

**IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CHANCERY DIVISION**

DARRELL CANNON,)
)
 Plaintiff,)
)
 v.)
)
 ILLINOIS PRISONER REVIEW BOARD;)
 JORGE MONTES, Chairman of the Illinois)
 Prisoner Review Board; ANDREW)
 FOX, Member of the Illinois Prisoner)
 Board; and DAVID FRIER, Member of the)
 Illinois Prisoner Review Board,)
)
 Defendants.)

COMPLAINT FOR MANDAMUS AND FOR COMMON LAW CERTIORARI

Plaintiff Darrell Cannon, by his undersigned attorneys, for his complaint for a writ of mandamus and/or for a common law writ of certiorari against the Illinois Prisoner Review Board; its Chairman, Jorge Montes; and Illinois Prisoner Review Board members Andrew Fox and David Frier, alleges as follows:

INTRODUCTION

1. On November 2, 1983, while he was on parole, plaintiff Darrell Cannon was arrested by Area 2 Chicago Police detectives working under the Command of Lt. Jon Burge. Those detectives tortured Mr. Cannon by repeatedly pretending to load a shotgun, placing the barrel of the gun in Mr. Cannon's mouth and pulling the trigger and by shocking Mr. Cannon with an electric cattle prod on his genitalia and on his mouth. At the conclusion of this torture, Mr. Cannon confessed to participating in the murder of Darren Ross. Based on this tortured

confession – *and no other evidence* – Mr. Cannon was convicted of the murder and sentenced to natural life imprisonment.

2. When the murder charges were initially filed, the Illinois Prisoner Review Board notified Mr. Cannon that his alleged murder of Darren Ross constituted a violation of the conditions of his parole. No final hearing was ever held on this alleged parole violation, however. Instead, shortly following Mr. Cannon's conviction in the criminal court, the Illinois Prisoner Review Board found Mr. Cannon to be a parole violator without a hearing, based on the fact of his conviction alone.

3. After decades of litigation, in which Mr. Cannon steadfastly maintained that he was unjustly convicted and a victim of torture, the Cook County State's Attorney's Office, on April 14, 2004, dismissed the criminal case against Mr. Cannon.

4. Following the dismissal of the criminal charges, Mr. Cannon demanded that the Prisoner Review Board drop its parole hold and release him from custody, pointing out that the basis for the parole hold (*i.e.*, the conviction) no longer existed. The Board refused to release Mr. Cannon and instead convened a parole revocation hearing to determine – for the first time, nearly 21 years after the underlying act – whether Mr. Cannon had violated his parole in October 1983 in connection with the Darren Ross homicide. The Prisoner Review Board conducted the hearing on August 27 (at Stateville Correctional Center in Will County) and September 3, 2004 (in Chicago in Cook County). At the conclusion of that hearing, the Board revoked Mr. Cannon's parole.

5. This petition seeks review of the Prisoner Review Board's parole revocation decision based on numerous violations of the due process clauses of the United States Constitution and the Illinois Constitution: the Prisoner Review Board failed to provide Mr.

Cannon a timely parole revocation hearing; failed to provide Mr. Cannon with notice of the grounds on which it revoked Mr. Cannon's parole; improperly denied Mr. Cannon the right to confront and cross examine witnesses against him; failed to follow Illinois law regarding accountability for the crime of murder; and demonstrated hostile bias against Mr. Cannon. In addition, the PRB's refusal to release Mr. Cannon to parole breaches an agreement that had been reached between Mr. Cannon and the Cook County State's Attorney's Office (acting on behalf of the People of the State of Illinois) that Mr. Cannon would be released from custody in August 2003.

PARTIES

6. Plaintiff Darrell Cannon is a resident of the State of Illinois and is currently an inmate of the Illinois Department of Corrections.

7. Defendant Illinois Prisoner Review Board (the "PRB") is an administrative agency of the State of Illinois charged, among other things, with responsibility for determining whether to revoke the parole of persons paroled on pre-1978 convictions who are alleged to have violated the conditions of their parole.

