

TABLE OF CONTENTS

Introduction 1

Statement of Case & Facts..... 1

A. Statement of the Case 1

B. Statement of the Facts..... 2

Argument 4

Appellees’ Proposition of Law No. 1

The Court of Appeals properly dismissed Jones’s habeas petition for failure to attach all relevant commitment papers pursuant to R.C. §2725.04(D). 4

Appellees’ Proposition of Law No. 2

Jones’s petition must fail because it does not demonstrate that he is a person entitled to a writ of habeas corpus. 5

A. Jones has no right to release from confinement until he has served the maximum sentence. 6

B. Jones’s double jeopardy claim is nonsense in a writ of habeas corpus and is inapplicable to Jones’s parole revocation. 7

C. Jones’s due process rights were not violated as a result of his parole revocation. 8

D. Habeas should not issue because there are adequate remedies at law. 9

Appellees’ Proposition of Law No. 3

The Court of Appeals properly dismissed Jones’s writ of mandamus because immediate release from prison is not a proper remedy for this extraordinary writ. 10

Conclusion..... 12

Certificate of Service 13

TABLE OF AUTHORITIES

CASES

<i>Bloss v. Rodgers</i> (1992), 65 Ohio St.3d 145, 602 N.E.2d 602	4
<i>Boyd v. Money</i> (1998), 82 Ohio St.3d 388, 696 N.E.2d 568	4
<i>Brown v. Ohio</i> (1977), 432 U.S. 161	7-6
<i>Cornell v. Schotten</i> (1994), 69 Ohio St.3d 466, 633 N.E.2d 1111	4
<i>Day v. Wilson</i> , 116 Ohio St.3d 566, 2008-Ohio-82.....	4
<i>Elersic v. Wilson</i> , 101 Ohio St.3d 417, 2004-Ohio-1501	7
<i>Halleck v. Koloski</i> (1965), 4 Ohio St.2d 76, 212 N.E.2d 601	6
<i>Hammond v. Dallman</i> (1992), 63 Ohio St.3d 666, 590 N.E.2d 744	4
<i>Howard v. Randle</i> , 95 Ohio St.3d 281, 2002-Ohio-2122	7
<i>Luna v. Russell</i> (1994), 70 Ohio St.3d 561, 639 N.E.2d 1168	9
<i>Morrissey v. Brewer</i> (1972), 408 U.S. 471.....	8
<i>Ney v. Niehaus</i> (1987), 33 Ohio St.3d 118, 515 N.E.2d 914.....	11
<i>North Carolina v. Pearce</i> (1969), 395 U.S. 711.....	8
<i>Ridenour v. Randle</i> , 96 Ohio St.3d 90, 2002-Ohio-3606	6
<i>Stahl v. Shoemaker</i> (1977), 50 Ohio St.2d 351, 364 N.E.2d 286	5-6
<i>State ex rel. Beaver v. Konteh</i> (1998), 83 Ohio St.3d 519, 700 N.E.2d 1256	7
<i>State ex rel. Dix v. McAllister</i> , 81 Ohio St.3d 107	3
<i>State ex rel. Jackson v. McFaul</i> (1995), 73 Ohio St.3d 185	<i>passim</i>
<i>State ex rel. Johnson v. Ohio Parole Bd.</i> (1997), 80 Ohio St.3d 140.....	10
<i>State ex rel. Lemmon v. APA</i> (1997), 78 Ohio St.3d 186	10
<i>State ex rel. Massie v. Rogers</i> (1997), 77 Ohio St.3d 449.....	9

