

NO. 19-7739

IN THE
SUPREME COURT OF THE UNITED STATES

H. K. V.,
PETITIONER

V. S.

FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES,
ET AL
RESPONDENT (S)

ON PETITION FOR WRIT OF CERTIORARI TO THE
SECOND DISTRICT COURT OF APPEAL OF FLORIDA

PETITIONER'S REPLY BRIEF TO RESPONDENT'S
(GAL) BRIEF IN OPPOSITION TO PETITIONER'S
PETITION FOR WRIT OF CERTIORARI

HAILEY KYLE VALLIER
PETITIONER
6901 STATE ROAD 62
BOWLING GREEN, FL 33834

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QUESTIONS PRESENTED

The petitioner adopts the questions presented listed in the former briefs

JURISDICTION

Jurisdiction is invoked under 28 U.S.C. 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section one of the Fourteenth Amendment to the United States Constitution provides that no "state shall deprive any person of life, liberty, or property without due process of law. . ."

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OTHER

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28 USC 1257 §§

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STATEMENT OF CASE

Petitioner adopts the statements of case presented in the former briefs

This reply brief is filed in response to the Guardian ad Litem's Brief in Opposition to the petition for writ of certiorari.

It appears on the face of the record that the Guardian ad Litem has mismatched cases 19-7738 and 19-7739 in their briefs in opposition.

REPLY

In reply to the Guardian ad Litemis argument regarding the procedural application alleging ineffective assistance of appellate counsel, Florida Rule of Appellate Procedure 9.1-41(d) should not be used for criminal cases alone. Any litigant should have a right to argue the ineffectiveness of appellate counsel regardless of venue. This should be a state and/or federal constitutional right, however, it is also the reason why the parent titled his petition as a petition for writ of habeas corpus as well, providing the appellate court to treat the petition ambiguously or to choose classification of the litigation as either a Florida Rule of Appellate Procedure 9.41(d) petition or a habeas petition under Florida Rule of Appellate Procedure 9.030(b)(3).

The case law provided in the merits of his petition clearly demonstrates where the Second District Court of Appeal of Florida violated its own precedent when dealing with procedural routes for appellate counsel and their clients; that is, if their client had become a temporary pro se litigant due to the appellate counsel's conditional motion to withdraw. Additionally, the case dealt exclusively with parental rights and termination proceedings, and makes citation to Constitutional Law 274(5) regarding the due process clause of the fourteenth amendment to the U.S. Constitution. See In re K.W., T.R. v. State, Dep't of Children and Families, 779 So. 2d 292 (Fla. 2nd DCA 1998). The case of K.W. should pave the way for relief by alleging the ineffective assistance of appellate counsel in termination proceedings when the appellate court's precedent in K.W. is violated. This is a due process right.

The parent's due process right to effective counsel was misapprehended and duly and legally proven in his petition. His argument is legally sound. Additionally, his petition was indeed timely. See Florida Rule of Appellate Procedure 9.141(d)(5); *Lawson v. State*, 35 So. 3d 112 (Fla. 2nd DCA 2010); *Haines v. Black Diamond Props*, 2015 Fla. App. LEXIS 15759 (Fla. 5th DCA 2015).

The parent strongly encourages this Court to focus on the fact that the Order issued by the Second District Court of Appeal of Florida focused on the fact that their ruling alleged untimeliness as basis for denial by citing Florida Rule of Appellate Procedure 9.141(d)(5), which contains the two-year time requirement wherein the parent in this instance was within such time frames, and the appellate court did not address the issue as to whether or not venue was appropriate as what the Guardian ad Litem argues. In addition, the parent moved for the appellate court to rehear the matter and to clarify the issues, yet, the appellate court consistently failed to address the issues of the case. Therefore, once again, the appellate court rendered a per curiam opinion without sufficient elaboration, thus causing the Florida Supreme Court to lack jurisdiction on cases with unelaborated decisions. It is, therefore, exceptionally important for this Supreme Court to accept jurisdiction over this case. The parent should indeed be entitled to relief/redress/remedy as to these issues, and his petition should be ruled on its merits; not denied on a procedural reason. Again, the actions taken by the State has effectively stonewalled the parent from obtaining justice and capturing the best interests of his child.

The parent should be awarded a fair appeal from the

invalid termination order. He has not been given a fair direct appeal. The parent recognizes that although all points of law that have been adjudicated become the law of the case, the court has the power to reconsider and correct erroneous rulings notwithstanding that such rulings have become the law of the case where reliance on the previous decision would result in a manifest injustice. See *Zolache v. State*, 687 So. 2d 298 (Fla. 4th DCA 1997); *Young v. State*, 939 So. 2d 263 (Fla. 4th DCA 2006); *Ross v. State*, 901 So. 2d 253 (Fla. 4th DCA 2005). At present, it would be fundamentally unfair for the parent to continue to be without his parental rights, and his child remaining in illegal/unlawful custody due to the subsequent adoption that occurred after the illegal/unlawful termination.

