IN THE 24TH JUDICIAL CIRCUIT COURT OF ST. FRANCOIS COUNTY
STATE OF MISSOURI

In re TERRELL ROBINSON,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. __________________
	)	
DAVID VANDERGRIFF, in his Capacity as Warden, Eastern Reception, Diagnostic and Correctional Center,	)	
	)	
Respondent.	)	

SUGGESTIONS IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW Petitioner Terrell Robinson and, pursuant to RSMo. § 532.010, *et seq.*, and Missouri Supreme Court Rule 91, respectfully petitions this court for a writ of *habeas corpus*. In support of this petition, Mr. Robinson states as follows:

* * *

> Revocation of parole may deprive the parolee of only conditional liberty, but it nevertheless "inflicts a 'grievous loss' on the parolee and often on others." Simply put, revocation proceedings determine whether the parolee will be free or in prison, a matter of obvious great moment to him.[1]

* * *

Terrell Robinson has been incarcerated for over 12 years on alleged parole-condition violations, the details of which are still unknown to him. His parole revocation process was opaque and rife with due process violations. At no time during the revocation process was Mr. Robinson ever informed of his rights, including his right to request legal counsel. He was never screened to

[1] *Wolff v. McDonnell*, 418 U.S. 539, 560 (1974) (citation omitted; emphasis added) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)).

determine whether he qualified for state-funded counsel, despite the fact that he would have certainly qualified. He never received written notice of the claimed violations of his parole. The evidence used against him in support of revocation was never disclosed to him. And although he signed forms waiving his right to a preliminary hearing and revocation hearings, those waivers were not knowing, intentional, and voluntary. To this day, Mr. Robinson still does not know why, exactly, the Missouri Parole Board revoked his parole and which alleged parole violations were relied upon by the Board in coming to that determination.

These due process violations undermine the constitutional adequacy of Mr. Robinson's entire revocation process and render his continued incarceration unconstitutional. For these reasons, discussed fully below, Mr. Robinson respectfully petitions this Court for a writ of *habeas corpus* releasing him from prison and restoring his status as a parolee for the remainder of his sentence.

I. JURISDICTIONAL STATEMENT

This Court has jurisdiction over this petition for *habeas corpus* pursuant to Missouri Supreme Court Rule 91.02(a) and Section 532.030, RSMo. This is the proper venue for this matter because Mr. Robinson is currently incarcerated at the Eastern Reception, Diagnostic and Correctional Center located in Bonne Terre, St. Francois County, Missouri. Pursuant to Rule 91.04(a)(4), Mr. Robinson states that he has not previously raised the issues brought herein in any prior *habeas corpus* petition.

II. STATEMENT OF FACTS

Terrell Robinson was incarcerated in the Missouri Department of Corrections (MDOC) for nearly twenty years before he was released on parole supervision in September 2007. Prior to his release in 2007, Mr. Robinson was serving time related to crimes he and two young friends

committed when he was only 17 years old—a juvenile in the eyes of the law and therefore developmentally more prone to take risks, especially when with his peers.

Upon being released on parole, he did his best to acclimate to life back in the community. He consistently attended classes at Vatterott College, worked in a boxing gym as a personal trainer, started a boxing team for neighborhood youth, volunteered with at-risk children at a local church, and attended all his parole appointments. Mr. Robinson also made sure to spend time with his family, including with his mother, who had been diagnosed with cancer.

Mr. Robinson had a few minor stumbles on the always difficult path to reentry. He tested positive for marijuana and alcohol, which led his parole officer to indicate that he had violated parole conditions #6-Drugs and #11-Special conditions.[2] He did occasionally self-medicate with alcohol and marijuana to cope with his anxiety. In a Field Violation Report (FVR), dated July 28, 2009, Mr. Robinson stated "I drank a beer and I take responsibility for that." He also explained that he suffered from anxiety and panic attacks and expressed an understanding that this sort of self-medication was not healthy.

Prior to Mr. Robinson's parole being revoked, he was scheduled to see a psychological doctor about these mental health issues. *See* Robinson Affidavit, Exhibit 1; 7.28.2009 FVR, Exhibit 2, p. 4.[3] He was referred to and attended a substance abuse education program at the Gateway Foundation. He again tested positive for alcohol on October 13, 2009 and was directed to obtain a substance abuse evaluation. In October 2009, his parole officer ordered Mr. Robinson

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[2] The conditions read:
#6 Drugs: I will not have in my possession or use any controlled substance except as prescribed for me by a licensed medical practitioner.
#11 Special Conditions: Not consume intoxicating beverages nor enter any establishment where intoxicating beverages are the major item for sale.

