No. 4-17-0841

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS	)
Plaintiff-Appellee	) Circuit Court of Jersey County
V.	) Case No. 07-CF-176
CHRISTOPHER L. PARKER	) Circuit Judge:
Defendant-Appellant	) Eric S. Pistorius

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT

Submitted by,

Christopher L. Parker, Pro-Se

1258 Bess Hollow Road

Kampsville, Illinois 62053

618-653-4419

POINTS AND AUTHORITIES

I

Remand is necessary for the trial court to VOID this judgment

II

Applying 730 ILCS 150/3 to me would violate my

14th U.S.C.A. Right to Due Process of law

III

730 ILCS 5/5-8-1(d)(4) creates a punishment that is grossly disproportionate to the severity of the crime in violation of the 8th U.S.C.A. for anyone convicted of one count of criminal sexual assault

IV

730 ILCS 5/5-8-1(d)(MSR) violates the Article II, Section 1 , (Illinois constitution) Separation of Powers Doctrine

V

730 ILCS 5/3-6-3(a)(2),(2.3),(2.4),(2.5) and (2.6) deny anyone they are applied to Equal in violation of the 14th U. S.C.A. as long as anyone sentenced on the same day has their sentence calculated pursuant to 730 ILCS 5/3-6-3(a)(2.1)

VI

730 ILCS 5/5-6-3(a)(4.6) is facially VOID for vagueness in violation of the 14th U.S.C.A.

NATURE OF CASE

This appeal arises from the Circuit Court of Jersey County Illinois denying a successive Post-Conviction petition on Octobert 24, 2017.

ISSUES PRESENTED FOR REVIEW

I

Remand is necessary for the court to VOID this judgment

II

Applying 730 ILCS 150/3 to me would violate my 14th U.S.C.A. Right to Due Process of Law

III

730 ILCS 5/5-8-1(d)(4) creates a punishment that is grossly disproportionate to the seve rity of the crime for anyone convicted of one count of criminal sexual assault

IV

730 ILCS 5/5-8-1(d) violates the Article II, Section 1, (Illinois Constitution) Separation of Powers Doctrine

V

730 ILCS 5/3-6-3(a)(2),(2.3),(2.4),(2.5) and (2.6) deny anyone they are applied to Equal Protection of the law in violation of the 14th U.S.C.A. as long as anyone sentenced on the same day has their sentence calculated pursuant to730 ILCS 5/3-6-3(a)(2.1)

VI

730 ILCS 5/3-6-3(a)(4.6) is facially VOID for vagueness in violation of the 14th U.S.C.A.

JURISDICTION

Defendant-Appellant, Christopher L. Parker, Pro-Se, appeals the denial of a successive Post-Conviction Petition by the Circuit Court of Jersey County Illinois on October 24, 2017. Notice of appeal was timely filed on November 17, 2017. This Court therefore has jurisdiction pursuant to Article VI, Section 6, of the Illinois Constitution and Supreme Court Rule 651(a).

Jurisdiction to hear ISSUES II-VI lies because : Questions regarding the constitutionality of statutes are reviewed de novo (*People v. Klepper 917 NE 2d 381, 386 (2009)*) and the constitutionality of a statute may be raised at anytime. *People v. Jones 744 NE2d 344, 346 (4th Dist. 2001)*

STATEMENT OF FACTS

I was charged with two counts of criminal sexual assault, one count of predatory criminal sexual assault, and one count of criminal sexual abuse, (R.C,2-3)

On January 2, 2008, I entered an "OPEN" plea to the charge of criminal sexual assault because I was admonished that I could possibly receive probation.(R.Vol.IV,3-5)

On January 28, 2008 the Court again admonished me that I could possibly receive probation.(R.Vol.V,3)

On February 4, 2008, Counsel Scott Schultz asked the Court to sentence me to probation and the Court imposed 10 Years with 2 Years of MSR without admonishing me that I could never have received probation by law. (R.Vol.IV,1-13)

On March 24, 2008 this was reduced to 5 Years 3 Months due to the 85% rule.(R.Vol.VII)

On March 31, 2009 I withdrew this plea due to improper admonishment of MSR(R.Vol.VIII,3-7)

On June 24, 2009 I took a negotiated plea for 5 years 3 months with proper admonishment of MSR.(R.Vol.X)

On October 6, 2017 I filed a successive Post-Conviction Petition.(R.C,472-475)

This appeal follows.