8. Defendant Jorge Montes is the Chairman of the Illinois Prisoner Review Board. Defendant Montes presided over Mr. Cannon's August 27 and September 3 parole revocation hearing.

9. Defendants Andrew Fox and David Frier are members of the Illinois Prisoner Review Board. With defendant Montes, defendants Fox and Frier sat on the hearing panel that found Mr. Cannon to have violated the conditions of his parole.

JURISDICTION AND VENUE

10. This Court has jurisdiction to review by mandamus and/or by common law certiorari the administrative decision and other actions of the Illinois Prisoner Review Board. Venue is proper in Cook County because part of the transaction out of which this claim arises took part in Cook County.

ALLEGATIONS OF FACT

I. Proceedings in the criminal court and before the PRB leading to the August 27-September 3 parole revocation hearing.

11. Mr. Cannon was convicted in 1971 of the murder of one Emanuel Lazar and was given an indeterminate sentence of 100 to 200 years for that conviction. After serving 12 years of the sentence, Mr. Cannon was paroled. As of November 1983, Mr. Cannon was on parole from his 1971 conviction.

12. On November 2, 1983, Mr. Cannon was arrested by Chicago Police detectives working under the command of Lt. Jon Burge. Following Mr. Cannon's arrest, he was tortured by Area 2 Chicago Police Sergeant John Byrne and Detectives Peter Dignan and Charles Grunhard. Among other things, the three officers took Mr. Cannon to an isolated area on the south side of Chicago, where they terrorized Mr. Cannon by pretending to load a shotgun, placing the gun in his mouth, and pulling the trigger; by lifting Mr. Cannon from the ground by his handcuffed arms and thereby wrenching his arms behind his back; and by shocking Mr. Cannon with an electric cattle prod on his exposed genitalia and on his mouth. Following this torture, Mr. Cannon signed a confession to the October 27, 1983 murder of one Darren Ross and was subsequently charged in the Circuit Court of Cook County with armed violence, murder and conspiracy to commit murder.

13. On November 18, 1983, shortly after his arrest, Mr. Cannon received a Notice of Violation (attached hereto as Ex. A) stating that he was being charged with violating the conditions of his parole in that he had allegedly “committed the crime of murder.”

14. On December 2, 1983, a PRB hearing officer held a preliminary hearing on this alleged parole violation and concluded that there was probable cause to believe that Mr. Cannon was guilty of the violation. A copy of that preliminary determination is attached as Ex. B.

15. Despite the finding of probable cause, the PRB never conducted a full parole revocation hearing in Mr. Cannon’s case. Instead, the PRB awaited the outcome of the criminal proceedings against Mr. Cannon.

16. Prior to his criminal trial, Mr. Cannon moved to suppress the statement that had been tortured from him by Area 2 detectives at the time of his November 2 arrest. The motion to suppress was denied. Mr. Cannon’s case proceeded to a trial, at which *the only evidence* implicating him in the Darren Ross murder was the tortured confession. At the conclusion of trial, Mr. Cannon was convicted of the murder and, on June 20, 1984, was sentenced to a term of natural life imprisonment.

17. On August 7, 1984, after Mr. Cannon had been convicted in the criminal court, the PRB (without conducting a hearing) found Mr. Cannon to be a parole violator based solely upon the fact of the conviction and revoked Mr. Cannon’s parole. A copy of the August 7, 1984 parole revocation document is attached as Ex. C.

18. Mr. Cannon’s criminal case continued in several proceedings in the Circuit Court of Cook County (including a retrial of the case in 1994, which also resulted in a guilty verdict) and multiple appeals to the Illinois Appellate Court, spanning altogether a period of fourteen years. In 1997, the Appellate Court remanded the case to the Circuit Court for a full evidentiary

hearing on Mr. Cannon's motion to suppress, at which, for the first time, Mr. Cannon would be permitted to introduce evidence of the pattern of torture committed by Area 2 and Area 3 detectives working for Burge. (People v. Cannon, 293 Ill. App. 3d 634 (1st Dist. 1997).)