<i>State ex rel. Miller v. Leonard</i> (2000), 88 Ohio St.3d 46, 723 N.E.2d 114.....	6
<i>State ex rel. Milner v. APA</i> (2000), 87 Ohio St.3d 567	10
<i>State ex rel. Parker v. Ohio Parole Bd.</i> (1993), 68 Ohio St.3d 23, 623 N.E.2d 37.....	4
<i>State ex rel. Pirman v. Money</i> (1994), 69 Ohio St.3d 591.....	9, 10
<i>State v. Jester</i> (1987), 32 Ohio St.3d 147, 512 N.E.2d 962.....	10
<i>State v. Jones</i> , 8th Dist. No. 88203, 2007-Ohio-1717, 2007 Ohio App. LEXIS 1566.....	1
<i>State v. Jones</i> (July 2, 1992), 8th Dist. No. 60106, 1992 Ohio App. LEXIS 3470	2
<i>Walker v. Maxwell</i> (1965), 1 Ohio St.2d 136, 205 N.E.2d 394.....	2
<i>Watkins v. Collins</i> , 111 Ohio St.3d 425, 2006-Ohio-5082	5
<i>Wenzel v. Enright</i> , 68 Ohio St.3d 63, 1993-Ohio-53.....	11
<i>Zanders v. Anderson</i> (1996), 74 Ohio St.3d 269, 658 N.E.2d 300.....	6

STATUTES

O. R.C. 2725.04.....	<i>passim</i>
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INTRODUCTION

The Ohio Adult Parole Authority (“APA”) and Warden Margaret Bradshaw request that this Court affirm the judgment of the Lorain County Court of Appeals dismissing Shigali Jones’s (“Jones”) petition for writ of habeas corpus and writ of mandamus. Jones’s petition for a writ of habeas corpus was fatally flawed as he failed to attach the requisite commitment papers, contrary to R.C. §2725.04(D). Additionally, Jones cannot present a single meritorious argument demonstrating that he is entitled to a grant of habeas corpus.

Mandamus is inappropriate because it is not a suitable vehicle through which to seek immediate release from incarceration. Moreover, had Jones requested appropriate relief, he still could not satisfy the requisites for making a claim for a writ of mandamus. Jones does not have a clear legal right to release from confinement, which was the issue presented to the lower court. Neither the APA nor Warden Bradshaw is obligated to release Jones from custody. Finally, Jones had an adequate remedy at law in a declaratory action.

STATEMENT OF THE CASE AND FACTS

A. Statement of the Case

As the record illustrates, Jones is inmate number #504-029 of the State of Ohio. He is currently incarcerated at the Grafton Correctional Institution (“GCI”) located in the City of Grafton, Lorain County, Ohio. Appellee Bradshaw is Warden of GCI, which institution is operated by the Ohio Department of Rehabilitation and Correction. As Warden, she maintains custody of Jones pursuant to a 1990 judgment of conviction and an aggregate term of five to twenty-five years imprisonment issued in Cuyahoga County Common Pleas Case No. CR-238869. (Respondents’ Mtn. for Summary Judgment, Exhibit 1A, Case No. CR-238869).

Jones filed the petition for a writ of habeas corpus and for a writ of mandamus that is the subject of this appeal in the Court of Appeals of Lorain County, Ohio. He claimed that he was entitled to immediate release from confinement because he is being held without legal authority and in violation of his statutory and constitutional rights. Appellees filed a motion for summary judgment because Jones failed to attach necessary commitment papers and because immediate release from prison is not an appropriate remedy for a writ of mandamus. On April 20, 2009, the court granted the Appellees' motion and dismissed the case. The case is before this Court pursuant to Jones's appeal.

B. Statement of the Facts

In June 1990, after being convicted of kidnapping, aggravated robbery, gross sexual imposition, and possession of criminal tools, Jones was sentenced to five to twenty-five years incarceration in Cuyahoga County Case No. CR-238869. *Id.* That conviction was affirmed on direct appeal. *State v. Jones* (July 2, 1992), 8th Dist. No. 60106, 1992 Ohio App. LEXIS 3470, at *1. In September 2003, Jones was paroled from prison while serving the five to twenty-five year term imposed in CR-238869.

In October 2005, while still on parole for CR-238869, Jones was arrested and indicted for one count of attempted murder with firearm specifications, two counts of aggravated robbery, and two counts of felonious assault with firearm specifications in Cuyahoga County Case No. CR-471599. (Respondents' Mtn. for Summary Judgment, Exhibit 1.) After Jones was tried and convicted in CR-471599, this case was reversed and remanded by the Eighth District Court of Appeals. *State v. Jones*, 8th Dist. No. 88203, 2007-Ohio-1717, 2007 Ohio App. LEXIS 1566. At Jones's second trial for the charges in CR-471599, he was acquitted.

