it is proper to grant bail.") That rationale applies a fortiori to a refusal to hold any bail hearing at all." Jennings v. Rodriguez, 138 S.Ct. 830, 861, (2018). (Citations omitted).

The only remedy available in this case is reinstatement of Petitioner's liberty on pretrial release. As Petitioner has no financial means to secure bail, release on his own recognizance is requested. No hearing or procedural process can equate to the "irreparable harm" he has suffered for over 5 years. As detailed above, if released, Petitioner will appear at all required court appearances. In order to insure protection of the public, the Court may order conditions up to and including; curfew, house arrest, and GPS monitoring. Thus, Petitioner may be afforded the opportunity to recover from the "irreparable injury' inflicted upon him by the State of Illinois. As evidenced above, no equitable relief will come from the State or State Courts. Only this Honorable Court can provide the Justice Petitioner is due.

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V. CONCLUSION

The records in this case, as well as the precedents detailed above, clearly demonstrate that Petitioner's constitutional rights have been violated for over 5 years. No equitable attempt, to provide suitable post-deprivation remedies, has been made by the parties responsible for said deprivations. WHEREFORE, Petitioner humbly prays this Honorable Court will find that in the interest of justice, and in accord with the Constitution of the United States, the Writ of Habeas Corpus must be granted, and further, Petitioner be reinstated to pretrial release, on his own recognizance, pending trial. Any other relief this Court deems just and equitable.

Respectfully Submitted,

John E. Garrett

John E. Garrett - Pro Se
L1S9088
P.O. Box 38
Waukegan, IL 60079

Certificate of Service

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned certifies that on February 20, 2023, a copy of the foregoing Petitioner's Reply to Respondent's Response to Petitioner's Habeas Corpus Petition was mailed to ASA Jamie Helton, at 8:00pm, from the Lake County Jail.

John E. Garrett
John E. Garrett

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ILLINOIS

JOHN E. GARRETT (L-159088)

Petitioner,

v.

RICHARD CLOUSE
Chief of Corrections,
Lake County Jail,

Respondent.

Case No. 22 CV 5993

Hon. Lindsay C. Jenkins

NOTICE OF APPEAL AND/OR REQUEST FOR CERTIFICATE OF APPEALABILITY

Plaintiff, John E. Garrett, appeals to the United States Court of Appeals for the Seventh Circuit, from the final judgement entered on April 5, 2023.

Alternatively, Plaintiff states that his constitutional rights were violated by the Circuit Court of Lake County, IL. Further, that the District Court for the Northern District of Illinois ruled incorrectly on his request for a Writ of Habeas Corpus. Reasons for requesting a Certificate of Appealability are listed in the enclosed Docketing statement.

John E. Garrett
SIGNATURE

John E. Garrett - Pro Se
L159088
P.O. Box 38
Waukegan, IL 60079

I deposited this Notice in the institutional mail at Lake County Jail on April 30, 2023 at 8:00pm, postage paid, first-class.

I, John E. Garrett, declare under penalty of perjury that the foregoing is true and correct.

Executed On: April 30, 2023

John E. Garrett

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IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

JOHN E. GARRETT - (L159088)
Petitioner - Appellant

v.

RICHARD CLOUSE
Chief of Corrections
Lake County Jail
Custodian

Respondent - Appellee.

Appeal From The Northern District of Illinois, Eastern Division

Case No. 22-CV-5993

Hon. Lindsay C. Jenkins

Date of Notice of Appeal:
April 30, 2023

Date Judgement was Entered:
April 5, 2023

DOCKETING STATEMENT

1) This action is not a cross appeal, separate appeal, joining in a prior appeal or related to another appeal that is currently pending or decided by this Court.

2) Name and Address of Petitioner - Appellant filing this statement:

John E. Garrett - Pro Se
L159088
P.O. Box 38
Waukegan, IL 60079

3) Name and address of Respondent - Appellee:

Richard Clouse
Chief of Corrections
Lake County Jail
Custodian
29 S. Martin Luther King Jr. Ave
Waukegan, IL 60085

4) Petitioner is requesting a Certificate of Appealability for the following reasons:

a) Violation of Constitutional Rights. Although the District Court recognized and referenced some of Petitioner's claims of violation of his constitutional rights, it did not fully and properly determine if said rights were in

fact violated. Violation of constitutional rights are required to be addressed by the Federal Courts if the State Courts have not fully remedied such violations. See Hutto v Finney, 437 U.S. 678, 687, N.9, 1978, (State and local authorities have primary responsibility for curing constitutional violations, if however, these authorities fail in their affirmative obligations... judicial authority may be invoked. (Citations omitted.)) and Robb v Connolly, 111 U.S. 624, 637, 1884, (Upon... courts of the Union, rests the obligation to guard, enforce, and protect every right granted or secured by the Constitution of the United States.) Constitutional rights that were violated include:

(1) State-created liberty interest in freedom pending trial. See Sandin v. Conner, 515 U.S. 472, 483, 1995, (States may under certain circumstances create liberty interests which are protected by the Due Process Clause.) and Wolff v. McDonnell, 418 U.S. 539, 558, 1974, (A person's liberty is equally protected, even when the liberty itself is a statutory creation of the State.)