AGRUMENTS

I

Remand is necessary for the trial Court to VOID this judgment

Because the judgment of February 4, 2008 was procured by *fraud* it was VOID *ab initio* and this cause should be remanded for the trial Court to VOID this judgment.

On January 2, 2008 I entered an "OPEN" plea to the charge of criminal sexual assault because I was led to believe I could possibly receive probation for this "OPEN" plea.(R.Vol.IV,3)

> "It means four to 15 years in the Illinois Department of Corrections with a mandatory supervised release , like parole of three or two years. You could also receive probation or conditional discharge for up to four years"

On January 28, 2008 the court again admonished me that I could possibly receive probation for up to four years.(R.Vol.V,3)

> "You could also receive probation or conditional discharge for up to four years"

On February 4, 2008 counsel Scott Schultz asked the court to sentence me to probation and the Court sentenced me to 10 Years at 50% with 2 Years of MSR without admonishing me that I could never have received probation pursuant to 730 ILCS 5/5-5-3(c)(2)(H).(R.Vol.VII)

This judgment was procured by *fraud* because:

> "A period of probation, a term of periodic imprisonment or condititional discharge shall not be imposed for the following offenses.[...].(H) criminal sexual assault"

730 ILCS 5/5-5-3(c)(2)(H)

A judgment procured by *fraud* is VOID:

> "Illinois law distinguishes between judgments that are void and those that are merely voidable. A void judgment "that is, one entered by a court which lacks jurisdiction over the parties, the subject matter or lacks inherent power to enter the particular judgment, or an order procured by fraud, can be attacked at anytime, in any court, either directly or collaterally, provided the party is properly before the court."
>
> *Long v. Shorebank Development Corp. 182 F. 3d 548,561(1999)*

It is well known that *People v. Castleberry 43 NE3d 932 (2015)* held that the court need not look to a statute for jurisdiction. That being said, until I was properly admonished of the proper consequences I was facing for my "OPEN" plea of guilty the court lacked subject matter jurisdiction.

More importantly in the case at bar is the fact that I was led to believe that I could possibly receive probation when in fact I never could have.

Every member of that court had been to law school. Everyone of the members of that court had a duty to correct any misconceptions that were being presented.

Not a single person spoke up to say otherwise.

At the time of sentencing on February 4, 2008 I was a 17 Year old kid. The court leading a 17 year old kid to believe he could possibly walk out of a courtroom when the law says otherwise is the Circuit Court of Jersey County running a "kangaroo court".

Because the court lacked subject matter jurisdiction, the judgment of February 4, 2008 was VOID *ab initio.*

Wherefore I pray this Court will remand this cause with instructions to VOID this judgment WITH PREJUDICE.

II

Applying 730 ILCS 150/3 to me would violate my

14th U.S.C.A. Right to Due Process of Law

Because the judgment in this cause must be VOIDED (ISSUE I), I can never have the due process of law of having the hearing conducted pursuant to 104-25(a) of the code of criminal procedure as required by 730 ILCS 150/2(A)(1)(d).

> "As used in this Article, "sex offender" means any person who is"
> *730 ILCS 150/2(A)*

> "charged pursuant to Illinois law, or any substanitally similar federal, Uniform Code of Military Justice, sister state, or foreign country law, with a sex offense set forth in subsection (B) of this Section or the attempt to commit an included sex offense,and:"
> *730 ILCS 150/2(A)(1)*

> "is the subject of a finding not resulting in an aquittal at a hearing conducted pursuant to Section 104-25(a) of the code of criminal procedure of 1963 for the alleged commission or attempted commission of such offense:"
> *730 ILCS 150/2(A)(1)(d)*

Because I can never have this required hearing due to this judgment being VOIDED I ask

this Court to order that to require me to register would violate my 14th U.S.C.A. Right to due process of law.

Wherefore I pray this Court will order that I also do not have to register as a "sex offender" pursuant to 730 ILCS 150/3.

