

No. 17-6892

5:16:hc-02127-FL

IN THE
SUPREME COURT OF THE UNITED STATES

James Fox — PETITIONER
(Your Name)

vs.

Brick Tripp - Parole Board — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Fourth Circuit Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

James Fox Rivers Prison

(Your Name)

Po Boc 630 Winton

(Address)

Winton NC 27986

(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

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1/ Should the Parole Board be able to not credit me for time on a past crime exceeding 16 years and a violation of the retroactivity of my street time and early termination .

2/ Should a Certificate of Appealability be issued by the Court of Appeals and the District Court .

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:
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STATUTES AND RULES

- 1/ Rule 12 (b)(1)
- 2/ 28 CFR 2 .102-105
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- 4/ code 24-404(a2)(1)
- 5/ code 2.43
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- 7/ 28 USC 2241

OTHER

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☒ is unpublished.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☒ is unpublished.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 _____ 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☐ is unpublished.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 appears at Appendix _____ 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☐ is unpublished.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 January 8 2018.

☒ 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: _____, 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. § 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1/ Due Process under the 5 th Amendment for the issue of a COA .

2/ Double jeopardy as I am being punished again and again for the same crime

STATEMENT OF THE CASE

The victim in this case Mr Fox has exhausted all administrative remedies before every attacking his position in Court in the district of his incarcerations .

1/ On June 8 2016 I proceeded Pro Se and filed a 28 USC2241 alleging due process rights were violated by not being notified of having a early release of parole according to the DC Parole Board Statute for maintaining clear conduct from 1995 to 2000.

2/ I layed out specific facts that I was released one time on Parole in 1995 with the same crime in 1988 case of having one dilaudid pill with co-defendant. There was no minor gang or gun violence and no quantity of drugs .

After serving 7 years in prison I was paroled in 1995 to the DC Board .

I was the victim of double jeopardy and charged and sentenced twice for the same crime against the protection of the amendment barring double jepordy .

I want that overturned now and my freedom returned to me after all these years for the following reasons.

3. Petitioner alleges as supporting that I was released for the second time to parole in 2002, for a violation of criminal law for possession of less than a gram of Cocaine that the police found in a public trash can. It was a misdemeanor. The judge sentenced me to 60 days. For the same 2002 criminal law violation the Parole Commission exceeded the sentence and increased it to 24 months incarceration which greatly exceeded the judges committed sentence full term expiration date from 2006 to 2011 instead they violated my constitutional rights by attaching double jeopardy and the ex post factor refuse to parole me to my expiration date, that would have finished my original 2006 date. I would not have been going through any parole violation.
4. Petitioner alleges as supporting facts that I was released for the third time to parole in 2009, judge no criminal law violation. The United States Parole Commission revoked my parole because they are not bound by the court's decision or the Constitution. They sentenced me to 12 months incarceration and for the second time changed the original judgment commitment from 2006 to 2011 now to 2018 greatly exceeding the sentence after the crime had been committed for violation of the ex post factor. After 2006 the USPC are illegal and therefore out of their jurisdiction to monitor computation sentence by changing the judge's sentence.
5. On August 23, 1988, the Superior Court of the District of Columbia sentenced petitioner to 6 to 18 years no less or no more with a full term expiration date of 2006 in the care of the Attorney General for Possession with Intent to Distribute a Dilaudid pill. The judge sentence monitoring computation data, (hereinafter).
6. On June 15, 1995, the DC Parole Board granted petitioner parole. Petitioner was to remain on parole supervision until the full term expiration date of August 23, 2006 with the general conditions. Exceeding my sentence was not one.
7. The U.S. Parole Commission revoked petitioner's parole on August 6, 2001 to serve 24 months, took 5 years street time for a parole violation, the judge gave me three months instead of paroling me to to the expiration date of 2006. The USPC re-paroled me on July 18, 2002 so I would have a new sentence expiration date of 2011.