(2) Arbitrary Revocation of Bail amounted to violation of Petitioner's substantive right to due process. See King v Zimmerman, 632 F. Supp. 371, 376, 1986, (where a person has been entitled to release on bail, it's arbitrary revocation is unconstitutional.) and Bell v Burson, 402 U.S. 535, 542, 1971, (due process requires that when a State seeks to terminate an interest... it must afford notice and opportunity for hearing appropriate to the case before the termination becomes effective.) also Love v. Ficano, 19 F. Supp. 2d 754, 766, 1998, (vacation of petitioner's release on bond... without any statement of the reason(s) for this action constituted an arbitrary denial of petitioner's protected liberty interest

and violated his right to due process of law.)

(3) Excessive Bail. Although the District Court considered this constitutional violation claim, it did not conclude correctly. At a minimum, the Circuit Court of Illinois did not follow the requirements of due process in attempting to address the constitutional violation committed when petitioner's bail was arbitrarily revoked. See United States v. Wilks, 15 F.4th 842, 848, 2021, (A recitation of the statutory language devoid of any discussion, analysis, or explanation as to why the district court concluded that the criteria for release had not been met cannot justify detention... A finding that the defendant violated a release condition does not alone permit revocation; the judge must make findings... before he may revoke release.) At a maximum, it utilized preventive detention by setting the bond amount at an impossibly unattainable number, again without following the requirements of Due Process, namely, the consideration of other possible alternatives. See Caliste v. Cantrell, 329 F. Supp. 3d 296, 315, 2018, (the Court finds that in the context of hearings to determine pretrial detention Due Process requires: 1) an inquiry into the arrestee's ability to pay, including notice of the importance of this issue and the ability to be heard on this issue; 2) consideration of alternative conditions of release, including findings on the record applying the clear and convincing standard and explaining why an arrestee does not qualify for alternative conditions of release; and 3) representative counsel.) and Pugh v Rainwater, 572 F.2d 1053, 1057, 1978, (Such requirement as is necessary to provide reasonable assurance of the accused's presence at trial is constitutionally permissible. Any requirement in excess of that amount would be inherently punitive and run afoul of due process requirements.)

b) Adequacy of postdeprivation remedy in response to the constitutional violations. As Petitioner was arbitrarily denied his freedom for over 4 years, before even an attempt at remedying the constitutional violation was made, a postdeprivation hearing will not and cannot cure the deprivation. See McRorie v Shimoda, 795 F.2d 780, 786, 1986, (When substantive deprivations of liberty interests are involved, due process is violated at the moment the intentional injury to the interest occurs. The existence of a postdeprivation hearing, therefore, is irrelevant to whether the state has deprived a prisoner of liberty without due process of law.) and Cobb v Green, 574 F. Supp. 256, 262, 1983, (There is no adequate remedy at law for a deprivation of one's physical liberty.) also Scott v McCaughtry, 810 F. Supp. 1015, 1019-20, 1992, (A state postdeprivation remedy is considered adequate unless it can readily be characterized as inadequate to the point that it is meaningless or nonexistent and thus in no way can be said to provide the due process relief guaranteed under the Fourteenth Amendment... Adequacy must be measured by the nature of the alleged unauthorized deprivation.)

2) Mootness. The District Court incorrectly ruled that Claim One was moot. As mentioned above, the postdeprivation remedy was inadequate to cure the constitutional violation. Thus, as long as petitioner has a concrete interest, however small, in the outcome and the court can grant the relief requested, the claim is not moot. See Ellis v Bhd of Ry., 466 U.S. 435, 442, 1984, (as long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot.) and Exxon Mobil Corp v. Healey, 28 F. 4th 383, 392, 2022,

(A live controversy remains as long as a court can fashion some form of meaningful relief to award the complaining party, and even the availability of a possible remedy is sufficient to prevent a case from being moot. (quoting Church of Scientology v United States, 506 U.S. 9, 12-13, 1992.))

