

IN THE SUPREME COURT OF THE UNITED STATES

LEODIUS CLARK III-PETITIONER

vs.

OHIO ADULT PAROLE AUTHORITY et al.,-RESPONDENT

**ON PETITION FOR WRIT OF CERTIORARI TO THE SIXTH CIRCUIT COURT OF
APPEALS**

PETITION FOR WRIT OF CERTIORARI

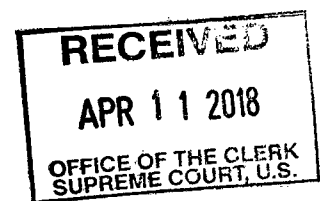
LEODIUS CLARK #A641-095

BELMONT CORRECTIONAL INSTITUTION

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QUESTIONS PRESENTED

DID THE SIXTH CIRCUIT COURT OF APPEALS ERR IN NOT GRANTING CLARK A CERTIFICATE OF APPEALABILITY AS HIS ISSUES WERE DEBATABLE AMONG REASONABLE JURIST?

SHOULD A CERTIFICATE OF CERTIORARI ISSUE WHEN THE OHIO PAROLE BOARD BREACHES THE DOUBLE JEOPARDY CLAUSE BY DISREGARDING AN INITIAL IMPOSED AND SUCCESSFULLY COMPLETED SANCTION BY CLARK'S PAROLE OFFICER, BY IMPOSING A SEPARATE AND SUCCESSIVE SANCTION FOUR YEARS LATER FOR THE SAME VIOLATION, WITHOUT EVER PROVIDING HIM WITH A REVOCATION HEARING?

SHOULD A CERTIFICATE OF CERTIORARI ISSUE WHEN THE OHIO PAROLE BOARDS DECISION TO CONTINUE PETITIONERS INCARCERATION WITHOUT KNOWINGLY PROVIDING HIM WITH A REVOCATION HEARING, CONFLICTS WITH THIS COURTS DECISION IN MORRISEY V. BREWER, 408 US 471, AND DID THIS DECISION VIOLATE CLARK'S RIGHT TO DUE PROCESS UNDER THE 14TH AMENDMENT?

SHOULD A CERTIFICATE OF CERTIORARI ISSUE WHEN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO-EASTERN DIVISION DENIED CLARK THE OPPORTUNITY TO AMEND THE MOST SERIOUS OF THE GROUNDS IN HIS PETITION?

SHOULD A CERTIFICATE OF CERTIORARI ISSUE WHEN THE OHIO PAROLE BOARD VIOLATED CLARKS 14TH AMENDMENT RIGHTS TO DUE PROCESS BY SUPERCEDING THE TRIAL COURT IN MODIFYING CLARKS SENTENCE WITHOUT THE TRIAL COURTS AUTHORIZATION AND WITHOUT CLARK BEING PRESENT AND WITHOUT THE NEW MODIFIED SENTENCE BEING TRANSCRIBED OR JOURNALIZED?

LIST OF PARTIES

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

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

THE OHIO ADULT PAROLE AUTHORITY, et al., 770 W. BROAD STREET, Columbus, OH. 43215

THE OHIO ATTORNEY GENERAL, MIKE DeWINE, JAMES A. RHODES STATE OFFICE TOWER, 30 E. BROAD STREET, 14th Floor, Columbus, OH. 43215

ASSISTANT ATTORNEY GENERAL-KELLY N. BROGAN (0093891), CRIMINAL JUSTICE SECTION, CORRECTIONS LITIGATION UNIT, 150 E. GAY STREET, 16th Floor, Columbus, OH. 43215

ASSISTANT ATTORNEY GENERAL-HILDA ROSENBERG, CRIMINAL JUSTICE SECTION, 441 VINE STREET, 1600 CAREW TOWER, Cincinnati, OH. 45202

JUDGE GENE DONOFRIO, JUDGE CHERYL L. WAITE, JUDGE MARY DeGENARO, SEVENTH DISTRICT COURT OF APPEALS FOR BELMONT COUNTY, OH, 131 W. FEDERAL STREET, Youngstown, OH 44503

JUSTICES-O'DONNELL, O'CONNER, KENNEDY, FRENCH, O'NEILL, FISCHER, DeWINE, C.J., AND J.J., 65 S. FRONT STREET, 9th Floor, Columbus, OH. 43251-3431

JUDGE JAMES L. GRAHAM, MAGISTRATE JUDGE KIMBERLY JOLSON, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT-EASTERN DIVISION, JOSEPH P. KINNEARY U.S. COURTHOUSE, 85 MARCONI BLVD. Rm 349 and Rm 235, Columbus, OH. 43215

