

21-6647 ORIGINAL
No.

IN THE
SUPREME COURT OF THE UNITED STATES

KENNETH H. KERR III - PETITIONER

vs.

LORIE DAVIS, "Et Al" - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS - FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Kenneth H. Kerr III

TDCJ-ID No. 00716805

H.H. Coffield Unit

2661 FM 2054

Tennessee Colony, Texas 75884

QUESTIONS PRESENTED

I

Did the Petitioner state enough facts (included in his attachments as well as the text) to present a valid claim?

II

Did the Petitioner state enough facts (included in his attachments as well as the text) to present a claim of due process violations?

III

Did the Petitioner show "injury in fact"?

IV

Did the Petitioner state enough facts (included in his attachments as well as the text) to present a claim of equal protection violations?

V

Is TDCJ-RPD limmiting the Petitioner's 1st Ammendment Right to Freedom of Speach by preventing him the equal opportunity to reform by denying him the knowledge needed to re-entergrate upon his release?

VI

Is the fact that the Petitioner is being denied the right to be treated the same as other similarly situated prisoners (S3-G2 Class) denying him the equal opportunity at re-entergration into society upon his release going to cause harm that reaches beyond the scope of his period of incarceration to be considered a fact

in violation of Packingham v. North Carolina, 137 S.Ct 1730 (2017)?

VII

By denying sex offenders the opportunity to learn how to use the computer to learn skills such as Computer Aided Drafting and Office Applications in order to obtain jobs as Administrative Assistants, is not TDCJ-RPD as well as TDCJ-ID in general, attempting to prevent sex offenders from having the same chance at survival as other similarly situated offenders and an equal opportunity at re-entegrating into society?

VIII

Has the petitioner herein shown "injury in fact" because he is being denied the equal opportunity to survive in society upon his release?

LIST OF PARTIES

All parties do not appear in the caption or the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

KEN PAXTON,
Attorney General of Texas

BRENT WEBSTER,
First Assistant Attorney General

GRANT DORFMAN,
Deputy First Assistant Attorney General

SHAWN E. COWLES,
Deputy Attorney General for Civil Litigation

SHANNA E. MOLINARE
Chief, Law Enforcement Defense Division

JEANINE M. COGGESHALL,
Assistant Attorney General

RELATED CASES

KERR V. DAVIS, USCA Cause No. 20-40255 (5th Cir.)

KERR V. DAVIS, USDC Cause No. 6:19-CV-198, Eastern District of Texas
Tyler Division

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals, 5th Circuit appears at Appendix - A to the petition and is unpublished.

The opinion of the United States District Court, Eastern District of Texas, Tyler Division appears at Appendix - B to the petition and is unpublished.

There are no state courts involved.

JURISDICTION

The date on which the United States Court of Appeals, 5th Circuit decided my case was August 12, 2021.

No petition for rehearing was timely filed in my case.

The jurisdiction of this Court is invoked under 28 USC § 1254 (1). 12544(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

USC Amendment 5: No person shall be held to answer for a capital crime, unless on a presentation or indictment of a grand jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself, nor be deprived

of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation.

USC Amendment 14:

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 the due process of law; nor deny to any person within its jurisdiction the equal protection of law.

Section 5: The Congress shall have the power to enforce by appropriate legislation, the provisions of this article.

28 U.S.C. § 1291

The Court of Appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the District Courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The Jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in section 1292(c) and (d) and 1295 of this title.

(June 25, 1948, ch 646, 62 Stat. 929; Oct. 31, 1951, c.655; §42, 65Stat. 726; July 7, 1958, Pub.L. 85-508, §12(e), 72 Stat. 348 Apr. 2, 1982, Pub.L. 97-164, Title I § 124, 96 Stat. 36.)

28 U.S.C. § 1331

The District Court shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

(June 25, 1948, ch. 646, 62 Stat. 930; July 25, 1958, Pub.L. 85-554, §1, 72 Pub.L. 96-486, §2(a), 94 Stat. 2369.)

28 U.S.C. § 1343

(a) The District Courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

- (1) to recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;
- (2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;
- (3) TO redress the deprivation, under color of any State Law, statute, ordinance, regulation, custom, or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;
- (4) To recover damages or to secure equitable or other

relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

(b) For the purpose of this section —

(1) The District of Columbia shall be considered to be a State; and,

(2) any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

(June 25, 1048, ch. 646 Stat. 932; Sept. 3, 1954, ch. 1263, § 42, 68 Stat. 1241; Sept. 9, 1957, P.L. 85-315, Part III, § 121, 71, Stat. 637; Dec. 29, 1979, P.L. 96-170, § 2, 93 Stat. 1248.)

