ORIGINAL

No. 18-7173

In The

Supreme Court of the United States

FILED
NOV 16 2018
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Karen Lofgren,

Petitioner, Pro Se

v

Todd Hardin,

Respondent

On Petition For Writ of Certiorari To The

Washington State Supreme Court

PETITION FOR WRIT OF CERTIORARI

Karen Lofgren

WCCW, 363716

9601 Bujacich Rd. NW

Gig Harbor, WA 98332

QUESTIONS PRESENTED FOR REVIEW

♦ Whether it is First and Fourteenth Constitutional Amendment violations for a Family Court in State to deny a parent visitation with her children because she is incarcerated and whether this implies *Troxel v Granville,* 527 U.S. 1069, 144 L.Ed.2d 842, 120 S.Ct. 11 (1999)?

♦ Whether a mother, not determined to be unfit *(Troxel)* and who has an established bond with her children has a Constitutional right to maintain contact with her children while she is incarcerated?

♦ Whether the Washington State Court of Appeals has decided an important question of federal law, which impacts millions of children and parents, that has not been, but should be, settled by the United States Supreme Court (Rule 10.C) – noting that conflicting rulings in the lower courts abound as to whether a fit but incarcerated parent has a constitutional right to visitation with her children?

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CITIATION TO OPINION BELOW

The opinion in the Court of Appeals of the State of Washington, Division II. Hardin v Lofgren, No. 48987-2-II (2018), Exhibit MM. The order of the Supreme Court of Washington, denying Discretionary Review of that decision is reported as Hardin v Lofgren, No. 95865-3 (2018), Exhibit PP.

JURISDICTION

The Court has jurisdiction pursuant to 28 U.S.C. § 1257 (a), except as argued here in.

CONSTITUTIONAL PROVISIONS INVOLVED

Petition contends that issues presented in this case involve the First and Fourteenth Amendments to the United States Constitution.

STATEMENT OF THE CASE

A) FACTS

Karen Lofgren, proceeding Pro Se, am the petitioner, here in after referred to as I. In December, 2012, I plead guilty to Solicitation to Commit Murder in the Second Degree. Pleading guilty was what my attorney advised me to do, was my taking responsibility for my crime, but most importantly, was what I believed to be the fastest route to be able to see my children again.

As a Pro Se litigant, I will be appealing my conviction based on newly discovered evidence leading to arguments for *Brady v Maryland,* 373, U.S. 83, 87 S.Ct. 1194, 10 L.Ed2d 215 (1963) and *Giglio v Untied States,* 405 U.S. 150, 154, 92 S.Ct. 763, 31 L.Ed.2d (1972) violations and an entrapment defense. At the time of my crime I was a victim of domestic violence who was attempting to leave my abuser (one of the two most deadly and dangerous times in the life of a victim of domestic violence.) I was emotionally vulnerable and believed my children's lives to be at risk. I have extensive documentation attesting to the abuse as well as to the actions of my abuser who was my victim.

My incarceration is the sole basis for me not being allowed to have contact with my children.

B) PROCEDURAL HISTORY

♦ January 25, 2013, the trial court judge entered a no-contact order with my children. Pierce County Cause No. 12-1-00662-0.

♦ August 12, 2014, the no-contact order was vacated in Division II of the Washington State Court of Appeals.

♦ March 25, 2016, the family court trial judge ruled against me having contact with my children despite the Court of Appeals vacating the no-contact order.

♦ April 17, 2018, Division II of the Washington State Court of Appeals upheld the trial court's ruling of not allowing me visitation with my children.

♦ September 5, 2018, the Washington State Supreme Court denied my Motion for Discretionary Review.

♦ November 15 2018, my last recourse, my last hope, is this Writ of Certiorari. These are my children, they live 15 minutes away from this prison, I love them with every fiber of my being, I was a wonderful and devoted mother and we were incredibly bonded. I only ask to see them. Please, for their sake, and for the sake of every child who has an incarcerated parent, which because of mass incarceration is a number of epidemic proportion, review my Writ of Certiorari. I was a documented victim of domestic violence and I fought back in a horribly wrong way, but this is not the full story, nor is it my children's fault. By denying my children their mother, my children are being punished as well.