[3] Aside from a notation regarding these appointments, the FVRs do not discuss his challenges with anxiety in any detail, including how they might mitigate the alleged violations or counsel against revocation.

to enter electronic alcohol monitoring by November 15, 2009—a step Mr. Robinson planned to take but could not complete before he was arrested in early November. Nor could he enter the Better Family Life employment program, which he was planning on doing in November 2009.

1. Arrests Leading up to Revocation

On October 9, 2009 Mr. Robinson was arrested by Dellwood police in connection to a robbery. Mr. Robinson's Parole Officer, James Fannon, spoke with the arresting officer who relayed that he didn't think Robinson "had anything to do with the offense." *See* 10.19.2009 FVR, attached hereto as Exhibit 3. On or about November 9, 2009, Mr. Robinson was again arrested by St. Louis City police for an alleged connection to a separate robbery and assault. He was never charged or convicted of any of those crimes.

A parole violation warrant was issued on November 10, 2009 and on or about November 13, 2009, Mr. Robinson was arrested by Jennings police while visiting his Parole Officer. *See* 11.10.2009 FVR p. 8, attached hereto as Exhibit 4; Robinson Affidavit, Exhibit 1.

2. Interviews and Shifting Allegations

Parole Officer Fannon submitted a series of Field Violation Reports leading up to Mr. Robinsons' parole revocation, copies of which Mr. Robinson never received. Nor did he receive any other documents setting forth the factual or evidentiary basis of his alleged parole condition violations. The parole conditions he was accused of violating changed with subsequent FVRs—reports he was never able to review:

A. <u>November 10, 2009 Field Violation Report</u>

On November 10, 2009, parole officer James Fannon prepared an initial FVR accusing Mr. Robinson of violating two conditions of his parole supervision:

- #1-Laws for his connection to the November 9 arrest;

- #5-Association[4] in connection with his October arrest for associating with Michael Jones, Darrick Robinson, and Maxwell Morris. [5]

Fannon asserted these parole violation allegations against Mr. Robinson even though he was never charged with any crimes related to the October and November arrests. Nevertheless, Fannon recommended parole revocation because Mr. Robinson was allegedly a "danger to the community" and a parole warrant was issued. 11.10.2009 FVR, Exhibit 4, p. 6.

B. November 18, 2009 Interview and Waiver of Preliminary Hearing

On or about November 18, 2009, Mr. Robinson was interviewed about the alleged violations #1-Laws and #5-Association while in custody at the St. Louis County Justice Center and without access to counsel.[6] At this November interview Mr. Robinson signed a form waiving his right to a preliminary hearing. Prior to signing the waiver form, he was not made aware of his right to counsel nor was he given a Red Book which, at the time, was MDOC's resource explaining an alleged parole violator's rights during revocation.[7] *See* Robinson Affidavit, Exhibit 1; 11.20.2009 FVR, Exhibit 5.

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[4] Violations of any conditions of parole supervision other than a #1 laws violation are considered "technical" violations.

[5] The conditions read:
#1 Laws: I will obey all federal and state laws, municipal and county ordinances. I will report all arrests to my Probation and Parole Officer within 48 hours.
#5 Association: I will obtain advance permission from my Probation and Parole officer before I associate with any person convicted of a felony or misdemeanor, or with anyone currently under the supervision of the Board of Probation and Parole.

[6] According to the November 20, 2009 FVR, Officer Fannon only discussed the #1 and #5 violations with him at this November 18 interview.

[7] If a parolee was not provided with the Red Book at the time of the interview, parole staff were required to offer it at the same time a preliminary hearing was offered. Even if it was offered, however, the Red Book does not advise parolees of their right to appeal revocation decisions, does not advise parolees of their right to counsel under *Gagnon*, and was not written in plain language or in a manner accessible to the expected reading comprehension level of the average alleged parole violator. And the Red Book was, overall, contradictory and confusing. In response to a federal lawsuit against MDOC and its parole board, *Gasca v. Precythe, et al.*, Case No. 17-cv-04149 (W.D. Mo.), they stopped using the Red Book entirely.

C. November 20, 2009 Field Violation Report

In the November 20, 2009 FVR, Officer Fannon again repeated that Mr. Robinson faced parole revocation based on violations to #1-Laws and #5-Association. Fannon reported that Mr. Robinson denied the allegations related to the November 9 arrest which formed the basis of the #1-Laws violation. With respect to the #5-Association violation, Mr. Robinson stated that "I don't even know Maxwell Morris. Darrick is my brother, and Michael Jones told me he was not on papers or nothing." 11.20.2009 FVR p. 4, attached as Exhibit 5.

