

Case No. 21-6196

IN THE SUPREME COURT OF THE UNITED STATES

I.A.,

Petitioner,

v.

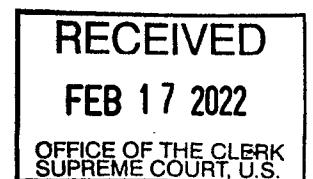
STATE OF KANSAS,

Respondent.

On Petition For A Writ Of Certiorari To The Kansas Supreme Court

REPLY BRIEF OF THE PETITIONER

ISAAC ALLEN #84241
ECF P.O. Box 107
Ellsworth, KS 67439
Petitioner, pro se



QUESTIONS PRESENTED

1. Does the Fourteenth Amendment require a district court judge to advise juveniles of their right to appeal?
2. Was I.A.'s trial counsel ineffective?
3. Was I.A.'s appellate counsel ineffective?

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STATEMENT OF CASE

On August 30, 1998, in 98-JV-2434, I.A. was charged with one count of aggravated battery. On September 29, 1998, the State filed an amended complaint. On November 30, 1998, I.A. plead guilty to two counts of aggravated battery. The Court failed to advise I.A. of his right to appeal. (Pet. App. 20a) On August 1, 2017, I.A. filed a notice of appeal out of time. On August 16, 2019, the Court of Appeals issued their opinion dismissing I.A.'s appeal for a lack of jurisdiction. (Pet. App. 10a) I.A. sought review of the Kansas Supreme Court. On July 23, 2021, the Kansas Supreme Court issued their opinion. The Kansas Supreme Court held that juvenile offenders have no statutory or constitutional right to have a district court judge inform him or her of their right to appeal. (Pet. App. 1a) On September 16, 2021 I.A. filed his petition for a writ of certiorari, with the United States Supreme Court.

REASONS FOR GRANTING THE RELIEF

1. The Decision By The Kansas Supreme Court Has Decided An Important Federal Question In A Way That Conflicts With The Fourteenth Amendment.

The United States Supreme Court applies a three factor balancing test when considering civil procedural due process. "First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the

additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).

The United States Supreme Court applies a different test when considering criminal procedural due process. The test that applies to criminal procedural due process was set out in *Patterson v. New York*, 432 U.S. 197, 97 S. Ct. 2319, 53 L. Ed. 2d 281 (1977). The *Patterson* test recognizes that a State has a right to define its criminal procedures and that State specific rules of criminal procedures do not violate the Due Process Clause unless they "offend some principle of justice so rooted in the traditions and conscience of our people as to rank as fundamental." *Patterson*, 432 U.S. at 201-02. The Kansas Supreme Court applied this test in considering whether or not the first exception to *Ortiz* applied to civil juvenile appeals. The Kansas Supreme Court erred in applying the *Patterson* test over the *Mathews* test.

A. The Kansas Supreme Court Erred By Using The *Patterson* Test.

This case is a matter of protections. Protections are in place to ensure that a person subject to orders of the court are aware and understand what options are available to them. See *United States v. Benthien*: To insure that defendants who might wish to appeal are fully aware of their rights. 438 F.2d 1031(1st Cir. 1970). The Kansas Supreme Court has ruled that juvenile offenders have no statutory or constitutional right to have a district court judge inform him or her of their right to appeal. *In re I.A.* 2021 Kan. LEXIS 79, 16, 491 P.3d 1241 (2021). Juvenile

defendants cannot be aware or understand their rights unless they are first made aware of their rights and the options available to them.

The Kansas Supreme Court and the State want to argue that criminal procedural protections afforded to adults do not apply to juveniles, but then argue to apply the *Patterson* test, which outlines criminal due process procedures, to juvenile offenders. Since, *Mullane v. Central Hanover Bank and Trust Co.* 339 U.S. 306, 94 L.Ed. 865, 70 S.Ct. 652 (1950), the Supreme Court has regularly applied the *Mathews* test when confronted with questions regarding the adequacy of the method used to give notice. *Dusenberry v. United States*, 534 U.S. 161, 168, 122 S.Ct. 694, 151 L.Ed. 2d 597 (2002). The *Mathews* test has not been applied to notices of appeals yet. However, it is the better test to apply to juvenile civil cases dealing with a juvenile's right to a notice of appeal.