19. In the middle of that hearing, following the completion of Mr. Cannon's evidence, and before the State was required to present the testimony of the alleged police torturers, the State offered Mr. Cannon a plea bargain whereby he would plead guilty to the offenses of armed violence and conspiracy to commit murder, and would be sentenced to consecutive terms of thirty and ten years. With credit for time served, the intended result of the plea was that Mr. Cannon would be released from custody in August 2003. Mr. Cannon accepted that plea deal on January 19, 2001 and pled guilty to those charges only because he was informed and believed that, as a result of the plea, he would be released in August 2003. At the plea proceeding Mr. Cannon merely stipulated that the factual basis was sufficient to support a conviction, but did not admit guilt. Mr. Cannon continues to assert his innocence.

20. Notwithstanding the agreement between Mr. Cannon and the Cook County State's Attorney, the PRB asserted that it had authority to continue to hold Mr. Cannon as a parole violator based upon the August 7, 1984 parole revocation document attached hereto as Ex. C. In accordance with that claimed authority, the PRB conducted a parole release hearing for Mr. Cannon on February 20, 2003.

21. The Cook County State's Attorney routinely objects to releasing Cook County defendants on parole. In Mr. Cannon's case, however, the Cook County State's Attorney wrote a letter explaining the background of Mr. Cannon's guilty plea and specifying that the office did *not* object to Mr. Cannon's release on parole. Mr. Cannon is informed and believes that, in addition to the letter, representatives of the State's Attorney also made oral requests that the PRB

release Mr. Cannon so that their agreement with him would be honored. Despite the State's Attorney's entreaties, the PRB denied Mr. Cannon's request for parole and continued his case for a subsequent parole release hearing in 2006.

22. Following the PRB's refusal to adhere to the agreement reached between Mr. Cannon and the Cook County State's Attorney's Office, Mr. Cannon, on October 22, 2003, filed a petition for post-conviction relief in the Circuit Court of Cook County alleging (a) that his counsel had provided ineffective assistance by not warning him of the possibility that, notwithstanding the agreement, the PRB might continue to hold him as a parole violator and (b) that the State had breached its agreement that Mr. Cannon would be released in August 2003.

23. On April 14, 2004, the State filed a response to Mr. Cannon's post conviction petition acknowledging that Mr. Cannon had been denied the benefit of what he bargained for. The State interposed no objection to vacating Mr. Cannon's guilty plea and moved to *nolle prosee* all charges against Mr. Cannon. In its written response to the post-conviction petition the State explained the reason for its action:

At the time of the plea, the People believed that Cannon would be released in August of 2003. After extensive review, the People have determined that there is only one option available that honors the intent of the parties at the time of the plea. This option is a drastic step to take on Cannon's behalf but the People feel obligated to honor the intent of the parties. The only option available is to dismiss the substantive case. In doing so the People have fulfilled their obligation to honor a "gentlemen's agreement" struck in 2001 and have taken the only step that they can to give him the benefit of [sic] he bargained for.

Thus, the State's dismissal of the criminal case constituted the strongest possible signal to the PRB that the agreement the State had reached with Mr. Cannon should be honored. Mr. Cannon is informed and believes that the State's Attorney took this action only after the PRB had refused

additional requests by representatives of the State's Attorney that Mr. Cannon be released on parole so that the agreement between the State and Mr. Cannon would be honored.

24. On April 26, 2004, Mr. Cannon wrote to the PRB explaining that, since the PRB's parole revocation document (Ex. C) found Mr. Cannon to be a parole violator based solely on the fact of his criminal conviction, the PRB had no further basis to continue to hold Mr. Cannon as a parole violator, now that the criminal case had been dismissed.

