

STATE OF MICHIGAN
MICHIGAN COURT OF CLAIMS

JOSEPH MATTHEW MORRISON MDOC No. 735421
and PAUL EDWARD BELLAR MDOC No. 735434

Plaintiffs,

vs.

MICHIGAN DEPARTMENT OF CORRECTIONS
AND HEIDI WASHINGTON, DIRECTOR OF
MICHIGAN DEPARTMENT OF CORRECTIONS,

Defendants.

Court of Claims

Docket No.:

23-000184 -MM

Elizabeth L. Gleicher

Complaint and Motion for Injunctive Relief. Filed via truefiling.com
--

MICHAEL A. FARAONE (P45332)
Attorney for Plaintiff Morrison
3105 S. Martin Luther King Blvd. No. 315
Lansing Michigan 48910
PH: (517) 484-5515

RONALD D. AMBROSE (P45504)
Attorney for Plaintiff Bellar
16818 Farmington Rd
Livonia, MI 48154-2947
PH: (248) 890-1361

**VERIFIED COMPLAINT, WRIT OF MANDAMOUS
AND REQUEST FOR DECLARATORY AND INJUNCTIVE RELIEF**

Other than the direct appeal described in this pleading, there is no other action between these parties arising out of the same transaction or occurrence alleged in this complaint pending in this Court, nor has any such action been previously filed or dismissed or transferred after having been assigned to a judge in any court.

NOW COME Plaintiffs Joseph Matthew Morrison and Paul Edward Bellar, through their respective counsel, Michael A. Faraone and Ronald D. Ambrose, saying:

Introduction

1. Plaintiffs were convicted in a Michigan state trial court and sentenced to the Michigan Department of Corrections. Attorneys Faraone and Ambrose were thereafter appointed to represent Plaintiffs in their respective appeals. Plaintiffs have the constitutional right to effective assistance

of counsel on appeal. The circuit court record is enormous and the Plaintiffs' briefing deadlines are imminent. On the eve of their appeals, the defendants transferred Plaintiffs to facilities operated by the Federal Bureau of Prisons (the "BOP"). No meaningful communication with appellate counsel is being allowed and Plaintiffs' rights, including their Sixth Amendment right to effective assistance, are being violated. Plaintiffs respectfully request injunctive relief which directs the MDOC to return said inmates to Michigan.

The Parties

2. Plaintiff Morrison was convicted in the Jackson County Circuit Court and his judgment of sentence was directed to the MDOC. **Exhibits One.**

3. Plaintiff Bellar was convicted in the Jackson County Circuit Court and his judgment of sentence was directed to the MDOC. **Exhibits Two.**

4. The Michigan Department of Corrections ("MDOC") is a state public body located within Ingham County at the Grandview Plaza Building, 206 E. Michigan Ave., P.O. Box 30003, Lansing, Michigan 48909.

5. Heidi E. Washington was the Director of the MDOC at all times relevant to the claims made in this complaint.

Background Facts

6. Plaintiffs' trial garnered national media attention with the accused portrayed as "right-wing radicals" motivated by then President Donald Trump to kidnap Governor Gretchen Whitmer. The transcripts tell a different story from the national media. For example, the accused attended Black Lives Matter rallies in the summer of 2020 to *protect the protesters* against what they perceived to be potential violence by police.

7. On December 15, 2022, Morrison was sentenced. On January 23, 2023, Morrison filed a claim of appeal. Said appeal is pending before the Court of Appeals under docket number 364651.

8. On December 15, 2022, Bellar was sentenced. On January 10, 2023, Bellar filed a claim of appeal. Said appeal is pending before the Court of Appeals under docket number 364572.

9. Although neither Plaintiff has ever been tried or convicted on any federal charge, the MDOC took the unusual step of transferring both Plaintiffs, Morrison and Bellar, to out-of-state federal BOP facilities.

10. Plaintiff Morrison was transferred to the Pekin Federal Correctional Institute located in Pekin, Illinois. **Exhibit Three.**

11. Plaintiff Bellar was transferred to the Schuylkill Federal Correctional Institute located in Minersville Pennsylvania. **Exhibit Four.**

12. The Plaintiffs' trial lasted over three weeks and, together with pretrial hearings, involves complex factual and legal issues. The court file and transcripts are over 7,500 pages. Discovery has not yet been provided. The Attorney General has described the latter as "two terabytes of data" including 150-hours of recorded conversations.

