

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CHANCERY DEPARTMENT, FIRST DISTRICT

Kevin Gilyard
Plaintiff,

No.

V.
John R. Baldwin, Illinois Department
of Corrections, in his official capacity,
and

Ned Schwartz, Illinois Department of
Corrections Parole Officer in his
official capacity
Defendant.

PLAINTIFF'S VERIFIED COMPLAINT FOR RELIEF

Plaintiff presents this verified complaint for declaratory relief, injunction, and
Temporary restraining order against John R. Baldwin of the State of Illinois Department of
Corrections and Ned Schwartz Parole Officer for the State of Illinois Department of
Corrections. In support of this complaint the Plaintiff presents the following:

A. PARTIES

1. Plaintiff Kevin Gilyard is a natural person serving his MSR period of 1 year under IDOC # Y21240.
2. Defendant John R. Baldwin is the director of the Department of Corrections and a natural person.
3. Defendant Ned Schwartz Parole Officer for the State of Illinois Department of Corrections.
4. Plaintiff was convicted 13CR2185801 for Possession of a firearm by a felon in 2017.
Plaintiff was sentenced to 30 months incarceration.
5. January 10th, 2018 Plaintiff was released on one-year MSR and is serving his MSR in the County of Cook.

6. Plaintiff is a world recognized entertainment artist.
7. Plaintiff is a musician having released multiple albums, one of which peaked at number two on the US Billboard 200 chart
8. Plaintiff has conducted Global and international tours.
9. Plaintiff is a Platinum selling artist having sold more than 1 million Units (albums)
10. Plaintiff has been nominated for awards.
11. Plaintiff owns an independent label known as Bread Winners Association and in excess of 20+ employees and agents who depend on Plaintiff to perform in order to sustain an income and lively hood.
12. Plaintiff has been nominated for Top Rap Album by Billboard Music Awards and has had his music featured in various television shows and movies including Suicide Squad and The Fate of the Furious
13. Plaintiff has been allowed to Travel to Louisiana on March of 2018 unsupervised.
14. Plaintiff has been allowed to Travel to Louisiana in January of 2018 unsupervised.
15. Plaintiff traveled on both occasions and has returned without incident.
16. Plaintiff is in full compliance with his MSR conditions.
17. Plaintiff has finished his period of house arrest and electronic monitoring.
18. Plaintiff was assigned and has completed his required anger management program.
19. Plaintiff has contracted for and is scheduled to work and perform, entertain, create music, and otherwise associate with other artists to present entertainment and music to the public on the following dates and locations: See Exhibit B.

- A. May 4th- JMBLYA Festival Dallas, TX¹
- B. May 5th- JMBLYA Festival Austin, TX
- C. May 6th- JMBLYA Festival Houston, TX
- D. May 12th- Rolling Loud Festival Hard Rock Stadium Miami Gardens, FL²
- E. May 13th- Khaza (our son) 4th Birthday Party Disney World Orlando, FL³
- F. June 24th- BET Awards NOVO Los Angeles, CA⁴
- G. July 8th- Common Ground Music Festival Lansing, MI⁵
- H. July 21st- Global Dance Festival Denver, CO⁶

20. Pursuant to his MSR conditions, on or about Early April of 2018 Plaintiff requested permission from his parole officer Mr. Schwartz to travel for the purposes of working and performing as an artist on such dates in such areas and was denied the right to travel to perform.
21. Plaintiff was denied leave to travel on April 10th, 2018.

¹ This is an event benefitting the Texas Organizing Project, Angel By Nature Foundation and Grounded in Music

² This is the largest hip-hop gathering event in the country where all Plaintiff's fellow performers from hip-hop gather to entertain and perform music and art.

³ This is Plaintiff's son's birthday event. Plaintiff has missed two birthdays with is son.

⁴ This is a civil rights exposition and award show for African American entertainers.