25. The PRB refused to release Mr. Cannon and instead announced that it would hold a parole revocation hearing concerning Mr. Cannon's alleged 1983 parole violation. Mr. Cannon objected, informing the PRB that a parole revocation hearing conducted in 2004 with respect to an alleged violation in 1983 would contravene the due process principle that parole revocation hearings must be conducted in a reasonably timely manner. This objection was overruled and the PRB conducted a parole revocation hearing on August 27, at Stateville Correctional Center, and on September 3, in Chicago.

II. The evidence at Mr. Cannon's parole revocation hearing.

26. Mr. Cannon contended at the parole revocation hearing that, in accordance with the Notice of Violation (Ex. A), the hearing must be limited to the single question of whether Mr. Cannon had participated in the murder of Darren Ross. Accordingly, Mr. Cannon objected to the PRB's consideration of various items of evidence unrelated to the murder charge. Those objections were either overruled or ignored, because, in the words of defendant Montes, the PRB was entitled, notwithstanding the limited Notice of Violation, to weigh generally whether Mr. Cannon was "being good" and/or was "getting [his] act together" at the time of his arrest.

27. The PRB allowed into the record of the hearing a large amount of material regarding Mr. Cannon's life and background that was completely irrelevant to whether Mr.

Cannon was guilty of the Ross murder. This evidence included, but is not limited to, prison records and a sentencing transcript from 1984. In addition, the PRB relied on evidence tending to show that Mr. Cannon may have been guilty, not of the murder of Darren Ross, but of the separate crime of concealment of a homicide.

28. As to the Darren Ross murder, the record consisted of four categories of evidence: (a) the confession that was tortured from Mr. Cannon by Chicago Police officers Byrne, Dignan and Grunhard; (b) evidence concerning the torture that led to that confession; (c) the October 31, 1983 grand jury testimony of one Tyrone McChristian and an affidavit recanting that testimony; and (d) Mr. Cannon's own testimony from his 1994 trial and at the revocation hearing regarding his presence at the scene when Ross was murdered by one A.D. McChristian.

29. At the parole revocation hearing, Mr. Cannon testified that he confessed to involvement in the Ross murder only because he was tortured, as he has consistently asserted over the past twenty years. He testified that Byrne, Dignan and Grunhard tortured him by repeatedly pretending to load a shotgun, placing it in his mouth and pulling the trigger and by shocking Mr. Cannon with an electric cattle prod that they placed on his genitalia and on his mouth. In the tortured confession, Mr. Cannon inculpated himself in planning the Ross murder and supplying the murder weapon to A.D. McChristian.

30. In contrast, Byrne and Dignan refused to answer questions at the parole revocation hearing concerning their mistreatment of Cannon, asserting their Fifth Amendment right against self-incrimination. (Grunhard, who was also involved, is now deceased.) Former Chicago Police Lt. Jon Burge, who commanded Byrne, Dignan and Grunhard, and Chicago Police Officers Daniel McWeeney and Michael Bosco, who also participated in the investigation of the

Ross murder, also asserted the Fifth Amendment in response to questions concerning the abusive interrogation of Mr. Cannon.

31. Mr. Cannon presented the testimony of one David Bates and submitted the transcribed testimony of one Gregory Banks concerning their similar torture experiences at Area 2 within days of Mr. Cannon's torture. And, finally, Mr. Cannon introduced the report of Chicago Police Office of Professional Standards investigator Veronica Messenger, which sustained allegations of the torture of Mr. Cannon against Byrne, Dignan and Grunhard.

32. The grand jury testimony of Tyrone McChristian was consistent with Mr. Cannon's tortured confession in that it asserted that Mr. Cannon had been involved in planning the murder of Darren Ross and had supplied the murder weapon to A. D. McChristian. Tyrone McChristian never testified at either of Mr. Cannon's criminal trials and Mr. Cannon has never had the opportunity to cross examine him.

