

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

SHANE A. KITTERMAN — PETITIONER
(Your Name)

vs.

JASON GARNETT, Warden, — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

• THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

SHANE A. KITTERMAN B-80577
(Your Name)

5665 IL Hwy 146 E
(Address)

Vienna, IL 62995
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1). WHETHER PETITIONER WHO ENTERED A FULLY NEGOTIATED PLEA AGREEMENT WITH THE STATE OF ILLINOIS THE TERMS OF WHICH WERE SET OUT WITH SPECIFICITY MUST SUFFER FROM FALSE IMPRISONMENT IN STATE PRISON IN DIRECT VIOLATION OF THE NEGOTIATED TERMS WHILE HIS APPEAL TO THE STATE APPELLATE COURT IS PENDING?

2). WHETHER THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT ERRED BY DENYING PETITIONER BOND WHERE HE IS BEING DEPRIVED THE BENEFIT OF A PLEA BARGAIN AND NO ADEQUATE PROCESS IS AVAILABLE TO CORRECT THE MANIFEST INJUSTICE?

3). WHETHER PETITIONER HAS ANY REMEDY THROUGH THE FEDERAL COURT SYSTEM TO CORRECT A MANIFEST INJUSTICE WHERE THE STATE TRIAL COURT DENIES PETITIONER THE RIGHT TO PRESENT A DEFENSE THAT A PRIOR PROMISE BY THE STATE PREVENTS JUDGMENT BEING ENTERED IN VIOLATION OF THOSE PROMISES?

4). WHETHER THE STATE OF ILLINOIS CAN CREATE A LIBERTY INTEREST IN ENACTING LEGISLATION, USE THAT LIBERTY INTEREST TO INDUCE ACTIONS BY THE PETITIONER, AND DEPRIVE THE PETITIONER OF DUE PROCESS OF LAW IN VIOLATION OF THE UNITED STATES CONSTITUTION?

5). The Constitutionality of Illinois Laws is being questioned and 28 U.S.C. § 2403(b) may apply and has been served accordingly.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

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

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the 20th Judicial Circuit court appears at Appendix D to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 10, 2017.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: October 12, 2017, and a copy of the order denying rehearing appears at Appendix E.

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

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

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

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

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

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

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Cherek v. United States, 767 F.3d 335,337 (7th Cir. 1985)	13
Connecticut v. Dept. of Public Safety, 538 U.S. 1	12
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OTHER

LIST OF PARTIES

- [] All parties appear in the caption of the case on the cover page.
- [X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

People of the State of Illinois
By Brendan Kelly State Attorney
#10 Public Square
Belleville, Il 62220

Jason Garnett, Warden,
Shawnee Correctional Center
6665 Il Hwy 146 E
Vienna, Il 62995

Jeff Dennison, Warden,
Shawnee Correctional Center
6665 Il Hwy 146 E
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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Under Illinois Law 730 ILCS 150 a person convicted of an offense must register as a sex offender for a period of 10 years from the date of conviction. See 730 ILCS 150/2; 150/7 (registration expires 10 years after conviction and release).

Mr. Kitterman's right to Due Process of Law would encompass facts that prove he was not required to register more than 10 years outside of the date he was released.

Mr. Kitterman was denied due process of Law where he entered a fully negotiated plea and the State breached the deal.

The Fourteenth Amendment to the United States Constitution provides in pertinent part as follows:

....nor shall any State deprive any person of life, liberty or property, without due process of law

U.S. Const. Am. XIV

STATEMENT OF THE CASE

Petitioner, Shane Allen Kitterman, was born on April 26, 1978 in Belleville, St. Clair County, Illinois. Mr. Kitterman is the only child of Rebecca Kitterman who passed away in 2011.

Growing up in a dysfunctional household with an alcoholic mother, Mr. Kitterman suffered physical and sexual abuse from various boyfriends of his mother.

At the age of sixteen, Mr. Kitterman experimented with consensual sexual curiosity with a 14 year old male. The acts included and were limited to touching the genitals one time. As a direct consequence of the actions of Mr. Kitterman, on July 19, 1995, after overhearing a conversation between Mr. Kitterman and the male, the grandmother of the male called police to report a sexual crime.

Mr. Kitterman was arrested three months removed from age sixteen and charged with a Felony. After several months of pre-trial confinement, Mr. Kitterman and the State of Illinois, by its advocate, State Attorney Robert Haida, entered into a fully negotiated plea agreement, the terms of which were memorialized within the trial record and very easily discernible. The exact terms as understood by both parties was that in exchange for the abandonment of certain Constitutional Rights, the State would agree to reduce the charged offense and Mr. Kitterman would be subject to register as a sex offender pursuant to the "Child Sex Offender Registration Act" 730 ILCS 150/1 (West 1994) as it existed

and pursuant to the provisions prior to the '1996 amendments.