III

730 ILCS 5/5-8-1(d)(4) creates a punishment that is grossly disproportionate to the severity of the crime in violation of the 8th U.S.C.A. for anyone convicted of only one count of criminal sexual assault

730 ILCS 5/5-8-1(d)(4) ceates a possible natural life "custody" period for anyone convicted of certain crimes including criminal sexual assault.

> "Except where a term of natural life is imposed, every sentence shall include as though written therein a term in addition to the term of imprisionment. For those sentenced under the law in effect prior to February 1,1978,such term shall be identified as a parole term. For those sentenced on or after February 1,1978 such term shall be identified as a mandatory supervised release term."*730 ILCS 5/5-8-1(d)(West 2006)*

> " for defendants who commit the offense of [...], or criminal sexual assault, on or after the effective date of this amendatory Act of the 94th General Assembly, the term of mandatory supervised release shall range from a minimum of 3 years to the natural life of the defendant."
> *730 ILCS 5/5-8-1(d)(4)(West 2006)*

Pursuant to 730 ILCS 5/3-14-2(a), a prisoner remains in IDOC "custody" until they are discharged from MSR.

This statute allowing a defendant to remain in IDOC "custody" for the rest of their natural life, creates a punishment that is grossly disproportionate to the severity of the crime in violation of the 8th U.S.C.A. for anyone convicted of one count of criminal sexual assault.

The sentencing court can only impose a maximum of 17 years in "custody" for any other class one felony.

Criminal sexual assault is a class 1 felony purauant to 720 ILCS 5/12-13(b)(1).

All other class felonies only carry a maximum 15 years in prison and 2 years of MSR pursuant to 730 ILCS 5/5-8-1(a)(4) and 730 ILCS 5/5-8-1(d)(2).

> "for a class 1 felony other than secomd degree murder, the sentence shall not be less than 4 years and not more than 15 years"
> *730 ILCS 5/5-8-1(a)(4)(West 2006)*

All other class one felonies carry 2 years of MSR

Therefore this statute creating a possible natural life term of "custody" creates a punishment that is grossly disproportionate to the severity of the crime.

The 8th U.S.C.A. proscribes punishment that is grossly disproportionate to the severity of the crime. *Ingraham v. Wright 430 U.S. 651,667(1977)*

Wherefore I pray this Court will strike the application of this statute.

IV

730 ILCS 5/5-8-1(d)(MSR) violates the Article II, Section 1, (Illinois Constitution) Separation of powers doctrine

Under the law in effect since February 1,1978, the sentencing court imposes a DETERMINATE sentence of imprisonment:

> "Except as otherwise provided in the statute defining offense, a sentence of imprisonment for a felony shall be a determinate sentence set by the court[...]"
> *730 ILCS 5/5-8-1(a)(West 2006)*

The IDOC then calculates this pursuant to 730 ILCS 5/3-6-3.

After serving the lawful portion of this sentence we must then serve a term of MSR that neither the state nor Court had an option of withholding pursuant to 730 ILCS 5/5-8-1(d).

> "Except where a term of natural life is imposed, every sentence shall include as though written therein a term in addition to the term of imprisionment. For those sentenced under the law in effect prior to February 1,1978,such term shall be identified as a parole term. For those sentenced on or after February 1,1978 such term shall be identified as a mandatory supervised release term."*730 ILCS 5/5-8-1(d)(West 2006)*

The Illinois Supreme Court has held:

> "We recognize that MSR terms are statutorily required and that the state has no right to offer the withholding of such period as part of plea negotiations and *** the court has no power to withhold such period in imposing sentence."
> *People v. Whitfield 840 NE2d 658,672(2005)*

This on its own would warrant striking this statute on a separation of powers doctrine violation because:

> "It is, or course indisputable that the power to impose a sentence is exclusively a function of the judiciary."
> *People v. Davis 442 NE2d 855,857(1982)*

The trouble is that this gets worse when the Illinois Legislature delegates the power to impose a new sentence of imprisonment to the executive branch of government pursuant to:

> "If prior to the expiration or termination of the term of mandatory supervised release, a person violates a condition of mandatory supervised release under

section 3-3-7 of the code to govern that term the board may:"

730 ILCS 5/3-3-9(a)

"revoke the parole or mandatory supervised release and reconfine the person for a term computed in the following manner:"

730 ILCS 5/3-3-9(a)(3)

As previously explained, the power to impose a sentence is exclusively a function of the judiciary and "the Board" is the executive branch.