After some discussion and the recommendation for Revocation, Officer Fannon reported that Mr. Robinson requested that a previous statement from a Dellwood police officer be included in the FVR. In that statement, the Dellwood police officer said that he didn't think Mr. Robinson had anything to do with the Dellwood robbery, forming the basis of his October arrest, and that Mr. Robinson was very cooperative. Mr. Robinson also requested that his positive reporting habits and enrollment in school be taken into consideration.

D. December 7, 2009 Field Violation Report

In the December 7 FVR, Officer Fannon changed the violations supporting Mr. Robinson's parole revocation from #1-Laws and #5-Association to #6-Drugs and #7-Weapons.[8] He stated that both new violations were connected to Mr. Robinson's November 9, 2009 arrest—an arrest for an alleged crime that Mr. Robinson was never charged with. According to Fannon, the police reports from the November 9 arrest indicated that Mr. Robinson stated he robbed the victim of 21 pounds of marijuana. Fannon also noted that warrants for Mr. Robinson's arrest were ultimately refused.

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[8] The conditions read:
#6 Drugs: See Footnote 2 *supra*.
#7 Weapons: I will not own, possess, purchase, receive, sell or transport any firearms, ammunition or explosive device, or any dangerous weapon if I am on probation or parole for a felony charge or a misdemeanor involving firearms or explosive, or if it is in violation of federal, state, or municipal laws or ordinances.

Mr. Robinson never saw those police reports and subsequently denied making those statements. Officer Fannon again repeated that Mr. Robinson presented a "danger to the community" based on the alleged crime leading to the November 9 arrest, even though Mr. Robinson was not facing charges related to the robbery and denied any involvement in the crime. 12.07.2009 FVR attached as Exhibit 6.

E. <u>December 10, 2009 Interview</u>

On December 10, Mr. Robinson was again interviewed without access to counsel. He denied the allegations made against him related to the #6-Drugs and #7-Weapons conditions violations, which were supposedly connected to his November 9 arrest. Again, he was not made aware of his right to counsel.

F. <u>December 11, 2009 Field Violation Report</u>

In the next FVR he drafted, Parole Officer Fannon repeated that the violations supporting Mr. Robinson's parole revocation were #6-Drugs and #7-Weapons. He stated that Mr. Robinson was interviewed on December 10, 2009, where he maintained his innocence. With respect to the #6-Drugs violation, Mr. Robinson said "I never did report anything like that to them." And with respect to #7 Weapons, he said "I did not say that stuff." 12.11.2009 FVR p. 4, attached as Exhibit 7.

G. <u>December 22, 2009 Field Violation Report</u>

In his December 22, 2009 FVR, the last FVR before Mr. Robinson's parole was revoked, Officer Fannon did not specify which violations exactly supported parole revocation, he just referred to the December 11, 2009 FVR. He did confirm that there were no pending criminal charges against Mr. Robinson—all of which formed the basis for the #1-Laws, #5-Association, #6-Drugs and #7-Weapons violations. Yet the recommendation for parole revocation remained without any explanation.

With no charges pending against him, Mr. Robinson has been left to guess what parole conditions he was ultimately found to have violated. With his #1-Laws, #5-Association, #6-Drugs and #7-Weapons violations being completely unsupported and contested as discussed above, it would appear that his pre-arrest purported parole violations of #6-Drugs and #11-Special Conditions remained the only possible parole condition violation allegations left against him.

Throughout this whole revocation process, Mr. Robinson was never informed of his rights, including his right to request legal counsel. Parole staff never screened Mr. Robinson to determine if he qualified for state-funded counsel, despite the fact that he insisted he was innocent of the alleged violations he was interviewed about. He was never given a copy of the Red Book, which was a procedural requirement at the time Mr. Robinson was going through the revocation process. 12.22.2009 FVR, attached as Exhibit 8.

3. Parole Revocation

The Parole Board revoked Mr. Robinson's parole on or about February 8, 2010. Mr. Robinson's parole was revoked without a hearing and without explanation. He never received an explanation of the evidence the Parole Board relied upon in finding that he had violated one or more parole conditions. Indeed, he never even learned which conditions he was found to have violated. He did not receive an order of revocation[9]. Mr. Robinson only received a barebones, boilerplate notice:

[9] The Missouri Board of Probation and Parole has indicated to Petitioners' counsel that any order of revocation has been destroyed, so Petition cannot attach the order as required by Rule 91.04(b).

