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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Case No. 20-0628

**STATE OF WEST VIRGINIA ex rel.
JOSHUA MILLER,**

Petitioner,

v.

**BETSY JIVIDEN, Commissioner,
West Virginia Division of Corrections and
Rehabilitation,**

Respondents.

RESPONDENT'S SUMMARY RESPONSE TO PETITIONER'S PETITION FOR WRIT OF MANDAMUS

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BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS

STATE EX REL. JOSHUA MILLER,

Petitioner,

v. **Docket No. 20-0628**

BETSY JIVIDEN, Commissioner,
West Virginia Division of Corrections and
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RESPONDENT'S SUMMARY RESPONSE TO PETITIONER'S PETITION FOR WRIT OF MANDAMUS

COMES NOW, the Respondent, Betsy Jividen, Commissioner of the West Virginia Division of Corrections and Rehabilitation, [1] (referred to herein as "DCR" or "Commissioner Jividen"), by counsel, Briana J. Marino, Assistant Attorney General, to respectfully respond to the above-styled Petition for Writ of Mandamus filed *pro se*, on or about August 21, 2020 (hereinafter referred to as "Petition"). For the reasons fully discussed below, DCR asserts that the Petition should be refused in its entirety and dismissed from the Court's active docket.

I. STATEMENT OF THE CASE

On or about January 25, 2016, the Fayette County Sheriff's Office received a report regarding the alleged sexual abuse of a minor child. Resp.Appendix000007-8. Upon initiating an investigation and speaking with the 12 year old victim, Petitioner Joshua Miller was arrested and charged with one count of First Degree Sexual Abuse and one count of Sexual Abuse by a Parent, Guardian, Custodian or Person in a Position of Trust. *Id.* A duly-empaneled grand jury returned a true indictment against

[1] The Division of Corrections, Division of Juvenile Services, and West Virginia Regional Jail and Correctional Facility Authority were consolidated pursuant to House Bill 4338 (2018) to form the West Virginia Div. of Corrections and Rehabilitation effective July 1, 2018.

Petitioner on or about September 13, 2016. Resp.Appendix000001-2. On or about April 17, 2017, Petitioner appeared before the Honorable Judge Paul Blake, Case No. 16-F-153, for sentencing pursuant to a plea agreement. Petitioner pled guilty to one count of Sexual Abuse in the First Degree and was sentenced to a period of not less than one nor more than five years of incarceration in the care, custody, and control of DCR and a period of three years extended supervised release pursuant to West Virginia Code § 62-12-26 (repl. 2020). Resp.Appendix000003-6. Petitioner's effective sentence date, with credit for pre-trial detention, was established as October 16, 2016. Petitioner was paroled on or about December 12, 2017, and discharged from parole on or about February 4, 2019.

Upon discharge from parole, Petitioner began serving his period of three years extended supervised release. *See* W. Va. Code § 62-12-26(c) (indicating sentence of supervised release is served after terms of incarceration, parole or probation are satisfied). Petitioner was later detained and his adult probation officer filed a petition seeking to revoke his extended supervised release for violations of the terms and conditions of sex offender supervision. On or about July 29, 2019, the Honorable Judge Blake adjudicated Petitioner's case pursuant to his admission that he: (1) failed to attend sex offender counseling as required; (2) failed a mandatory drug test; and (3) used heroin; and (4) by possessing drug paraphernalia. Resp.Appendix000009-12. Judge Blake then ordered Petitioner incarcerated for a determinate period of three years as a sanction with an effective date of April 24, 2019, due to time served prior to revocation. *Id.* Petitioner remains incarcerated pursuant to this sanction with an anticipated discharge date of April 23, 2022.

Earlier this year, the novel coronavirus or COVID-19 began sweeping the nation. Almost immediately, inmates from Prison Industries came up with the idea of making masks as a way of "giving back" to the community. "Clean teams" were formed at each facility to assist with the enhanced cleaning and sanitation necessary to combat COVID-19 introduction and spread in DCR facilities. The vigilance and extra efforts of these teams contributed significantly to the DCR's effort

to combat and reduce the spread of the virus, as was clearly demonstrated in the results of facility-wide mass testing in June 2020.