33. Tyrone McChristian currently lives in Omaha, Nebraska. Mr. Cannon submitted an affidavit, signed by Tyrone on August 7, 2004, in which he recanted the portions of his grand jury testimony implicating Mr. Cannon and stated that that testimony had been coerced by police who threatened to charge him with the Ross murder unless he implicated Mr. Cannon. Former Chicago Police officers Daniel McWeeney and Peter Dignan asserted their Fifth Amendment privilege when they were asked whether they had participated in coercing false testimony from Tyrone.

34. Darrell Cannon testified at the parole revocation hearing that he did not participate in the killing of Darren Ross; that he did not supply the murder weapon; and that he had no foreknowledge that the crime would occur. Mr. Cannon stated that Ross was killed in an automobile that Cannon was driving at the request of A.D. McChristian, who was a passenger in

the car; that, as they were driving, without warning and without any foreknowledge on Mr. Cannon's part, A.D. pulled a handgun and repeatedly shot Ross in the head. Mr. Cannon acknowledged that, numb with shock following the murder and acting on instructions from A.D., Mr. Cannon held back the car seat as A.D. removed the body from the car and that he fled the scene with A.D. Mr. Cannon also admitted that he did not report the offense to the police. This testimony was consistent with Mr. Cannon's testimony at his 1994 retrial.

III. The PRB's decision to revoke parole.

35. On September 9, 2004, the PRB issued a written decision revoking Mr. Cannon's parole, a copy of which is attached hereto as Ex. D. That decision concluded: (a) that Tyrone McChristian's grand jury testimony inculpated Mr. Cannon in the Ross murder and provided a sufficient basis to revoke parole; (b) that Mr. Cannon's own testimony at the hearing inculpated Mr. Cannon in the murder and provided a sufficient basis to revoke his parole; and (c) that, in any event, the PRB did not have to find Mr. Cannon guilty of murder in order to revoke parole

36. First, the PRB found "good cause" to rely on Tyrone McChristian's grand jury testimony, even though Mr. Cannon had never had an opportunity to cross examine it, because it deemed that testimony to be "reliable." The PRB "disregarded" Tyrone McChristian's affidavit recanting his grand jury testimony. The PRB credited the testimony because the PRB viewed it as consistent in certain respects with Mr. Cannon's own account of his whereabouts on the day of the Ross murder and because, in it, Tyrone implicated his brother, A.D.

37. Second, the PRB found Mr. Cannon's own account of his actions on the day of the Ross murder to be inculpatory because (a) it chose not to believe Mr. Cannon's assertion that he did not know that A.D. McChristian possessed a gun prior to the murder and (b) it viewed Mr. Cannon's concealment of the body and flight from the scene as evidence of guilt of the murder.

38. Third, the PRB concluded, without explanation, that it had the authority to revoke Mr. Cannon's parole on grounds other than murder because "the inmate was given actual notice of other grounds for revoking his parole."

39. The PRB's decision made no mention of the overwhelming evidence that Mr. Cannon was a victim of torture at the hands of Chicago Police officers. In interviews with the media about the decision, defendant Montes stated that the PRB was "inclined to believe" that Mr. Cannon had been tortured. Despite this "inclination" to believe the evidence of torture, the PRB's decision made no mention of the fact that, without the tortured confession, the State could not have convicted Mr. Cannon of the Ross murder nor of the fact that Mr. Cannon had spent 21 years unjustly imprisoned because of that unlawful evidence.

COUNT I
(Mandamus – Denial of Timely Parole Revocation Hearing)

40. Plaintiff Darrell Cannon repeats and re-alleges the preceding paragraphs as if fully set forth herein.

41. The PRB has a non-discretionary duty pursuant to the due process clauses of the United States Constitution and the Illinois Constitution to provide persons charged with parole violations with a reasonably prompt parole revocation hearing.

42. Where, because of the passage of time, it is no longer possible to provide a reasonably prompt parole revocation hearing, the PRB has a non-discretionary duty pursuant to the due process clauses of the United States Constitution and the Illinois Constitution to order the release of a person confined for an alleged parole violation.