AKU032A-OVN Missouri Department of Corrections Page - 1
Time - 17:20:17 BOARD OF PROBATION AND PAROLE Date - 2/08/10

DOC ID: 162841 Cycle: 19871217
DOC Name: ROBINSON, TERRELL

Name TERRELL ROBINSON Number 162841
Institution/Housing Unit ERDCC/009
Minimum Mandatory Release Date N/A

RELATING TO PAROLE/CONDITIONAL RELEASE VIOLATION

Following your violation hearing on ____________ or your waiver of violation hearing, signed by you on 01/13/10 :

X 1. You have been revoked. Your copy of the order of Revocation is attached.

___ 2. Because you were returned with a concurrent or consecutive sentence, you are not eligible for further parole consideration.

___ 3. Your New Maximum Release Date will be .

___ 4. You have been scheduled for release from confinement on .

Special Conditions of release are:

X 5. You have been scheduled for a Parole Hearing 07/00/2010.

The reason for the actions taken are:

**THIS DECISION IS SUBJECT TO APPEAL.

This notice, attached in full here as Exhibit 9 does not reference which alleged condition(s) he was found to have violated or any reason justifying his parole revocation. Nor does it describe the evidence relied upon by the Parole Board in reaching this decision.

III. ARGUMENT AND SUGGESTIONS IN SUPPORT

Terrell Robinson is entitled to habeas relief because he was reincarcerated via a parole revocation process that violated his due process rights. That is because the liberty of a parolee is "valuable and its termination inflicts a 'grievous loss' on the parolee and often on others." *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (internal quotation omitted). Longstanding U.S. Supreme Court precedent governs what kind of process is owed to individuals like Mr. Robinson, who face parole revocation and reincarceration. *Morrissey v. Brewer*, 408 U.S. 471 (1972) and *Gagnon v. Scarpelli, 411 U.S.* 778 (1973). That process must at least include:

> (a) written notice of the claimed violations of parole;
>
> (b) disclosure to the parolee of 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 factfinders as to the evidence relied on and reasons for revoking parole.

Morrissey, 408 U.S. at 485-89.

Due process also requires that a parolee like Mr. Robinson be informed of his right to counsel, and, if appropriate, provided with a state-funded attorney. *Gagnon*, 411 U.S. 778 at 790. When Mr. Robinson had his parole revoked in early 2010, he was denied nearly all of the due process rights guaranteed to him by the Fourteenth Amendment to the United States Constitution and Article I, Section 10 of the Missouri Constitution. Indeed, the process he was subjected to was confusing, opaque, and unfair—and he was left to navigate it without the assistance of counsel. Because the process was tainted by a myriad of due process violations, detailed below, his resulting, ongoing incarceration is unconstitutional.

1. Due Process Violation #1: Mr. Robinson did not receive written notice of the claimed violations of parole.

Mr. Robinson did not receive written notice of the alleged violations at any time during the revocation process. He never received the Field Violation Reports or any other documentation detailing the basis for the alleged violations. Yet, the U.S. Supreme Court set forth that the minimal requirements of due process for parole revocation proceedings includes "written notice of the claimed violations of parole." *Morrissey*, 408 U.S. at 485-89; *see also Abel v. Wyrick,* 574 S.W.2d 411, 417 (Mo. banc 1978). *Morrissey'*s written notice requirement must be provided in advance of any preliminary hearing. *Belk v. Purkett,* 15 F.3d 803, 806 (8th

Cir. 1994) ("With only a few moments notice of the alleged violations, the other rights set forth by the Supreme Court for the preliminary hearing may be of little benefit."). The Missouri Court of Appeals, Western District explained the import of this notice in *State ex rel. Beaird v. Del Muro*:

> The purpose of requiring notice is not only to provide the probationer adequate time to prepare a defense on the issue of whether probation violations were committed, but also on the issue of whether probation should be revoked because of the violations or "whether some other less drastic alternative should be invoked...**Without notice, both of the nature of the charges and of the evidence to be presented against him, [probationer] could not effectively prepare an explanation of the reasons for his actions and of any extenuating circumstances**."[10]

98 S.W.3d 902, 907 (Mo. App. W.D. 2003) (quoting *Abel v. Wyrick*, 574 S.W.3d at 417) (emphasis added).

In Mr. Robinson's case, written notice was critical not only to providing Mr. Robinson time to prepare an adequate defense to the accusations he was facing, but also, depending on the alleged violation, time to effectively identify and explain mitigating factors that would have supported less drastic alternatives to incarceration. *Abel v. Wyrick*, 574 S.W.2d at 417 (explaining the importance of notice in preparing a defense to revocation).

