

19-7459  
No.

## IN THE

2

SUPREME COURT OF THE UNITED STATES

CHRISTOPHER SCOTT PEYTON, *pro se*

*PETITIONER*

V.

RAVONNE SIMS, WARDEN, ROEDERER  
CORRECTIONAL COMPLEX; AND

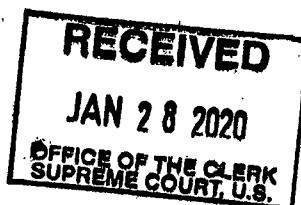
JAMES ERWIN, COMMISSIONER, KENTUCKY  
DEPARTMENT OF CORRECTIONS

## RESPONDENTS

On Petition For Writ Of Certiorari  
To The Kentucky Court Of Appeals

**PETITION FOR WRIT OF CERTIORARI**

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## **INTRODUCTORY STATEMENT**

This Petition for Writ of Certiorari initiated as a civil action in the Kentucky State Court when the Kentucky Department of Corrections determined that Petitioner could be permanently denied any form of visitation with his mother because she was related to his crime.

## **QUESTIONS PRESENTED**

Does incarceration sever a person's right to maintain their familiar bonds through some form of visitation?

Were Petitioner's Due Process Rights violated when the Department of Corrections permanently banned his mother from visiting without considering the impact to his rehabilitation?

Did the state courts abuse their discretion when (a.) the Franklin Circuit Court denied Petitioner's motion to supplement and (b.) the Kentucky Court of Appeals passed on Petitioner's claim?

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

## RELATED CASES

- Peyton v. Sims Et al., No. 17-CI-01227, Franklin Circuit Court. Judgement Entered June 15, 2018.
- Peyton v. Sims, 585 S.W. 3d 250, No. 2018-001062-MR, Kentucky Court of Appeals. Judgement Entered February 15, 2019.
- Peyton v. Sims, 2019 Ky. LEXIS 476, No. 2019-SC-000290-D, Kentucky Supreme Court. Judgement Entered October 24, 2019.

## **JURISDICTION**

The Kentucky Supreme Court Denied Discretionary Review on October 24, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a)

“Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.”

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Fourteenth Amendment to the United States Constitution, Section 1

“All persons born or naturalized in the United States, and subject to the

jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; 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."

Eighth amendment to the United States Constitution

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Kentucky Revised Statutes §532.007

"It is the sentencing policy of the Commonwealth of Kentucky that: (1) The primary objective of sentencing shall be to maintain public safety and hold offenders accountable while reducing recidivism and criminal behavior and improving outcomes for those offenders who are sentenced; (2) Reduction of recidivism and criminal behavior is a key measure of the performance of the criminal justice system; (3) Sentencing judges shall consider: (a) Beginning July 1, 2013, the results of a defendant's risk and needs

assessment included in the presentence investigation; and (b) The likely impact of a potential sentence on the reduction of the defendant's potential future criminal behavior; (4) All supervision and treatment programs provided for defendants shall utilize evidence-based practices to reduce the likelihood of future criminal behavior; and (5) All supervision and treatment programs shall be evaluated at regular intervals to measure and ensure reduction of criminal behavior by defendants in the criminal justice system.”

#### **STATEMENT OF THE CASE**

1. Petitioner, Christopher Scott Peyton, an inmate of the Kentucky Department of Corrections sought to add his mother Kimberly Peyton to his approved visitor list in May, 2017.
2. The request was denied by Classification and Treatment Officer (hereinafter CTO) Jordan Wright “due to being an active parolee”. CTO Wright instructed Ms. Peyton to write Warden Ravonne Sims for permission to visit Petitioner.

3. Ms. Peyton wrote Warden Sims but was denied as she was "directly involved in the inmate's criminal behavior".

4. Petitioner wrote Warden Sims asking for reconsideration on the visitation denial. Warden Sims refused to reconsider.

5. Petitioner filed a grievance requesting visitation with his mother.

6. Deputy Warden Veech answered the informal resolution stage citing Corrections Policy and Procedure (hereinafter CPP) 16.1(E)(6) stating "a review of your PSI shows that Ms. Peyton was involved in your crime".