43. Mr. Cannon was charged on November 18, 1983 with violating the conditions of his parole by murdering Darren Ross. The PRB did not conduct a hearing on this alleged violation until August 27 and September 3, 2004 – almost 21 years later.

44. The PRB could have held a prompt parole revocation hearing in the weeks following its November 18, 1983 charge. Illinois law does not require the PRB to await the outcome of criminal proceedings in parole revocation matters. Rather than conducting a prompt hearing, however, the PRB chose to defer to the criminal process and to base its parole revocation upon Mr. Cannon's criminal conviction.

45. By conducting Mr. Cannon's parole revocation hearing almost 21 years after the alleged violation (following the dismissal of the criminal case), the defendants violated their duty to afford Mr. Cannon a reasonably prompt parole revocation hearing and thereby deprived Mr. Cannon of due process of law.

COUNT II
(Mandamus – Failure to Provide Notice of Parole Violation)

46. Plaintiff Darrell Cannon repeats and re-alleges the preceding paragraphs as if fully set forth herein.

47. The PRB has a non-discretionary duty pursuant to the due process clauses of the United States Constitution and the Illinois Constitution to provide persons charged with parole violations with written notice of the claimed violation of parole.

48. The PRB has a non-discretionary duty, pursuant to the due process clauses of the United States Constitution and the Illinois Constitution, to consider only the particular violation alleged in the written notice in determining whether to revoke parole.

49. The only written notice of an alleged parole violation ever provided to Mr. Cannon stated that Mr. Cannon was alleged to have committed the crime of murder.

50. During Mr. Cannon's parole hearing, defendant Montes repeatedly asserted that the PRB was entitled to revoke Mr. Cannon's parole on grounds other than those stated in the notice. The PRB's written decision also asserts that the PRB has this right.

51. In revoking Mr. Cannon's parole, the PRB relied, to Mr. Cannon's prejudice, upon evidence of wrongdoing by Mr. Cannon that is irrelevant to whether Mr. Cannon was guilty of the Ross murder, including (a) assertions contained in a 1984 sentencing transcript, which remained in the record despite Mr. Cannon's objections; (b) Department of Corrections records concerning Mr. Cannon's incarceration, which remained in the record despite Mr. Cannon's objections; and (c) evidence regarding Mr. Cannon's actions *following* the Ross murder, which, under Illinois law, are not sufficient to establish Mr. Cannon's guilt of the murder by accountability.

52. The defendants violated their duty in Mr. Cannon's parole revocation hearing to limit their parole revocation consideration to the charge alleged in the notice of violation and thereby deprived Mr. Cannon of due process of law.

COUNT III
(Mandamus – Denial of Right to Confront and Cross Examine Witnesses)

53. Plaintiff Darrell Cannon repeats and re-alleges the preceding paragraphs as if fully set forth herein.

54. The PRB has a non-discretionary duty pursuant to the due process clauses of the United States Constitution and the Illinois Constitution to provide persons charged with parole violations the right to confront and cross examine adverse witnesses unless there is "good cause" to excuse this requirement.

55. In revoking Mr. Cannon's parole, the PRB relied upon the grand jury testimony of Tyrone McChristian, whom the PRB did not subpoena to the hearing as a witness.

56. Tyrone McChristian's grand jury testimony was inherently unreliable because: (a) Mr. Cannon at no time has ever had the opportunity to cross examine Tyrone concerning his inculcation of Mr. Cannon in the Ross murder; (b) Tyrone has subsequently recanted the

portions of his grand jury testimony that inculpate Mr. Cannon, stating in an affidavit that he had been coerced by the police into implicating Mr. Cannon; and (c) there is no evidence to corroborate the portions of Tyrone's grand jury testimony that inculpate Mr. Cannon. Therefore, the defendants had a non-discretionary duty to afford Mr. Cannon the opportunity to confront and cross examine Tyrone, if they were to rely on his testimony.