UNITED STATES COURT OF APPEALS-FOR THE SIXTH CIRCUIT, POTTER STEWART U.S. COURTHOUSE, 100 E. FIFTH STREET, Rm 540, Cincinnati, OH. 45202-3988
CIRCUIT JUDGES: BATCHELDER, GIBBONS, and WHITE

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DOUBLE JEOPARDY - (ADMINISTRATIVE COLLATERAL ESTOPELL)

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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 D to the petition and is

☒ reported at Clark v. Adult Parole Auth. 17-3476; 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 C to the petition and is

☒ reported at 2:16-cv-00204, 2:16-cv-00413-00414; 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 B 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 COURT OF APPEALS-SEVENTH DISTRICT court appears at Appendix A to the petition and is

☒ reported at 16-BE5; 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 October 5th, 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: February 12th, 2018, and a copy of the order denying rehearing appears at Appendix D.

☐ 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 11-2-2017. A copy of that decision appears at Appendix B.

☒ A timely petition for rehearing was thereafter denied on the following date: February 14th, 2018, and a copy of the order denying rehearing appears at Appendix B.

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. sec., 1915 See App.

42 U.S.C. sec, 1983 states that every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or territory of the District of Columbia, subjects or causes to be subjected or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to deprivation of any right, privileges, or immunities secured by the Constitution and Law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any act of Congress applicable exclusively the District of Columbia shall be considered to be of the District of Columbia.

FOURTEENTH AMENDMENT

EQUAL PROTECTION

Fourteenth Amendment requires that all persons subject to legislation shall be treated alike, under the circumstances and conditions, both in the privileges conferred and in the liabilities imposed when those who appear similarly situated are nevertheless treated differently, the Equal Protection Clause requires at least a rational reason for the difference, to ensure that all persons subject to legislation shall not be deprived of life, liberty, or property, without the due process of law; nor deny to any person within its jurisdiction the equal protections of the laws.

CONSTITUTIONAL AND STATUTORY PROVISIONS
INVOLVED-(Continued)

(Due Process)

FIFTH AMENDMENT OF U.S.C.

Fifth Amendment requires at least the minimal requirements of the due process clause before revoking parole. U.S. v. Scott, C.A.5 (Tex.) 1982, 678 F.2d 32, rehearing denied 683 F.2d 1373. Constitutional Law 272.5

[CONSTITUTIONAL RIGHT]

Revocation of parole after unreasonable delay and under circumstances misleading to the parolee violates clearly a right to Due Process. U.S. v. Hamilton, 708 F.2d 1412, 1415 (9th Cir. 1983).

DOUBLE JEOPARDY

To establish Double Jeopardy the United States Constitution, Article I §10, outlines the following to establish Double Jeopardy; "(1) WHETHER THE ELEMENTS FOR BOTH PROCEEDINGS ARE THE SAME; (2) WHETHER PROCEEDINGS ARE IN FACT SEPARATE PROCEEDINGS; AND (3) WHETHER SANCTIONS FOR THE FIRST PROCEEDING CONSTITUTED A COGNIZABLE PUNISHMENT." See Seven Hills v. Adkins, 74 Ohio Misc.2d 60, 658 N.E.2d 828, Affirmed 1996 WL563657.

STATEMENT OF THE CASE

On February 15th, 2011 Mr. Clark was paroled from the Marion Correctional Institution, in Marion, Ohio 43301. Clark reported to the Oriana House in Akron, Ohio as his place of temporary residence as he was homeless. Clark became employed at the MALCO Industries in Akron, Ohio, but was later terminated from his employment as a result of his case manager contacting his place of business and falsely asserting to his Supervisor that Clark had been released from prison for murder and that he had to enroll into the necessary programming there at the Oriana House (RIP) to properly transition back into society. This was after Clark was already permitted to go out and retain employment, and assessed initially at in-take to not having needed any further programming because he was only there until he had found an APA approved residence. Subsequently, Clark was terminated from his place of employment and his temporary residence at the Oriana House.

On August 24th, 2011, Clark was arrested at The Town and Country Motel in Youngstown, Ohio by the Boardman, Ohio Police Department. On August 25th, 2011 the Adult Parole Authority via their field agent reported to the Mahoning County Jail where Clark was being detained for the charges of Trafficking in Drugs, Possession of Drugs, Receiving Stolen Property, and Possession of a WIC Benefits Card. Clark was informed that he was not being held under a APA holder, and if he could make bond that he had to report to his parole officer the next business day after release. Clark complied and reported to his parole officer, Mr. Matthew Giorgio and was told that he was not being revoked for his new crimes committed while on parole, but instead the agency had decided to sanction Clark for violating his parole. He was repeatedly informed by Ms. Jennifer Boswell (Parole Officer's Supervisor) that these sanctions would serve as the Final Decree for the violation of his parole. These sanctions consisted of: Complete 90 days of Electronic Monitoring (House Arrest); Reside at an APA approved residence only; Report to his Parole Officer as Ordered; and to Comply with All Court Orders on the new charges in Mahoning County. Clark successfully completed the imposed sanctions and had his parole restored (reinstated) on December 31st, 2011. Clark was then transferred to the Parole Division in Youngstown, Ohio under the supervision of Mr. Dwight Pasckovic, and later Mr. Jim Corrin.