The parent also recognizes that although parents are generally precluded from raising identical issues in successive post-termination proceedings that were previously denied on the merits, an exception to the rule exists when a manifest injustice can be determined from the face of the record. See *Eason v. State*, 932 So. 2d 465 (Fla. 1st DCA 2006); *State v. McBride*, 848 So. 2d 287 (Fla. 2003). The parent further notes that res judicata and the law of the case doctrines will not be invoked when it would defeat the ends of justice, and collateral estoppel will not be invoked when it would result in a manifest injustice. See, *McBride* at 291; *Smith v. State*, 946 So. 2d 1078 (Fla. 1st DCA 2006).

In the present case, the parent contends that his issue has not been addressed or denied on the merits; however, even if the Court so finds, the parent asserts a manifest injustice has occurred permitting the parent to raise a similar, or even

an identical, issue in a successive post termination petition/ motion because the termination and subsequent adoption has utterly failed to meet the statutory prerequisite to legally warrant such and is against the intent of the Florida Legislature and is unconstitutional. Moreover, a sentence is "illegal" when a court imposes "any sentence that does not conform to the requirements of the law." *State v. Mancino*, 714 So. 2d 429 (Fla. 1998); *Carter v. State*, 786 So. 2d 1173 (Fla. 2001). The claims of illegality must be apparent on the face of the record and the motion must expressly state so and direct the Court's attention to specific portions of said record. See *Mancino*, at 433; *Baker v. State*, 714 So. 2d 1167 (Fla. 1st DCA 1998). See also, *Kerrin v. State*, 8 So. 3d 395 (Fla. 1st DCA 2009).

Thus, the appellate court has jurisdiction and an inherent authority to issue the writ (or grant the petition) to correct a manifest injustice. See, *Hoager v. State*, 36 So. 3d 883 (Fla. 2nd DCA 2010) (to prevent a manifest injustice and a denial of due process, post conviction relief may be afforded even to a litigant raising a successive claim); *Lago v. State*, 975 So. 2d 613 (Fla. 3rd DCA 2008) (where a manifest injustice in sentencing has occurred, it is the responsibility of the court to correct that injustice, if it can); *Figuerroa v. State*, 84 So. 3d 1158 (Fla. 2nd DCA 2012).

The parent notes that when the issues below were raised, the appellate court denied it based on a procedural reason, and the issues have not been squarely addressed or decided on the merits, despite the parent's attempt to raise it pro se. Thus, the parent believes there is a good faith basis to bring the

issues to this Court's attention for review, as the termination and adoption order that is barred by law is a manifest injustice requiring relaxation of the finality of any prior decisions. Again, the actions taken by the State has effectively stonewalled the parent from obtaining justice and capturing the best interests of his child.

Finally, this Supreme Court has ruled that the relationship between a parent/family and their child(ren) is far more precious than any property right, and that the interests of parents in their relationship with their children is sufficiently fundamental to come within the finite class of liberty interests protected by the Fourteenth Amendment, and is of the unanimous view that few consequences of judicial action are so grave as the severance of natural family ties. See *Santosky v. Kramer*, 455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982) and *Troxel v. Granville*, 530 U.S. _____, 120 S. Ct. _____, 147 L. Ed. 2d 49 (2000) [No. 99-138] in 'Separate Opinion' II. (P. 9, 2LED20).

The termination/adoption order that the parent and his child still face is far below the statutory prerequisite in order to legally warrant such, which creates a manifest injustice and a denial of due process in his case, because the parent was never afforded effective appellate counsel in his direct appeal that could have otherwise resulted in the reversal of the illegal/unlawful termination/adoption judgment via the appellate court's decision to grant the parent a new direct appeal or from the issuance of a writ of habeas corpus, upon a lawful judgment based on the substance of his claims on the merits. Therefore, the parent's continued loss of his child on the termination/adoption judgment is a

manifest miscarriage of justice, and the parent respectfully requests that this Honorable Supreme Court issue the writ of certiorari.

CONCLUSION

WHEREFORE, because of the parent's claim of termination/adoption illegality is apparent on the face of the record, and the parent has attached those portions below of the record that demonstrate on their face an entitlement to relief, along with issues he presented in his state petition in which were never addressed, the parent respectfully requests that this Court issue the writ of certiorari, remanding the case to the appellate court so the substance of his claims on the merits can be appropriately addressed via his state petition; or any other relief the Supreme Court may deem just and proper.

Signed and executed on this 8th day of May, 2020.

Respectfully Submitted,

Hailey Kyle Vallier

Hailey Kyle Vallier, Y51633

Petitioner, Biological Father of O.R.T., Prose.

6901 State Road 62

Bowling Green, FL 33834