

18-9334  
No. \_\_\_\_\_

Supreme Court, U.S.

FILED

APR 25 2019

OFFICE OF THE CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES

IN RE: PHILLIP S. GRIGALANZ  
ON A PETITION FOR WRIT OF MANDAMUS TO  
LORETTA H. RUSH, CHIEF JUSTICE, INDIANA SUPREME COURT

PETITION FOR WRIT OF MANDAMUS

PHILLIP S. GRIGALANZ

Y-26282

12078 IL SR 185

HILLSBORO, IL 62049

ORIGINAL

QUESTIONS PRESENTED

- I. Do State actors possess an inherent responsibility to protect a prisoner's right of access to process against unlawful interference?
- II. Should the Comer v. Peake doctrine be considered to apply to State appellate processes?
- III. Should the Mailbox Rule be considered to apply to State appellate processes?
- IV. Should the Indiana Supreme Court be required to substantively construe Petitioner's Motion for Writ of Certiorari and accompanying appellate documents as an attempt to seek the Indiana Supreme Court's de novo review of the lower court cases?

LIST OF PARTIES

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

**Petitioner:**

Phillip S. Grigalanz

Y-26282

12078 ILSR 185

HILLSBORO, IL 62049

**Respondent:**

Loretta H. Rush

Indiana Supreme Court

216 State House

Indianapolis, IN 46204

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF MANDAMUS

Petitioner prays that a writ of mandamus issue regarding the judgment below. The opinion of the highest court to review the merits appears at Appendix A and is unpublished.

JURISDICTION

The date on which the highest state court decided my case was 8/17/18. A copy of that decision appears at Appendix A.

Rehearing is not available from that decision.

The jurisdiction of this Court is invoked under 28 U.S.C. §1651(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Amendment 5, U.S. Constitution:

"[...] nor be deprived of life, liberty, or property, without due process of law; [...]"

Amendment 14, U.S. Constitution:

"[...] nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. [...]"

STATEMENT OF THE CASE

In August 2015 a Petition for Dissolution of Marriage was filed before Porter Superior Court #1 (the Court of first instance).

On November 5, 2015 Porter Superior Court #1 held a status hearing during which the Court established de-facto parenting status, right to adopt and parenting time for minor child known as "CLE" (Petitioner's step-daughter).

On December 2, 2015 Petitioner was arrested for an offense unrelated to the minor child. Petitioner's ex-wife, though in possession of Brady information, instead used the arrest to obtain an ex parte divorce [Grigalanz v. Grigalanz, No. 18-cv-161, S.D. Ill (2/6/18)].

On May 19, 2016 Porter Superior Court #1 held a final dissolution hearing in the absence of Petitioner. No hearing regarding the rights granted at the November 5 hearing was held and these rights were absent on the Decree of Dissolution of Marriage.

Numerous motions were filed to conduct a hearing or other due process for these rights. All motions were denied summarily. No venue for introduction of evidence was provided.

On 9/19/16 a Motion for Change of Venue was filed and denied. This denial led to appeal.

During the course of appeal, Petitioner's ex-wife conspired with the Sheriff of Jersey County, Illinois (in whose custody Petitioner was held at the time) to obstruct Petitioner's access to the appellate courts via theft and interception of Petitioner's legal mail [Grigalanz v. State of Indiana, et al, No. 18-cv-1445, S.D. Ill] which continued despite a locally obtained court order (Appendix G).

On March 1, 2017 a timely Appellant's Brief was mailed but delayed beyond its deadline. On March 23, 2017 the Indiana Court of Appeals dismissed the appeal with prejudice for lack of timely filing of Appellant's Brief under color of Indiana Appellate Rule 45(D).

On April 1, 2016 Petitioner filed a Motion to Correct Error on Appeal stating that under the mailbox rule the brief was timely. This motion was denied.

On April 24, 2016 Petitioner filed a Motion for Writ of Certiorari (Appendix H) as well as appellate documents with the Indiana Supreme Court. These were instead ruled upon by the Indiana Court of Appeals as though a Petition for Rehearing and summarily denied on 5/26/17. (Appendix C).

Petitioner then learned that a "Petition to Transfer" was necessary to transfer the case to the Indiana Supreme Court. Petitioner filed this document several times. However the Clerk refused and failed to file this document due to rather inconsequential (when Petitioner's out-of-state incarcerated status is taken into view) form defects. Each version was delayed by unlawful obstruction.

