

NO. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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PHILIP ANDRA GRIGSBY,

PETITIONER,

v.

UNITED STATES OF AMERICA,

RESPONDENT.

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PETITION FOR WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

CASE NO. 17-3275

---

RESPECTFULLY SUBMITTED

PHILIP ANDRA GRIGSBY

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QUESTION PRESENTED

Has the United States Court of Appeals for the Tenth Circuit violated the Fourteenth Amendment to the United States Constitution by denying a parent contact with his non-victim 16 year-old son and monitored non-physical contact with his 15 year-old daughter?

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PETITION FOR WRIT OF CERTIORARI

The Petitioner, Philip Andra Grigsby, pro-se, respectfully prays that a writ of certiorari be issued to review the decision of the United States Court of Appeals for the Tenth Circuit, issued on June 5, 2018, affirming the decision of the United States District Court for the District of Kansas, Wichita Division, UNITED STATES OF AMERICA V. PHILIP ANDRA GRIGSBY (D.C.No.6:12-CR-10174-JTM-1) (D.KAN.) (10th Cir.App.No. 17-3275) .

OPINION BELOW

The decision of the United States Court of Appeals for the Tenth Circuit is included in the Appendix to this petition.

JURISDICTION

1. The United States District Court for the District of Kansas (Wichita) originally had jurisdiction pursuant to 18 U.S.C. § 3231, which provides exclusive jurisdiction for offenses against the laws of the United States.

2. Thereafter, Mr. Grigsby timely appealed the decision of the District Court to the United States Court of Appeals for the Tenth Circuit pursuant to 28 U.S.C. § 1291.

3. Mr. Grigsby seeks review in this Court of the Judgment and Order of the United States Court of Appeals for the Tenth Circuit affirming the decision of the District Court. This court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

4. Mr Grigsby herein has appealed, pursuant to 28 U.S.C. § 1291 and Fed.R.App.P.4(b)(1) from the dismissal of Mr. Grigsby's Motion To Modify The No Contact Order placed between him and his biological children on December 12, 2017. A Notice of Appeal was filed on December 18, 2017.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment 14

Federal Rule of Criminal Procedure 32.1(b) and (c)

STATEMENT OF CASE

On November 15, 2012, Mr. Grigsby entered a plea of Guilty to eight counts of 18 U.S.C. § 2251(a), one count of 18 U.S.C. § 2252(a)(4)(b), and one count of 18 U.S.C. § 922(g)(1) and 18 U.S.C. § 924(a)(2).

On May 20, 2013, Mr. Grigsby was sentenced to 260 years in prison to be followed by 10 years probation and ordered to pay \$140,000 in restitution, and a No-Contact Order against his biological children.

Mr. Grigsby filed an appeal on May 31, 2013, to the 10th Circuit Court of Appeals which was affirmed on April 15, 2014. See UNITED STATES V. GRIGSBY, 749 F.3d 908, 909-911 (10th Cir. 2014). Mr. Grigsby's writ of certiorari was denied on October 6, 2014.

On 11/27/2017 Mr. Grigsby filed 3 motions in the U.S. District Court for the District of Kansas, Wichita: "Pre se Motion for Modification or Removal of No-Contact Order", "Supplemental Motion to Pre se Motion for Modification or Removal of No-Contact Order Asking Jurisdictional Question", Second Supplemental Motion to Pro se Motion for Modification or Removal of No-Contact Order 14th Amendment Violation in Denying Familial Relationship". On 12/12/2017 The Honorable Judge J. Thomas denied Mr. Grigsby's motions.

On June 5, 2018, the United States Court of Appeals for the Tenth Circuit affirmed the District Courts decision.

REASON FOR GRANTING THE WRIT

Relief is sought on the basis that the No-Contact Order is a violation of the Fourteenth Amendment's Due Process Clause.

Mr. Grigsby has displayed a legitimate change in circumstances in that he is actively pursuing behavioral treatment as evident in the many programs he has completed and is currently enrolled in.

Mr. Grigsby's children are now adolescents (15 years-old and 16 years-old) and desire contact with their father.

Mr. Grigsby's son is 16 years-old and is not a victim of Mr. Grigsby's crimes and is being denied contact with his father.

Mr. Grigsby's mother (Carmelita Christensen) is being denied contact with her paternal grandchildren. (Affidavit Attached).