57. The defendants violated their duty in Mr. Cannon's parole revocation hearing to afford Mr. Cannon the opportunity to confront and cross examine the witnesses against him.

COUNT IV
(Mandamus – Failure to Follow Illinois Law on Accountability)

58. Plaintiff Darrell Cannon repeats and re-alleges the preceding paragraphs as if fully set forth herein.

59. In determining whether a person has violated parole by committing the crime of murder, the PRB has a non-discretionary duty to follow the Illinois law defining the crime of murder, including, where applicable, the Illinois law of accountability, as defined by Illinois statute and developed by the Illinois Supreme Court.

60. Illinois law provides that a person may not be legally accountable for the crime of murder merely by being present at the scene of the crime and that a person may not be legally accountable for a crime based on actions he takes subsequent to the completion of the crime.

61. The PRB's decision revoking Mr. Cannon's parole departs from clearly established Illinois law by holding Mr. Cannon accountable for the murder of Darren Ross based upon evidence showing no more than that Mr. Cannon was present at the time Ross was murdered by A.D. McChristian.

62. The PRB's decision revoking Mr. Cannon's parole departs from clearly established Illinois law by holding Mr. Cannon accountable for the murder of Darren Ross based

upon evidence of Mr. Cannon's actions following A.D. McChristian's completion of the Ross murder.

63. The defendants violated their duty in Mr. Cannon's parole revocation hearing to follow Illinois law on accountability for the crime of murder in determining whether to revoke Mr. Cannon's parole for committing the crime of murder.

COUNT V
(Administrative Review by Common Law Certiorari)

64. Plaintiff Darrell Cannon repeats and re-alleges the preceding paragraphs as if fully set forth herein.

65. This Count V seeks administrative review of the PRB's decision to revoke Mr. Cannon's parole via a writ of common law certiorari.

66. The statute conferring power on the PRB to conduct parole revocation hearings contains no reference to the Administrative Review Act and provides for no other means of review of parole revocation decisions. Review of the PRB's parole revocation decisions is therefore available via the writ of common law certiorari.

67. For the reasons set forth above in Counts I through IV, the PRB's decision to revoke Mr. Cannon's parole was arbitrary and capricious, an abuse of discretion, contrary to law and against the manifest weight of the evidence and should be reversed by issuance of a writ of common law certiorari.

COUNT VI
(Mandamus – Breach of Contract)

68. Plaintiff Darrell Cannon repeats and re-alleges the preceding paragraphs as if fully set forth herein.

69. The Cook County State's Attorney, on behalf of the People of the State of Illinois, entered into a contract with Darrell Cannon in January 2001 whereby the State agreed to the imposition of a sentence in the Darren Ross murder case that would result in Mr. Cannon's release in August 2003. In exchange for the State's promise, Mr. Cannon agreed to forego the opportunity to suppress his illegally obtained confession and his defense in the case.

70. The PRB, as an agency of the State of Illinois, was bound by the contractual commitment that the Cook County State's Attorney, as an official of the State of Illinois, made with Mr. Cannon on behalf of the People of the State of Illinois.

71. The PRB has a non-discretionary duty to honor contractual commitments made on behalf of the State of Illinois and not to take action constituting a breach of such contracts.

72. The PRB's refusal, in February 2003, to allow Mr. Cannon to be released on parole in accordance with the promise the Cook County State's Attorney made to him on behalf of the People of the State constituted a breach of contract.

73. In April 2004, the Cook County State's Attorney reaffirmed its contractual agreement with Mr. Cannon by dismissing all criminal charges against Mr. Cannon arising out of the Ross murder and explaining the reasons for this action as follows:

At the time of the plea, the People believed that Cannon would be released in August of 2003. After extensive review, the People have determined that there is only one option available that honors the intent of the parties at the time of the plea. This option is a drastic step to take on Cannon's behalf but the People feel obligated to honor the intent of the parties. The only option available is to dismiss the substantive case. In doing so the People have fulfilled their obligation to honor a "gentlemen's agreement" struck in 2001 and have taken the only step that they can to give him the benefit of [sic] he bargained for.