13. Appellate counsel cannot effectively communicate with Plaintiffs, Morrison or Bellar, with appellate briefs due in February. In fact, there is little communication of any kind occurring. Said problems include:

- a. Letters his appellate counsel sends to Morrison, at his BOP facility, are not being delivered to him even after language the BOP wants on envelopes sent to him is included. Faraone knows this through Morrison's wife, who has had some contact with her husband. Plaintiff Bellar has experienced similar problems.
- b. Upon information and belief, Morrison cannot send letters to counsel because postage cannot be sent to him and because the BOP will not sell postage to him. Plaintiff Bellar has experienced similar problems.
- c. Appellate counsel can easily meet defendants housed within the MDOC via Polycom or

Zoom. That is not true with the BOP facility where Morrison is housed. The Michigan Attorney General, at a December 1st circuit court hearing, indicated that the facility where Bellar is housed *might* be different in that regard.

- d. In person-visits are not a solution. The Attorney General argued at a recent hearing that Pekin, Illinois is closer than the MDOC's Baraga Correctional Facility where Morrison *could* in theory be placed. But appellate counsel would not need to drive to Baraga *every time* he wanted to communicate with Morrison if Morrison were placed there, they could communicate via Polycom or Zoom. The same is true of Bellar and the facility in which Bellar is located.
- e. Upon information and belief, neither Plaintiff has access to any Michigan law library legal materials.
- f. Upon information and belief, a third-party seems to be listening-in on attorney/client phone conversations.

14. Assuming for the sake of argument that the Interstate Agreement on Detainers applies, MCL 791.211a(3)(b) requires that the receiving institution "Provide law library materials including Michigan Compiled Laws, Michigan state and federal cases, and United States Sixth Circuit Court cases." That is not occurring. MCL 791.211a(5) requires that "A prisoner who is transferred to an institution of another state under this section must receive all of the following while in the receiving state: (a) Mail services and access to the court [and] (b) Visiting and telephone privileges...." That is not occurring.

15. The Michigan Attorney General – who *prosecuted* Morrison and Bellar and are defending their convictions on appeal – has talked about helping the defense resolve said problems, but nothing changes. The Michigan Attorney General has no control over the BOP and, moreover, appellate counsel should not be required to "work with" and "go through" the prosecution in order

to speak with their clients. The situation is abhorrent.

16. Appellate counsel moved the circuit court to require the MDOC to explain why Plaintiffs were transferred to BOP facilities and complained that, even if authority exists for said transfers, the *effect* of said transfers violates the Plaintiffs' Fifth, Sixth, and Fourteenth Amendment rights and their right to access the courts.

17. On October 27, 2023, a hearing was held. The circuit court, the Hon. Thomas Wilson, asked the Michigan Attorney General to explain why Plaintiffs were transferred to the federal BOP and adjourned the hearing to December 1, 2023.¹

18. On December 1, 2023, to the surprise of appellate counsel, the Attorney General was relieved of any burden to provide an answer. Instead, the circuit court ruled that it lacked jurisdiction over the issues raised, indicated that jurisdiction was in the Court of Claims, and denied both Plaintiffs bond on appeal.

COUNT ONE

Plaintiffs Constitutional Rights Under the First, Fifth, Sixth and Fourteenth Amendments of the United States Constitution and their Right To Access the Courts are Being Violated. Preliminary and Permanent Injunctions are Warranted.

19. Plaintiffs hereby incorporate by reference the allegations made in each of the preceding paragraphs as if fully set forth herein.

20. Assuming arguendo that said transfers of the Plaintiffs to BOP facilities was lawful, the *effect* of the transfers has prevented any meaningful communication with their appellate counsel – a necessary part of any criminal appeal including Plaintiffs' appeals. An effective attorney-client relationship depends upon counsel and client being able to communicate and that is being denied in violation of the Fifth, Sixth, and Fourteenth Amendments.

¹ The defense was not alone in understanding that to be the reason why the hearing was adjourned. See this Associated Press article, "Judge Wants to Know Why Men Tied to Governor Whitmer Plot Were Moved to Federal Prisons." <https://apnews.com/article/michigan-governor-whitmer-kidnapping-plot-9a3ffca420deb7ca1b55ace8ffdbdc57> (last accessed December 4, 2023).

