

No. 21-201

In the
Supreme Court of the United States

NEHAD ABDEL NABI,

Petitioner,

v.

FATMA ADEL SEKIK,

Respondent.

On Petition for a Writ of Certiorari to the
Court of Appeals of Tennessee, Eastern Division

PETITION FOR REHEARING

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APRIL 1, 2022

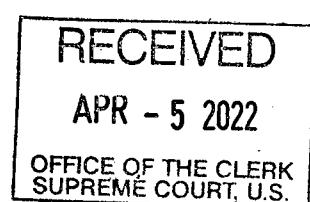


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BACKGROUND

On Monday, July 19, 2021 this Court rescinded its prior orders relating to COVID-19 and ordered that the requirement of Rule 33.1 that 40 copies of documents be submitted in booklet format will go back into effect as to covered documents filed on or after September 1, 2021. My petition for writ of certiorari was filed in August of 2021 and was submitted for filing under the Court's April 15, 2020 order. The Respondent filed an opposition to the petition which contained many misstatements of fact. I, unaware of the July 19th Order, filed my Reply Brief in February of 2022 on 8.5 x 11 inch paper, as set forth in the April 15th Order, which brief was then rejected by the Clerk. As a result, this Court denied the petition for writ of certiorari without me having an opportunity to address the Respondent's misstatement of facts as follows:

I. Oral Argument

A. Opposing Counsel's Claim That There Was No Oral Argument on Husband's Appeal.

Ms. Sekik, through counsel, claims: "there was, in fact, no oral argument in this matter." (Brief in opposition, pg. 2) (emphasis in original) This is the first time that Appellant Nehad Abdel Nabi has heard that there was no oral argument on his appeal and the Appellant sincerely doubts the veracity of that claim. This was never mentioned in Appellee Fatma Adel Sekik's Reply in Opposition to Mr. Abdel Nabi's Application for Permission to Appeal to the

Tennessee Supreme Court. In fact, Ms. Sekik argued this issue as follows:

Appellant admits he had no Constitutional right to participate in the oral argument. Application at pp. 16-17. Although there is no Constitutional right of self-representation at the appellate level, the Court of Appeals allowed Appellant to file his brief and reply brief granted several Motions for Extension of Time, and accepted other pro se filings in the Court of Appeals and in this Court. Appellant has received fair hearings and treatment, consistent with the Rules and within the Court's power.

Appellant has not demonstrated he has any Constitutional right to silence his ex-wife because he has rendered himself indisposed. Appellant has been provided due notice of the oral argument. He has not objected to his co-conspirators being heard outside his presence even though they pursued claims against him at trial. He seeks only to silence his ex-wife, whom he physically and mentally abused for years. There is nothing *ex parte* about this appeal, Appellant has been given notice, the opportunity to represent himself, and the opportunity to present his arguments in multiple briefs and multiple motions. His inability to attend the oral argument is the direct result only of his own intentional decisions. This is not an *ex parte* or unconstitutional proceeding.

Appx. I, pp. 6-8.

B. Appellants Effort to Attend Oral Argument Would Have Been an Effort in Futility.

This Court, in *Martinez*, stated that We already leave to the appellate courts' discretion, keeping the best interests of both the prisoner and the government in mind,' the decision whether to allow a *pro se* appellant to participate in, or even be present at, oral argument." *Martinez v. Court of Appeal of California, Fourth Appellate District*, 528 US. 152, 163, 120 S.Ct. 684, 692, 145 L.Ed.2d 597 (2000) (quoting *Price v. Johnston*, 334 U.S. 266, 284, 68 S.Ct. 1049, 92 L.Ed.2d 1356 (1948)).