The parties agreed as a condition of Mr. Kitterman's plea that he would only be subjected to the duty to register in the State of Illinois for the period of probation. These terms were memorialized in the Court Order. The Court Order specifically defines Mr. Kitterman's agreement based on promises from the State.

In the State of Illinois a person who is convicted of a violation of 720 ILCS 5/12-16 (West 1992) must register after conviction as a sex offender for a period of 10 years. See 730 ILCS 150/1 (West 1994) However, based on the promise from the State that in exchange for Mr. Kitterman abandoning his right to a trial and to prove his innocence based on the allegations, Mr. Kitterman would only have to register for a period of four years, and following the termination of probation, Mr. Kitterman would be relieved of the burden of registration.

Following the termination of the period that Mr. Kitterman was lawfully required to register, on or about 2012, 2014, and 2015, the State of Illinois commenced prosecutions against Mr. Kitterman for allegedly violating the Sex Offender Registration Act. In a series of prosecutions for the alleged violation of Illinois Law, Mr. Kitterman, proceeding Pro Se, attempted to prove that as a direct promise by the State of Illinois, as it was memorialized in Court Records, he was no longer under any obligation to register. However, the State convinced the trial Court that Illinois Law prohibits a person charged with violation

of the Act from presenting a defense that the duty no longer exists.

As a consequence of the Trial Court's misapprehension of Law, Mr. Kitterman was prevented from his right to Due Process at every stage of the criminal proceedings.

Following conviction Mr. Kitterman has attempted to overcome his unlawful imprisonment by filing a Petition for Writ of Habeas Corpus in the United States District Court's Southern District of Illinois. After filing his petition challenging the current confinement as violative of a promise by the State in a fully negotiated plea, District Court Number: 16-cv-1134-DRH, the petition was stayed by the District Court after remand by the Seventh Circuit Court of Appeals vacated the District Court's dismissal. See Appendix "A".

After the Court of Appeals vacated the Order of the District Court and remanded the case, Mr. Kitterman sought release from the unlawful imprisonment pursuant to Federal Rules of Appellate Proc. Rule 23. Mr. Kitterman set forth allegations that clearly established his right to release from the unlawful confinement, however, the District Court denied the request in an order attached as App. "B". An appeal was taken to the Seventh District Court of Appeals from the denial of the bond and the District Court was affirmed. See App. "E".

Following affirmance by the Court of Appeals Mr. Kitterman sought a full panel rehearing and on October 12, 2017, the Court denied the panel request. This petition follows.

ARGUMENT
POINT I

I. Petitioner has the right to the benefit of a bargain between himself and the State and the promises made by the State to induce Petitioner to plead guilty to a serious Felony must be kept.

Petitioner was convicted on January 10, 1996 following promises that as a direct result of abandoning his Constitutional Rights to prove his innocence to the charged offense as alleged by the State in exchange for the promise that he would only be subject to the duty to register as a sex offender pursuant to the "Child Sex Offender Registration Act" 730 ILCS 150/1 et seq (West 1994) as it existed prior to the '1996 amendments. According to the law as it existed at the time of the plea and as understood by the parties, Petitioner would be under a duty to register for a term of Four Years. These terms were memorialized within the Court Record and Order. These terms were the result of promises by the State and were considered by Petitioner before agreeing to abandon his rights.

In Santobello v. New York, 404 U.S. 257 this Court held: "When a guilty plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled."

In the instant case the promises by the State were set out in the Record with specificity and were definite. "Guilty plea must be voluntary and knowing, and if it was induced by promises the essence of those promises must in some way be made known."

In a series of cases commenced by the State of Illinois by a prosecutor who was not a party to the original agreement Mr. Kitterman was arrested and charged with failure to register after a Deputy Sheriff discovered Mr. Kitterman's name in the Law Enforcement Agency Data System (L.E.A.D.S) as a person who must still register. At the point of pretrial proceedings Mr. Kitterman Pro Se attempted to raise the affirmative defense that he was not one under a duty to register. The State Trial Court denied Mr. Kitterman Due Process by excluding any evidence that the duty to register no longer existed. See Appendix "D".

In its order the State Trial Court interpreted Illinois Law to prohibit raising the issue of the legitimacy of the requirement of registering at a trial for failure to register. The Trial Court held: "Defendant's Motion in limine filed 9-5-13 is addressed as a notice of affirmative defense. That motion is Denied. This issue has been previously addressed pursuant to a State's motion in limine where the defendant has been prohibited from raising the issue of the legitimacy of the requirement of registering. The State argues that the requirement status is collateral issue to be argued outside the parameters of a criminal trial. It appears to me that this process places too much faith in government in general and police in particular and allows government employees, rather than a jury of a defendant's peers to protect the defendant from those same employees. However,

as that is the law as I beleive it has been decided the defendant will not be allowed to challenge his requirement to register. The Trial Court ended its Order with "This issue is reserved for Appeal." See Appendix "D".