Indeed, today, even after reviewing relevant documents Mr. Robinson never saw at the time of his revocation, it is still not clear on what basis Mr. Robinson's parole was revoked. If revocation was based on his October and November arrests, Mr. Robinson would have needed notice to prepare a defense to the allegations he vehemently denied. This could have included reviewing the police reports, bringing in witnesses who could testify as to his whereabouts, and marshalling any other evidence needed to rebut the criminal accusation being brought against him

[10] Due Process is applicable to probation revocation proceedings just as in parole revocation proceedings, which includes satisfying certain minimum requirements pursuant to *Gagnon* and *Morrissey*. *Moore v. Stamps*, 507 S.W.2d 939, 947 (Mo. App. 1974).

in front of the Parole Board instead of in a criminal court. Without notice about which issue his parole would be revoked on, Mr. Robinson had no opportunity to bring in witnesses or evidence which would speak to his innocence.

If revocation was based on his pre-arrest alleged violations for #6-Drugs and #11-Special Conditions, notice would have given him time to bring in witnesses who could testify as to the circumstances of his alcohol use, community support, his commitment to attending treatment programs, and his efforts at rehabilitation. He could have also explained factors mitigating his consumption of alcohol. "Fair treatment in parole revocations will enhance the chance of rehabilitation by avoiding reactions to arbitrariness." *Morrissey*, 408 U.S. at 481-84.

This lack of notice was just the first of many due process violations he experienced. *See Morrissey*, 408 U.S. at 485-89; *Belk*, 15 F.3d at 806 (noting that *Morrissey* would be violated if petitioner did not receive violation reports in advance of his preliminary hearing).

2. **Due Process Violation #2: Mr. Robinson was not provided a fair opportunity to be heard because his hearing waivers were secured without informing him of his rights in the process.**

Due Process requires that a parolee like Mr. Robinson receive "an opportunity to be heard and to show, if he can, that he did not violate the conditions, or, if he did, that circumstances in mitigation suggest that the violation does not warrant revocation." *Morrissey*, 408 U.S. at 488. This constitutional right to be heard is denied when parole staff secure a hearing waiver without adequately informing a parolee of their rights. It is critical to fundamental fairness and due process that parolees be adequately informed of their rights during the revocation process. *See Morrissey*, 408 U.S. at 481 ("due process is flexible and calls for such procedural protections as the particular situation demands"), 484 (discussing society's interest in treating parolee with basic fairness); *Schroeder v. City of New York*, 371 U.S. 208, 212 (1962) ("the requirement that parties be notified of proceedings affecting their legally protected interests is obviously a vital corolary [*sic*] to one

of the most fundamental requisites of due process—the right to be heard"); *United States v. Taylor*, 747 F.3d 516, 519 (8th Cir. 2014) (waivers must be knowingly and voluntarily made); *Shafer v. Bowersox*, 329 F.3d 637, 650 (8th Cir. 2003) (quoting *Edwards v. Arizona*, 451 U.S. 477, 482 (1981)) (same).

On November 18, 2009 Mr. Robinson supposedly waived his right to a preliminary hearing, but he was not given the Red Book which, while legally insufficient, was then MDOC's only resource explaining an alleged parole violator's rights during revocation. And he was not verbally informed of his rights during the revocation process. Any waivers of a preliminary hearing or revocation hearing must be knowing and voluntary. *United States v. Taylor*, 747 F.3d 516, 519 (8th Cir. 2014) (waivers must be knowingly and voluntarily made); *Shafer v. Bowersox*, 329 F.3d 637, 650 (8th Cir. 2003) (quoting *Edwards v. Arizona*, 451 U.S. 477, 482 (1981)) (same). An inquiry into whether a waiver is effective requires an especially probing examination when, as here, constitutional rights are implicated. *Wilkins v. Bowersox*, 145 F.3d 1006, 1012 (8th Cir. 1998); *United States v. Jones*, 770 F.3d 710, 712 (8th Cir. 2014); *Brookhart v. Janis*, 384 U.S. 1, 4 (1966) ("[F]or a waiver to be effective it must be clearly established that there was 'an intentional relinquishment or abandonment of a known right or privilege.'") (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)). The Eighth Circuit has specifically held that "the mental health of [an individual] is . . . a relevant consideration in assessing whether a waiver of counsel was knowing, intelligent, and voluntary." *Wilkins*, 145 F.3d at 1012 (internal citation omitted).