Jones's misconduct, subsequent to his release on parole and prior to his 2005 arrest, also gave rise to a parole revocation hearing on November 3, 2005. (Respondents' Mtn. for Summary Judgment, Exhibit 10.) At that hearing, Jones was charged with the following parole violations: (1) possession of a handgun on October 6, 2005; (2) arrest on or about October 7, 2005, and failure to contact his supervising parole officer; (3) contact on or about September 20, 2005, with Earl Adkins; and (4) contact on or about September 20, 2005, with Jesus Morales. *Id.* Jones admitted to coming in contact with both Earl Adkins and Jesus Morales in violation of Rule 11 as set forth by the APA.¹ *Id.* Jones, however, denied his failure to contact his parole officer within twenty-four hours of arrest as well as his possession of a firearm. At his hearing it was found that Jones was a technical parole violator on all four of the aforementioned release conditions and his parole was revoked. *Id.* Accordingly, Jones was returned to prison to serve the remainder of his five to twenty-five year sentence in CR-238869. *Id.* The maximum sentence for CR-238869 will not expire until May 2015. (Respondents' Mtn. for Summary Judgment, Exhibit 1A; Exhibit 3.)

¹ Jones admitted to violating Rule 11, which stated: "I agree not to associate with persons having a criminal background and/or persons who may have gang affiliation, or who could influence me to engage in criminal activity, without the prior permission of my supervising officer."

ARGUMENT

Appellees' Proposition of Law No. 1:

The Court of Appeals properly dismissed Jones's habeas petition for failure to attach all relevant commitment papers pursuant to R.C. §2725.04(D).

Jones's failure to include commitment papers in CR-238869 rendered his petition technically and fatally flawed. Ohio Revised Code section 2725.04(D) provides that "[a] copy of the commitment or cause of detention of such person shall be exhibited, if it can be procured without impairing the efficiency of the remedy." The effect of such a deficiency is that the habeas corpus petition must be dismissed. *Boyd v. Money* (1998), 82 Ohio St.3d 388, 696 N.E.2d 568; *Bloss v. Rodgers* (1992), 65 Ohio St.3d 145, 602 N.E.2d 602; *Cornell v. Schotten* (1994), 69 Ohio St.3d 466, 633 N.E.2d 1111; *Hammond v. Dallman* (1992), 63 Ohio St.3d 666, 590 N.E.2d 744; see also, *State ex rel. Parker v. Ohio Parole Bd.* (1993), 68 Ohio St.3d 23, 623 N.E.2d 37.

In *Bloss*, this Court made clear that commitment papers are paramount to providing a "complete understanding of the petition. Without them, the petition is fatally defective." *Bloss*, 65 Ohio St.3d at 146. In the absence of attached commitment papers, courts are left with only the "bare allegations of petitioner's application." *Id.* Furthermore, this defect is not cured by Appellees' subsequent submission of relevant documents. *Cornell*, 69 Ohio St.3d at 466-467. Thus, when a petitioner has violated R.C. §2725.04(D) by failing to attach the commitment papers to his initial habeas corpus petition, the petition is fatally defective and must be dismissed. *Day v. Wilson*, 116 Ohio St.3d 566, 2008-Ohio-82 at ¶ 4.

In the present case, Jones failed to attach a copy of his commitment papers in CR-238869 to his petition at the time of filing.² Jones is incarcerated as a result of his sentence in CR-238869, and also the subsequent revocation of his parole in that case. Attaching those commitment papers, as required under R.C. §2725.04(D), would have revealed the lawful authority under which Jones is held. That failure cannot be cured by submitting the commitment papers at this time.

Nonetheless, Jones cites the disparate case, *Watkins v. Collins*, 111 Ohio St. 3d 425, 2006-Ohio-5082, to support his contention that the Ninth District should have entertained his petition irrespective of its deficiency. Unlike the facts in the case sub judice, the parties in *Watkins* stipulated to all pertinent facts. *Id.* at ¶38. The combination of those stipulated facts and attached sentencing entries provided the court with sufficient information to accurately and completely illustrate the claims set forth in the writ. *Id.*

Jones's writ is utterly void of any reference to his original sentence in CR-238869, the term for which he is currently incarcerated. No combination of facts submitted to the court at the time of filing offer a complete description of circumstances giving rise to Jones's incarceration. Therefore, the Ninth District properly dismissed Jones's claims as fatally defective.