Clark consistently appeared in the Mahoning County Court of Common Pleas for his new charges, where he continued on bond and parole supervision for approximately 20 months all while keeping his parole officer abreast of the judicial process dealing with the new charges. On January 17th, 2013 Clark's then Parole Officer Mr. Jim Corrin recommended Clark for termination from parole supervision. On March 18th, 2013 Clark after consulting with his parole officer and Attorney, agreed to plead guilty to a minimum sentence for the collection of new charges. Clark was informed by his parole officer that since his release certificate hadn't been received for termination of his parole that Clark would have to again complete a 1 year

supervision status along with whatever Post-Release Control supervision he'd received upon the completion of his three year sentence for the new charges. Mr. Corrin informed Clark that he would not be seen by the Ohio Parole Board in any capacity because he had already been dealt with by them for the violation of his parole. Clark was granted a continuance on bond until March 22nd, 2013 to render himself available to report to begin his three year term. Clark complied and reported to court for detention on March 22nd, 2013.

On April 12th, 2013, Clark was committed to the ODRC and was scheduled to be released on January 25th, 2016. Clark had never received any hearing concerning revocation or being dependent on the Parole Board for release. He never received an on-site hearing originally, a mitigation hearing, a probable cause hearing, and he never received a Final Hearing. The Parole Board had placed a detainer on Clark after illegally modifying his sentence on May 22nd, 2013 without Clark being present. This took place between the parole board and the Prison's Record Office. To this date, Clark still had not had the opportunity to receive the minimal due process requirements outlined in **Morrissey v. Brewer, 408 U.S. 471; 92 S.Ct. 2593; 33 L.Ed.2d 484; 1972 U.S. LEXIS 19.**

WRIT OF MANDAMUS TO THE SEVENTH APPELLATE DISTRICT

Clark filed a Writ of Mandamus to the Seventh District Court of Appeals in Belmont County, Ohio on March 4th, 2016. Clark argued to the Seventh Appellate District Court that the Ohio Parole Board violated the Due Process Clause under the Fourteenth Amendment of the U.S. Constitution, and his right to be treated equally under the Equal Protections Clause of the Fourteenth Amendment had been violated. Clark also argued that his Fifth Amendment rights to be free from Double Jeopardy were also violated.

THE DUE PROCESS CLAUSE

Clark argued that he was not provided with any sort of a revocation hearing which would have offered him the opportunity to appear in front of the revocation panel with his Attorney, or relevant witnesses to offer an explanation as to why he shouldn't have his parole revoked. Clark's position was supported by this courts earlier ruling in (**Morrissey v. Brewer, 408 U.S. 471; 92 S. Ct. 2593; 33 L.Ed.2d 484; 1972 U.S. LEXIS 19**). Clark also asserted that he wasn't even provided with the minimal requirements of due process for the revocation of his parole which includes; (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of the evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a "neutral and detached" hearing body such as a traditional parole board members of which need not be judicial officers or lawyers; and (f) a written statement by the fact-finders as to the evidence relied on and the reasons for revoking parole.

Clark also argued to the Seventh Appellate District that the order of the revocation hearing would have provided Clark with proper notice of what action the Parole Authority proposed to take against him. Clark was repeatedly informed by the APA that he had remedied the violation of his parole and that he would face no further or subsequent sanctions as a result. The Ohio Parole Board disregarded this order from the parole authority and as such, imposed a continued incarceration upon Clark without providing him with a revocation hearing and or the jurisdiction to do so. Clark was unsuccessful in his argument.

THE EQUAL PROTECTION CLAUSE

Clark argued that his rights to Equal Protections Rights under the Fourteenth Amendment were violated by the Ohio Parole Board when the parole board chose to disregard protocol of ordering a revocation hearing before deciding to continue his incarceration where their jurisdiction and discretion in the matter did not appear on the face of the record. The Seventh Appellate District concluded that Clark had not alleged any facts that would support the notion that he was treated any differently than those similarly situated. What was clear from this assertion by the Courts is that the Courts never provided Clark with a showing that he was not treated any differently than those that are or were similarly situated than him. Acquiring the necessary documents or record of minutes held by the Ohio Parole Board in dealing with the way that inmates, parolees, and parole violators are treated in difference is impossible for a civilian other than a Court of Law whom orders it. Ultimately, Clark was unsuccessful in this argument as well.