Tennessee made clear its choice to not allow *pro se* inmate appellants to appear at oral argument. *See*, Tennessee Code Annotated § 41-21-304(a) (In no civil case can an inmate be removed from the penitentiary to give personal attendance at court, but testimony may be taken by deposition, as in, other cases, the party seeking the testimony being required to make affidavit that the inmate is a material witness in the cause). The appellate courts in Tennessee have consistently denied requests by prisoners to appear for oral arguments in Tennessee. *See, Knight v. Knight*, 11 S.W.3d 898, 901 (Tenn.App. 1999) ("hold[ing] that a prisoner has a constitutional right to institute and prosecute a civil action seeking redress for injury or damage to his person or property, or for the vindication of any other legal right; however, this is a qualified and restricted right.") The *Knight* Court noted that T.C.A. § 41-21-304(a) provides that in no civil case can a convict be removed from the penitentiary to give personal attendance at court, but his testimony may

be taken by deposition, as in other cases . . ." 11 S.W.3d at 901-02.

In *Weatherly v. State*, 704 S.W.2d 730, 731 (Tenn. Crim.App. (1985) the appellate court made a preliminary observation that petitioner requested oral argument in the appellate court and found that:

Neither the United States Supreme Court nor the Constitution of the State of Tennessee accords a defendant the right of self-representation at appellate proceedings. A defendant has no absolute right to argue his own appeal or even to be present at the proceedings in an appellate court.

704 S.W.2d at 731, citing, *Price v. Johnson*, 334 U.S. 266, 68 S.Ct. 1049, 1060, 92 L.Ed.2d. 1356 (1948), *rev'd on other grounds*; *Vowell v. State*, 178 S.W. 768, 771, 132 Tenn. 349 (1915); *State v. Reeves*, 610 S.W.2d 730, 731 (Tenn.Cr.App. 1980); *State v. Cole*, 629 S.W.2d 915, 917 (Tenn.Cr.App. 1981).

Mr. Abdel Nabi did not request to appear at oral arguments given that Tennessee has no prior case-law allowing a prisoner pro-se litigant to appear before its appellate courts.

II. Appellants Claim Regarding the Trial Is Not Frivolous.

A. This Court Has Jurisdiction.

While the February 19th trial issue regarding continuance to search for counsel was not listed in the "Questions Presented For Review" of the Application for Permission to Appeal to the Tennessee Supreme Court, this issue was argued throughout the Application

for Permission to Appeal to the Tennessee Supreme Court on pages 6-7, &12. Moreover, this issue was fully argued in the Tennessee Court of Appeals and appeal to the Tennessee Supreme Court is discretionary.

B. Husband Requested Continuance.

See Petition for Writ of Certiorari on pages 29-36



**MISSTATEMENT OF FACT OR LAW
IN BRIEF IN OPPOSITION**

Counsel for Appellee, made the following misstatements in opposition to the Petition:

Although the parties owned condos, a home and an electronics shop in the United States, most of those properties were financially upside down, while just one (1) of the pieces of property Husband purchased in the Gaza Strip (in his name alone) was worth, by his own estimate, a little over Two Million Dollars (\$2,000,000.00). Husband's Appx. B at the 2 unnumbered pages following p. 290).¹

Brief in Opposition at pg. viii.

Although the parties two (2) Condo properties are "financially upside down" to the tune of \$41,845.00,

¹ The 2 referenced unnumbered pages are attached Exhibits to the trial courts findings of fact about the value of the assets and the court's determination as to an equitable division.

the parties home and electronics shop has a combined equity of \$287,674.00. Although Mr. Abdel Nabi testified that the property was worth "maybe about 2 million", the Gaza Strip property was actually assessed a value of \$1,380,714.00.² *See Sekik v. Abdeelnabi*, 2021 WL 120940 at *18 in Appx. A; *See also* Appx B of the Petition at the 1st unnumbered page following p. 290. With regard to the valuation of these assets, the trial court adopted without modification the valuation proffered by Ms. Sobieski's client. *See Sekik v. Abdeelnabi*, 2021 WL 120940 at *18 in Appx. A; *See also* Appx B, at pg. 284.