7. Petitioner requested a hearing with the Grievance Committee which concurred with the Warden's decision.

8. Petitioner appealed the grievance to Warden Sims who concurred with her decision.

9. Petitioner appealed the grievance to James Erwin, Commissioner of the Kentucky Department of Corrections (hereinafter Commissioner) on August 1, 2017. Commissioner Erwin's response is dated August 2, 2017 but was mailed to Petitioner and postmarked on October 12, 2017.

10. Petitioner filed a Petition for Declaration of Rights in the Franklin Circuit Court on November 17, 2017.

11. Petitioner requested leave to file a supplemental pleading raising an 8<sup>th</sup> Amendment claim.

12. The Petition was ultimately dismissed on June 15, 2018 wherein the Court also denied his motion for leave to supplement.

13. Petitioner appealed as a matter of right to the Kentucky Court of Appeals.

14. The Court of Appeals affirmed the Franklin Circuit Court's Order on February 15, 2019.

15. Petitioner requested a rehearing and modification of opinion to address issues with the Court of Appeals' Opinion.

16. The request for rehearing was denied on May 15, 2019.

17. Petitioner sought Discretionary Review from the Kentucky Supreme Court.

18. The motion for Discretionary review was denied on October 24, 2019.

19. This Petition for Certiorari follows.

## REASONS FOR GRANTING THE PETITION

The last prison visitation case addressed by this Court was Overton v. Bazzetta 539 U.S. 126 (2003) wherein this Court reversed the Sixth Circuit's ruling that a ban on non-contact visitation violated the prisoner's and prospective visitor's Constitutional rights. As opined by the Court:

We do not hold, and we do not imply, that any right to intimate association is altogether terminated by incarceration or is always irrelevant to claims made by prisoners. We need not attempt to explore or define the asserted right of association at any length or determine the extent to which it survives incarceration because the challenged regulations bear a rational relation to legitimate penological interests. This suffices to sustain the regulation in question. See Turner v. Safley, 482 U.S. 78, 89, 96 L. Ed. 2d 64, 107 S. Ct. 2254 (1987). We have taken a similar approach in previous cases, such as Pell v. Procunier, 417 U.S. 817, 822, 41 L. Ed. 2d 495, 94 S. Ct. 2800 (1974), which we cited with approval in Turner. In Pell, we found it unnecessary to decide

whether an asserted First Amendment right survived incarceration. Prison administrators had reasonably exercised their judgment as to the appropriate means of furthering penological goals, and that was the controlling rationale for our decision. We must accord substantial deference to the professional judgment of prison administrators, who bear a significant responsibility for defining the legitimate goals of a corrections system and for determining the most appropriate means to accomplish them. See, e.g., Pell, *supra*, at 826-827, 41 L Ed 2d 495, 94 S Ct 2800; Helms, *supra*, at 467, 74 L Ed 2d 675, 103 S Ct 864; Thornburgh v. Abbott, 490 U.S. 401, 408, 104 L. Ed. 2d 459, 109 S. Ct. 1874 (1989); Jones, *supra*, at 126, 128, 53 L Ed 2d 629, 97 S Ct 2532; Turner, *supra*, at 85, 89, 96 L Ed 2d 64, 107 S Ct 2254; Block v. Rutherford, 468 U.S. 576, 588, 82 L. Ed. 2d 438, 104 S. Ct. 3227 (1984); Bell v. Wolfish, 441 U.S. 520, 562, 60 L. Ed. 2d 447, 99 S. Ct. 1861 (1979). The burden, moreover, is not on the State to prove the validity of prison regulations but on the prisoner to disprove it. See Jones, *supra*, at 128, 53 L Ed 2d 629, 97 S Ct 2532; O'Lone v. Estate of Shabazz, 482 U.S. 342, 350, 96 L. Ed. 2d 282, 107 S. Ct. 2400 (1987); Shaw, *supra*, at 232, 149 L Ed 2d 420, 121 S Ct 1475. Respondents have failed to do so here.

(Overton v. Bazzetta, 539 U.S. 126, 131-2 (2003)).