THE DOUBLE JEOPARDY CLAUSE

Clark argued that he has in fact been victimized by the by the Ohio Parole Board. The Parole Board had clearly disregarded the fact that Clark had been sanctioned for the violation of his parole by his parole officer and his parole officer's Supervisor. The Seventh Appellate District misapplied Clark's argument due to the notion that Double Jeopardy "generally" does not apply to parole revocations. In fact, The Seventh District Appellate Court cited *Brown v. The Adult Parole Authority*, 10th Dist. No.09Ap-797, 2010-Ohio-872, citing *Martello*, supra, as their controlling case in the matter, stating that Clark had not received multiple punishments and the maximum expiration of his indefinite maximum sentence stemming from his original conviction case no. 95-CR-589 had not changed. Clark argued that these cases did not apply to him because in the *Brown v. The Adult Parole Authority* case, it is very clear that these cases seem similar on the face but are very different. Brown received an order for revocation immediately when he violated his parole with a new felony offense. This triggered a revocation hearing which gave the Parole Board the subsequent discretion over Brown's release. Clark argued to the Seventh Appellate District that he never received an order for revocation and had never received a revocation hearing, thus having his release status decided by the parole agency once he had

successfully completed the sanctions that were imposed for the violation of his parole. The Seventh Appellate District erroneously rendered their decision based on Clark having received a revocation hearing. Their decision stated that there was no violation for receiving two separate sanctions at two different parole revocation hearings. Clark argued that receiving two separate and successive sanctions for the same violation of parole and after Clark's parole had already been restored violates the multiple punishment clause of Double Jeopardy. It is clear that the Ohio Parole Board's intent was to severely punish Clark even greater when it continued his incarceration without providing him with the constitutionally protected Due Process. Clark then appealed to the Ohio Supreme Court. Clark argued that the issuing of punishments in a separate and successive proceeding, and not pursued in a single proceeding (revocation hearing), violated the multiple punishment clause, where the parole board should have been Administratively Collaterally Estopped.

THE OHIO SUPREME COURT

On August 18th, 2016 Clark appealed this decision to the Ohio Supreme Court arguing that the Seventh Appellate District erred in rendering their decision to not grant the Writ of Mandamus. Clark argued that the Seventh Appellate District should have transferred the Writ to the Tenth District Appellate Court in Franklin County, Columbus, Ohio because the Seventh Appellate District did not have the jurisdiction to hear the Writ because the Tenth District is the Adult Parole Authority's where their place of business functions. Clark argued to the Ohio Supreme Court and attempted to further demonstrate that his rights were violated. Ultimately the Ohio Supreme Court concluded and erroneously affirmed the decision of the Seventh Appellate Court on November 2nd, 2017 failing to acknowledge or even address the main issue of Clark's argument of his incarceration being continued without him being provided with a revocation hearing, and after successfully completing the sanctions that were imposed for the violations of his parole. The Court also refused to acknowledge that Clark's parole had already been reinstated prior to him being committed on his new felony offenses. The Court also refused to acknowledge that the Ohio Parole Board modified Clark's sentence without a trial Court's authorization and without Clark being present, thus violating the Separation of Powers Doctrine, and The Due Process Clause of the United States. On November 8th, 2017 Clark filed a reconsideration into the matter asserting misapprehension of the law by the Court in Clark's case. Clark also filed a Motion for Leave to Supplement his reconsideration on February 8th, 2018. Both were denied on February 14th, 2018, and February 21st, 2018.

THE UNITED STATES DISTRICT COURT FOR SOUTHERN OHIO

On March 7th, 2016 Clark filed a 42 U.S.C.S. § 1983 in the United States District Court for the Southern District of Ohio-Eastern Division simultaneously as he had filed his Writ of Mandamus in the State Courts. This case was docketed under 2:16-CV-0204 in the courtroom of the Honorable James L. Graham, and Magistrate Judge Kimberly A. Jolson. Upon review of Clark's petition, the Magistrate Judge made the determination to re-characterize Clark's petition to a 28 U.S.C.S. § 2254. On April 15th, 2016 the District Court filed Clark's reconsideration of the re-characterization of his 1983 petition. This motion was denied, and as such, proceeded on the dockets as a Federal Habeas Corpus. Clark argued that he had unexhausted state adjudications dealing with awaiting a decision on his Mandamus and re-characterizing his Civil petition into a Federal Habeas left the procedures open for the state to argue that Clark had not exhausted all of his state remedies. True to that effect, the state did just that. Clark was sent forms for a standard filing of a Federal Habeas Corpus pursuant to 28 U.S.C.S. § 2254 by the Court and after re-formatting his petition for a 2254 and submitting it, that petition was then docketed as a second Habeas petition under the docket no.2:16-CV-00413. Clark submitted this petition along with a new civil claim pursuant to 42 U.S.C.S. §1983 that was docketed under 2:16-CV-00414 asking for monetary damages in the amount of \$1000 for each day that he was confined beyond his release date. These cases were consolidated for the purposes of the Court's review.