21. The United States Supreme Court long ago held that defendants have the right to effective assistance of counsel in a direct appeal. See *Evitts v. Lucey*, 469 US 387 (1985) and *Douglas v. California*, 372 US 353, (1963). The *effect* of said transfers of the Plaintiffs to BOP facilities has violated and continues to violate the Plaintiffs' Sixth Amendment right to the effective assistance of counsel in their direct appeals.

22. The United States Supreme Court long ago held that prisoners have a constitutional right to access the courts. See *Lewis v. Casey*, 518 US 343, 349-355 (1996). The *effect* of said transfers has violated and continues to violate the Plaintiffs' right to access the courts.

23. The *effect* of the transfers of Morrison and Bellar to the BOP facilities violates Article 1, Section 2 of the 1963 Michigan Constitution which provides that "no person shall be denied the equal protection of the laws."

24. The *effect* of the transfers of Morrison and Bellar to the BOP facilities violates US Const, Amend XIV § 1 that no state shall "deny to any person within its jurisdiction the equal protection of the laws."

25. Plaintiffs are not being given reasonable access to their appellate counsel in violation of the above-described constitutional rights:

- a. Letters appellate counsel sends to Morrison at his BOP facility in Pekin, Illinois, are not delivered to him even when language is included which the BOP wants on the envelope. Plaintiff Bellar has experienced similar problems.
- b. Upon information and belief, Morrison cannot send letters to counsel because postage cannot be sent to him and the BOP will not sell postage to him. Plaintiff Bellar has experienced similar problems.
- c. Appellate counsel can easily meet defendants housed within the MDOC via Zoom. That is not true with the BOP facility where Morrison is housed. There was an indication from the

Michigan Attorney General at a December 1st circuit court hearing that that the facility where Bellar is housed *might* be different in that regard.

- d. In person-visits are not a solution. Counsel should not have to travel hundreds of miles out-of-state to have even a routine communication with Morrison or Bellar.
- e. Upon information and belief, a third-party seems to be listening-in on attorney/client phone conversations when placed to the BOP facility.

26. Unlike any other incarcerated client either appellate counsel has represented (in their combined experience of over 60 years) these Plaintiffs were sent to out-of-state BOP facilities.

27. There is an extensive amount of material to review – material which involves detailed *factual* issues not just questions of law. An unreasonable burden is being placed on the defense with the Plaintiffs being transferred to out-of-state federal prisons.

28. Plaintiffs recognize that courts cannot “unreasonably” intrude into prison management. This case is not about “prison management,” it is about the ongoing violation of fundamental constitutional rights. Where constitutional rights are being violated, the Court’s role is beyond question and the only apparent remedy in this instance is the return of the Plaintiffs to an MDOC facility in Michigan which has Zoom or Polycom.

29. This case is not about housing the Plaintiffs in any particular facility; it is about the right to a meaningful appeal and the right of access to the courts. Both rights prohibit prison officials from erecting barriers that may impede the inmate's access to the courts. See *Doe v. Dep't of Corr.*, 312 Mich App 97, FN 19; 878 NW2d 293, 318 (2015) (recognizing an inmate’s right to access the courts), judgment vacated in part, appeal denied in part, 499 Mich 886; 876 NW2d 570 (2016). See also *Thaddeus-X v. Blatter*, 175 F.3d 378, 391 (6th Cir. 1999) (en banc) (A prisoner’s right to access the courts extends to direct appeals).

30. An MDOC policy that causes a “litigation-related detriment” can be an unlawful

impediment to a prisoner’s right of access to the courts. See *Pilgrim v. Littlefield*, 92 F.3d 413, 416 (6th Cir. 1996).

31. The Supreme Court has long held that, “inmates must have a reasonable opportunity to seek and receive the assistance of attorneys” and “[r]egulations and practices that unjustifiably obstruct the availability of professional representation or other aspects of the right of access to the courts are invalid.” *Procunier v. Martinez*, 416 US 396, 419; 94 S Ct 1800; 40 L Ed 2d 224 (1974) (overruled on other grounds, *Thornburgh v. Abbott*, 490 US 401, 412-414 (1989)). This is because “convicted prisoners do not forfeit all constitutional protections by reason of their conviction and confinement in prison.” *Bell v. Wolfish*, 441 US 520, 545; 99 S Ct 1861; 60 LEd 2d 447 (1979).