Based upon the ruling of the Trial Court to deny Petitioner Due Process at trial, Petitioner entered a plea to minimize the damage that followed an inevitable conviction in St. Clair County Case No: 12-CF-1204 and 15-CF-373. Mr. Kitterman is serving three years on each conviction.

In St. Clair County No: 14-CF-1422 Mr. Kitterman was charged with failure to register while the aforementioned cases were pending and Mr. Kitterman proceeding Pro Se again tried to submit to the trier of fact that he was not under any lawful obligation to register in the State of Illinois and this defense was denied at trial.

The State Court's ruling that Mr. Kitterman was denied the right to submit evidence of a prior plea bargain at trial is inconsistent with the Circuits of the Federal Court. The purpose of a trial is to provide Due Process under the Fourteenth Amendment and the Fifth Amendment to the Constitution. Here, Mr. Kitterman was denied Due Process at every instance.

In Saiger v. City of Chicago, 37 F.3d 979 (N.D.Ill. 2014) the Court noted that: "In assessing what process was Due, the court noted that some registrants can and have challenged registry errors in the course of criminal prosecutions for failure to comply with the registration requirements".

The instant case is analogous to Hamdi v. Rumsfeld, 542 U.S. 507 where the government was authorized to arrest and to detain persons whom it felt were enemy combatants and this Court held: "that due process required United States Citizen *** be given a meaningful opportunity to contest factual basis for his detention."

Mr. Kitterman entered a fully negotiated plea agreement with the State of Illinois that prevented the State from commencing the prosecutions that have resulted in his current confinement and the Seventh Circuit Court of Appeals and the District Court are assisting the State Trial Court in depriving Mr. Kitterman of Due Process of law and no adequate remedy exists to correct the manifest injustice.

In Connecticut v. Dept. of Public Safety, 538 U.S. 1 this Court held: "Plaintiff's who assert right to hearing under Due Process Clause must show facts they seek to establish in that hearing are relevant under statutory scheme." Mr. Kitterman attempted to seek relief pursuant to 42 U.S.C. §1983 in District Court Case No: 17-733- MJR and the Court held that plaintiff was barred by Heck v. Humphrey. No remedy is available without assistance from this Court.

Ruling that the Petitioner must suffer imprisonment until the State of Illinois corrects their gross miscarriage of justice is not justice.

Petitioner requests help from the Court to correct this injustice.

POINT II

II. THE COURT OF APPEALS ERRED IN DENYING THE REQUEST FOR BOND PENDING THE OUTCOME OF THE PETITION FOR WRIT OF HABEAS CORPUS.

In its order denying the Petitioner's Motion for Release Pending Decision of Petition For Writ of Habeas Corpus the Seventh Circuit Court of Appeals cited its holding in Cherek v. United States, 767 F.3d 335, 337 (7th Cir. 1985) See appendix "F" attached hereto.

In Cherek, distinguishable from the instant case, the petitioner was unable to prove the merits of his entitlement to bail pending the outcome of his postconviction proceedings. The Petitioner cited U.S. v. Bilanzich, 771 F.2d 292 (7th Cir. 1985) for the proposition that as a matter of first instance this case is very easily distinguished from Cherek because here the Petitioner can very easily prove that his current imprisonment is in violation of a fully negotiated plea of guilty based on promises made by the State of Illinois,

Additionally, Mr. Kitterman was denied Due Process of Law at the most critical stage of the criminal proceeding and as a result denied the benefit of a bargain between himself and the State of Illinois on January 10, 1996. In People v. Jones, 2017 WL 143718 (2017) the Illinois Court of Appeals for the First District overturned a conviction holding: "Defendant's conviction for failure to report weekly in violation of the Sex Offender Registration Act is reversed as the State failed to produce evidence that proved beyond a reasonable doubt that he is required to register 33 years after his underlying felony conviction." Making it unquestionable that Mr. Kitterman was

denied Due Process of law.

POINT III

III. PETITIONER HAS FILED SEVERAL LAWSUITS UNDER 42 U.S.C § 1983 SEEKING TO RECOVER FROM THE UNLAWFUL INJURIES HE CONTINUES TO SUFFER FROM STATE ACTION. CAN HE SUE IN FEDERAL COURT AND RECOVER FROM INADEQUATE PROCESS EMPLOYED BY THE STATE.