Appellees' Proposition of Law No. 2:

Jones's petition must fail because it does not demonstrate that he is a person entitled to a writ of habeas corpus.

Appellees have not violated any of Jones's statutory or constitutional rights so as to entitle him to the immediate release from custody. Habeas corpus generally issues where the sentencing court lacks jurisdiction. *Stahl v. Shoemaker* (1977), 50 Ohio St. 2d 351, 364 N.E.2d

² It is also noteworthy that this is the second petition submitted by Petitioner, with the assistance of counsel, that fails to meet the requirements of R.C. §2725.04(D), and the second time that Respondent has identified the failure to attach the same commitment papers as a fatal defect to the petition.

286. This Court also permits habeas corpus in order to “challenge a decision of the APA in extraordinary cases involving parole revocation.” *State ex rel. Jackson v. McFaul* (1995), 73 Ohio St. 3d 185,187. However, there is no generally recognized right to parole. *Ridenour v. Randle*, 96 Ohio St. 3d 90, 2002-Ohio-3606. Moreover, habeas corpus is an extraordinary remedy and inappropriate where there remains an adequate remedy at law. *State ex rel. Jackson v. McFaul, supra*.

A. Jones has no right to release from confinement until he has served his maximum sentence.

Jones has yet to serve his maximum sentence in CR-238869. Convicted prisoners are not entitled to be released prior to the expiration of their maximum sentence. *State ex rel. Miller v. Leonard* (2000), 88 Ohio St. 3d 46, 47, 723 N.E.2d 114. The burden of proving that he is unlawfully detained and entitled to immediate release rests with the Jones. *Halleck v. Koloski* (1965), 4 Ohio St. 2d 76, 77, 212 N.E.2d 601. Jones’s claim that, because he was found not guilty upon retrial for the criminal offenses surrounding the activity that formed the basis of his parole revocation, his parole should not have been revoked is insufficient to satisfy this burden.

The jury’s findings in CR-471599 have no bearing on the factual underpinnings for the revocation of Jones’s parole. As Jones correctly points out, “parole and probation may be revoked even though criminal charges based on the same facts are dismissed, the defendant is acquitted, or the conviction is overturned, unless all factual support for the revocation is removed.” *Zanders v. Anderson* (1996), 74 Ohio St. 3d 269, 271-272, 658 N.E.2d 300. Jones was found not guilty of attempted murder, aggravated robbery, and felonious assault. Yet, Jones offers no evidence, nor could he, to support his burden of showing that all factual support for his parole revocation is removed. Consequently, the APA is within its authority to find that Jones

was in possession of a firearm while on parole and failed to report an arrest to his parole officer in violation of APA Rules 6 and 8, respectively.³

Assuming that his acquittal did neutralize the factual support for violations of Rules 6 and 8, the undisputed facts are sufficient for the APA to lawfully revoke Jones's parole on independent grounds. In 1990, Jones was convicted in CR-238869, and in 2003 he was paroled while serving his sentence for that conviction. (Respondent's Mtn. for Summary Judgment, Exhibit 3.) In October 2005, Jones admitted to associating with Earl Adkins and Jesus Morales, each constituting a separate violation of APA Rule 11. (Respondents' Mtn. for Summary Judgment, Exhibit 10.) Failure to comply with the stated terms of parole authorized the APA's revocation and reinstatement of his original sentence. Accordingly, Jones can lawfully be held until the expiration of his maximum sentence in 2015.

B. Jones's double jeopardy claim is nonsense in a writ of habeas corpus and is inapplicable to Jones's parole revocation.