REASONS FOR GRANTING THE WRIT

For decades, the Supreme Court has recognized the Constitutionally protected right to parent under the Fourteenth Amendment. While the Supreme Court has chipped away at the rights of prisoners in other areas, finding that many rights are forfeited at the prison doors, the Supreme Court has not ruled on the status of parental rights during incarceration **which makes this issue ripe for review.**

This Writ of Certiorari, if accepted for review, I believe, will be a landmark case for the Fourteenth Amendment, for incarcerated parents who are "fit" *Troxel,* and more importantly, for the millions of children nation-wide who have an incarcerated parent. Mass incarceration in the United States has reached epidemic levels without an end in sight. **The issue of public importance here** is an entire generation of children suffering a trauma of which they may not fully recover. Assuming a parent is "fit" *Troxel*, the loving bond a child and her parent share does not magically dissolve when the prison doors close. The negative psychological harm a child suffers from the trauma of not being allowed contact with her mother is significantly impacting and long reaching. To see that her mother is safe rather than left to a child's imagination of the scary images of prison life and to know that her mother loves her, will significantly reduce the trauma these children suffer.

"A mother's arms are made of tenderness and children sleep soundly in them" Victor Hugo.

Denial of this Writ of Certiorari would set a dangerous threshold in removing parental rights based solely on incarceration. Under that threshold, an incarcerated parent would be at the mercy of the prosecutor as to whether or not that parent will be allowed to see their children. Parenting one's children are fundamental federal rights guaranteed under the United States Constitutional Fourteenth Amendment.

ARGUMENT

The lower courts have been challenged on prison policies regarding the visitation of children with their incarcerated parents. The lower court's rulings on the precedent set by policies banning parental visitation based on incarceration not only conflict between the courts but with the Fourteenth Amendment. Further compounding this issue is the ruling by the Washington State Court of Appeals, Division II in my case – that I may not have contact with my children because I am incarcerated. **This therefore, becomes a fundamental Constitutional question under the Fourteenth Amendment requiring determination by the United States Supreme Court.**

A parent-child relationship is a fundamental right. I was denied this right despite the Washington State Court of Appeals, Division II previously

vacating the unconstitutionally placed no-contact order by the trial court with my children. The Fourteenth Amendment explicitly prohibits deprivations without due process by the several States: "*Nor shall any State* deprive any person of life, liberty, or property, without due process of law. United States Constitutional Amendment XIV.

CONFLICTING RULINGS

White v Pazin, 2016 U.S. Dist. LEXIS 145086 (2016), focuses on institutional policies banning children from visiting their incarcerated parent, however, as the Ninth Circuit Justices summarize in *White v Pazin* "There is no binding precedent from the Supreme Court or Ninth Circuit on the matter." The rulings cited in *White v Pazin,* support my argument of existing conflict among the lower courts on my legal questions, and therefore, require our United States Supreme Court to resolve this issue.

> "'The relationship between a father or mother and his or her child, even in prison, merits some degree of protection.'" Ultimately, the court declined to articulate more precisely the existence and scope of a prisoner's right to visitations from his or her children while incarcerated...In *Dunn v Castro,* the Ninth Circuit analyzed Supreme Court and Ninth Circuit precedent on inmate visitation issues, as well as relevant law from other jurisdictions...The Ninth Circuit was careful to state that both it, and the Supreme Court, had not h[e]ld or impl[ied] that incarceration entirely extinguished the right to receive visits from family members...The Supreme Court had also stated that a permanent or excessively long deprivation of all visitation privileges, or a restriction that was applied in an arbitrary manner to a particular inmate, may violate an inmate's constitutional rights...the Ninth Circuit in *Dunn* declined to define any constitutional right for prisoners to visitations from their children...To the extent that other courts from other jurisdictions have

addressed the issue, they have arrived at differing outcomes based on differing reasoning and the variety of circumstances presented. Those courts who have considered the issue have expressly disagreed regarding the fundamental issue of whether there is any constitutional basis for asserting a right to visitations with minor children. Even those courts who have found such a right disagree on what provision of the Constitution supports that right...Some courts, for example, find that visitation between inmates and their children are protected by the constitutional rights of association and privacy under the First Amendment, see *In re Smith,* 112 Cal.App.3d. at 968-969 (United States and California Constitutions). Other courts, on the contrary, convincingly reason that visitation rights are not the type of association rights protected by the First Amendment, since freedom of association as articulated by the Supreme Court is rooted in free speech, the advancement of beliefs and ideas, and the advocacy of points of view, rather than any right to see and visit with another person. See *Thorne,* 765 F.2d at 1273-1274 (Any first amendment right to mere physical association is so attenuated from the true protections of that amendment as to not be deserving of the unusual strictures placed on abridgement of first amendment rights including restriction only by the least drastic means.) still other courts that have address a right to visitations with minor children have simply assumed for the sake of argument that it may exist, and instead focused on whether restrictions imposed upon the visitations were reasonable." *White v Pazin.*