Mr. Robinson was not informed of his rights during the revocation process at the time of his arrest. Mr. Robinson was not informed of his rights during the revocation process when he was offered a preliminary hearing. Mr. Robinson was not informed of his rights during the revocation process when he was interviewed—twice—about his alleged violations. In fact, Parole Officer

Fannon advised Mr. Robinson that waiving the hearing would be to his benefit. And throughout this time, Mr. Robinson was grappling with documented mental health issues, including anxiety. Thus, although Mr. Robinson signed forms waiving his preliminary hearing and revocation hearing, those waivers were not knowing and intentional. Mr. Robinson was therefore denied a fair opportunity to be heard, in contravention of *Morrissey*. *See Gasca v. Precythe*, 500 F.Supp.3d 830, 851 (W.D. Mo. Nov. 12, 2020) ("A waiver that is the result of inaccurate or incomplete information or that is coerced or encouraged is unknowing and involuntary, and denying parolees the hearings to which they are constitutionally entitled under Morrissey is a violation of due process.") (appeal pending).[11]

3. Due Process Violation #3: The Parole Board did not provide Mr. Robinson with the specific reason for parole revocation nor did it provide him with the evidence it relied on in deciding to revoke his parole

Due process also required that the Parole Board (1) give Mr. Robinson adequate notice of the decision to revoke his parole and (2) disclose the evidence that was being used against him. *Belk*, 15 F.3d at 814. The Court in *Belk* stated:

> While the sentencing authority is not required to elaborate upon the reasons for a course not taken, it must specifically state the reason for its decision and the evidence relied upon to provide an adequate basis for review to determine if the decision rests on permissible grounds supported by the evidence. The broad statement that petitioner violated the condition that he "not break any laws" is not sufficient.

Id. (citing *Black v. Romano,* 471 U.S. 606 (1985)).

[11] The federal court in *Gasca* also found that parole staff have a practice of pressuring parolees to waive preliminary hearings and revocation hearings, sometimes based on false and misleading information. The court also noted that, "[t]he issue is exacerbated by evidence that some parolees waive their right to hearings before receiving their violation reports and without an adequate explanation of their rights in the process. Pressuring parolees to waive their hearings strips parolees of their right to challenge allegations that they contend are untrue or for which mitigating circumstances may render revocation unwarranted." 500 F.Supp.3d at 851.

The Missouri Parole Board failed to make such a specific finding and also failed to "specifically state the evidence relied upon to provide an adequate basis for review to determine if the decision rests on permissible grounds supported by the evidence." *Id.* Mr. Robinson did not have the opportunity to review any evidence. He did not receive the Field Violation Reports regarding his alleged violations. Even if he was given the opportunity to review the Field Violation Reports, his constitutional rights would still have been violated because simply producing a synopsis or a violation report is insufficient to comply with due process. *Belk*, 15 F.3d at 806, 812. The Eighth Circuit held evidence was not "clearly" disclosed to a petitioner where he "received nothing . . . other than synopsis of . . . evidence prepared by a parole or probation officer," but was "not permitted to examine the written statement of the alleged victim," "did not receive the police reports," and was "not given the results of the fingerprint test on the knife." *Id.* at 812. Here, as in *Belk,* parole staff did not provide Mr. Robinson with any police reports relating to the October and November arrests, even though those reports were relied upon by Officer Fannon and allegedly included statements that Mr. Robinson vehemently denied making. And he was never provided the results of any urinalysis reports related to his alleged use of drugs or alcohol. Instead, the Board simply told him his parole was revoked and the decision was final, with no further information.

Although the one-page decision notice provided to Mr. Robinson referred to an Order of Revocation, he received no such order.[12] He was given no explanation at all as to why his parole was being revoked, not even the kind of synopsis considered insufficient in *Belk*. This is a clear due process violation. *Morrissey*, 408 U.S. at 485-89; *Belk*, 15 F.3d at 806, 812; *see also Gasca v. Precythe,* No. 17-CV-04149-SRB, 2020 WL 6689199 (W.D. Mo. Nov. 12, 2020) *(Morrissey*

[12] Indeed, even if he were given an order of Revocation, such an order does not explain the basis for parole revocation decisions or evidence relied upon in reaching revocation decisions. No such explanation is provided as a matter of practice when revocation hearings are not conducted, as was the case in Mr. Robinson's circumstances.

requires that evidence be disclosed to parolees before the revocation hearing) (appeal pending). Here, as in *Belk*, such failures contributed to a revocation proceeding which "did not approach the most minimal requirements of due process or reliability." *Id.* at 815.