8. Upon release petitioner's expiration of the sentencing judge's sentence was recalculated without the sentencing judge's permission or approval to July 22, 2011, Equitable Street Time Credit Act of 2008 (DC Code § 24-406) the petitioner did not receive credit for that period of parole if the crime is punishable by a term of imprisonment of more than one year, I received no relief.

9. Following petitioner's re-parole upon my release in July 2002, on February 27, 2009, the USPC revoked petitioner's parole for the second time for no conviction in 2008 of any criminal law. Judge dismissed the case, parole commission is not bound by the court, or the constitution. They revoked my parole and ordered me to serve 12 months and took 6 years of street time. Without the crime being punishable by a term of imprisonment one year or less and for the second time changed the sentencing Judge's sentence to 2018, greatly exceeding the sentence. Granted parole October 29, 2009 with no relief the lawyer told the parole examiner if they revoke my parole they would be in violation of their on law and she would appeal their decision, the examiner said their decision is not appeal.

10. Petitioner appealed the examiner decision to the Commission National Appeals Board, which affirmed the commissions decision on May 27, 2008

11. On October 29, 2009, petitioner was released on re-parole and was to remain on parole supervision until the newly calculated expiration full term date of January 31, 2018 with no relief.

12. On March 12, 2011, petitioner got charged with possession with intent to distribute cocaine on June 9, 2011 parole commission issued once again a illegal arrest warrant to have me incarceration. A proper cause hearing was with in five days and proper cause was fine for a revocation hearing schedule for 7, 20, 2011. Commission refused to honor 45 days revocation hearing, petitioner file a Habeas Corpus against the commission for delay of time. Judge grant my motion and commission gave me a revocation hearing on June 27, 2012 and grant me immediately release, after I have served 13 months for false allegation the commission reinstated my supervision, on July 16, 2012. The same in the 2008 case, illegal arrest.

13. On March 8, 2013 petitioner was arrested and charged with possession with intent to distribute 43.3 grams of crack cocaine, possession of drugs paraphernalia and possession of four (4) round 357 ammunition. On May 10, 2013 a parole warrant was executed and petitioner was taken into custody. Officer Leboo affidavit in support of a search warrant for the entire premises know as 535 mellon street southeast, apartment #5 Washington D.C. where petitioner resides. Officer Leboo had no knowledge who resides at 535 mellon street southeast, apartment #5, affiant conducted an investigation obtained a record check from law enforcement database Columbo and Justis revealed that a James Fox resides at the above address . Officer Leboo during the course of the week of March 26, 2013 has met with a confidential police informant herein referred to as a (C.I). The (C.I) reported having personal knowledge that a black male individual that resides at 535 mellon street, southeast apartment #5 Washington, D.C is in possession of a large quantity of white rock like substance and observed numerous small ziplocs bags each containing a white rock substance. Therefore, the information that the (C.I) has provided a search warrant was issue for the entire premises know as 535 mellon street S.E #5 Washington DC, nothing illegal was seized from the entire premises of apartment #5. 35 to 40 feet outside of the scope of the search warrant a unreasonable search was conducted and 43.3 grams of crack cocaine, four (4) 357 ammunition, digital scale and a medicine pill bottle in the name of James Fox containing loose white rock like substance (5 grams) of crack cocaine. The police came in apartment #5 and lock me up and charged me with possession with the intent to distribute cocaine, possession of four (4) ammunition, and drug paraphernalia. I was found guilty by the jury and on 2-14-2014 sentenced to 25 months and 30 days consecutive, the commission on the 1988 case gave me 60 months incarceration more time than the crime is self and run it consecutive no relief. A parole warrant was executed on May 10, 2013 and petitioner was taken into custody, the lawyer advise me to waive my revocation hearing that I would get relief if I get found guilty in my case that the statue require the commission to run the judge sentence concurrent. I did not receive that relief for the delay of revocation hearing from May 10,13 2013 to April 16, 2014 beyond 45 days for a revocation hearing.