⁵ This is a civil rights exposition and an event built on the premise of diversity and inclusion in that it groups artists from America from different genres of music to promote diversity.

⁶ This is a civil rights exposition and an event built on the premise of diversity and inclusion in that it groups artists from around the world from different genres of music to promote diversity.

22. Plaintiff was not a resident of the State of Illinois at the time of the arrest.

23. Plaintiff has four children.

- T.D. Louisiana 14 years old
- K.G. Louisiana 5 years old
- I.G. California 5 years old
- K.G. 3 years old California.

24. Plaintiff has only seen three of his children twice since being released on parole and due to the children being in school he is unable to remove the children from class to visit them or otherwise travel there.

25. The 14 Year suffers from some emotional issues.

26. Plaintiff is allowed to travel as part of his MSR conditions.

27. Prior to travel Plaintiff must ask permission from his Parole officer.

28. Plaintiff has not attempted to undermine the court or otherwise disrespected the agencies involved.

29. Plaintiff must check in once a month with his officer.

30. Aside from the once a month visit with his officer Plaintiff is otherwise unsupervised.

31. Plaintiff and his wife founded a charitable organization Mentoring at risk youth known as the Kevin & Dreka Gates Foundation.

32. Plaintiff participates in the make a wish foundation, achievement academy at risk program for the youth.

33. Plaintiff will be traveling with his staff, wife, entertainment attorney, Vincent Phillips from Atlanta, Georgia, and two children I.G. 5 and K.G. 3. The children always travel with the

parents when Plaintiff is performing.

34. Plaintiff is not a flight risk and has not avoided the court's jurisdiction and otherwise fled.

35. Plaintiff is unable to flea and hide in that he is so well recognized as an international musician and entertainer and due to his distinct appearance as a result of his artistic expression through the use of art in the form of tattoos on his body and face.

36. Plaintiff submitted a draft copy of the complaint to the legal department to which the legal department replied that the reason for the denial is that Plaintiff cannot be supervised while out of town.

37. Plaintiff's parole conditions allow for travel outside the jurisdiction without supervision, but simply require permission.

38. Denial of the permission to leave will cause harm to the Plaintiff both financially and otherwise deprive him of his constitutional rights and income to support himself and his family.

39. Plaintiff has a fit moral character. See Exhibit A.

**B. COUNT 1: DECLARATORY JUDGMENT VIOLATION OF PLAINTIFF'S
CONSTITUTIONAL RIGHTS**

40. Plaintiff re-alleges paragraphs 1-39 and asserts them in to this count.

41. The Department of Corrections refusal to approve Plaintiff's request interferes with his constitutional right to travel, his First Amendment right to freedom of speech, his right to association, his rights to substantive and procedural due process, his right to work, and his rights as they relate to his family.

42. Plaintiff has protectable interests and rights.

43. As a parolee who has completed his conditions except to report monthly he has the "right to

travel and [his] First Amendment right to freedom of association.” Berrigan v. Sigler, 475 F.2d 918, 919 (D.C. Cir. 1973).

44. Additionally, Pursuant to state law and the MSR conditions imposed on Plaintiff by the State under 730 ILCS 5/3-3-7(A)(8) he has the right to travel outside the jurisdiction without supervision while on Parole.
45. The condition states he must “obtain permission of an agent of the Department of Corrections before leaving the State of Illinois”. See 730 ILCS 5/3-3-7(A)(8).
46. There is no restriction on Plaintiff’s travel or requirement for supervision when he travels as a condition, just permission.
47. Plaintiff’s right to work is a property right protected by the due process clause of the constitution. *Levin v. Civil Serv. Comm’n of Cook County*, 52 Ill. 2d 516, 521, 288 N.E.2d 97, 100 (1972).
48. Plaintiff also has a protectable first Amendment right and interest. Specifically, music and live entertainment such as musical works fall within the First Amendment guarantee. *Schad v. Borough of Mount Ephraim*, 452 U.S. 61, 101 S. Ct. 2176, 68 L. Ed. 2d 671 (1981). *Ward v. Rock Against Racism*, 491 U.S. 781, 109 S. Ct. 2746, 105 L. Ed. 2d 661 (1989).
49. Plaintiff has a protectable right to expressive association. See *Knox v. Serv. Employees Int’l Union, Local 1000*, 567 U.S. 298, 132 S. Ct. 2277, 183 L. Ed. 2d 281 (2012). Plaintiff also has a protectable interest in his company and business, BWA.
50. The matter also involves protected liberties such as Plaintiff’s and his children’s rights in relation to “[t]he relationship between parent and child, a father’s interest in maintaining his familial relationship with his [children].” *United States v. Bear*, 769 F.3d 1221, 1229 (10th Cir. 2014); the right to direct the education and upbringing of one’s children, *Washington v.*