Jones's claim of double jeopardy is nonsense in habeas corpus. See *Elersic v. Wilson*, 101 Ohio St. 3d 417, 2004-Ohio-1501 at ¶3, citing *Howard v. Randle*, 95 Ohio St. 3d 281, 2002-Ohio-2122 at ¶6; *State ex rel. Beaver v. Konteh* (1998), 83 Ohio St. 3d 519, 700 N.E.2d 1256. Double Jeopardy Clause does not preclude the APA from revoking Jones's parole and reinstating his original sentence in CR-238869. "The Double Jeopardy Clause 'protects against a second prosecution for the same offense after acquittal. It protects against a second prosecution for the same offense after conviction. And it protects against multiple punishments for the same

³ The Rules presented to Jones stated as follows:

Rule 6: I will not purchase, possess, own, use or have under my control, any firearms, ammunition, dangerous ordinance or weapons, including chemical agents, electronic devices used to immobilize, pyrotechnics and/or explosive devices.

Rule 8: I will report any arrest, citation of a violation of the law, conviction or any other contact with a law enforcement officer no later than the next business day. I will not enter into any agreement or other arrangement with any law enforcement agency, which might place me in the position of violating any law or condition of my supervision, unless I have obtained permission in writing from the [APA], or from the Court.

offense.” *Brown v. Ohio* (1977), 432 U.S. 161, 165, quoting *North Carolina v. Pearce* (1969), 395 U.S. 711, 717. The revocation of parole, however, is not a punishment resulting from prosecution, but a remedial measure. *Morrissey v. Brewer* (1972), 408 U.S. 471, 489.

Here, the APA merely revoked the conditional liberty that it granted Jones and did not impose an additional “sentence” as Jones suggests. Rather, the record reveals that parole was revoked in CR-238869, under his former inmate number 222-250, and he was “Continued to Maximum Expiration Date.” (Respondents’ Mtn. for Summary Judgment, Exhibit 10.) Accordingly, the APA reinstated Jones’s original sentence without placing him twice in jeopardy for the same offense.

C. Jones’s due process rights were not violated as a result of his parole revocation

Neither the APA nor Warden Bradshaw is under a clear legal duty to release Jones from custody. Once facts giving rise to a technical parole revocation exist, a prisoner must be afforded a minimum level of due process before that parole may be revoked. *Morrissey*, 408 U.S. at 489. In *Morrissey*, the United States Supreme Court established six elements as the minimum due process requirements for parole revocation.⁴ *Id.* Jones does not contest that his parole revocation hearing comported with procedural due process, nor could he as there is no evidence to the contrary. Thus, the APA was within its authority to reinstate Jones’s sentence in CR-238869 and Warden Bradshaw may maintain custody of Jones until the expiration of his maximum sentence.

⁴ The six elements necessary to establish minimum due process for a parole revocation are as follows: (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a “neutral and detached” hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the fact finders as to the evidence relied on and reason for revoking parole. *Morrissey* at 489.

D. Habeas should not issue because there are adequate remedies at law.

Jones's petition must fail because he either had or currently has available adequate remedies at law to challenge parole hearings regarding CR-238869. "[H]abeas corpus will lie in certain extraordinary circumstances where there is an unlawful restraint of a person's liberty . . . but only, where there is no adequate legal remedy." *State ex rel. Jackson v. McFaul, supra; State ex rel. Massie v. Rogers* (1997), 77 Ohio St. 3d 449, 450, citing *State ex rel. Pirman v. Money* (1994), 69 Ohio St. 3d 591 (although habeas corpus relief may be granted for non-jurisdictional claims, the petitioner must have no adequate remedy at law). The existence of this alternative remedy is enough to remove a petitioner's allegations from habeas consideration, whether the opportunity still exists or not, as long as the petitioner could have taken advantage of it previously or still could pursue it. *See Luna v. Russell* (1994), 70 Ohio St. 3d 561, 639 N.E.2d 1168. "[Habeas corpus] is not a substitute for, nor is it a concurrent remedy with, appeal." *Walker v. Maxwell* (1965), 1 Ohio St. 2d 136, 137, 205 N.E.2d 394.

Jones has an adequate remedy at law to challenge both his 2005 parole revocation hearing as well as his 2008 denial of parole. That remedy is a new hearing, not out right release from prison. *McFaul*, 73 Ohio St. 3d at 188. In the case of his 2005 parole revocation, Jones had the right to seek reversal of the finding and order of the revocation hearing officer from the chief of the APA based upon prejudicial or case-dispositive error. Respecting the denial of parole in 2008, Jones has the right to seek a new parole hearing and he may also pursue his claim parole denial claim in a declaratory action.