The parties . . . negotiated and submitted an Agreed Order for support, alimony and related obligations which was adopted by the Trial Court. as its order. Husband made only one (1) month of partial payment pursuant to the order, then ceased support of his wife and children altogether.

Brief in opposition, pgs. viii-ix.

Ms. Sobieski failed to mention that agreement was in the form of a temporary parenting plan entered on September 8, 2012, granting Mr. Abdel Nabi weekend visitation every week and setting his child support at Two Thousand Dollars (\$2,000.00) per month and included Mr. Abdel Nabi paying for household expenses, including the mortgage, utilities, phone and internet, credit cards, health insurance, medical bills, automobile insurance. *Sekik v. Abdeelnabi*, 2021 WL 120940 at *18 in Appx. A. Ms. Sobieski also failed to mention that Mr. Abdel Nabi and his wife "subsequently reconciled,

² Ms. Sobieski persists in her efforts to inflate this amount throughout her argument to this Court.

and by an agreed Amended Order of Protection entered on December 5, 2012, they were permitted to have contact." *Id.* Thereafter, Husband paid a total of Three Thousand Dollars (\$3,000.00) in support, and none has been paid since that time in 2012. *Id.* Husband moved back into the marital residence at that time. (Appendix "C", p. 252). They remained in the residence together from December 2012 until January 2016. *Id.* Contrary to Ms. Sobieski's allegation, Mr. Abdel Nabi provided support for his wife and children during that period. Additionally, while Ms. Sobieski is correct that Ms. Sekik proceeded with the divorce after Mr. Abdel Nabi was incarcerated, the record is devoid of any evidence she did so only because "Husband was safely behind bars" as stated by counsel on page ix of the Brief in opposition. (Brief in opposition, pg. ix).

Husband was much less forthcoming with information about the parties assets. Among the assets omitted from his discovery responses was the most significant asset, the chalet and orchard property in Gaza that was worth over Two Million Dollars (\$2,000,000.00).

Brief in opposition, pgs. ix-x, *citing* Husbands Appx. C at pp. 284-85.

Two Million Dollars is not mentioned anywhere in Appendix C at pages 284-85.

When Husband refused to make the ordered *pendent lite* support payments, Ms. Sekik, [through counsel], filed a Motion for Interim Relief asking the court to allow her to marshal the parties' assets, receive the rents and profits from the various properties (especially

the vacation chalet and orchard property in Gaza) and account to the court for the use of the funds (Husband's Appx. B at pp. 39-44), followed by a Motion for Emergency Relief. Husband's Appx. B at pp. 50-52. At a hearing on January 13, 2017 (where Husband was present in person), the Trial Court empowered Ms. Sekik to do so and ordered Husband to cooperate with execution of documents necessary to effectuate that order. Instead, Husband refused to comply with the order and set upon a course of action to defeat it. Husband's Appx. B at pp. 50-52.

Brief in opposition, pgs. x-xi.

Once again, Ms. Sobieski failed to mention that Mr. Abdel Nabi and his wife "subsequently reconciled, and by an agreed Amended Order of Protection entered on December 5, 2012, they were permitted to have contact." *Id.* Thereafter, Husband paid a total of Three Thousand Dollars (\$3,000.00) in support, and none has been paid since that time in 2012. *Id.* Husband moved back into the marital residence at that time. (Appendix "C", p. 252). They remained in the residence together from December 2012 until January 2016. *Id.* Contrary to Ms. Sobieski's allegation, Mr. Abdel Nabi provided support for his wife and children during that period.

Thereafter, Husband (aware that his actions were illegal) along with Brother and Sister-in-Law (also aware of the illegality of their actions), conspired to have a Power of Attorney prepared authorizing Brother to sell all the Gaza properties. Husband's Appx. A at unnumbered pp. 10-14; Husband's Appx. C at

pp. 284-88. Brother then sold a portion of the Gaza property for Four Hundred Fifty-one Thousand Dollars (\$451,000.00) and transferred another section of the property (valued at Two Hundred Thirty-two Thousand Six Hundred Seventy-two Dollars (\$232,672.00) to himself. Brother also entered into leases for the chalet and for the orchard that allowed the tenants to use the remaining property rent free for two years. Husband's Appx. C at pp. 282-87.