Glucksberg, 521 U.S. 702, 720, 117 S. Ct. 2258, 2267, 138 L. Ed. 2d 772 (1997); the privacy interest in family, procreation, and child rearing. See *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 65, 93 S. Ct. 2628, 2639, 37 L. Ed. 2d 446 (1973); and the right to intimate association with family members which is anchored in the Fourteenth Amendment. *Clayworth v. Luzerne County, Pa.*, 513 Fed. Appx. 134, 137 (3d Cir. 2013).

51. Plaintiff has the "right to travel and a First Amendment right to freedom of association," as a parolee *Berrigan v. Sigler*, 475 F.2d 918, 919 (D.C. Cir. 1973)

52. According to the United States Supreme Court Entertainment is a form of "speech" fully protected by the First Amendment. *Zacchini v. Scripps-Howard Broad. Co.*, 433 U.S. 562, 97 S. Ct. 2849, 53 L. Ed. 2d 965 (1977)

53. According to the Illinois Supreme Court Music is recognized as a form of expression and communication protected by the first amendment. *People v. Jones*, 188 Ill. 2d 352, 356, 721 N.E.2d 546, 549 (1999)

54. The proposed visit will be of short duration and does not last in excess of 4 days at a time. See *Berrigan v. Sigler*, 475 F.2d 918, 919–20 (D.C. Cir. 1973)(short trip while no other conditions other than reporting was improperly denied)

55. The trip will not interfere with the rehabilitation of appellants since the Board has made no active effort to rehabilitate Plaintiff since the date of his release, the removal of his electronic monitor, and the completion of his anger management.

56. Plaintiff has no other requirements other than to comply with the conditions of MSR, Report and complete his term.

57. Plaintiff reports once a month to the parole officer and otherwise remains unsupervised the remainder of the month.

58. Plaintiff has never violated his MSR.
59. Plaintiff is of good character and a productive member of society. See Exhibit A
60. He was not charged with the use of the weapon in the crime but a simple possession of the weapon of the crime.
61. The decision to deny Plaintiffs request is arbitrary and irrational since there is no rational relationship or a reasonable necessity by the Department to deny him permission to leave. *McGregor v. Schmidt*, 358 F. Supp. 1131, 1134 (W.D. Wis. 1973)
62. There is no interest, compelling or otherwise, served by the Departments refusal to approve Plaintiff's proposed trip. His right to travel, to freedom of association, right to work, right to due process, liberties as to his children, and free speech must prevail. See *Berrigan v. Sigler*, 475 F.2d 918, 919-20 (D.C. Cir. 1973).
63. The denial is in effect an unreasonable restriction on the time place or manner of constitutionally protected speech occurring in a public forum.
64. The denial is also improper based on the Defendant's family circumstances given the effect of the defendant's absence on his family members. *United States v. Runyan*, 639 F.3d 382, 384 (7th Cir. 2011). The effects of a father not being present during the rearing of the child are substantially negative and life altering. In fact, a common factor amongst criminal defendants is a lack of a father. As a result, the denial is not in favor of public policy to promote the Plaintiff's family ties and responsibilities and will allow for Plaintiff to reasonably provide for the welfare of his family. *States v. Jebara*, 313 F. Supp. 2d 912 (E.D. Wis. 2004)
65. The executive action by the Department of corrections also violates the procedural and the substantive component of the Due Process Clause since it "can properly be characterized as arbitrary in a constitutional sense." *County of Sacramento v. Lewis*,