As seen in the transcripts of Mr. Grigsby's sentencing hearing Dkt. 88 p.29 1.8-12 Asst. U.S. Atty. Jason W. Hart requested on behalf of Tammy Lynn Grigsby that a No-Contact Order be put in place to prevent Mr. Grigsby from legally contacting his biological children. On 11/9/2017 in the U.S. Court of Appeals for the Tenth Circuit, Case No. 17-3110 The Honorable Circuit Judge Mary Beck Brisco confirmed that "At Mr. Grigsby's sentencing, Tammy Grigsby, Mr. Grigsby's wife, asked the district court to prohibit Mr. Grigsby from contacting the victim and the victim's immediate family. "As a special condition on Mr. Grigsby's supervised released terms, the district court imposed a No Contact Order forbidding Mr. Grigsby from any contact with the victim and the victim's family, including her brother, and her mother, Tammy Grigsby.

Mr. Grigsby asks who owns jurisdiction over the No-Contact Order?

Mr. Grigsby has made significant changes in his life that warrant a change in an illegal No-Contact Order that is preventing his children from contacting their father and grandmother.

Mr. Grigsby "HAS" displayed a legitimate change in circumstances to support modifying the prohibition of his contacting his biological "now" teenage children. As of July 17, 2018 Mr. Grigsby has served Six years of his two-hundreds-sixty year sentence. Mr Grigsby arrived at his current location in August of 2013 and in that time Mr. Grigsby has completed, or is currently in Forty-one Educational Programs, three Religious Programs, five Vocational Programs, eleven Psychology Treatment Programs, ten Release Preparation Programs , and nineteen Recreation Programs, also Mr. Grigsby participates in Treatment Programs through outside community organizations: Mr. Grigsby teaches the U.S. Department of Labor Sponsored Electrical Apprenticeship Program and several other electrical programs through the Educational Department for Release Preparation. "Mr. Grigsby's job on the outside was a Master Electrician. Mr. Grigsby graduated the ten month Spiritual based Non-Residential "Threshold Program" on December 7 of 2017. Mr Grigsby is currently housed in the Residential "Challenge Program" where he attends treatment based classes and also teaches work-force based classes. Mr. Grigsby has completed the Adjunct Non-Residential Sex-Offender Treatment Program. Mr. Grigsby has completed the Inside-Out Dad Program (BOP) Parenting Course). Mr. Grigsby is a

certified counselor for PTSD Veterans, Mr. Grigsby has completed two PTSD courses through the Religious Services Department (Mr. Grigsby is a veteran of the U.S. Army). Mr. Grigsby seeks positive change for his future, accepts responsibility for his past and maintains the mind-set that meaningful growth is attainable, believes he can be rehabilitated and become the man and father he was meant to be.

The right to familial association is grounded in the Fourteenth Amendment's Due Process Clause. *LOWERY V. CTY OF RILEY*, 522 F.3d 1086, 1092 (10th Cir. 2008), see also *CORDOVA V. CITY OF ALBUQUEQUE*, 816 F.2d 645, 654 (10th Cir. 2016), to prevail on a familial-association claim, Mr. Grigsby must make two showings" (1) that Tammy Lynn Grigsby and Asst. U.S. Atty. Jason W. Hart "intended to deprive him of his protected relationship, "and (2) That balancing the individual's interest in the protected familial relationship against the State's interest in its actions, Tammy Lynn Grigsby and Asst. U.S. Atty. Jason W. Hart either "unduly burdened Mr. Grigsby's protected relationship, or effected an unwarranted intrusion into that relationship." *THOMAS V. KAVEN*, 763 F.3d 1183, 1196 (10th Cir. 2014). The conduct or statement must be directed at the familial relationship with knowledge that the conduct will adversely effect that relationship. Put differently, to satisfy the first prong of the test, Mr. Grigsby must allege that Tammy Lynn Grigsby and Asst. U.S. Atty. Jason W. Hart had the "intent to interfere" with a particular protected relationship. See also *TRUJILLO V. BD. OF CTY COMM'RS*, 768 F.2d 1186, 1190 (10th Cir. 1985). In conducting the balancing

required by the second prong, "the court must consider, among other things, the severity of the infringement on the protected relationship, the need for Tammy Lynn Grigsby and Asst. U.S. Atty. Jason W. Hart's conduct, and possible alternative course of action." THOMAS, 765 F.3d at 1196.