On November 21st, 2016 Clark filed a Motion for Leave to Amend his petition asserting that Ground Two of the petition was misstated in error as Clark receiving a second parole hearing at which time the Ohio Parole Board continued Clark's confinement. Clark asserted to correct this misstatement and had his petition immediately denied. The Court stated that Clark failed to demonstrate or failed to show that his rights were violated, and that he had not exhausted all of his state remedies.

On February 6th, 2017, the District Court adopted the Magistrate Court's report and recommendation. On May 1st, 2017, Clark requested that the District Court grant him a certificate of appealability. On May 10th 2017 the District Court denied Clark's motion for a certificate of appealability. Clark then timely appealed this decision to the Sixth Circuit Court of Appeals.

THE SIXTH CIRCUIT COURT OF APPEALS DECISION

Clark appealed this decision to the Sixth Circuit Court of Appeals on May 5th, 2017 and was informed that he had to petition the District Court for a Certificate of Appealability which Clark did. Clark was denied the issuance of a COA on May 10th, 2017 stating that the appeal can not be taken in good faith. His Motion for Leave to Appeal in forma pauperis was also denied on June 15th, 2017. Clark again went to the Sixth Circuit petitioning the Court for a COA and this case was docketed under 17-3476. Clark's Motion for COA was denied on October 5th, 2017. Clark then filed a re-consideration into the matter on November 8th, 2017, as well as a Motion for Leave to Supplement his Reconsideration on February 5th, 2018 arguing that the Court was being selective in its review of Clark's petition. Clark was never provided with constitutional reasons as to why his petition shouldn't be granted. Clark argued that he had in fact established a substantial showing of denial of his Constitutional Rights, **28 U.S.C.S. § 2253(c) (2)**. He also argued that he had shown that reasonable jurists could debate whether, or for that matter agree, that his petition should have been resolved in a different manner, and that the issues presented were adequate to deserve encouragement to proceed further. **Citing Slack, 529 U.S. at 484 (quoting Barefoot, 463 U.S., at 893 n.4).**

THE REASON WHY THE WRIT SHOULD BE GRANTED

THE SIXTH CIRCUITS DECISION TO DENY A CERTIFICATE OF APPELABILITY TO CLARK CONFLICTS WITH THIS COURTS DECISION IN MILLER EL COCKRELL

This court has stated in **Miller el v. Cockrell, 537 U.S. 322** that a certificate of appealability (COA) will issue only if the requirements of **28 U.S.C.S. § 2253** have been satisfied. The COA statute establishes procedural rules and requires a threshold inquiry into whether the circuit court may entertain an appeal. **28 U.S.C.S. § 2253(c)** permits the issuance of a COA only where a petitioner has made a substantial showing of the denial of a constitutional right. Congress codified the standard for determining what constitutes the requisite showing. Under the controlling standard, a petitioner must show that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further. Petitioner has passed the test set forth in **28 U.S.C.S. § 2253 c**. The issues set forth before this Court are debatable among jurists of reason.

SHOULD A CERTIFICATE OF CERTIORARI ISSUE WHEN THE OHIO PAROLE BOARD BREACHES THE (ADMINISTRATIVE COLLATERAL ESTOPPEL) DOUBLE JEOPARDY CLAUSE BY IMPOSING A MORE SEVERE SANCTION AFTER PAROLE HAD ALREADY BEEN REINSTATED UPON THE SUCCESSFUL COMPLETION OF THE INITIALLY IMPOSED SANCTIONS BY THE PAROLE AUTHORITY FOR THE VIOLATION OF PAROLE?