I argue that these statutes must be considered together under the *in pari materia* doctrine.

Wherefore I pray this court will declare that this statutory scheme violates the separation of powers doctrine of Article II, Section 1, of the Illinois Constitution.

V

730 ILCS 5/3-6-3(a)(2),(2.3),(2.4),(2.5) and (2.6) deny anyone they are applied to Equal Protection of the law in violation of the 14th U.S.C.A. as long as anyone sentenced on the same day has their sentence calculated pursuant to730 ILCS 5/3-6-3(a)(2.1)

The current sentence calculation scheme in place in Illinois denies many Equal Protection of the law in violation of the 14th U.S.C.A. because two offenders sentenced on the same day to the same sentence by the court can immediately be given different outdates, without the due process protections of *Wolff v. McDonnell 418 U.S. 539(1974).*

If a judge today sentences two offenders to the same sentence in the IDOC and either of them does even a single day more than the next without these due process protections then one has been denied equal protection of the law in violation of the 14th U.S.C.A..

I was denied equal protection of the law because I was only awarded 4.5 days sentence credit per month of my court imposed sentence pursuant to 730 ILCS 5/3-6-3(a)(2)(ii) while the next man sentenced on the same day received day for day sentence credit pursuant to 730 ILCS 5/3-6-3(a)(2.1).

> "that a prisoner serving a sentence for [...],criminal sexual assault, or [...], shall receieve no more than 4.5 days sentence credit per month or his or her sentence of imprisonment"
> *730 ILCS 5/3-6-3(a)(2)(ii) (West 2018)*

Anyone not listed within the challenged statutes receives day for day sentence credit pursuant to 730 ILCS 5/3-6-3(a)(2.1).

I argue that if one offender sentenced to a class X felony receives day for day than all should.

The way it is today, some class 1 felonies (Attemped murder)(730 ILCS 5/3-6-3(a)(2)(i)) serve 100% of their time while some class X felonies only serve 50% of their time.

Child pornagraphy (720 ILCS 5/11.20.1) can be a class X felony served at 50% (my friend Kaillif Ammen Y-18686, is serving 10 years on this but only must do 5 years pursuant to 730 ILCS 5/3-6-3(a)(2.1)).

This is not right and needs to be changed.

If the Illinois legislature wants certain crimes punished by harsher terms of imprisonment then they need to change the classification of these offenses so that the court must impose harsher terms of imprisonment.

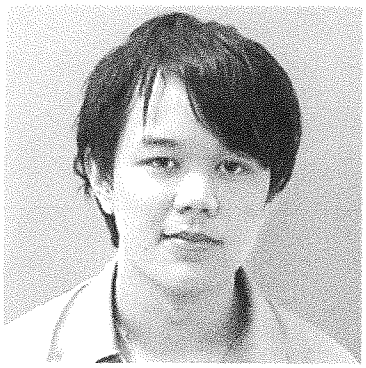
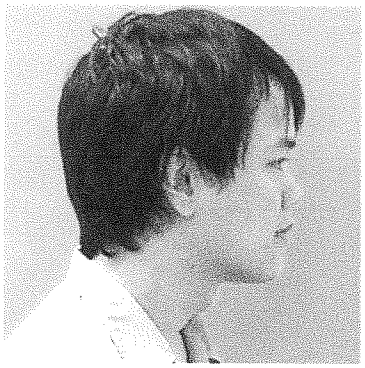
Giving anyone more time in prison by a different calculation scheme when the court imposed the same sentence violates the 14th U.S.C.A. .

Wherefore I pray this court will declare that these statutes deny anyone they are applied to equal protection of the law in violation of the 14th U.S.C.A. as long as an offender sentenced on the same day receives day for day sentence credit pursuant to 730 ILCS

5/3-6-3(a)(2,1) when both were convicted of the same class felony.