Mr. Grigsby satisfies the first prong in pointing out Tammy Lynn Grigsby and Asst. U.S. Atty. Jason W. Hart vindictively intended to deprive Mr. Grigsby of a protected relationship by including non-victims in the No-Contact Order, further Mr. Grigsby satisfies the second prong in pointing out Tammy Lynn Grigsby and Asst. U.S. Atty. Jason W. Hart "unduly burdened" Mr. Grigsby's protected relationship by denying Mr. Grigsby contact with his non-victim son, in doing so, Mr. Grigsby's non-victim son has been denied a relationship with his father for over six years, Mr. Grigsby was denied contact with his non-victim son by Tammy Lynn Grigsby and Asst. U.S. Atty. Jason W. Hart through bias of Mr. Grigsby's conviction, Mr. Grigsby is attempting to gain "supervised" contact with his children thus further satisfying the alternative course of action. General, restrictions on contact with children do not involve a greater deprivation of liberty than reasonably necessary in an ordinary case where a defendant has committed a sex offense against children or other vulnerable victims.

UNITED STATES V. SMITH, 606 F.3d 1270, 1282-83 (10th Cir. 2010). "But restrictions on a defendant's contact with his own children are subject to stricter scrutiny," UNITED STATES V. BEAR, 769 F.3d 1221, 1229 (10th Cir. 2013), because "the relationship between parent and child is constitutionally protected," and "a father has a fundamental liberty interest

in maintaining his familial relationship with his children," UNITED STATES V. EDGIN, 92 F.3d 1044, 1049 (10th Cir. 1996). In light of the importance of this liberty interest, "special conditions that interfere with the parental right to familial association can do so only in compelling circumstances," and must "be especially fine-tuned to achieve the statutory purpose of sentencing." BEAR, 769 F.3d at 1229.

The liberty interest parents have in care, custody, and control of their children is a substantive Due Process right protected by the Fourteenth Amendment. TROXEL V. GRANVILLE, 530 U.S. 57, 65, 120 S.CT. 2054, 147 L.Ed.2d 49 (2000). Indeed, it "is perhaps the oldest of the fundamental liberty interest recognized by the Supreme Court." The Court first held the Due Process Clause protects a parent's substantive right to "establish a home and bring up children" and "control the education of their own" in MEYER V. NEBRASKA, 262 U.S. 390, 399, 401, 43 S.CT. 625, 67 L.Ed.1042 (1923). Shortly thereafter, it held restrictions on the "liberty of parents and guardians to direct the upbringing and education of their children under their control" are unconstitutional. PIERCE V. SOC'Y OF SISTERS, 268 U.S. 510, 534-35, 45 S.CT. 571, 69, L.Ed 1070 (1925). The Court reaffirmed this right in PRINCE V. MASSACHUSETTS, 321 U.S. 158, 166, 64 S.CT. 438, 88 L.Ed. 645 (1944), and more recently announced "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, 530, U.S. at 66.20.

Mr. Grigsby's restrictions on his contact with his

children are important because they prevent him from communicating with his own children. "The relationship between parent and child is constitutionally protected". Again, it is imperative that any such restriction "be especially fine-tuned" to achieve the statutory purpose of sentencing. EDGIN, 92, F.3d at 1049.

Mr. Grigsby has a fundamental liberty interest that is invaded by the special condition, for "a father has a fundamental liberty in maintaining his familial relationship with his child." Thus, the circumstances had to be compelling before the district court could restrict Mr. Grigsby's contact with his children, see UNITED STATES V. LONJOSE, 663 F.3d 1292, 1303 (10th Cir. 2011) (stating that a similar condition interfered with the right of familial association) ;EDGIN, 92 F.3d at 1049 (remanding for reconsideration of a sentence when the court prohibited contact without jurisdiction). As an initial matter, claims for loss of familial relationship are not necessarily limited to those brought by parents of children. See TRUJILLO V. BD. OF CNTY. COMM'RS OF SANTA FE CNTY., 768 F.2d 1186, 1188-98 (10th Cir. 1985). In an unpublished opinion, The Court recognized that the right can extend to grandparents in certain circumstances, SUASNAVAS V. STOVER, NO. 05-5171, 196 F. App'x 647, 657 (10th Cir. 2006) (citing TRUJILLO's recognition of the importance of the familial relationship between grandparents and grandchildren). When extending the rights to grandparents, however, courts often consider whether the grandparents are "custodial figures" or "acting in loco parentis," or "whether there is a potential conflict between the rights of the grandparent and

the rights or interests of the child's natural parents." REES V. OFFICE OF CHILDREN & YOUTH, 744 F.Supp. 2d 434, 450, 455 (W.D. Pa. 2010), Aff'd 473 F. App'x 139 (3rd Cir. Mar 30, 2012), see also ESTATE OF B.I.C. V. GILLEN, 710 F.3d 1168, 1175 (10th Cir. 2013).