**THE SIXTH CIRCUITS DECISION CONFLICTS WITH
NORTH CAROLINA V PEARCE 395 U.S. 711**

This Court many times has held that the Double Jeopardy Clause protects against three distinct abuses: a second prosecution for the same offense after acquittal; a second prosecution for the same offense after conviction; and **multiple punishments** for the same offense. See, *e. g.*, **North Carolina v. Pearce**, 395 U.S. 711, 717 (1969). Several courts have recognized that the double jeopardy clause does not “generally” apply in an issue relating to violations of parole. See, **State v. Welburn**, 2d 200 CA 2000. In this case sub judice, Clark argues that he is being subjected to a double jeopardy standard because he had sanctions imposed for the violation of his parole, and after successfully completing these sanctions, the OAPA reinstated Clark’s parole and stated to him that he would face no further discipline or subsequent sanctions without any new violations or infractions during his parole supervision. The Ohio Parole Board breached this by continuing Clark’s confinement for his new offenses without providing him with a revocation hearing. These sanctions then became “separate and successive” because they were not pursued in a single proceeding (revocation hearing), thus becoming a “multiple punishment” while being camouflaged as being part of the original sentence. Clark’s exhibits prove this clearly and convincingly. To test the three prong test for the double jeopardy standard **The United States Constitution, Article I § 10**, outlines the following to establish double jeopardy. Citing **Seven Hills v. Adkins**, 74 Ohio Misc.2d 60, 658 N.E.2d 828, Affirmed 1996 WL563657.

The United States Supreme Court has granted certiorari to re-view a "similar" question in another case. The Supreme Court or the relevant circuit has identified the question as open, unresolved, or a matter of disagreement among different circuit courts. See, *e.g.*, **Lance v. Mathis**, *supra*, 519 U.S. at 436

THE DUE PROCESS CLAUSE HAS ALWAYS PROTECTED DEFENDANTS AGAINST MULTIPLE PUNISHMENTS FOR THE SAME INCIDENT

The Adult Parole Authority claims that petitioner's punishment was a part of his original sentence; however the record states otherwise. The record clearly shows that after Clark successfully completed his sanctions the Ohio Adult Parole Authority reinstated his parole supervision and allowed Clark to remain free on bond for nearly two years. Clark was even recommended for termination of his supervision in February 2013. The sentencing court sentenced Clark to a three year term followed by five years of Post-Release Control after his three year term. The Ohio Parole Board then changed Clark's sentence themselves without ordering for Clark to be resentenced where that sentence would be journalized, and without Clark being present for the modification of his sentence. Pursuant to **Ohio Revised Code § 2929.01** House Arrest means a period of confinement of an offender that is in the offender's home or in other premises specified by the sentencing court or by the parole board. **See 2929.01:**

"House arrest" means a period of confinement of an offender that is in the offender's home or in other premises specified by the sentencing court or by the parole board pursuant to section 2967.28 of the Revised Code and during which all of the following apply:

- (1) The offender is required to remain in the offender's home or other specified premises for the specified period of confinement, except for periods of time during which the offender is at the offender's place of employment or at other premises as authorized by the sentencing court or by the parole board.
- (2) The offender is required to report periodically to a person designated by the court or parole board.
- (3) The offender is subject to any other restrictions and requirements that may be imposed by the sentencing court or by the parole board.

Clark remained confined to the APA approved premises for 93 days only leaving the residence to report to his Parole Officer, the Doctor's Office, and scheduled Court appearances. Clark had his monitoring equipment removed after the successful completion of this portion of the imposed sanctions. Clark's parole supervision was then restored on December 31st, 2011, and was informed that he would face no further or subsequent sanctions, particularly the parole board. Clark was not detained or held in abeyance until the outcome of his pending charges, he was informed upon the issuing of the APA sanctions that this was the Final Decree for the violation of his parole.

SHOULD A CERTIFICATE OF CERTIORARI ISSUE WHEN THE OHIO PAROLE BOARDS DECISION TO CONTINUE PETITIONERS INCARCERATION WITHOUT KNOWINGLY PROVIDING HIM WITH A REVOCATION HEARING, CONFLICTS WITH THIS COURTS DECISION IN MORRISEY V BREWER 408 US 471, AND DID THIS DECISION OFFEND CLARKS RIGHT TO DUE PROCESS UNDER THE 14TH AMENDMENT?

**THE SIXTH CIRCUITS DECISION CONFLICTS WITH THE EIGHTH CIRCUITS
DECISION IN CREECH V. UNITED STATES BOARD OF PAROLE 538 F.2D 205**

In Creech, the Eighth Circuit Court of Appeals followed this courts decision in **Morrissey v. Brewer, 408 U.S. 471** holding that a parole violator must have a hearing. The process of revocation was never initiated or triggered in Clark's situation because the adult parole authority chose to deal with the violation of Clark's parole "locally" or what's called an "in-house" punishment. That process was successfully completed and Clark's parole was restored. Clark asserts that there was no indication or warning of any subsequent sanctions, because Clark was informed repeatedly that he would face no subsequent punishment unless a new violation of the new conditions of his supervision were again violated, and absent a revocation hearing to be forewarned of a subsequent sanction violated the his rights to due process under the fourteenth amendment. It is also held in **Wells v. Wise, 390 F.Supp. 229 (C.D. Cal. 1975)**, that even though the fact of a violation has already been conclusively determined either by a conviction or an admission, a hearing must be held.