Petitioner has sought damages in Federal Court from inadequate procedures employed by State agencies in the registration of sex offenders in Illinois. The District Court dismisses the causes of action without consideration of the allegations due to the Heck Rule. However, this Court has held that "due process required the government to accord a plaintiff a hearing to prove or disprove a particular fact or set of facts." Connecticut v. Doe.

Denying the Petitioner any forum where he can challenge government action violates Due Process. Petitioner seeks help from the Court to correct this gross miscarriage of justice.

Mr. Kitterman has served over two years of a three year sentence and will be released on May 26, 2018.

POINT IV

IV. THE STATE OF ILLINOIS HAS CREATED A LIBERTY INTEREST IN ITS LAWS GOVERNING THE REGISTRATION OF SEX OFFENDERS & IN RELIANCE UPON THAT INTEREST PETITIONER ENTERED INTO A FULLY NEGOTIATED PLEA BARGAIN AND LATER LEARNED THAT HE WOULD BE DEPRIVED OF DUE PROCESS OF LAW BY THE STATE.

Under Illinois Law a person who has been convicted of an enumerated offense under 730 ILCS 150/2 has a duty to register under 730 ILCS 150/3 and provide certain information to law enforcement and their information can be displayed on a State Police website. Mr. Kitterman and the State entered into a fully negotiated plea agreement on January 10, 1996 in St. Clair County Case No. 95-CF-750 (Illinois) Following negotiations the State promised that while Illinois Law 730 ILCS 150/7 imposes a 10 year period of registration ("...Liability for registration terminates at the expiration of 10 years from the date of conviction or adjudication if not confined to a penal institution.....") (West 2013) in exchange for Mr. Kitterman abandoning his Constitutional Right to a trial, the term of registration would be for the Four year term he was to serve on probation and would expire upon the termination of the period of probation. Mr. Kitterman registered in the State of Illinois on January 25, 1996 and the terms of the period of the duty to register were memorialized. See Appendix "G" (initial registration 01-10-96; ***; expiration 01-10-06) Observing this Court's holding in McKune v. Lile, 536 U.S. 24, 32 ("[s]ex offenders are a serious threat in this Nation") Illinois Appellate Courts hold

"The purpose of the Sex Offender Registration Act is to enhance public safety by enabling law enforcement agencies to keep track of sex offenders. (Citation) ***** . Thus allowing his duty to register to expire 10 years after his release fully serves the purpose of enhancing public safety." Leshner v. Trent, 407 Ill.App. 3d 1170, 944 N.E.2d 479, 348 Ill.Dec. 526 (2011). Notwithstanding the terms of the fully negotiated plea agreement and the terms in the agreement, Mr. Kitterman understood that by pleading guilty to the allegations and abandoning his right to trial, he would become subject to register in the State of Illinois for at maximum 10 years.

The State thus created the liberty interest by enacting a law that has a specific time period. By a new prosecutor Mr. Kitterman was denied all rights to Due Process and was subsequently forced to plead guilty to crimes that he did not commit as a result of the Trial Court's Ruling that he could present no defense. See Appendix "D".

It is unconstitutional for the State of Illinois to enact a law that purports to define a specific period of time that a person would be subject to certain duties and then deprive those citizens of the right to Due Process of Law at every stage of any process.

The Seventh Circuit considered similar questions in Schepers v. Indiana Department of Corrections, 691 F.3d 909, 915 (7th Cir. 2012). There the Court in assessing what process was due, noted that some registrants "can and have, challenged registry errors in the course of criminal prosecutions....." The Court concluded, however

that "due process does not require a person to risk additional criminal conviction as the price of correcting an erroneous listing, especially where a simple procedural fix is available much earlier."

The State of Illinois has an interest in protecting the public from harm but Mr. Kitterman also has an interest in Due Process of Law that the State has taken away from him. Illinois has enacted a law that purports to provide Due Process protection and the nit deprives its Citizens of those Due Process Rights after they abandon thier Constitutional Rights at trial.

The Illinois Law 730 ILCS 150/1 is Unconstitutional.

REASONS FOR GRANTING THE PETITION

Petitioner Kitterman was denied Due Process of Law where the State breached promises it made in and pursuant to a fully negotiated plea agreement that precluded commencement of the prosecutions that have resulted in his current confinement.

Petitioner Kitterman continues to be denied Due Process of Law where he must wait until the same State who denied him Due Process of Law decides to correct its own error of law.

Petitioner Kitterman is deprived Due Process of Law where he easily proves that he is being imprisoned in violation of the Constitution. However, the Court refuses to grant bail.

Petitioner Kitterman is denied Due Process of Law where he has no adequate remedy under 42 U.S.C. § 1983 to address the violations of his Constitutional Rights.

Petitioner, Pro Se, moves this Honorable Court for any and all relief deemed fair and just.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Sha A. Kell

Date: December 7, 2017