d) Younger Abstention. The District Court incorrectly ruled that the Younger Abstention applied to this case. It does not apply for 2 reasons:

(1) Issues concerning pretrial liberty are distinct and independent from trial and cannot be raised in a post-conviction proceeding. See Stack v Boyle, 342 U.S. 1, 12, 1951, (an order fixing bail can be reviewed without halting the main trial - its issues are entirely independent of the issues to be tried and unless it can be reviewed before sentence, it never can be reviewed at all.) and Atkins v. Michigan, 644 F.2d 543, 549, 1981, (The issue of whether the right to bail has been denied is collateral to and independent of the merits of the case pending against the detainee, and it is a right that, if not asserted immediately at the time it is infringed, is irremediably lost. In addition, ... if the state courts have been offered an opportunity to confront the issue, then a petition to the federal courts prior to trial does not violate the values of federalism.)

(2) This case fits within the irreparable harm exception. See Arevalo v Hennessy, 882 F.3d 763, 766-67, 2018, (It is well established that the deprivation of constitutional rights unquestionably constitutes irrepable injury. Deprivation of physical liberty by detention constitutes

irrepable harm. We have applied the irrepable harm exception when full vindication of the right necessarily requires intervention before trial.) and Cobb v Green, 574 F. Supp. 256, 260, 1983, (There is no adequate remedy at law for a deprivation of one's physical liberty. Thus the Court finds that the harm asserted by plaintiff is substantial and irreparable.)

5) I certify that on April 30, 2023, I filed a request with the District Court Clerk to prepare the Record on Appeal.

John E. Garrett - Pro Se
L159088
P.O. Box 38
Waukegan, IL 60079

John E. Garrett
SIGNATURE

I deposited this Docketing Statement in the institutional mail at Lake County Jail on April 30, 2023 at 8:00pm, postage paid, first-class. Also, I sent a copy to the Respondent - Appellee at the same time in the same manner.

I, John E. Garrett, declare under penalty of perjury that the foregoing is true and correct.

Executed on: April 30, 2023

John E. Garrett

136a

STATUTORY PROVISIONS INVOLVED

725 ILCS 5/110-6(b): "Violation of the conditions of Section 110-10 of this code or any special conditions of bail as ordered by the court shall constitute grounds for the court to increase the amount of bail, or otherwise alter the conditions of bail, or, where the alleged offense committed on bail is a forcible felony in Illinois...revoke bail pursuant to the appropriate provisions of subsection (e) of this Section."

725 ILCS 5/110-6(e): "Upon verified application by the State stating facts or circumstances constituting a violation or a threatened violation of any of the conditions of the bail bond the court may issue a warrant commanding any peace officer to bring the defendant without necessary delay before the court for a hearing on the matters set forth in the application...When the defendant is charged with a felony offense and while free on bail is charged with a subsequent felony offense and is the subject of a proceeding set forth in Section 109-1 or 109-3 of this Code, upon filing of a verified petition by the State alleging a violation of Section 110-10 (a)(4) of this Code, the court shall without prior notice to the defendant, grant leave to file such application and shall order the transfer of the defendant and the application without unnecessary delay to the court before which the previous felony matter is pending for a hearing as provided in subsection (b) or this subsection of this Section. The

defendant shall be held without bond pending transfer to and a hearing before such court. At the conclusion of the hearing based on a violation of the conditions of Section 110-10 of this Code or any special conditions of bail as ordered by the court the court may enter an order increasing the amount of bail or alter the conditions of bail as deemed appropriate."

725 ILCS 5/110-6(f): "Where the alleged violation consists of the violation of one or more felony statutes of any jurisdiction which would be a forcible felony in Illinois...and the defendant is on bail for the alleged commission of a felony, ...the court shall, on motion of the State or its own motion, revoke bail in accordance with the following provisions:

(1) The court shall hold the defendant without bail pending the hearing on the alleged breach; however, if the defendant is not admitted to bail the hearing shall be commenced within 10 days from the date the defendant is taken into custody or the defendant may not be held any longer without bail. Unless delay is occasioned by the defendant...

(2) At a hearing on the alleged violation the State has the burden of going forward and proving the violation by clear and convincing evidence. The evidence shall be presented in open court with the opportunity to testify, to present witnesses in his behalf, and to cross-examine witnesses if any are called by the

State, and representation by counsel and if the defendant is indigent to have counsel appointed for him.

(3) Upon a finding by the court that the State has established by clear and convincing evidence that the defendant has committed a forcible felony...while admitted to bail ... the court shall revoke the bail of the defendant and hold the defendant for trial without bail."