The United States Parole Commission and Reorganization Act, Appendix I §§ 4213 and 4214, states that when a parolee has been convicted of a crime while on parole and is serving a new sentence, and a detainer has been placed against him, a revocation hearing *must* be held within 180 days of the placement of the detainer, or upon his release, whichever occurs first. If the Ohio Parole Board sought to continue Clark's incarceration and felt that the sanctions imposed at the local level weren't severe enough, then they should have provided him with a revocation hearing, or some form of a Final Hearing to inform Clark of what action the State proposed to take against him. This was Clark's Due Process.

THE SIXTH CIRCUITS DECISION CONFLICTS WITH THE NINTH CIRCUITS DECISION IN UNITED STATES V. HAMILTON

The Sixth Circuit's decision not to grant petitioner a certificate of appealability on his issues conflicts with the Ninth Circuits decision in (**United States vs. Hamilton 708 f.2d 1412, 1415**). The Ninth Circuit held that the revocation of parole after unreasonable delay or under circumstances misleading to the parolee constitutes a clear violation of due process.[U.S. Constitutional Right]. Petitioner Clark was repeatedly informed by his parole and his parole officer's supervisor that he would not see the parole board in any capacity because he had already been dealt with. In (**Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct 2593; 33 L.Ed. 2d 484; 1972 US Lexis 19**) Petitioners filed habeas corpus petitions, alleging that they had been denied due process because their paroles had been revoked without being provided a revocation hearing. On review, this court held that the requirements of due process in general applied to parole revocations. This court determined that whether procedural protections were due depended on the extent to which an individual would be condemned to suffer grievous loss. In this situation Clark suffered a grievous loss because it was already set in stone on what length of incarceration Clark was facing until the Ohio Parole Board unlawfully and fraudulently overruled by disregarding the order of the Adult Parole Authority and the sentencing court. This court also held that one's freedom was valuable and, therefore, its termination called for some orderly process. Clark's family was victimized by the process of which the Ohio Parole Board took to continue Clark's incarceration. Clark's had a newborn daughter and a pre-teen step-son, and a fiancée whom looked forward to Clark's return home. This court ordered that all parole revocations in the future required a simple factual hearing to ensure due process of law. The court reversed the judgments against petitioners and remanded for further consideration. The Sixth Circuit seemed to ignore protocol that this court sat down in the Brewer ruling. Once Clark's parole officer and his parole officer's supervisor opted against revocation after considering mitigating factors, but chose to deal with the violation of Clark's parole by issuing sanctions instead, which included "House Arrest" a form of incarceration, the parole board's jurisdiction to continue Clark's incarceration was not valid on the face of the record, and as a result, violated Clark's rights to the 14th Amendment Due Process Clause. See (**Bennett v Ohio Department of Rehabilitation Corrections 60 Ohio St. 3d 107**) Furthermore, Clark was not even provided with the minimum due process requirements. See **Morrissey v. Brewer 408 U.S. 471, 92 S. Ct 2593; 33 L.Ed. 2d 484; 1972 US Lexis 19**

SHOULD A CERTIFICATE OF CERTIORARI ISSUE WHEN JUDICIAL CONFLICT OF INTEREST POSSIBLY IS A KEY FACTOR IN PROPER DECISION NOT BEING RENDERED?

Clark asserts to this Most Honorable Court that the Ohio Parole Board's reach throughout the court system in Ohio is of great magnitude. Decisions have been rendered in the past against them and have later been overturned for unforeseen reasons. There are no protections for inmates who were sentenced and still remain under the shadow of the "Old Law" sentencing laws. These inmates are not afforded the protections of their constitutional rights or the right to be treated equally under the protections of the Ohio or United States Constitution. As a matter of fact, inmates under the "Old Law" (House Bill 261) sentencing laws have been victimized repeatedly by the Ohio Parole Board and those that oversee them. Inmates have been subjected to cruel and unusual punishment which they camouflage as reform. Without this Most Honorable Court setting precedence in this plea for help, this particular group of inmates will continue to receive treatment of mental abuse. These inmates will return to society one day, and will depend on the government for an income, or possibly become capable of committing a heinous crime of violence against the public.

