IN THE DISTRICT COURT OF APPEAL FOR THE

STATE OF FLORIDA FIFTH DISTRICT

LOUIS EARLY PAYTON, CASE NO.: 5D20-1442

 *Plaintiff,*

vs.

BILLY WOODS, as

SHERIFF of MARION COUNTY,

 *Defendant*.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_/

**AMENDED PETITION FOR WRIT OF HABEAS CORPUS**

 Plaintiff, Louis Early Payton, by and through his undersigned counsel, hereby sues the Defendant, Billy Woods, as Sheriff of Marion County, Florida and humbly request that this writ of habeas corpus be granted and an order entered directing the Defendant to immediately release the Plaintiff. In support thereof, the following is submitted:

**INTRODUCTION**

 1. Plaintiff, Louis Early Payton is a 74-year-old combat veteran who was exposed to agent orange in Vietnam. This has caused him to develop many serious health conditions, to include chronic kidney disease, obstructive sleep apnea, diabetic neuropathy and chronic lung disease. Mr. Payton is presently incarcerated without bond at the Marion County Jail pending resolution of two alleged technical violations of his misdemeanor probation. The trial court has denied setting bond three (3) times, resulting in the filing of this writ of habeas corpus.

[intentionally left blank]

**PROCEDURAL HISTORY**

 2. On or about January 16, 2020, the Plaintiff, Louis Early Payton was placed on twelve (12) months' probation for offense of Simple Battery (a misdemeanor) in case 2019-CF-1821.[[1]](#footnote-1)

 3. On April 3, 2020, the State of Florida filed a Probation Violation Affidavit in case 2019-CF-1821 alleging that Mr. Payton violated his probation by:

 a. Driving in-front-of Cynthia and Racheal Matthews' property and blocking their path; and

 b. Operating a jet ski to closely to the Matthews' boat dock on March 31, 2020.[[2]](#footnote-2)

 4. On April 7, 2020, the trial court issued a nonbondable arrest warrant in case 2019-CF-1821 due to the alleged violations of probation discussed above.

 5. On April 13, 2020, Mr. Payton was taken into custody on the abovementioned warrant and held without bond.

 6. On April 17, 2020, Mr. Payton filed his first Motion to Set Bond (*see* BOND MOTION attached as ***Exhibit #2***). In support of his release, the Plaintiff submitted the following:[[3]](#footnote-3)

 a. Mr. Payton is a 74-year-old combat veteran who was exposed to agent orange in Vietnam.[[4]](#footnote-4) This has caused him to develop many serious health conditions, to include chronic kidney disease, obstructive sleep apnea, diabetic neuropathy and chronic lung disease. As a result, the undersigned counsel warned that Mr. Payton was high risk for severe illness if he were to catch COVID-19.

 7. A hearing was held on Mr. Payton's first motion to set bond on April 22, 2020. When this occurred, there had been no confirmed cases of COVID-19 at the Marion County Jail. The trial court denied the Plaintiff's request to set bond without explanation (*see* ORDER #1 attached as ***Exhibit #3***).

 8. On June 1, 2020, Mr. Payton filed his second motion to set bond (*see* SECOND MOTION attached as ***Exhibit #4***).[[5]](#footnote-5) In doing so, the Plaintiff disclosed exculpatory evidence not previously disclosed to the trial court which proves his innocence. Mr. Payton argued that this was a sufficient change in circumstances so as to warrant a reconsideration of his bond.

 9. On June 8, 2020, the trial court denied the Plaintiff's second motion to set bond without a hearing (*see* ORDER #2 attached as ***Exhibit #5***). When this occurred, the trial court indicated a willingness to conduct a VOP trial via Zoom (*see* E-MAIL CHAIN #1 attached as ***Exhibit #6***). The State of Florida and Mr. Payton expressed a desire to proceed and efforts to coordinate a VOP trial were commenced. In doing so, the prosecution informed the trial court it would require forty-five (45) minutes to present its case-in-chief, and Mr. Payton advised two hours was needed.[[6]](#footnote-6) Shortly after, both parties were advised that due to the availability of resources the Zoom trial would need to be:

 a. Reduced to one hour;

 b. Broken down into one-hour segments which would be held on different days; or

 c. Not held at all.

 10. On June 22, 2020, Mr. Payton's attorney received an e-mail authored by Timothy T. McCourt, general counsel for the Marion County Sheriff's Office (*see* SHERIFF E-MAIL attached as ***Exhibit #7***). This e-mail advised that one jail staff member tested positive for COVID-19 and had been sent home, and eight (8) inmates were exhibiting virus like symptoms and were being quarantined for safety.[[7]](#footnote-7)

 11. On June 24, 2020, Mr. Payton filed his third motion to set bond (*see* THIRD MOTION attached as ***Exhibit #8***). Like before, the trial court refused to grant a hearing. It is reasonable to conclude that the trial court has or intends on denying Mr. Payton's third request to set bond.[[8]](#footnote-8)

 12. On June 26, 2020, the trial court unilaterally scheduled a VOP trial to occur on July 14, 2020.[[9]](#footnote-9) It is unknown whether this hearing will be reduced to an hour, held in parts or conducted in some other manner.