On 9/12/17, the Indiana Supreme Court reviewed a Motion for Leave to File and denied same. This motion set out the unlawful conspiracy and obstruction, the foreign order and continued obstruction. The Indiana Supreme Court refused to hear the case under color of Indiana Appellate Rule 57(C) stating lack of timely filing of Petition to Transfer.

On 9/12/17, Petitioner filed a timely Petition for Rehearing which was denied on 10/18/17.

On 5/8/18 Petitioner filed a Motion for Arrest from Judgment which was denied on 8/17/18. (Appendix A). A similar motion was denied by the Indiana Court of Appeals on 1/11/19.

REASONS FOR GRANTING THE PETITION

The Writ of Mandamus will aid the Court's appellate jurisdiction in that it will resolve conflicts in the following areas:

Firstly, the Writ will establish a responsibility for State actors to protect a prisoner's right of access to process. This will serve to both establish the Constitutionality of this right and to resolve these conflicts as they occur at the State level. This will reduce the Court's need to assert certiorari for issues surrounding these conflicts.

Secondly, the Writ will establish the same precedent of substantive review of petitions and motions as this Court employs in its appellate jurisdiction. This will serve to reduce the assertion of certiorari where mere form defects which do not harm substantive review are at the heart of the issue.

Lastly, this Writ will establish how and if the Court need review a lower court case wherein the Mailbox Rule [Houston v. Lack, 487 US 266, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988)] is at issue.

There are exceptional circumstances which warrant the exercise of this Court's discretionary powers. Namely, the Petitioner will lose all rights to his step-daughter, including the right to contact, due to a long series of violations to Petitioner's due process rights. These violations go back to the Court of First Instance and include the last court of state resort. Without the Court's intervention, the integrity of Petitioner's family is at risk.

Relief in any other form or venue is not available. Firstly, Petitioner has exhausted all State courts of resort. In fact, it is the State Court of last resort which is the Respondent to this Petition. Secondly, the United States District Court for the Southern District of Illinois has abstained under the Newman v. Indiana (129 F.3d 937, 939) doctrine [Grigalanz v. Grigalanz] with Certificate of Appealability denied. Finally, a Petition for Writ of Certiorari is time-barred in this Court (Appendix I). Thus both this petition and venue are of last and final resort.

The Petition should be granted upon the following merits as well:

Firstly, one of the issues at conflict is that of unlawful interference with access to process. It is well-established that a prisoner possesses a Constitutionally-protected liberty interest under the Fifth and Fourteenth Amendments in access to process. This is underscored by rulings that State actors should not interfere with a prisoner's ability to raise claims [Grigalanz v. State of Indiana, et al; Ortiz v. Downey, 561 F.3d 664, 6712(7th Circuit 2009)]. Since these rulings require that State actors not interfere, it is just to rule that State actors (such as the Indiana Supreme Court in this instance) possess an equal responsibility to protect a prisoner's right of access to process when interference does occur. This would include the application of the Mailbox Rule to State appellate processes, which would prevent jail and/or prison officials from being able to lapse-out a prisoner's claim through interference with legal mail.

The issue of the standard by which pro se petitions are reviewed is also a crucial matter in this case as the Motion

for Writ of Certiorari pre-dates all attempts to file a PETition to Transfer. "Pleadings drafted by pro se litigants should be held to a lesser standard than those drafted by lawyers since an unrepresented litigant should not be punished for his failure to recognize subtle factual or legal deficiencies in his claims." [Comer v. PEake, 552 F.3d 1362; Haines v. Kerner, 404 US 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972); Bledsue v. Johnson, 188 F.3d 250, 255 (5th Circuit 1999); Perez v. Thaler, No. H-11-3982, S.D. Tex (2/13/13)]. The Motion for Writ of Certiorari should have been easily recognized by both the Indiana Court of Appeals and the Indiana Supreme Court as an attempt to seek the de novo review of the Indiana Supreme Court over its lower court cases, and the text of the motion so explicitly asks.

CONCLUSION

The Indiana Supreme Court has not protected Petitioner's Constitutionally protected liberty interest in access to process, nor has taken effort to substantively reviewed attempts to comply with the Indiana Appellate Rules though incarcerated out-of-state. The combination of these factors serve to violate Petitioner's Fifth and Fourteenth Amendment rights.

The petition for a writ of mandamus should be granted.

Respectfully submitted,



Date: 4/17/19  
5/8/19