V.T.C.A. GOV. CODE § 492.012

The Texas Board of Criminal Justice and the Texas Department of Criminal Justice are subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board and the department are abolished September 1, 2013.

(Added by Acts 1989, 71st Leg., ch. 212, § 2.01, eff. Sept. 1, 1989. Ammended by Acts 1991, 72nd Leg., ch. 16, § 10.01(a), eff. Aug. 26, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 17, § 3.01, eff. Nov. 12, 1991; Acts 1995, 74th Leg., ch. 321, § 1.112, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1188, § 1.05, eff. Sept. 1, 1999; Acts 2005, 79th Leg., ch. 1227, § 1.01, eff. Sept. 1, 2005; Acts 2007, 80th Leg., ch. 1308, § 14, eff. June 15, 2007; Acts 2009 81st Leg., 1st C.S., ch. 2, § 2.04 eff. July 10, 2009.)

STATEMENT OF CASE

Petitioner, Kenneth H. Kerr III, TDCJ-ID Number 00716805, Henceforth Kerr, is an inmate confined at the H.H. Coffield Unit of the Texas Department of Criminal Justice - Institutional Division (TDCJ-ID). Kerr filed suit alleging that, as a sex offender, he was being discriminated against by policy prohibiting sex offenders from enrolling in computer related classes. According to Kerr the practice violates his right to due process and equal protection. Kerr sought injunctive relief in the form of policy changes to the Texas Department of Criminal Justice - Rehabilitation Program Department (TDCJ-RPD)'s policies that prohibit sex offenders from enrolling in computer related classes.

Respondent, Lorie Davis filed a motion to Dismiss, to which Kerr responded. On January, 17, 2020, Magistrate Judge John Love recommended that the Court Grant Davis' Motion to Dismiss "with prejudice for failing to state a claim...". Kerr filed his objection to the Magistrate's report and recommendation. On March 17, 2020, the Court adopted the MAGESTRATE'S REPORT AND recommendation and granted Davis' Motion to Dismiss with Prejudice. Kerr appealed this decision to the United States Court of Appeals 5th Circuit under Cause Number 20-40255. On August 12, 2021, the Court affirmed.

REASONS FOR GRANTING THE PETITION

Fact One :

Petitioner is in the same class as other similarly situated offenders because TDCJ-ID has Kerr classified as an s3-G2 offender. See Appendix C,D; see also Kerr v. Davis USD , Tyler, Cause

number 6:19-CV-198 - Plaintiff's Objection to Magistrate's Report and Recommendation)

Kerr's original complaint clearly shows that there is no legislation allowing for such complaint. see Att. B of Orriginal 1983 complaint.

Kerr has cited **Packinham v. N. Carolina**, 137 S.Ct. 1730 which this Honorable Court will see does attach because TDCJ-RPD's refusal to allow Kerr the equal opportunity at reform as any other similarly situated offender extends beyond his period of incarceration. This honorable Court's opinion in **Packingham** clearly states the necessity of such information.

Fact 2:

All policies governing any action inside of TDCJ-ID is required to be made available for inspection. To date, TDCJ-RPD can or has not, produced any such policy showing the restriction of sex offenders from computer related classes. Windham Schoøl Policy has not governed College Trade or Accademic since September 1, 2013. On that date such oversight was given to TDCJ-RPD which continues to operate under the same policies as Windham School. Kerr is not a student of Windham School District he is enrolled in Trinity Valle Community College which is governed by TDCJ-RPD — not Windham School District therefore existing Windham Policy does not apply to Kerr's complaint. Even so Windham School's policy is discriminatory and violated Equal Protection of law and due process. Kerr is not entitled to education, but he is entitled to be treated the same as similarly situated offenders.

Kerr has therefore shown that TDCJ-ID and TDCJ-RPD has in fact

violated Due Process and Equal Protection. In using the Rational Basis Test it is clear that there are [no] rational reasons for the State of Texas to restrict sex offenders from using computers since there is no possible access to the internet from the classroom computers. There can be seen no rational reasons that are related to a legitimate penological interest. Bell v. Woods, 382 F.App'x 391,392-93 (5th Circuit 2010). The 5th Circuit held that Bell's claim lacked merit because the State of Texas had a rational reason to prevent sex offenders from contacting their victims or creating new victim or generating sexually explicit images from the internet. Though that may have been the case in Bell, Kerr's claims have merit because there is no access to the internet available from the classroom computers inside of TDCJ-ID or under the oversight of TDCJ-RPD.

