

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT
COUNTY OF DU PAGE

REQUEST TO EXPUNGE & IMPOUND)
AND/OR SEAL CRIMINAL RECORDS,)
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_____,)
REQUESTER)

No. _____

ORDER

This matter coming on for the Requester's application for a Writ of Habeas Corpus. The Court hereby finds and orders:

1. Per 735 ILCS 5/10-135.

The several courts having authority to grant relief by habeas corpus, may enter orders, when necessary, to bring before them any prisoner to testify, or to be surrendered in discharge of pretrial release, or for trial upon any criminal charge lawfully pending in the same court or to testify in a criminal proceeding in another state as provided for by Section 2 of the "Uniform Act to secure the attendance of witnesses from within or without a state in criminal proceedings", approved July 23, 1959, as heretofore or hereafter amended; and the order may be directed to any county in the State, and there be served and returned by any officer to whom it is directed.

2. Habeas corpus ad prosequendum is a writ used in criminal cases to bring before a court a prisoner to be tried on charges other than those for which the prisoner is currently being confined. People v. Johnson, 2013 IL 114639, 995 N.E.2d 986.
3. Ultimately, "[w]hether the testimony of a prisoner is sought for a civil or a criminal case, and whether or not the prisoner is a party to the case, it is a matter that lies within the sound discretion of the court whether to issue an order of habeas corpus ad testificandum." In re Marriage of Allison, 126 Ill. App. 3d 453, (1984).

4. Per *Moeck v. Zajackowski*, 541 F.2d 177, and *In re Marriage of Allison*, 126 Ill. App. 3d 453, 467 N.E.2d 310, 313–14 (1984).

We do not agree with the district court as to the content to be ascribed to the fundamental interest of a prisoner in access to the courts. We accord greater weight to the interest of the state in maintaining the confinement of persons serving sentences at the place and institution chosen by the state, in avoiding risks of escape, and in economical administration of custody without incurring expenses which the state reasonably deems unnecessary.

We find no support in the Constitution or in judicial precedent for the proposition that a prison inmate has a fundamental interest in being present at the trial of a civil action to which he is a party, sufficient to outweigh, as a matter of course, the interest of the state in avoiding expense. The due process requirements of the Fifth and Fourteenth Amendments, which guarantee access to the courts, do not grant a prisoner the right to attend court in order to carry on the civil proceedings which he initiates.

5. Subsequent applications by the same Requester seeking the same action could be deemed by this court as frivolous. If the court makes a specific finding that a pleading, motion, or other paper filed by the prisoner is frivolous, the IDOC shall conduct a hearing” before the Prisoner Review Board to revoke up to 180 days of the prisoner's good conduct credit. 730 ILCS 5/3–6–3(d)

Wherefore, this Court denies the Requester’s application for a Writ of Habeas Corpus and denies the Requester’s application to Expunge & Impound and/or Seat Criminal Records. The Requester may reinstate these proceedings when the Requester is able to either appear in person, or by an attorney, for the hearing.

Date: _____

Judge Robert A Miller