RULINGS AGAINST PARENTAL RIGHTS TO VISITATION

Other courts have found that there is no parental fundamental right to visitations and that bans to visitation were not improper; *Ford v Beister,* 657 F.Supp. 607, 611 (M.D.Pa. 1986), *Thorne v Jones,* 765 F.2d 1270 (5th Cir. 1985), *Victory v Coughlin,* 165 A.D. 2d 402, 404, 568 N.Y.S.2d 186 (N.Y.App.Div.3d Dep't. 1991), *Navin v Iowa Dep't of Corrections,* 843 F.Supp. 500, 504 (N.D. Iowa 1994), *Nouri v Cit. of Oakland,* 615 F.App's 291 (6th Cir. 2015).

RULINGS IN FAVOR OF PARENTAL VISITATION

However, many rulings by the lower courts across the Country slant towards the courts supporting a parent's right to maintain contact with her children, the following rulings are a smattering of such.

> "Prison policy banning all minor children from visiting their incarcerated parents is unconstitutional and violation of inmate's civil rights, since the policy is not justified by any compelling necessities of jail administration." *Valentine v Englehardt,* 474 F.Supp. 294 (D.C. N.J. 1979).
>
> "When incarcerated parents lack regular contact with their children, those children – 2.7 million of them nationwide – have higher rates of truancy, depression, and poor school performance." *Global Tel*Link v FCC,* 859 F.3d 39 (U.S. Court of Appeals D.C. Cir. 2017).
>
> "Generally, the Supreme Court has held that a prisoner retains those constitutional rights that are not inconsistent with his or her status as a prisoner or with the legitimated penological objectives of the corrections system. *Pell v Procunier,* 417 U.S. 817, 822, 41 L.Ed.2d 495, 94 S.Ct. 2800 (1974)" *Glover v Johnson,* 850 F.Supp. 592 (6th Cir. 1994).
>
> "The Court also found that a child has a fundamental right to be raised by his parents. *Id,; Wooley v City of Baton Rouge,* 211 F.3d 913, 923 (5th Cir. 2000). ("[A] child's right to family integrity is concomitant to that of a parent.") *Howard v Lemmier,* 2011 U.S. Dist. LEXIS 130417 (5th Cir. 2011).
>
> "Based on its finding that the relationship between a parent and child is a fundamental right, however, the state court determined that even a good faith claim of maintaining jail security which would separate a parent and child for long periods of time denies the constitutional rights of association and privacy inherent in the parent and child relationship." *In re Smith,* 112 Cal.App. 3d 968, 169 Cal. Rptr. 564, 567 (2nd Dist. 1980).
>
> An "inmate's desire to touch and hold family members...is natural human desire and that deprivation of it is serious." *Jone v Diamond,* 636 F.2d 1364, 1377 (5th Cir. 1995).

"There was a traditional presumption that fit parents acted in the best interest of their children...In the case at hand, the state lacked even a legitimated interest in second-guessing a fit parent's decision regarding visitation with third parties...The Federal Constitution permits a State to interfere with this right only to prevent harm or potential harm to the child...The Fourteenth Amendment's Due Process Clause has a substantive component that 'provides heightened protection against government interference with certain fundamental rights and liberty interests,' *Washington v Glucksberg,* 521, U.S. 702, 720, 183 L.Ed.2d 772, 117 S.Ct 2258 (1997) including parent's fundamental right to make decisions concerning the care, custody, and control of their children, see e.g. *Stanley v Illinois,* 405 U.S. 645, 651, 31 L.Ed.2d 551, 92 S.Ct. 1208 (1972)...no court has found that Granville was an unfit parent. There is a presumption that fit parents act in their children's best interests, *Parham v J.R.,* 442 U.S. 584, 602, 61 L.Ed.2d 101, 99 S.Ct. 2493 (1979); there is normally no reason for the State to inject itself into the private realm of the family to further question fit parent's ability to make the best decisions regarding their children, see, e.g. *Reno v Flores,* 507 U.S. 292, 304, 123 L.Ed.2d 1, 113 S.Ct. 1439 (1993). The problem here is not that the Superior Court intervened, but that when it did so, it gave no special weight to Granville's determination of her daughter's best interests. More importantly, that court appears to have applied the opposite presumption, favoring grandparent visitation. In effect, it placed on Granville the burden of disproving that visitation would be in her daughter's best interest and thus failed to provide any protection for her fundamental right...This ends the case, and there is no need to decide whether harm is required or to consider the precise scope of a parent's right of its necessary protections...Justice Thomas agreed that this Court's recognitions of a fundamental right of parents to direct their children's upbringing resolves this case, but concluded that strict scrutiny is the appropriate standard of review to apply to infringements of fundamental rights...It is not within the province of the state to make significant decisions concerning the custody of children merely because it could make a 'better' decision. Ibid. 969 P2d, at 31...The Fourteenth Amendment provides that no State shall 'deprive any person of life, liberty, or property without due process of