32. The “right to hire and consult an attorney is protected by the First Amendment's guarantee of freedom of speech, association and petition.” *Denius v. Dunlap*, 209 F.3d 944, 953 (7th Cir. 2000)); and *DeLoach v. Bevers*, 922 F.2d 618, 620 (10th Cir. 1990) (“The right to retain and consult with an attorney . . . implicates . . . clearly established First Amendment rights of association and free speech.”).

33. Michigan courts recognize the right of individuals to sue for injunctive relief, and even to seek money damages for the violation of constitutional rights by the state and its departments. See *Bauserman v. Unemployment Ins. Agency*, 509 Mich 673; 983 NW2d 855 (2022) and *Mays v. Governor of Michigan*, 506 Mich 157, 222–23; 954 NW2d 139, 174 (2020).

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter judgment in their favor awarding money damages against Defendants for the violations of their constitutional rights and an injunction preventing the continued violations of said constitutional rights; grant Plaintiffs their costs and attorney fees for having to bring this action (or reimburse any government agency who paid attorney fees for the bringing of this action); and award Plaintiffs any other relief this Court deems just.

COUNT TWO

Request for Preliminary and Permanent Injunction

34. Plaintiffs hereby incorporate by reference the allegations made in each of the preceding paragraphs as if fully set forth herein.

35. If Defendants are allowed to continue to hold Plaintiffs in out-of-state BOP facilities, said violation of fundamental constitutional rights will continue and it will cause immediate and future irreparable injury to the Plaintiffs' right to appeal.

36. Accordingly, injunctive relief is necessary to remedy the current violation of rights and to prevent any future violation of rights.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court: (i) Permanently enjoin the Defendants from transferring them to out-of-state BOP facilities, (ii) award costs and fees to which they may be entitled for having to bring this action, and (iii) any other relief this Honorable Court deems just.

COUNT THREE

Writ of Mandamus

37. Plaintiffs hereby incorporate by reference the allegations made in each of the preceding paragraphs as if fully set forth herein.

38. This is an action brought against the Michigan Department of Corrections and its Director under MCR 3.305 and MCL 600.4401.

39. Mandamus is properly in the Court of Claims under MCL 600.4401:

(1) An action for mandamus against a state officer shall be commenced in the court of appeals, or in the circuit court in the county in which venue is proper or in Ingham County, at the option of the party commencing the action. [MCL 600.4401].

This statute is modified by MCL 600.6419 which vests jurisdiction for all claims against the "the state or any of its departments or officers" in the Court of Claims." See *O'Connell v. Dir of Elections*, 316 Mich App 91; 891 NW2d 240 (2016). See also MCR 3.305.

40. As our Court of Appeals has stated:

[W]here an official has a clear legal duty to act and fails to do so, the appropriate remedy is an order of mandamus. Where... the Legislature has established a clear, ministerial duty, but has failed to prescribe any consequence for a violation of that duty, a plaintiff may seek a writ of mandamus to compel compliance with the statutory duty. [*Morales v. Michigan Parole Bd*, 260 Mich App 29, 41; 676 NW2d 221, 230 (2003)(citations omitted)].

41. The MDOC has violated clear statutory duties or obligations if the Interstate Agreement on Detainers applies. MCL 791.211a(3)(b) states that the receiving institution must provide to the inmate, “law library materials including Michigan Compiled Laws, Michigan state and federal cases, and United States Sixth Circuit Court cases.” MCL 791.211a(5) states that the receiving institution must provide “(a) Mail services and access to the court [and] (b) Visiting and telephone privileges....” None of this has occurred. This mandatory language (“shall” or “must”) signifies a Legislatively-imposed, non-discretionary duty imposed on Defendants to perform said ministerial functions. Thus, mandamus is an appropriate form of relief.

42. The writ of mandamus is discretionary and will issue against a public official only to compel the enforcement of a clear legal duty. *Lundberg v. Corr Comm*, 57 Mich App 327, 329; 225 NW2d 752 (1975). If the act requires some discretion but is mandated by statute and the officer failed to carry out the provisions of the statute the courts may order him to do so. *Bischoff v. Wayne Co*, 320 Mich 376; 31 NW2d 798 (1948).