The Court further explained,

"if faced with evidence that MDOC's regulation is treated as a *de facto* permanent ban on all visitation for certain inmates, we might reach a different conclusion in a challenge to a particular application of the regulation. Those issues are not presented in this case, which challenges the validity of the restriction on noncontact visits in all instances. Overton at 134. (Emphasis added).

In Overton this Court addressed a statewide regulation applied to all prisoners. The instant case involves a restriction applied to a particular prisoner which has denied him any form of visitation with his mother stretching indefinitely into the future. Further, Petitioner may suffer irreparable harm as his mother has been diagnosed with cancer, is on chemotherapy, and has been hospitalized multiple times because of issues with her kidneys not

retaining sodium and a seizure likely cause by radiation therapy.

As stated in Justice Thomas' Concurring Opinion,

"The Court is asked to consider "whether prisoners have a right to non-contact visitation protected by the First and Fourteenth Amendments." Brief for Petitioners i. In my view, the question presented, as formulated in the order granting certiorari, draws attention to the wrong inquiry. Rather than asking in the abstract whether a certain right "survives" incarceration, ante, at 156 L Ed 2d, at 170, the Court should ask whether a particular prisoner's lawful sentence took away a right enjoyed by free persons. Overton at 139.

Petitioner presents this question as well as two others to the Court.

The Kentucky Courts have determined that Petitioner does not possess a liberty interest in visitation with his mother, basing their ruling on Kentucky Dep't of Corrections v. Thompson, 490 U.S. 454, 463 (1983). In Thompson this Court held that

prisoners do not possess a liberty interest in unfettered visitation. However, Thompson is distinguished from the case at bar for two reasons.

"[Thompson] was prompted in large part by two incidents when applicants were denied the opportunity to visit an inmate at the reformatory. The mother of one inmate was denied visitation for six months because she brought to the reformatory a person who had been barred for smuggling contraband. Another inmate's mother and woman friend were denied visitation for a limited time when the inmate was found with contraband after a visit by the two women." Thompson at 458.

First, Petitioner does not seek to establish a right to unfettered visitation, but rather a right to some form of visitation. Second, in Thompson visits were temporarily suspended after a major rule infraction had taken place. The restriction faced by Petitioner is permanent and indefinite with no rule infraction having taken place and involves no

penological interest. In fact, severing Petitioner's only tie to the outside world serves a disinterest as it hinders his rehabilitation and promotes degeneration. It is also in direct contradiction to the Commonwealth's sentencing policy as stated in Kentucky Revised Statutes §532.007 which states,

It is the sentencing policy of the Commonwealth of Kentucky that: (1) The primary objective of sentencing shall be to maintain public safety and hold offenders accountable while reducing recidivism and criminal behavior and improving outcomes for those offenders who are sentenced; (2) Reduction of recidivism and criminal behavior is a key measure of the performance of the criminal justice system.

Although not addressed by the state courts, Petitioner seeks to have this Court address his claim that the permanent visitation ban violates his right under the Eighth Amendment to the United States Constitution as it is an unnecessary and wanton

infliction of pain essentially aimed at severing his only tie to the community, hindering his rehabilitation, and promoting his degeneration which will likely bar his successful reintegration into society and cause him to recidivate upon release.

Petitioner did not include this argument in his Petition to the Franklin Circuit Court as some of the grounds for the argument occurred subsequent to the filing. However, Petitioner did ask the Court for leave to file a supplemental pleading as soon as practical thereafter. Unfortunately, the Court did not address this until dismissing his Petition; denying his motion for leave to supplement in its Order.

Petitioner raised this claim to the Kentucky Court of Appeals outlining how the Circuit Court abused its discretion but the court deliberately passed on the claim when it did not address the claim in its Opinion. Petitioner requested a

Rehearing and Modification of Opinion to address this issue but the Court declined. Petitioner then sought Discretionary Review from the Kentucky Supreme Court but the Court denied his motion refusing to address these claims. Petitioner now seeks Certiorari from this Court to address these issues.

#### CONCLUSION

As the case at bar is distinguished from Overton and Thompson and presents an important issue the Court has not specifically addressed Petitioner respectfully requests this Honorable Court exercise it's duly given authority and grant this Petition for Certiorari.

Respectfully submitted,



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