The cooperative efforts of these offenders 'working for the greater good' is a recognized tenet of the rehabilitation process. The men and women who were part of the cleaning teams stepped up to help others, and the work they performed benefitted the DCR, their fellow offenders, and the State of West Virginia. In recognition of their exemplary work, Commissioner Jividen requested each Superintendent to nominate inmates who performed exemplary service related to COVID-19 efforts for an award of meritorious "good time" pursuant to West Virginia Code § 15A-4-17(i) (2018). Petitioner was included in the submission of names from Denmar Correctional Center and Jail and was recommended to receive 120 days of meritorious "good time" for his efforts in the manufacturing of masks and gowns that benefitted so many. Upon receipt of the recommendation, the Commissioner's office notified Petitioner that he was recommended to receive a meritorious "good time" award for his efforts and a new time sheet reflecting the same would be forthcoming. Pet.Brief, pg. 12. However, as time sheets were being reviewed and calculated for the nominated offenders, it was discovered that some of the recommended offenders were not adequately pre-screened for eligibility, such as life-sentenced offenders and sanctioned offenders, prior to letters being sent out. Further inquiry and analysis of the issue, and its effects, was necessary to ensure that all meritorious "good time" awards were compliant with West Virginia Code § 15A-4-17. Therefore, on or about August 7, 2020, Petitioner was notified that the program had been placed "under review" by Commissioner Jividen pending completion of a comprehensive review of the program. Pet.Brief, pg. 15. Since that time, Commissioner Jividen has engaged in discussions, analysis, and review of the meritorious "good time awards," "good time" eligibility; and the process through which awards will be processed for those found eligible to receive them. The program is currently under review, including determining the need for additional safeguards for strengthening its application.

II. LEGAL STANDARD

As an extraordinary remedy, a writ of mandamus will not issue unless a party can demonstrate (1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy. *State ex rel. Kucera v. City of Wheeling*, 153 W.Va. 538, 170 S.E.2d 367 (1969). "Mandamus lies to require the discharge by a public officer of a nondiscretionary duty. *State ex rel. Greenbrier County Airport Authority v. Hanna*, 151 W.Va. 479 [, 153 S.E.2d 284 (1967)].' Syllabus point 1, *State ex rel. West Virginia Housing Development Fund v. Copenhaver*, 153 W.Va. 636, 171 S.E.2d 545 (1969)." *State ex rel. Burdette v. Zakaib*, 224 W. Va. 325, 331, 685 S.E.2d 903, 909 (2009). "[T]he burden of proof as to all the elements necessary to obtain mandamus is upon the party seeking the relief[,]" 52 *Am. Jur. 2d Mandamus* § 3 at 271 (2000) (footnote omitted), a failure to meet any one of them is fatal." *Id.* Where a petitioner fails to show a clear right to the remedy sought mandamus relief is not warranted or appropriate.

III. ARGUMENT

Petitioner cannot demonstrate a clear legal right to the relief sought as he is not eligible for any type of "good time" pursuant to West Virginia Code § 15A-4-17. There is thus no need to address the remaining two requirements for mandamus relief. Petitioner is currently incarcerated as a result of a sanction imposed by the Circuit Court of Fayette County, West Virginia pursuant to West Virginia Code § 62-12-26 for the failure of the Petitioner to follow the terms and conditions of his extended sex offender supervised release. Therefore, because he is not serving a "sentence" as defined by West Virginia legal jurisprudence, a plain reading of the "good time" statute reveals Petitioner does not meet the eligibility criterion to receive any type of "good time."

A. *Defining "Sanctions" versus "Sentence" Within the Context of State ex rel. Hargus and West Virginia Code § 62-12-26.*

It is the prerogative of the West Virginia Legislature to determine the classification of crimes and punishments as well as eligibility for "good time" accrual subject to certain constitutional limitations. The Legislature exercised this plenary power by creating a statutory scheme that provides both behavioral standards and monitoring mechanisms for offenders who have been convicted of certain sexual offenses. *See* W. Va. Code § 62-12-26 (repl. 2020). An individual who commits a felony offense as prohibited in certain enumerated sections of the West Virginia Code, *shall, **as a part of the sentence** imposed at final disposition be required to serve, in addition to any other penalty or condition imposed by a court*, a period of supervised release up to 50 years...[.]" with a minimum term of supervised release of ten years. *Id.* (emphasis added). But, a court of competent jurisdiction may terminate the term of extended supervised release after the expiration of two years in cases where the court is satisfied that early termination of extended supervised release is warranted by the conduct of the offender and in the interest of society. *See,* West Virginia Code § 62-12-26(g)(1).