74. By revoking Mr. Cannon's parole in September 2004 and refusing to allow his release on parole in accordance with the agreement between Mr. Cannon and the State of Illinois,

the PRB again breached the contract that the Cook County State's Attorney had made with Mr. Cannon on behalf of the State.

COUNT VII

(Mandamus – Failure to Provide a Neutral Forum for the Parole Revocation Hearing)

75. Plaintiff Darrell Cannon repeats and re-alleges the preceding paragraphs as if fully set forth herein.

76. The PRB has a non-discretionary duty pursuant to the due process clauses of the United States Constitution and the Illinois Constitution to provide a neutral and detached forum for considering whether persons are guilty of alleged violations of parole.

77. The PRB and defendants Montes, Frier and Fox harbor a hostile bias against Mr. Cannon and, on information and belief, had determined prior to the beginning of Mr. Cannon's parole revocation hearing that, under no circumstances, would they allow Mr. Cannon to be released on parole. This bias exists, among other reasons not now known to Mr. Cannon, because Mr. Cannon's November 2, 1983 arrest, within a few months of his having been released on parole, embarrassed the PRB and because the PRB believes Mr. Cannon to be a leader within the El Rukin street gang.

78. At the hearing, no parole officer or other official "prosecuted" the parole violation case against Mr. Cannon. Instead, the defendants acted as both judge and prosecutor. On information and belief, defendant Montes designated defendant Fox to put forward the case for finding a parole violation. Consistent with this assignment, defendant Fox subjected Mr. Cannon to an aggressive and hostile cross examination at the hearing.

79. The hostile bias of the PRB against Mr. Cannon is reflected in the following actions taken by the defendants in the course of considering Mr. Cannon's case:

- The defendants refused to honor the clear contractual understanding between the Cook County State's Attorney's Office and Mr. Cannon, whereby Mr. Cannon was to have been released from custody in August 2003, despite numerous oral requests from the State's Attorney that they do so.
- The defendants convened a parole revocation hearing for Mr. Cannon nearly 21 years after the alleged parole violation and after the Cook County State's Attorney had dismissed all criminal charges related to the alleged violation. The PRB has never before taken comparable action in any other case.
- At the hearing, defendant Fox displayed overt hostility toward Mr. Cannon and his counsel, including by engaging in a hostile cross examination of Mr. Cannon that was intended not to discover the truth regarding the Ross murder, but rather to humiliate and/or to inflame Mr. Cannon.
- The defendants refused to acknowledge in their written decision that Mr. Cannon has spent nearly 21 years unjustly imprisoned because of a confession that was procured through police torture, even though defendant Montes admitted to reporters that he and the other defendants were "inclined to believe" that Mr. Cannon is a torture victim.
- The defendants revoked Mr. Cannon's parole in a decision that violates due process and fails to follow Illinois law, as alleged in Counts I through IV above.

80. The defendants violated their duty in Mr. Cannon's parole revocation case to afford Mr. Cannon a neutral and detached forum for considering whether Mr. Cannon's parole should be revoked.

PRAYER FOR RELIEF

Mr. Cannon prays that this Court award him the following relief:

A. Entry of an order directing the Illinois Prisoner Review Board to immediately release him on parole.

B. In the alternative, entry of an order reversing the Illinois Prisoner Review Board's parole revocation decision and directing the PRB to rehear Mr. Cannon's case, with directions that the PRB strictly follow the requirements of the due process clauses of the United States and Illinois constitutions at the rehearing.

C. Entry of an order requiring specific performance of the contract that was breached by the defendants, and awarding damages to Mr. Cannon against the defendants jointly and severally for the breach of contract.

D. Court costs and attorneys fees.

E. Such further and additional relief as this Court deems just and proper.

Respectfully submitted,

DARRELL CANNON

By: _____

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