Appellees' Proposition of Law No. 3:

The Court of Appeals properly dismissed Jones's writ of mandamus because immediate release from prison is not a proper remedy for this extraordinary writ.

Habeas corpus, rather than mandamus, is the appropriate action for persons claiming entitlement to immediate release from prison. *State ex rel. Milner v. APA* (2000), 87 Ohio St. 3d 567; *State ex rel. Johnson v. Ohio Parole Bd.* (1997), 80 Ohio St. 3d 140; *State ex rel. Lemmon v. APA* (1997), 78 Ohio St. 3d 186, 188; *Money* (1994), 69 Ohio St. 3d at 594. As the court noted in *Lemmon*, 78 Ohio St. 3d at 188, “[a] contrary holding would permit inmates seeking immediate release from prison to employ mandamus to circumvent the statutory pleading requirements for instituting a habeas corpus action, *i.e.*, attachment of commitment papers and verification.” See also, *McFaul*, 73 Ohio St. 3d at 188 (“habeas corpus lies only where the petitioner is entitled to immediate release from confinement.”).

In his writ of mandamus, Jones requested that the Ninth District direct “the [APA] to issue an immediate order releasing him from prison since he had served the nine (9) months of incarceration previously ordered.” (Petition p. 5) Jones now attempts to amend his request for relief before this Court stating that “[t]he essence of the complaint for writ of mandamus in this case was that petitioner wanted the Court of Appeals to order that the [APA] vacate its ruling.” (Petitioner’s Brief pp. 10-11.) The remedy represented in Jones’s brief to this Court was not the remedy requested from the appellate court. Jones cannot salvage his poorly stated claim at this juncture by asserting that the appellate court misinterpreted the “essence” of his argument. See *State v. Jester* (1987), 32 Ohio St. 3d 147, 155, 512 N.E.2d 962 (holding that “[t]his court will not ordinarily consider a claim of error which was not raised and not considered or decided by [the court of appeals].”). Based upon the relief requested, the Ninth District’s judgment was consistent with well-settled precedent and should be affirmed.

Although Jones's writ of mandamus was properly dismissed, it would also have failed upon a review of the merits because he cannot establish a factual or a legal basis upon which such a claim may rest. Mandamus should issue only where a party demonstrates that it has a clear legal right to the requested relief, the adverse party has a clear legal duty to perform the requested act, and there is no plain and adequate remedy in the ordinary course of law. *Ney v. Niehaus* (1987), 33 Ohio St. 3d 118, 118, 515 N.E.2d 914.

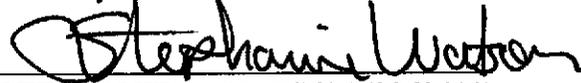
No statutory or constitutional violation has occurred that would vest Jones with a clear legal right to release from custody. For reasons stated above, Jones's constitutional right not to be placed in double jeopardy was not violated by the revocation of his parole and his right to due process is not violated by his continued confinement. Additionally, neither the APA nor Warden Bradshaw is under a clear legal duty to release Jones from custody as his parole was properly revoked and Warden Bradshaw holds lawful custody of him. Finally, a claim of double jeopardy is non-cognizable in mandamus because Jones had an adequate remedy by way of a declaratory action. See *State ex rel. Dix v. McAllister*, 81 Ohio St. 3d 107, 108, 1998-Ohio-646; *Wenzel v. Enright*, 68 Ohio St. 3d 63, 66, 1993-Ohio-53.

CONCLUSION

For the above reasons, the judgment of the Ninth District Court of Appeals dismissing Jones's petition for writ of habeas corpus was appropriate, and this Court should affirm the decision below.

Respectfully submitted,

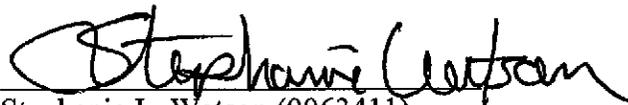
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of Appellees' Brief has been forwarded to Appellant's counsel, Paul Mancino, Jr., 75 Public Square, Suite 1016, Cleveland, OH 44113-2098, via regular U.S. Mail, postage prepaid, this 19th day of August, 2009.



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