The implementation of the extended supervised release component of the sentence is straightforward and structured in three provisos: the first establishes a mandatory minimum term of extended supervised release initiated after the conclusion of parole, probation or incarceration (whichever discharges last) of a minimum of ten years for adult offenders convicted of first-degree sexual assault and first-degree sexual abuse of victims 12 years old or younger; the second requires offenders who are found to be sexually violent predators to be subject to lifetime extended supervised release; and the third gives a sentencing court a wide degree of discretion to modify, terminate, or revoke any term of extended supervised release subject to the limitations contained in the statute. *See,* W. Va. Code § 62-12-26(a)*; see also State v. James*, 227 W. Va. 407, 414-15, 710 S.E.2d 98, 105-06 (2011). The general premise of the statute clearly evidences the Legislature's intent that a

"*sentence imposed* for certain felony offenses must *include the additional penalty* of a period of supervised release of up to fifty years." *James*, at 414, 710 S.E.2d at 105 (emphasis in original).

1. West Virginia Code § 62-12-16 Contemplates "Sanctions" When Ordering an Offender to Serve a Period of Incarceration for a Violation of the Terms and Conditions of Extended Supervised Release.

It is the differentiation of the terms "sentence" and "sanction" that fuels both the constitutional application of West Virginia Code § 62-12-26 and practical application of West Virginia Code § 15A-4-17. Each has a distinct meaning with a defined set of protections under the state and federal constitutions. In the instant case, whether Petitioner's current term of incarceration is defined as a "sentence" or a "sanction" conclusively determines both his eligibility to receive "good time" and the outcome of this case.

This Court previously recognized the term "sentence" to mean "[t]he judgment formally pronounced by the court or judge upon the defendant after his conviction . . . usually in the form of . . . incarceration, or probation." *State ex rel. Goff v. Merrifield,* 191 W. Va. 473, 477, 446 S.E.2d 695, 699 (1994). In *State v. Hargus*, 232 W. Va. 232, 741, 753 S.E.2d 735, 899 (2013), this Court demonstrated the difference between a "sanction" and "sentence" when addressing "the constitutionality of revocation of supervised release and post-revocation sanctions." In *Hargus*, this Court analyzed whether the imposition of a period of incarceration as a sanction upon an offender for violating the terms and conditions of his extended supervised release ran afoul of certain constitutional principles. Part in parcel of that analysis was whether a period of incarceration resulting from a revocation pursuant to West Virginia Code § 62-12-26(g)(3) was a new "sentence" or a "sanction." Mr. Hargus argued that, because an offender could be subject to additional incarceration as a result of a violation of extended sex offender supervision statute, any period of incarceration was a "sentence" entitling him to additional due process protections, such as a jury finding guilt beyond a reasonable doubt. *Hargus,* 232 W. Va. at 741. This Court rejected that premise relying upon both a

comparison of West Virginia Code § 62-12-26 with its federal counterpart, 18 U.S.C. § 3583, and examination cases which evaluated the constitutional issues associated with revocation.

Of particular note to this Court was *Johnson v. United States*, 529 U.S. 694 (2000). In *Johnson*, the United States Supreme Court examined similar issues to those raised in *Hargus*. The Supreme Court ruled the imposition of an additional period of incarceration for a violation of federal supervised release was a sanction attributable to the original crime's consequences and not a new "crime" for which a new sentence, new conviction, and prosecutorial due process requirements may apply. *See Hargus,* 232 W. Va. at 742, 753 S.E.2d at 900. The *Johnson* Court acknowledged that violations of supervised release often lead to re-incarceration as a sanction but that such violations are not *per se* criminal conduct in its own right making a jury or other prosecutorial steps inappropriate for such proceedings. *Hargus,* 232 W.Va. at 741, 753 S.E.d2d at 899 quoting *Johnson,* 529 U.S. at 700 (other citations omitted.) Finding the *Johnson* Court's rationale persuasive and constitutionally sound, this Court construed any "revocation proceeding under West Virginia Code § 62-12-26(g)(3) to be a continuation of the prosecution of the original offense and not a new prosecution of additional offenses." *Id.* Without a new and separate criminal prosecution there is no new jury, no new conviction, and no new *sentence* to which "good time" may apply pursuant to West Virginia Code § 15A-4-17.

Applying this paradigm to the instant case, Petitioner's "sentence" imposed by the circuit court following acceptance of his plea agreement was a period of incarceration of one to five years in the custody of the Division of Corrections and a period of extended supervised release of three years pursuant to West Virginia Code § 62-12-26. Resp.Appendix00003-6. The totality of Petitioner's sentence discharges[2] upon the completion of the initial mandatory term of incarceration set forth in

[2] As defined by Black's Law Dictionary, the term "discharge" means, *inter alia*, "any method by which a legal duty is extinguished."