B. Mathews Test, And How It Applies To I.A. & Juveniles

Private Interest Affected:

I.A. and juveniles have a liberty interest that would be protected. Juvenile's face incarceration for felony adjudications. I.A. has faced heavier penalties as an adult due to his juvenile adjudications. Other men face the same penalty. (see *K.S.A. 21-4710* and *K.S.A. 21-6810*). Providing a proper notice by the court or an attorney would protect juveniles and adults from wrongful incarcerations and constitutional violations.

Risk Of Erroneous Deprivation Of Liberty Interest:

Juveniles and adults are almost certainly at risk of deprivation of their liberty if no action is taken. Many juveniles and adults have already been affected within the State of Kansas. Many juveniles are incarcerated and may not know that they had a right to appeal their adjudication and sentence. While, many adults are incarcerated with enhanced sentences because prior juvenile adjudications.

Government Interest:

The Government has a well organized functioning judicial system. There would be no added fiscal and administrative burden because, appeals are already permitted. Lastly, the substitute procedural requirement provided is a simple fix and proven effective within the Kansas adult system.

2. I.A.'s Trial Attorney Was Ineffective.

Juvenile Appellate Protections exist for juveniles under the *Sixth Amendment*. This was made clear in *Roe v Flores-Ortega*, 528 U.S. 470 (2000). The United States Supreme Court held that, "Counsel performs in a professionally unreasonable manner only by failing to follow the defendant's express instructions with respect to an appeal. If counsel has not consulted with the defendant, the court must in turn ask a second, and subsidiary question: whether counsel's failure to consult with the defendant itself constitutes deficient performance." *Roe v. Flores-Ortega*, 528 U.S. 470, at 478. " Counsel has a constitutionally-imposed duty to consult with the defendant about an appeal when there is reason to think either (1)

that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.” *Roe v. Flores-Ortega*, 528 U.S. 470, at 480.

While the Kansas Supreme Court has held that district court judges do not have to advise juveniles of their right to appeal, attorneys have a constitutional duty to assist and inform juveniles of those rights. That Kansas Supreme Court has ignored this issue. I.A. would have appealed, but he had no knowledge of this right due to his counsel’s failure to inform him. I.A.’s trial counsel Scott Wasserman should have informed I.A. of his right to appeal because I.A. had non-frivolous grounds he could have appealed. I.A. had a Sixth Amendment right to effective counsel during his plea and sentencing hearing. (Pet. App. 21a)

3. I.A.’s Appellant Counsel Was Ineffective

I.A. clearly expressed to the Court and his attorney, Michael Bartee, that Scott Wasserman never advised him of his appellate rights or ever discussed and appeal with him. (Pet. App. 21a) When an attorney appointed by the State to pursue the direct appeal is ineffective, a defendant is denied fair process. *Martinez v. Ryan*, 566 U.S. 1, 11, 132 S. Ct. 1309, 1311, 182 L. Ed. 2d 272 (2012). Michael Bartee had the duty to raise the issue that I.A.’s court appointed attorney was ineffective for failing to notify him of his right to appeal.

4. Petitioner's Case Is An Excellent Vehicle To Consider These Issues.

This case is an ideal vehicle to correct the approach used by the Kansas Supreme Court in analyzing whether or not juveniles have a right to be informed of their right to appeal. It is also an excellent vehicle to correct the denial of I.A.'s right to appeal due to ineffective assistance of counsel.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully Submitted,



Isaac Allen
Isaac Allen, #84241
ECF P.O. Box 107
Ellsworth, KS 67439
Petitioner, pro se