**LEGAL ARGUMENT**

 13. "Habeas corpus is the proper remedy to challenge incarceration due to denial of a request for bond." *Seymour v. State*, 132 So.3d 300, 303 (Fla. 4th DCA 2014).

**I. COVID-19 Presents a Lethal Threat of Harm to Plaintiff in Violation of**

 **Article I, Section 17 of the Florida Constitution**

 14. The Florida Constitution states that "cruel and unusual punishment" is forbidden. *See* Article I, Section 17 Fla. Const.

 15. Defendant, Billy Woods, as Sheriff of Marion County, Florida is in continual violation of Plaintiff's constitutional right against cruel and unusual punishment.

 16. An outbreak of the novel coronavirus is imminent or already occurring at the Marion County Jail, where inmates are confined in conditions that threaten their lives.

 17. As an inmate in the Marion County Jail, the Plaintiff, Mr. Payton is being subjected to the following treatment by the Defendant:

 a. Mr. Payton does not have a safe way to dry his hands;

 b. Mr. Payton must sleep within three feet of other inmates;

 c. High touch surfaces within the jail pod are sanitized once or twice a day;

 d. Mr. Payton and other inmates in his pod have not been provided masks;

 e. Temperature checks are not being performed; and

 f. Social distance is not being observed/enforced.

 18. COVID-19 has been detected in the Marion County Jail.[[10]](#footnote-10) The extent of this outbreak is presently unknown.

 19. Mr. Payton is forced to suffer conditions that deny him the precautions and protections necessary to mitigate the severe threat of COVID-19. This constitutes cruel and unusual punishment forbidden by the state constitution.

 20. Due to the above, the Plaintiff seeks a writ of habeas corpus discharging him from state custody.

**PETITION FOR RELIEF**

 WHEREFORE, the Plaintiff, Louis Early Payton, demands a writ of habeas corpus requiring the Defendant, Billy Woods, as Sheriff of Marion County, Florida to bring him before this Court so that the legality of his detention can be determined and that the Plaintiff be discharged from custody.

STOUT DEFENSE, P.A.

Attorney for PLAINTIFF

5215 SW 91st Terrace

Gainesville, Florida 32608

Tel.: (352) 665-9266

E-Mail: adam@stoutdefense.com

By: /s/ Adam Stout l

 Adam Stout, Esq.

 Florida Bar No. 96527

**CERTIFICATE OF SERVICE**

 I hereby certify that on this 1st day of July 2020, the foregoing was mailed to the State of Florida, at the Office of the Attorney General, 444 Seabreeze Boulevard, 5th Floor, Daytona Beach, Florida 32118, and filed electronically through the Florida Courts E-Filing Portal and sent via e-mail through the Portal’s electronic service to: Office of the State Attorney 5th District, 110 NW 1st Avenue #5000, Ocala, Florida 34475, via e-mail at eserviceMarion@sao5.org, and to Tim McCourt, General Counsel for the Marion County Sheriff's Office, P.O. Box 1987, Ocala, Florida 34478, via e-mail at tmccourt@marionso.com.

By: /s/ Adam Stout l

 Adam Stout, Esq.

1. It is unknown (a) why Mr. Payton's probation is being supervised by the Florida Department of Corrections and (b) why the circuit court retained jurisdiction over his case when he pled to a misdemeanor offense on January 16, 2020. [↑](#footnote-ref-1)
2. *See* PROBATION AFFIDAVIT attached as ***Exhibit #1***. [↑](#footnote-ref-2)
3. During the hearing on this motion, Mr. Payton provided the trial court with his medical records from the VA Hospital. [↑](#footnote-ref-3)
4. Mr. Payton has a 90% service-connected disability rating through the VA Healthcare System. [↑](#footnote-ref-4)
5. When this motion was filed, the Plaintiff had yet to receive a trial date and continued to be held without bond. [↑](#footnote-ref-5)
6. *See* ***Exhibit #6***. [↑](#footnote-ref-6)
7. It is unknown if these eight (8) inmates tested positive for COVID-19. Since this e-mail was sent, more jail staff personnel have tested positive for COVID-19 and the true extent of the outbreak at the jail is unknown. [↑](#footnote-ref-7)
8. The undersigned counsel provided the trial court proposed orders denying Mr. Payton's third motion to set bond on June 24th and June 26th, but an order has yet to be executed by the court (*see* CORRESPONDENCE attached as ***Exhibit #9***). In any case, Mr. Payton's life is in danger due to the outbreak of COVID-19 in the Marion County Jail. The failure of the trial court to timely enter a final order should not preclude Mr. Payton from proceeding with this writ of habeas corpus. [↑](#footnote-ref-8)
9. Mr. Payton's attorney was contacted by the trial court on the morning of June 26th to see if all parties were available for a VOP trial in mid to late July 2020. That same morning, the Plaintiff advised the court he needed time to check with his witnesses' availability. Unfortunately, Mr. Payton was not given an opportunity to do this and a VOP trial was unilaterally set on June 26, 2020 (*see* E-MAIL CHAIN #2 attached as ***Exhibit #10***). [↑](#footnote-ref-9)
10. *See* [*https://www.ocala.com/news/20200623/2-ocala-jail-workers-test-positive-for-covid-19*](https://www.ocala.com/news/20200623/2-ocala-jail-workers-test-positive-for-covid-19) [↑](#footnote-ref-10)