West Virginia Code § 61-8B-7 (2006) and expiration of the three years of extended sex offender supervised release. The sex offender extended supervision statute, on the other hand, provides for sanctions. West Virginia Code § 62-12-26(g)(3) states:

> (g) Modification of conditions or revocation. -- The court may:
>
> (3) Revoke a term of supervised release and require the defendant to serve in prison all or part of the term of supervised release without credit for time previously served on supervised release if the court, pursuant to the West Virginia Rules of Criminal Procedure applicable to revocation of probation, finds by clear and convincing evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this subdivision may not be required to serve more than the period of supervised release[.]

West Virginia Code 62-12-26(g) permits a circuit court to exercise broad discretion in determining whether an offender's conduct while in the community on extended supervised release warrants modification, suspension, termination, or revocation. This provision, clearly providing for a sanction, is permissive rather than mandatory and does not affect the underlying sentence whatsoever. Rather, it vests a court of competent jurisdiction broad authority to impose changes in the terms, conditions, or length of the period of extended supervision and/or penalties, including an additional period of incarceration, for violations of previously-established terms. This new penalty, or sanction, is a measure that results from the failure of the offender to comply with the terms and conditions of extended supervised release resulting in revocation of the same.

Simply put, both the federal and West Virginia systems of post-supervised release revocations utilize sanctions (including incarceration) to penalize those who do not abide by the terms and conditions of their extended supervision. For a period of incarceration to be a "sentence," a new case, with a new crime, new indictment, new plea or trial by jury, and new final disposition would have to occur. Whereas a "sanction" is an enforcement penalty for the violation of the terms and conditions of the sentence already imposed for a previously adjudicated and sentenced crime. It is this distinction

with a significant difference that is essential to the operation and application of the extended supervision and "good time" statutes.

B. A Plain Reading of the "Good Time" Statute Demonstrates Those Serving a Sanction Are Ineligible to Receive Any Type of "Good Time."

"Good time" is a statutory creation "designed to advance the goal of improved prison discipline." *Woods v. Whyte*, 162 W. Va. 157, 160, 247 S.E.2d 830, 832 (1978) (internal citations and footnotes admitted). Because "good time" is legislatively created, it is the Legislature's prerogative to determine which incarcerated individuals should be rewarded with commutation of his/her sentence in exchange for good behavior. *Id.* West Virginia Code § 15A-4-17 (eff. July 1, 2018), previously codified as W. Va. Code § 28-5-27 (repl. 2018), allows for the reduction of the amount of time certain incarcerated offender(s) must serve if he/she does not violate prison disciplinary rules. The grant of "good time," often termed "earned good time," effectively results in a day-for-day commutation of a sentence of incarceration absent forfeiture. If an eligible offender violates prison disciplinary rules, as a penalty for those violations an offender's earned "good time" days may be forfeited, subject to certain due process rights, in addition to other privileges being curtailed. Each version of the "good time" statute also allows for a superintendent or warden to recommend the meritorious award of extra "good time" for extraordinary service performed by an eligible inmate. *See* W. Va. Code §§ 28-5-7(i) (repl. 2018); 15A-4-17(i)(2018). This additional award of meritorious "good time" is subject to the same eligibility criterion as earned "good time."

The "good time" statute is not applicable to every offender who is incarcerated by the State of West Virginia. West Virginia Code § 15A-4-17(b), and its predecessor § 28-5-27(b), sets forth the eligibility criterion of the statute and reads as follows: "[t]he commutation of sentence, known as "good time", shall be deducted from the maximum term of indeterminate sentences or from the fixed term of determinate sentences." The applicability of the "good time" statute is clear on its face: "good time" only applies to *sentences*. *Id.* Pursuant to a plain reading of the "good time" statute, Petitioner

was eligible to receive (and did receive) earned "good time" credit towards the discharge of his *sentence* of an indeterminate term of one to five years incarceration in the custody of the Division of Corrections.