43. The writ is appropriate if (1) Plaintiffs have a clear legal right to the performance of the duty sought to be compelled; (2) the agency has a clear legal duty to perform the requested act; (3) the act is ministerial; and (4) no other remedy exists that might achieve the same result. *Coalition for a Safer Detroit v. Detroit City Clerk*, 295 Mich App 363, 367; 820 NW2d 208 (2012).

44. Plaintiffs have no adequate remedy at law other than mandamus that will achieve the correct legal result of *immediately* requiring the MDOC to return the Plaintiffs to their custody so that their statutory rights do not continue to be violated.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter a Writ directing the MDOC and Director Heidi Washington to return the Plaintiffs to their custody; reimburse any client or government agency who has paid attorney fees for Plaintiffs to bring this action; and any other relief this Court deems just and proper.

COUNT FOUR

Request for Declaratory Judgment that the Transfers are Without Statutory Authority or are Violating Constitutional Rights, and Injunctive Relief

45. Plaintiffs hereby incorporate by reference the allegations made in each of the preceding paragraphs as if fully set forth herein.

46. MCR 2.605(A)(1) states that “[i]n a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment.” An “actual controversy” exists where a declaratory judgment or decree is necessary to guide a party's future conduct in order to preserve his legal rights. *Kircher v. City of Ypsilanti*, 269 Mich App 224, 227; 712 NW2d 738 (2005).

47. Michigan courts have “carefully limited the powers of administrative agencies to ensure they do not abuse or make baseless expansions of the limited powers delegated to them by the Legislature. Therefore, being creations of the Legislature, they are only allowed the powers that the Legislature chooses to delegate to them through statute.” *Herrick Dist Library v. Library of Michigan*, 293 Mich App 571, 582; 810 NW2d 110 (2011).

48. Plaintiffs question whether the MDOC has statutory authority to transfer and continually confine Plaintiffs in a BOP facility. If the Interstate Agreement on Detainers applies, it is not being followed for the reasons described throughout this Verified Complaint.

49. Plaintiffs respectfully seek declaratory and injunctive relief finding that Defendants lack statutory authority to continually house Plaintiffs in BOP facilities.

50. Plaintiffs respectfully seek declaratory and injunctive relief finding Defendants created

obstacles that infringe upon Plaintiffs' constitutional right to effective communication with their counsel.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter the requested declaratory judgment and any relief this Honorable Court finds just.

RELIEF REQUESTED

Plaintiffs pray for relief as follows:

- A. Injunctive relief ordering the MDOC to return Plaintiffs to a correctional facility within Michigan which has Zoom capability so Plaintiffs can communicate with their respective appellate counsel;
- B. Declaratory judgment that Defendants have created unreasonable obstacles that infringe upon Plaintiffs' constitutional right to communicate with their appellate counsel;
- C. A Writ of Mandamus requiring Defendants to honor their statutorily mandated duties;
- D. If MCL 791.211a is inapplicable and no other statutory authority exists, then declaratory judgment that the MDOC lacks authority to continually house Plaintiffs in BOP facilities;
- E. Money damages to Plaintiffs for the violation of their constitutional rights;
- F. Costs and attorney fees for having to bring this action; and
- G. Any other relief this Court deems just and proper.

VERIFICATION

Counsel declares under penalties of perjury that this complaint has been examined by them and that its contents are true to the best of our knowledge, information, and belief.

Respectfully submitted,

MICHAEL A. FARAONE

/s/ Michael A. Faraone

Michael A. Faraone (P-45332)
Attorney for Plaintiff Morrison
3105 S. Martin Luther King No. 315
Lansing, Michigan 48910
Telephone: (517) 484-5515
attorneyfaraone@faraonelegal.com

Dated: December 21, 2023

RONALD D. AMBROSE

/s/ Ronald D. Ambrose

Ronald D. Ambrose (P-45504)
Attorney for the Plaintiff Bellar
16818 Farmington Rd
Livonia, MI 48154-2947
Telephone: (248) 890-1361
rda100@flash.net

Dated: December 21, 2023