Brief in opposition, pgs. xi-xii.³

This issue is addressed more fully in the petition for certiorari filed by Nahed Abdulnabi and Rewa Gharbawe. The trial court's order states that the chalet property was rented to an individual named Mousa for a period of three years at Nine Thousand Dollars (\$9,000.00) per year, and the orchard to another individual, Shamalth, for four years at a total of Two Thousand Dollars (\$2,000.00). Appx. C at 285. Ms. Sobieski claims that leases for the chalet and for the orchard allowed tenants to use the remaining property rent free for two years; however, this is a misstatement of fact, the chalet property was rented "back to Nader (whom he had earlier ousted) for three (3) years with no money to be paid to settle a claim that Nader had made against Brother for ousting Nader from the control of the Chalet property." Appx. C at 287 (emphasis added).

³ At this point, Ms. Sobieski's citations become very imprecise thereby making it difficult to ferret out her misstatements and factual discrepancies. The Chalet property is first mentioned on page 285, not 282.

At Husband's direction his brother paid off approximately One Hundred Eighty Thousand Dollars (\$180,000.00) owed on the electronics shop, but refused to give anything at all to Ms. Sekik or the children.

Brief in opposition, pg. xii.

Ms. Sobieski misstates the facts as “[t]he parties agree[d] that on June 22, 2017, a portion of the proceeds from that sale in the amount of One Hundred Eighty-four Thousand Six Hundred Thirteen and 25/100 Dollars (\$184,613.25) was sent to the mortgage holder to pay off the shop in the United States.” (Appendix C, pg. 286) One Hundred Eighty-four Thousand Six Hundred Thirteen and 25/100 Dollars (\$184,613.25) ultimately benefited the marital estate by paying off the mortgage on the parties’ shop. The shop at 8218 Gleason Drive was awarded to Ms. Sekik by Court Order. Appx. C. at p. 272. The shop was valued at Two-Hundred-Thirty-Eight Thousand Nine-Hundred, (238,900.00), Dollars. Appx. C at 291.

Husband obtained new counsel in the criminal matter and filed ineffective assistance of counsel claim against Robert Jolley (his attorney in both the criminal case and this domestic matter) less than a month before the trial in this matter. Husband’s Appx C at p. 200. That, of course, set up a mandatory withdrawal by Mr. Jolley, which was granted February 8, 2019. Husband’s Appx. C at p. 207. Husband made no request to delay the trial. There is nothing in the record to suggest that Husband made any attempt to obtain new counsel for this civil trial until

well into trial. Husband's Appx. C at pp. 207-09.

Brief in opposition, pg. xiv.

It should be noted that while Nehad Abdel Nabi may be an "educated and skilled businessman", he is not a lawyer, or educated and trained in the law; consequently, he asserts that he did not contemplate that his post-conviction claims would conflict his counsel, requiring Mr. Jolley to withdraw from his divorce case.

The Divorce Court claimed that Mr. Abdel Nabi "was convicted and waited nearly an entire year before asserting a claim of ineffective counsel against his counsel." However, Mr. Abdel Nabi had only one year in which to file for post-conviction remedies. Both federal and state post-conviction remedies have a one-year limitation period.⁴ In the event that a petitioner files a petition for post-conviction relief outside the one-year statute of limitations, the trial court is required to summarily dismiss the petition. *See id.*, T.C.A. § 40-30-106(b) (2006).

Mr. Abdel Nabi hired John M. Boucher, Jr. of the Bridgefront Law Group⁵ to investigate and file his Petition for Post-Conviction relief. Mr. Boucher filed the Petition within the applicable statute of limitations. Neither Mr. Boucher nor Mr. Jolley advised Mr. Abdel

⁴ [A] person in custody under a sentence of court of this state must petition for post-conviction relief within one (1) year of the date of the final action of the highest state appellate court to which an appeal is taken or, if no appeal is taken, within one (1) year of the date on which the judgment became final. . ." T.C.A. § 40-30-102(a).