West Virginia Code § 15A-4-17(b), and its predecessor § 28-5-27(b), clearly and unambiguously demonstrate the Legislature's determination of who may receive an effective commutation of his/her sentence. "Where the language of a statute is clear and without ambiguity the plain meaning is to be accepted without resorting to the rules of interpretation." Syl. Pt. 2, *State v. Elder*, 152 W. Va. 571, 165 S.E.2d 108 (1968). As this Court restated in *State ex rel. Bailey v. State Div. of Corrs.*, 213 W. Va. 563, 568, 584 S.E.2d 197, 202 (2003), "[i]n any search for the meaning or proper applications of a statute, we first resort to the language itself. *Maikotter v. Univ. of W. Va. Bd. of Trustees/W. Va. Univ.*, 206 W. Va. 691, 696, 527 S.E.2d 802, 807 (1999)." As the title of the statutory code section and the plain text of section (b) states, only *sentenced* inmates (i.e. those inmates serving periods of incarceration such as those prescribed by Chapter 61 of the West Virginia Code) are eligible for any type of "good time." When West Virginia Code §§ 15A-4-17 and 62-12-26 are read in concert with one another, again, the Legislature's intent is instantly recognizable: subsequent periods of incarceration following revocation of extended supervised release are not intended to have a commutation element.

The Legislature's exercise of its plenary powers through the inclusion or exclusion of a privilege for incarcerated offenders must be afforded broad deference. For example, in 2018 the Legislature recodified the "good time" statute during the consolidation process that formed DCR. In doing so, the Legislature made some revisions to the "good time" statute but chose not to make any changes that would incorporate those offenders serving a sanction into the commutation provisions of § 15A-4-17. It is a long-settled principle that, when it enacts legislation, the Legislature is presumed to know its prior enactments. Syl. Pt. 12, *Vest v. Cobb*, 138 W. Va. 660, 76 S.E.2d 885

(1953). The Legislature, knowing that the statute was silent on the issue of sanctioned offenders, chose to include a provision which excluded any class of offender not specifically mentioned in the statute from receiving "good time." *See* W. Va. Code §§ 15A-4-17(j); 28-5-27(j)(repl. 2018). The Legislature chose not to act in a specific manner which is in and of itself an indication of its intent. It did not amend the statute to include sanctioned offenders.

Similarly, the Legislature passed the first codification of extended supervised release statute for certain sex offenders in 2006. Since that original enactment, known as The Child Protection Act of 2006, the West Virginia Legislature has amended § 62-12-26 a total of four additional times to arrive at the version applicable today. In each amended version of the statute the Legislature had the opportunity to include the earning or award of "good time" to offenders serving periods of incarceration as a sanction following revocation. In each instance the Legislature chose not to do so. Instead, the Legislature chose to make credit for time served on supervised release prior to revocation optional and at the sole discretion of the circuit court. *See*, W. Va. Code § 62-12-26(g)(3) ("Revoke a term of supervised release and require the defendant to serve in prison all or part of the term of supervised release without credit for time previously served on supervised release..."). Through its silence the Legislature has spoken volumes: commutation of sanctions under the extended supervised release provision is not permissible.

As Petitioner stands today, he is no longer serving his period of incarceration imposed by the judge as he discharged that portion of sentence. Resp.Appendix 000003-6. Rather, he is now serving the mandatory extended sex offender supervision portion of his sentence; and it is this portion of his sentence which has been revoked resulting in a prison term as a sanction. Sanctions are not eligible for "good time" in any form per the "good time statute." Without being eligible for "good time" based upon a plain reading of the statute, Petitioner cannot demonstrate a clear legal right to receive

the award of 120 days of meritorious "good time." As a result, his petition seeking a writ of mandamus must be denied in its entirety.

West Virginia Code § 62-12-26 does not ignore nor negate the policy rationale for the "good time" statute's existence. The positive behavior that the receipt of "good time" promotes within the four walls of a prison are still obtainable even by those who are ineligible for "good time" pursuant to West Virginia Code § 15A-4-17. As this Court has acknowledged, "[t]he purpose of awarding good time credit is to encourage not only rehabilitative efforts on the part of the inmate by encouraging the industrious and orderly, but also to aid prison discipline by rewarding the obedient." *State ex rel. Bailey,* 213 W.Va. at 566, 584 S.E.2d at 200. Just as the traditional concept of "good time" is statutorily created, so too is the mechanism a sanctioned offender may use to seek modification of the amount of time he/she is incarcerated as a sanction. The Legislature created a review mechanism to permit a sanctioned offender to seek modification of not only the term of his/her extended supervised release but also reevaluation of any sanction(s) ordered resulting from revocation. Pursuant to the plain terms of West Virginia Code § 62-12-26(g) the circuit court that adjudicated the revocation of extended supervised release retains jurisdiction over the offender throughout the entirety of the time period he/she is on extended supervised release. Therefore, an offender incarcerated on a sanction may seek judicial review of his/her situation at any time. Certainly to do so, offenders who have been defiant; guilty of unlawful, violent, or disruptive behaviors while incarcerated; or facing new charges as a result of actions perpetrated while incarcerated are unlikely to receive favorable dispositions upon review by his/her adjudicating judge. This statutorily-created review process provides a behavior-based incentive to encourage good behavior and rehabilitative efforts like the traditional "good time" process but in a form that gives reviewing courts far more authority to mitigate or modify sanctions.