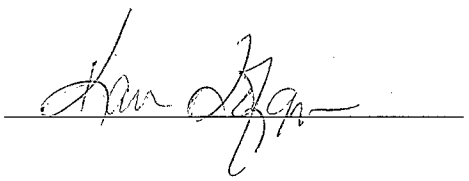
law.' We have long recognized that the Amendment's Due Process Clause, like its Fifth Amendment Counterpart, 'guarantees more than fair process.' *Washington v Glucksberg,* <pg. 719>. The Clause also includes a substantive component that 'provides heightened protection against government interference with certain fundamental rights and liberty interests.' Id. At 720; see also *Reno v Flores,* <pg. 301-302>...The liberty interest at issue in this case - the interest of parent in the care, custody, and control of their children – is perhaps the oldest of the fundamental liberty interests recognized by this Court. More than 75 years ago, in *Meyer v Nebraska,* U.S. 390, 399, 401, 67 L.Ed 1042, 43 S.Ct. 625 (1923), we held that the 'liberty' protected by the Due Process Clause includes the right of parents to 'establish a home and bring up children' and 'to control the education of their own.' Two years later, in *Pierce v Society of Sisters,* 268 U.S. 510, 534-535, 69 L.Ed 1070, 45 S.Ct. 571 (1925), we again held that the 'liberty of parents and guardians' includes the right 'to direct the upbringing and education of children under their control.' We explained in *Pierce* that [t]he child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations. 'Id., at 535, 69 L.Ed. 1070, 45 S.Ct. 571. We returned to the subject in *Prince v Massachusetts,* 321 U.S. 158, 88 L.Ed 645, 64 S.Ct. 438 (1944), and again confirmed that there is a constitutional dimension to the right of parents to direct the upbringing of their children. 'It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor <*pg. 57> hinder.' Id., at 166, 88 L.Ed 645, 64 S.Ct. 438...In subsequent cases also, we have recognized the fundamental right of parents to make decisions concerning the care, custody, and control of their children. See, e.g., *Stanley v Illinois,* (It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children 'come[s] to this Court with a momentum for respect lacking when appeal is made to liberties which deprive merely from shifting economic arrangements'; *Wisconsin v Yoder,* 406 U.S. 205, 232, 32 L.Ed.2d 15, 92 S.Ct. 1526 (1972)('The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children.. this

primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition'); *Quilloin v Walcott,* 434 U.S. 246, 255, 53 L.Ed.2d 511, 98 S.Ct. 549 (1978) ('**We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected**'); *Parham v J.R.,* ('Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course'); *Stantosky v Kramer,* 455 U.S. 745, 753, 71 L.Ed.2d 599, 102 S.Ct. 1388 (1982) (discussing [t]he fundamental liberty interests of natural parents in the care, custody, and management of their child'); *Glucksberg,* supra at 720 ('In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the 'liberty' specially protected by the Due Process Clause includes the righ[t]...to direct the education and upbringing of one's children' (citing *Meyer* and *Pierce*)). In light of this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Troxel v Granville.*

CONCLUSION

I argue this issue is ripe for consideration by The United States Supreme Court as The Supreme Court has not ruled on the status of parental rights during incarceration. Mass incarceration has led to millions of children who have a parent who is incarcerated, making this issue an issue of public importance. In addition, "the relationship between parent and child is constitutionally protected" *Parham v J.R.,* yet the lower courts frequently conflict in their rulings on this issue.

Respectfully Submitted,



November 15, 2018