The Chairperson of Ohio's Parole Board is Mr. Andre Imbrogno. Mr. Imbrogno was appointed to the Parole Board in July of 2012 after serving as Staff Counsel for the Ohio Department of Rehabilitation and Corrections. Prior to serving as Department Staff Counsel Mr. Imbrogno worked as a legislative liaison and policy analyst for the Ohio Judicial Conference. Previously, as of he was employed as an attorney with the Ohio Legislative Service Commission. Mr. Imbrogno began his legal career as a judicial law clerk with the Supreme Court of Ohio. He is licensed to practice law in the State of Ohio and before the United States District Court for the Southern District of Ohio. Two of the most important Courts Mr. Imbrogno has quite a serious history with, which is having favorable decisions. There are currently no Attorneys in the State of Ohio willing to litigate against the Ohio Parole Board, and the only attorneys that were willing to litigate against them, were employed by them at the Ohio Public Defender's Office.

CONCLUSION

Petitioner, Clark humbly asks this Most Honorable Court to review his petition and construe all evidence favorable to his case as it reflects the factual truth in this matter. Clark asserts that in August of 2011, he did in fact violate his parole by committing a new felony offense, Trafficking in Drugs, Possession of Drugs, and Illegal Possession of WIC Benefits Card. This was as a result of Clark being thrown out on the streets from a half-way house that was supposed to help him transition back into society after serving nearly 20 years of his life in prison for being an accomplice to a crime originally. This half-way house also attributed to Clark being terminated from his employment before expelling him to the streets as a homeless person.

Clark's parole officer and his parole officer's supervisor found these factors as mitigating terms to not order revocation against Clark for violating his parole with the new charges. The agency of the Parole Authority instead chose to deal with Clark's parole violation by sanctioning him that included "house arrest", a form of incarceration. Clark completed these sanctions in their entirety and without delay. Clark's parole officer then reinstated Clark's parole on December 31st, 2011, and then Clark was transferred from the Akron APA Unit to the Youngstown APA Unit, where Clark is originally from and where his new charges were currently pending. Clark was informed that he had rendered the violation of his parole and that he would start a clean slate of supervision. Clark remained abroad maintaining minimum supervision status whereas in February of 2013, Clark was recommended for supervision termination. Clark never received a final release certificate rendering him under the status and custody of the APA and the Ohio Department of Rehabilitation & Corrections.

Clark pled guilty to his new offenses on March 18th, 2013 and was given until March 22nd, 2013 to turn himself in. Being permitted to remain free after pleading to new charges isn't protocol for a parole violator. This is because the APA had already dealt with Clark and informed him on several occasions that he would only be committed for the new offenses but would have to serve a one-year "Old Law" parole supervision concurrently with his newly imposed 5 year term of post-release control, pursuant to **Ohio Revised Code 2967.28 (F)(4)(b)**.

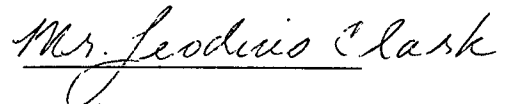
Clark's sentencing transcripts, his sentencing journal, and his commitment and cause of detention papers all describes this. The Ohio Parole Board and the prison's records office

conspired together to recommit Clark to the status of a parole violator, so they modified his sentence without a court's authorization and without Clark being present. This is where all of the constitutional violations began. A detainer was then lodged against Clark as a parole violator after Clark had already been in prison for at least six months. The parole board refused to hold a revocation hearing even after Clark inquired into having one. Clark served his the majority of his sentencing term when the Ohio Parole Board summoned Clark for a release consideration hearing. This hearing was nothing in regards to release, because a closer look at all of the exhibits submitted with Clark's petitions shows that the parole authority had reached out to the victims in Clark's previous case and sought to have them write letters in opposition to Clark being released. NOTE- Clark remained free on bond and parole after successfully completing the sanctions imposed for the violation of Clark's parole and the Parole Authority, and there were never any factors indicating that Clark was a risk to society or to the victims of his prior case.

Clark has now been deemed a danger to society by the parole board as it states in their rationale simply as a staple to camouflage why Clark is being kept in custody. Clark had no rule infraction while incarcerated, and had maintained a minimum 1A status of security while completing nearly every program at the institution where he now resides. As a result of the Constitutional and mental victimization by the parole board, Clark has again lost everything in society. His fiancée and children, his home, his car, his job, and his will to trust in the system ever again.

This petition for certiorari needs to be granted so that the violation and deprivation of Clark's constitutional rights do not go unnoticed. I humbly ask this Most Honorable Court to grant me a certiorari.

Respectfully Submitted,


LEODIUS CLARK III, PRO SE