For an extraordinary writ to issue, a party must demonstrate a clear legal right to the relief sought. *State ex rel. Kucera v. City of Wheeling, supra.* In the instant matter, there is no clear legal

duty on the part of Commissioner Jividen to vest in Petitioner 120 days of meritorious "good time" when doing such violates the plain terms of West Virginia Code §§ 15A-4-17 and 62-12-26.

As previously indicated, the West Virginia Legislature acted within the scope of its authority when it created a sentencing structure that included extended periods of supervised release for certain sexual and child abuses offenses as provided for in West Virginia Code § 62-12-26. Upon adjudication that an offender, in fact, violated the terms of his/her supervised release, a court may- at its sole discretion- sanction the offender by imposing a term of incarceration in the care, custody, and control of DCR. In formulating this sentencing structure, the Legislature determined that those offenders serving definite terms of imprisonment as a sanction for violating the terms of his/her extended supervised release are not eligible for "good time" awards of any kind as contemplated in West Virginia Code § 15A-4-17 (2018). In other words, an offender serving a sanction is not eligible for 'day-for-day' "good time" or meritorious "good time" as an offender serving a sentence is and must serve the entirety of the sanction period prior to discharging his/her sanction.

DCR acknowledges that it erred by providing an erroneous timesheet to Petitioner when he began his sanction period in 2018. *See* Pet. Brief, pg. 11. However, that error has been corrected with regard to Petitioner's anticipated discharge date, which is April 23, 2022. DCR's erroneous time sheet does not create any set of circumstances which would allow the agency to ignore statutory enactments nor does it change the application of those code sections to the facts of this case.[3] In this case where an offender is seeking an extraordinary writ of mandamus to compel the Commissioner of DCR to award him meritorious "good time" pursuant to W.Va. Code § 15A-4-17(i), such an award is contrary to both West Virginia Code §§ 15A-4-17 and 62-12-26. By failing to satisfy the criterion enunciated by the Court in *Kucera*, Petitioner has failed to carry his heavy evidentiary burden

[3] *Cf. Davis v. Moore*, 772 A.2d 204, 291 (D.C. Cir. 2001) ("An expectation of early release from prison (or from service of a sentence) that is induced...by the mistaken representation of officials does not without more give rise to a liberty interest entitled to protection under the Due Process Clause.").

necessary for the issuance of an extraordinary writ; therefore, Petitioner's request must be denied in its entirety.

IV. CONCLUSION

Based upon the foregoing, Petitioner has not demonstrated, and cannot demonstrate, that he is entitled to mandamus, or any other relief, as requested in Petitioner's Petition for Mandamus. Accordingly, Respondent, Betsy Jividen, Commissioner of the West Virginia Division of Corrections and Rehabilitation respectfully requests that this Court refuse this petition in its entirety, together with such other and further relief as the Court deems necessary and appropriate.

BETSY JIVIDEN, Commissioner,
West Virginia Division of Corrections and Rehabilitation,

By Counsel.

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STATE EX REL. JOSHUA MILLER,

Petitioner,

v. **Docket No. 20-0628**

BETSY JIVIDEN, Commissioner,
West Virginia Division of Corrections and
Rehabilitation,

Respondent.

CERTIFICATE OF SERVICE

I, Briana J. Marino, do hereby certify that on October 30, 2020, I caused the foregoing **RESPONDENT'S SUMMARY RESPONSE TO PETITIONER'S PETITION FOR WRIT OF MANDAMUS** to be served upon the *pro se* Petitioner by delivering to him a true copy thereof, via United States Mail, postage prepaid, and addressed as follows:

Joshua Miller, OID 3534186
Northern Correctional Center
112 Northern Regional Jail Correctional Drive
Moundsville, WV 26041

Briana J. Marino

Briana J. Marino (WVSB #11060)
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