Therefore any policy or practice that so clearly violates the 5th and 14th Amendment Due Process and Equal Protection clauses of the United States Constitution clearly require change and need no further proof or previously held presidence to establish such a claim.

Kerr has shown an actual, concrete and particularized "injury in fact"; that is directly traceable to the challenged action; and that is likely to be redressed by a favorable decision Friends of the Earth, v. Laidlaw Envt'l. Servs. (TOC), Inc., 528 U.S. 167, 180-81 (2002). Kerr, or any other person who has been estranged for over 30 years from society who has not been given the equal opportunity to rehabilitate and reform can be expected to survive in a high tech society. Without the knowledge of new

technology Kerr will not posses the ability to re-entergrate into the modern society. TDCJ-RPD is well aware of this and is actively promoting this causation. This Honorable Court has already published their oppinion about the need for technology in the modern world. Packinham v. N. Carolina, 198 L.Ed.2d 278, Justice Kennedy delivered the oppinion of the Court and reversed the N. Carolina Supreme Court. Though this decision was concerning the use of the internet and social media it is clear that any analogy test concerning the use of computers to interact with society and the need of such to maintain an equal opportunity of reform and re-entergration into society would hold the conclusion of Kerr's complaint.

Whether by Utilitarian or Libertarian test this would prove a positive and affirming conclusion to Kerr's claim.

Though Davis continues to state a valid conclusion her premises are not true and therefore her conclusion is not sound. There is no possible internet access from the computers Kerr is seeking to use and the knowledge he would gain is vital to his survival upon his release. This is true for any sex offender wishing to further their knowledge of modern technology. If other crimes such as murder and kidnapping can be allowed to participate in computer related classes, then why are only sex offenders being restricted from enrolling in these classes. They are similarly situated offenders within the same class (S3-G2) so the only conclusive reasoning for the exclusion of sex offenders is due to discrimination and the

personal prejudice of the persons responsible for creating such a policy. This policy needs to be reformed.

By allowing other S3-G2 offenders who are incarcerated for crimes other than sex offenses TDCJ-RPD has indeed created 2 classes of similarly situated prisoners that were treated differently, and because there is no access to the internet the classification had no rational relation to any governmental objective. citing Johnson v. Rodriguez, 110 F.3d 299, 306-07 (5th Cir. 1997) The standing policy can not be presumed valid and should not be sustained because "the classification drawn by the [policy] is not rationally related to any [legitimate] state interest. City of Cleburne Tex. v. Cleburne Living Ctr., 473 U.S. 432, 440 (1985).

Davis continues to argue that Kerr claims to be a [class] of sex offenders and Kerr is not claiming such. Kerr has clearly and logically shown that he is the same class as other similarly situated offenders (S3-G2) yet because and only because TDCJ-RPD feels that sex offenders should be excluded he is being denied access to these classes.

Therefore Kerr would assert that this Honorable Court has a duty to insure that all prisoners regardless of their crime are given the equal opportunity to reform themselves and to be able to take such rehabilitation into a society regardless of the length of estrangement, but especially in the case of decades of estrangement that they may become productive members of that society. Texas and no individual state or entity can be allowed to circumvent the United States Constitution in order to serve their own agenda. This Court has the responsibility to all Americans to

insure that they are treated fairly and equally in any situation, even when they have committed a crime that is repugnant to the moral instinct of a decent people. For if this is not done then what incentive would such a person have to change? If all the changes they make are to be of no account because they have not been given the equal opportunity to re-entegrate once they have obtained release? Why then if one obtains degrees in business would such matter if they are not given the tools to use such knowledge?

How can one obtain a job as an Administrative Assistant if they are not allowed to learn how to use Microsoft Word, Access or Excell? This is not fair treatment of any person, it is a backward mentality that would say that sex offenders alone can not change and rehabilitate their ways of life.

CONCLUSION

All primises considered the petition for a writ of certiorari should be granted.

Respectfully Submitted,



Kenneth H. Kerr III
TDCJ-ID No. 00716805

November 5, 2021