4. Due Process Violation #4: Mr. Robinson was denied his right to counsel when the MDOC failed to inform him of his right to appointed counsel

Finally, Mr. Robinson's incarceration is unconstitutional because his right to counsel was denied in two ways (detailed in this Section 4 and Section 5, *infra*). Following *Morrisey*, the U.S. Supreme Court announced that people accused of violating their conditions of parole are entitled to the assistance of counsel when fundamental fairness so requires. *Gagnon*, 411 U.S. at 790 ("there will remain certain cases in which fundamental fairness—the touchstone of due process—will require that the State provide at its expense counsel for indigent probationers or parolees"). So critical is the right to counsel at revocation hearings, that the Supreme Court in *Gagnon* stated that whenever someone is denied state-funded counsel at a revocation hearing, "the grounds for refusal should be stated succinctly in the record." *Id.* at 791.

Mr. Robinson was never informed of his right to state-funded counsel; he was never even asked if he wanted to be screened for eligibility for counsel. This, in and of itself, is a violation of Mr. Robinson's due process rights. The Missouri Court of Appeal's decision in *State ex rel. Boyle v. Sutherland*, is instructive here. 77 S.W.3d 736, 738 (Mo. App. E.D. 2002). There, the court issued a writ of prohibition because the trial court exceeded its jurisdiction in conducting a probation revocation hearing without informing the probationer of his right to appointed counsel. *Id*. Just as in *Sutherland*, Mr. Robinson was never made aware of his right to state-funded counsel. Because he was unable to assert his right to appointed counsel, the Parole Board could not give consideration as to whether "due process and the peculiarities of [his] case required counsel be

provided." *Id.* at 738. Yet, as discussed below, the circumstances surrounding Mr. Robinson's alleged violations unquestionably warranted the provision of state-funded counsel under *Gagnon*.

5. Due Process Violation #5: Fundamental fairness required that Mr. Robinson be given counsel at his revocation hearing.

Finally, fundamental fairness required that Mr. Robinson be represented by state-funded counsel at his revocation hearing, but he was not. Although a right to counsel does not attach in all parole revocation proceedings, the *Gagnon* Court explained that counsel should presumptively be provided in cases where substantial reasons exist which mitigate against revocation:

> Presumptively, it may be said that counsel should be provided in cases where, after being informed of his right to request counsel, the probationer or parolee makes such a request, based on a timely and colorable claim (i) that he has not committed the alleged violation of the conditions upon which he is at liberty; or (ii) that, even if the violation is a matter of public record or is uncontested, there are substantial reasons which justified or mitigated the violation and make revocation inappropriate, and that the reasons are complex or otherwise difficult to develop or present.

Gagnon, 411 U.S. at 790-791. The Court also directed parole staff to consider whether the alleged parole violator appears to be capable of speaking effectively for themselves when considering a request for appointment of counsel. *Id*. Providing counsel in such circumstances is critical to a fair and reliable revocation process in part because "the effectiveness of the rights guaranteed by *Morrissey* may in some circumstances depend on the use of skills which the probationer or parolee is unlikely to possess." *Gagnon*, 411 U.S. at 786. In Mr. Robinson's case, regardless of which parole conditions he was accused of violating, counsel would have been crucial to both rebutting the factual allegations that were being used to justify revocation and presenting mitigating evidence that would have counseled in support of alternatives to incarceration and against parole revocation.

If revocation was based on Mr. Robinson's November 9 or October 9 arrests, then counsel would have been crucial in defending Mr. Robinson against the parole conditions violations and criminal allegations he vehemently denied. He denied making certain statements to police which were cited to by Parole Officer Fannon in support of his recommendation for revocation. Indeed, Mr. Robinson denied all culpability associated with both arrests. He was never convicted of the crimes he was arrested for on October 9 and November 9 and there were no pending charges at the time his parole was revoked. So, if the Parole Board based their decision to revoke Mr. Robinson's parole on that November arrest, counsel would have been crucial in what would have essentially been the criminal defense of Mr. Robinson. Such a matter is too complex to be handled *pro se* and due process required the support of counsel.

If revocation was based on Mr. Robinson's alleged pre-arrest Drugs and Special Conditions violations, due process would have required that Mr. Robinson be given an opportunity to show "that circumstances in mitigation suggest that the [alleged] violation does not warrant revocation." *Morrissey*, 408 U.S. at 488. Indeed, due process specifically requires that the Parole Board consider "whether some other less drastic alternatives" [other than revocation] should be invoked. *Abel*, 574 S.W. at 417. Mr. Robinson's mental illness and coping mechanisms around the time of the alleged violations, including his multiple attempts to seek treatment, are complex mitigating factors that the Parole Board should have taken into account. Yet without legal representation and as someone who was struggling with anxiety, it would have been impossible for Mr. Robinson to effectively develop or present this mitigating evidence.