Argument

Plaintiff's second amended complaint should be grant because 1) the Court has the subject-matter jurisdiction to consider the claim, as plaintiff has exhausted administrative remedies as required by 28 C.F.R. & 2.102-105. Fed. R. Civ. P. 12 (b)(1) and 2). As I had already stated in my habeas corpus filed June 8, 2016, the commission failed to properly notify me from 2009 to 2014 for an early termination hearing for their finding for further supervision. 2.43 Early Termination (a)(1),2,b. See exhibits 8.

Exhaust Administrative Remedies

A motion to dismiss pursuant to Rule 12 (b)(1) challenges subject-matter jurisdiction. Subject-matter jurisdiction was not forfeited or waived. I had established subject-matter jurisdiction. The court has jurisdiction to review or consider claims that the commission has failed to follow pertinent constitution, statutory, and regulatory provisions.

Jurisdiction under DC Code for a parole.

This Court does have subject-matter jurisdiction to review the merits of petitioner's claims, because they were made with exhausting administrative remedies. The parole commission's regulations provide detailed procedures for the early termination hearing of a DC. Code sentenced parolee's parole 28 C.F.R. & 2.102-105. After completion of those procedures, including the decision of the parole commission regarding whether or not to grant the parole, the parolee may appeal the decision to the parole commission's National Appeals Board pursuant to 28 C.R.F. & 2.105 (g) in accordance with 28. C.F.R. 2.26. Such an appeal constitutes exhaustion of the parole commission's administrative remedies. Because petitioner did exhaust his administrative remedies in appealing the decision of the parole commission's for not property notify me within 1 to 4 years for a early termination hearing accordance with 2.43, (a)(1),2,b petitioner's has availed himself

14. On September 22, 2016 petitioner submitted an administrative commission decision for the revocation hearing. Petitioner claimed reconsideration early termination hearing in 1995 to 2000 and 2002 to 2004 code & 24-404 (a-2)(1) was effect May 20, 2009. After May 20, 2009 petitioner claimed that I was entitled to an early termination hearing in 2010 before the sentence expired. 2.43 early termination (a) (1). 2.43 early termination (2), after serves one year. 2.43 (b), after served two years in 2011. 2.43 early termination hearing after May 20, 2009 petitioner claim I has a right for a early termination hearing from 1 to 3 years for the finding for further continue supervision. since the statute went into effect I been eligible for an early termination hearing 1 year up to 5 years before I got convicted on 2-14-2014. The Appeals Board would have found merit to my claims from 2009 to 2014 with no criminal law violation. the commission revoked my parole for new criminal law violation in June 2014 with a new criminal law violation that is still in appeal court, unlikely that the commission would have terminated my supervision, with no conviction from 1 to 4 years early termination hearing 2.43 (b),(a) there is no likelihood that I would have violated any criminal laws.

15. On October 24, 2016 I was released on parole after being incarcerated 41 months for a parole violation for the case of 1988, 29 years ago to serve 25 months, and 30 days to run consecutive sentence in 2013 case with no relief. The parole date was extended by 45 days based upon I violated the institution rules for possession of tobacco for less than a half gram of tobacco that a cigarette butt that I found on the institution ground and 45 days in confinement with lost of institution privilege.

Lastly I argue my COA should have been issued because the Court used the merit reasoning that this Court prohibited use of in Buck v Davis . Once again a Court that denied my motion is being asked to overturn it self or at least take the chance of being overturned on appeal . This is a great flaw in this system that you should find a solution for . This is a " Interest of Justice " standard you should have dealt with long ago even if you have to take away the power of the District Court to deny a COA .

It is unarguable that a Jurist would not find my case reasonable to proceed with . I know this because 10 out of 10 people here when asked their opinion about this matter say I should be hear. I ask you now to do that .

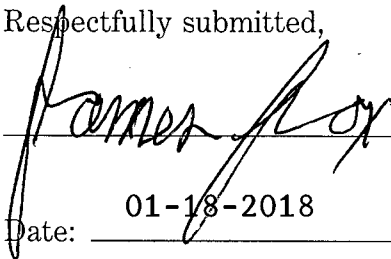
REASONS FOR GRANTING THE PETITION

The Petitioner has shown that a COA should have been issued by the District Court .

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 01-18-2018