ILLINOIS DEPARTMENT OF CORRECTIONS
INTERNET INMATE STATUS

AS OF: Tuesday, May 14, 2019

Y18686 - AMMEN, KAILLIF

Parent Institution: PINCKNEYVILLE CORRECTIONAL CENTER
Offender Status: IN CUSTODY
Location: PINCKNEYVILLE

Sex Offender Registry Required

PHYSICAL PROFILE

Date of Birth: 04/24/1995
Weight: 140 lbs.
Hair: Black
Sex: Male
Height: 5 ft. 08 in.
Race: Asian
Eyes: Brown

MARKS, SCARS, & TATTOOS

NONE RECORDED

ADMISSION / RELEASE / DISCHARGE INFO

Admission Date: 12/30/2016
Projected Parole Date: 01/03/2020
Last Paroled Date:
Projected Discharge Date: 01/04/2023

SENTENCING INFORMATION

MITTIMUS:	15CR0806001
CLASS:	X
COUNT:	1
OFFENSE:	CHILD PORN/REPRODUCE/MOV DPTN
CUSTODY DATE:	01/04/2015
SENTENCE:	10 Years 0 Months 0 Days
COUNTY:	COOK
SENTENCE DISCHARGED?:	NO

VI

730 ILCS 5/3-6-3(a)(4.6) is facially VOID for vagueness in violation of the 14th U.S.C.A.

This statute prohibits "sex offenders" from earning sentence credit for classes or programming they take while in prison unless they "successfully complete" sex offender treatment or have the Director's sole approval.

> "The rules and regulations on sentence credit shall also provide that a prisoner who has been convicted of a sex offense as defined in section 2 of the Sex Offender Registration Act shall receive no sentence credit unless he or she has successfully completed or is participating in sex offender treatment as defined by the Sex Offender Management Board. However, prisoners who are waiting to receive treatment, but are unable to do so due solely to a lack of resources on the part of the Department, may at the Director's sole discretion, be awarded sentence credit at a rate as the Director shall determine."
> *730 ILCS 5/3-6-3(a)(4.6)(West 2018)*

This staute is facially VOID for vagueness in violation of the 14th U.S.C.A. becaue it encourages arbitrary and discriminatory enforcement.

1) "Successful completion" of sex offender treatment is solely up to the counselors decretion, and

2) We are not given fair warning of the reasons that the director may deny us sentence

credit.

Wherfore I pray that this court will declare this statute VOID for vagueness in violation of the 14th U.S.C.A. and order it struck from application.

CONCLUSION

Wherefore I pray this Court will remand this cause back to the Circuit Court of Jeresy County with instructions for them to hold a hearing pursuant to 735 ILCS 5/2-1401(f) to VOID this judgment WITH PREJUDICE and strike the statutes challenged herein for the reasons given.

Respectfully submitted,

Christopher L. Parker, Pro-Se

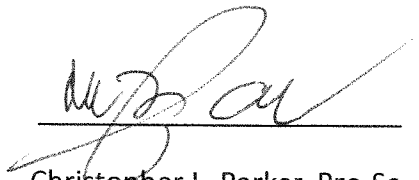
1258 Bess Hollow Rd.

Kampsville, IL 62053

618-653-4419

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rule 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule(h)(1) statement of points and authorities, the Rule 341(c) certificate of complianace, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 20 pages.



Christopher L. Parker, Pro-Se

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No. 4-17-0841

IN THE

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FOURTH JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS	)
Plaintiff-Appellee	) Circuit Court of Jersey County
V.	) Case No. 07-CF-176
CHRISTOPHER L. PARKER	) Circuit Judge:
Defendant-Appellant	) Eric S. Pistorius

PROOF OF SERVICE

TO: David J. Robinson, Deputy Director, States Attorney Appellate Prosecutor, 725 S. 2nd St. Springfield, IL 62705

TO: Benjamin L. Goetten, 201 W. Pearl St. , Jerseyville, IL 62052

PLEASE TAKE NOTICE that on the date below indicated I have mailed a copy of the enclosed MOTION FOR EXEMPTION FROM E-FILING & BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT to the clerk of the 4th District Appellate court for filing in the above captioned cause.

DATED: May 17, 2019

Submitted by,

Christopher L. Parker, Pro-Se

1258 Bess Hollow Road

Kampsville, Illinois 62053