⁵ The Bridgefront Law Group is located at 616 West Hill Avenue, 2nd Floor at Knoxville, Tennessee 37902.

Nabi that Mr. Jolley would have to withdraw from the divorce case when the petition was filed.

Mr. Abdel Nabi does not have a cell phone and does not have access to the internet due to his incarceration and has to rely upon the United States Mail in his efforts to locate an attorney; nevertheless, he did ask a friend to assist him in locating an attorney and that attorney⁶ made an informal inquiry with the judge and Ms. Sobieski, albeit off the record, asking for additional time to prepare which request was denied. Mr. Abdel Nabi attempted to introduce this in his Appellate Brief; however, Ms. Sobieski successfully brought a motion to strike that portion of the brief which was then stricken from the record. Mr. Abdel Nabi, whom is untrained in the law, had to represent himself in complex civil litigation against a trained Lawyer, much like "a sacrifice of unarmed prisoners to gladiators". *Cf., United States v. Cronic*, 104 S.Ct. 2039, 2046 (1984) ("While a . . . trial is not a game in which the participants are expected to enter the ring with a near match in skills, neither is it a sacrifice of unarmed prisoners to gladiators.") As a result, Mr. Abdel Nabi believes his due process rights were violated, which is the crux of his 2nd issue in his Petition. *See*, Petition for Writ of Certiorari at pp. 29-36.

⁶ Chad B. Tindell of Lacy, Price & Wagner, P.C., 249 Peters Road, Suite 101 at Knoxville, Tennessee 37923

CONCLUSION

Mr. Abdel Nabi submits that his lack of counsel so infected the trial process that it renders the results of the trial suspect and unreliable. He therefore asks this Court to take this into account when reviewing these proceedings.

Respectfully submitted,

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APRIL 1, 2022



RULE 44 CERTIFICATE

I, NEHAD ABDEL NABI, petitioner pro se, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the following is true and correct:

1. This petition for rehearing is presented in good faith and not for delay.
2. The grounds of this petition are limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.

/s/ NEHAD ABDEL NABI
Signature

Executed on April 1, 2022



CERTIFICATE OF WORD COUNT

No. 21-201

Nahed Abdulnabi,

Petitioner,

v.

Fatma Adel Sekik,

Respondent.

STATE OF MASSACHUSETTS)
COUNTY OF NORFOLK) SS.:

Being duly sworn, I depose and say:

1. That I am over the age of 18 years and am not a party to this action. I am an employee of the Supreme Court Press, the preparer of the document, with mailing address at 1089 Commonwealth Avenue, Suite 283, Boston, MA 02215.
2. That, as required by Supreme Court Rule 33.1(h), I certify that the NEHAD ABDELNABI PETITION FOR REHEARING contains 2986 words, including the parts of the brief that are required or exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.



Lucas DeDeus

April 1, 2022

CERTIFICATE OF SERVICE

No. 21-201

Nahed Abdulnabi

Petitioner,

v.

Fatma Adel Sekik

Respondent.

STATE OF MASSACHUSETTS)

COUNTY OF NORFOLK) SS.:

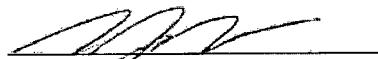
Being duly sworn, I depose and say under penalty of perjury:

1. That I am over the age of 18 years and am not a party to this action. I am an employee of the Supreme Court Press, the preparer of the document, with mailing address at 1089 Commonwealth Avenue, Suite 283, Boston, MA 02215.

2. On the undersigned date, I served the parties in the above captioned matter with the NEHAD ABDELNABI PETITION FOR REHEARING, by mailing three (3) true and correct copies of the same by Fedex 2-Day, prepaid for delivery to the following address.

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April 1, 2022

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