523 U.S. 833. And fails to provide a fair procedure.

66. Plaintiff has demonstrated a deprivation of a constitutionally protected liberty or property interest in order to establish a due process violation based on the discretionary conduct of government officials. *Am. Exp. Travel Related Services Co., Inc. v. Kentucky*, 641 F.3d 685, 688-89 (6th Cir. 2011)

Wherefore, plaintiff requests this honorable court to enter judgment declaring that the department of corrections denial of request to leave violates his constitutional rights and enter an order requiring them to grant plaintiff leave to travel on such dates.

C. COUNT TWO: REQUEST FOR TRO AND PRELIMINARY INJUNCTION

67. Plaintiff re-alleges paragraphs 1-66 in support of this count.

68. Plaintiff has a clearly ascertainable right in need of protection.

69. Entertainment is form of "speech" fully protected by the First Amendment. *Zacchini v. Scripps-Howard Broad. Co.*, 433 U.S. 562, 97 S. Ct. 2849, 53 L. Ed. 2d 965 (1977)

70. Music is recognized as a form of expression and communication protected by the first amendment. *People v. Jones*, 188 Ill. 2d 352, 356, 721 N.E.2d 546, 549 (1999)

71. Plaintiff has right to be free from arbitrary actions by the government

72. Plaintiff has a right to procedural and substantive due process.

73. Plaintiff has a right to association with his children and the liberties mentioned above.

74. Plaintiff will suffer irreparable harm in that the denial of his rights as they relate to the rearing and association with his children is unconstitutional.

75. Pursuant to the United States Supreme Court His Loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 96 S. Ct. 2673, 49 L. Ed. 2d 547 (1976)

76. At this time, Plaintiff has no other adequate remedy at law in that only prospective and

equitable relief is available in that money damages cannot satisfy the alleged injury or provide relief.

77. Plaintiff has a strong likelihood of success on the merits. See Attached Exhibit C Emergency Motion for TRO for further explanations.

78. The government is unable to present sufficient reason to deny him the permission to leave, especially since the MSR conditions expressly allow him to leave but with permission and he is in full compliance.

79. Plaintiff must only report to his officer once a month.

80. The hardships would balance in favor of the Plaintiff in that the Department of Corrections suffers no harm by having him leave the jurisdiction and perform and return, especially since they only check on him once a month

81. The trip will not interfere with the rehabilitation of appellants since the Board has made no active effort to rehabilitate Plaintiff since the date of his release, removal of his electronic monitor, and completion of his anger management.

82. The public policy of the State is to support employment since lack of employment is the leading cause of recidivism.

83. The public policy favors gradual reintegration into the community and allowing Plaintiff to slowly begin to perform a few days a month after serving 90 days on house arrest promotes this policy.

84. The public policy favors the first amendment and the marketplace of ideas. Fruition of the arts and entertainment is important to the public and the Plaintiff, both having a symbiotic relationship in that entertainment cannot exist without the entertainer.

85. The public policy favors rehabilitation and contact with family members.

Wherefore, the Plaintiff requests that a temporary restraining order and preliminary injunction prohibiting the Defendants from denying Plaintiff leave to perform be entered for the reasons set forth in this verified amended complaint.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true. I further certify that the documents attached to this petition are documents that I received from the author/creator of the document on or about the date indicated on each document and that such documents are actual copies of the originals, and that they are the same condition in which I received them during the course of litigation and business operations.

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/S/ Kevin Gilyard

By: Kevin Gilyard, Plaintiff.

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