Although the Supreme Court has also recognized familial rights in persons other than parents, the parameters of that interest are less well-defined. COMPARE MOORE V. CITY OF EAST CLEVELAND, 431 U.S. 494, 496, 505-06, 97 S. CT 1932, 52 L.Ed.2d 531 (1977), with TROXEL, 530 U.S. at 60-61 (2000). In TROXEL V. BOARD OF COUNTY COMMISSIONERS, the Tenth Circuit has held that a grandmother has a constitutional right to familial association. 768 F.2d 1186, 1188-89 (10th Cir. 1985). Citing MOORE they explained that the liberty interest in familial relationships include grandparent-grandchild relationships, see also SUASNAVAS V. STOVER, 196 F. App'x 647, 657 (10th Cir. 2006) (relying on TRUJILLO in upholding the denial of qualified immunity in a §1983 action based on child welfare workers' violation of the grandparents' clearly established constitutional right of familial association). "A person may file for modification of Supervised Release while incarcerated" Fed.R.Cr.P. 31.1(b) and (c) see UNITED STATES V. PUGLIESE, 960, 914-15 (10th Cir. 1992).

The No-Contact Order as seen in the Judgment and Commitment Order Dkt.98 p.2 reads "The Court Orders that the defendant does not have any contact with the victim and/or her family members to include her mother and brother." Mr. Grigsby is the father of the victim and shares the same family members, thus the verbiage of the No-Contact Order as it reads

applies to Mr. Grigsby's entire family. Mr. Grigsby has not had his parental rights removed, thus is still the father of the victim and her brother.

Mr. Grigsby's son now sixteen and who was not a victim of his crime is included in the No-Contact Order and is being denied any communication with his father, "All reasonable efforts should be pursued to reunite a father and his son even when the father is a sex offender." DHS V. M.K. (In Re R.W.) Ore. App. 409 (Or. Ct. App. 2013).

The victim and her brother both in their mid-teens may voice their desire of contact in the Kansas State Court, "This court may interview the minor children to assist in determining parenting time."K.S.A.23-3202,23-3202(b) (c) (d) (f) ,23-3209,23-3210(a) -(c) ,60-1614, and 60-1615(a) (b) .

Mr. Grigsby requests monitored/supervised communication with his son, and the facility where Mr. Grigsby is currently housed. All mail, telephone, and e-mail are monitored and/or recorded.

Mr. Grigsby requests monitored supervised communication through third party with his daughter (the victim) via the "licensed" psychologists of the Sex Offender Management Program where Mr. Grigsby is currently housed.

Mr. Grigsby is currently serving a 260 year sentence, thus is not now nor will he ever be a physical threat to his children, Mr. Grigsby is seeking to rebuild secure communication with his children. Opinion by the Honorable Judge Wade Broby, "The best interest of the child is an inseparable element of the child's "support", put another way,

11 U.S.C. § 523(a)(5) should be read as using the term "support" in a realistic manner, the term should not read so narrowly as to exclude everything bearing on the welfare of the child but the bare paying of bills on the child's behalf."

JONES V. JONES, F.3d 878 (In Re JONES) (10th Cir. 1993).

Mr. Grigsby defines communication with his children as monitored hand written or typed letters and/or holiday cards sent through the U.S. Mail to the residence his children live with their mother and recorded telephone calls to the residence where his children live with their mother. Mr. Grigsby is NOT requesting physical contact with his children. (The United States Disciplinary Barracks issued permission allowing the Petitioner (a sex offender) written communication with his children" WARD V. BELCHER. (10th Cir. 2010).

#### CONCLUSION

WHEREFORE, Mr. Grigsby respectfully requests This Honorable Court to remand back to the Tenth Circuit Court of Appeals the foregoing with an order to remove the No-Contact Order and allow the Kansas State (Divorce) Court to establish a parenting plan between Mr. Grigsby and his biological children WLG and RLG.

On this date: July 27, 2018      Respectfully submitted,

  
Philip Grigsby