If, indeed, Mr. Robinson's parole was revoked based on alleged violation of the pre-arrest "special conditions" and "drugs" parole violations, it would have been a text book example where alternatives to incarceration would have been more appropriate. The Missouri Supreme Court held

that violation of probation conditions does not automatically result in imprisonment without reflection on alternatives. *Abel,* 574 S.W.2d at 48. In *Abel*, the lower court refused to consider evidence offered in mitigation or alternatives to incarceration for a probationer who admitted to violating his parole conditions. *Id.* at 417-418. The Missouri Supreme Court concluded that this was in error:

> [C]ounsel may be necessary in some instances to explain the circumstances of the violations if they are shown to be complex, or to suggest alternative treatments especially where, as here, the violations did not themselves involve the commission of another serious crime.

Id. at 420. The *Abel* court held that in situations not involving another serious crime, alternative treatments should have been considered. *Id.* at 417. The holding applies to parole violations. *See Sincup v. Blackwell*, 608 S.W.2d 389, 392 (Mo. 1980) ("this Court recently held violation of parole or probation conditions does not automatically result in imprisonment without reflection on alternatives.") (citing to *Abel*).

Similarly, Mr. Robinson's case "is not a situation in which the alleged violation was commission of a major crime, or a crime similar to that for which the probationer was originally convicted, but rather is a violation due to a personal problem of alcohol abuse." *Id*. As noted above, Mr. Robinson was never charged with any crimes in connection with his October and November arrests. And he was putting in the necessary work to address his mental health needs. Shortly before his parole was revoked, Mr. Robinson had already begun seeing a psychologist to help with his anxiety issues, was attending a substance abuse program, and had planned to enter electronic alcohol monitoring. Counsel for Mr. Robinson would have helped set forth this critical mitigating evidence and advocated for the appropriateness of incarceration alternatives. Instead of these more appropriate alternatives to incarceration and a chance at rehabilitation, it is likely that Mr. Robinson has served over 12 years on these technical violations.

IV. PRAYER FOR RELIEF

Petitioner Terrell Robinson was reincarcerated through an unconstitutional parole revocation process. His continued incarceration due to this revocation is unlawful and unjust. For all the above reasons, Terrell Robinson respectfully requests that this Honorable Court grant him the following relief:

A. Issue a writ of *habeas corpus* granting Terrell Robinson relief from his unconstitutional incarceration and ordering him released from Respondent's custody, onto parole supervision, following approval of his home plan;
B. Permit Petitioner an opportunity to brief and argue the issues presented in this petition;
C. Afford Petitioner an opportunity to reply to any responsive pleading filed by Respondent; and
D. Grant such further relief as may be just and proper under the circumstances.

Dated: March 29, 2022

Respectfully submitted,

RODERICK AND SOLANGE MACARTHUR JUSTICE CENTER

By: /s/ Shubra Ohri

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IN THE 24TH JUDICIAL CIRCUIT COURT OF ST. FRANCOIS COUNTY
STATE OF MISSOURI

In re TERRELL ROBINSON,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. __________________
	)	
DAVID VANDERGRIFF, in his Capacity as Warden, Eastern Reception, Diagnostic and Correctional Center,	)	
	)	
Respondent.	)	

PETITIONER'S EXHIBIT LIST TO SUGGESTIONS IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

Exhibit 1: Robinson Affidavit

Exhibit 2: 07.28.2009 Field Violation Report

Exhibit 3: 10.19.2009 Field Violation Report

Exhibit 4: 11.10.2009 Field Violation Report

Exhibit 5: 11.20.2009 Field Violation Report

Exhibit 6: 12.07.2009 Field Violation Report

Exhibit 7: 12.11.2009 Field Violation Report

Exhibit 8: 12.22.2009 Field Violation Report

Exhibit 9: MDOC Parole Revocation Notice

CERTIFICATE OF SERVICE

I hereby certify that on the 29th of March, 2022, a true and correct copy of the foregoing petition, suggestions, and attached exhibits were electronically filed using the Court's online case filing system, and that a copy of the petition, suggestions, and exhibits were also sent to the Office of the Missouri Attorney General via email at attorney.general@ago.mo.gov.

/s/ Shubra Ohri
One of Petitioner's Attorneys