22-1051

No. _____

In the Supreme Court of the United States

RONALD AND TERESA SIMON,

Petitioners Et Ux.,

v.

WAYNE JANKE AND DORIS STRAND,

Respondents.

On Petition for a Writ of Certiorari to the Washington Court of Appeals, Division III

PETITION FOR A WRIT OF CERTIORARI

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April 8, 2023
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QUESTIONS PRESENTED

Appellants seek review of the jurisdiction of the State Court and a judgment of the Supreme Court of the State of Washington denying Appellants' petition of review of the Washington Court of Appeals' denial of Appellants' right to due process, including the right to a hearing, to decisions based on the records, and to a statement of the reasons of its decisions. These violations occurred when the Court of Appeals did not review Appellants' assigned errors in the trial court's decisions after the Court of Appeals had lost its records of the trial court's decisions and the established facts of the case prior to the issue of its opinion; and when the Court of Appeals rested its decision on without said lost records.

The Questions Presented Are:

1. Whether the State Courts have the inherent power or jurisdiction to allow a white couple, or any person, to proceed in court to gain custody of a child when the trial court already decreed that they were not the parents nor the guardian, nor had any custodian relation to the child, and when the court ordered and decreed that the biracial biological parents of the child are fit to parent their child, and when the trial court ordered and decreed that the white couple committed fraud upon the court to procure the court jurisdiction so as to determine their petition for "parental custody".

2. Whether the State Court has the inherent power to bar the Appellants' from accessing the court bringing motions under CR 60 to challenge the Jurisdiction of the court or violation of Appellants' constitutional rights until the Appellate court has

rendered its decision on Appeal and issue of the mandate.

3. Whether the state court violated Appellants' constitutional rights to parent their own child, especially that it lacked jurisdiction to begin with.

4. Whether the Court of Appeals violated the constitutional rights of Appellants to due process and equal protection when it denied Appellants their right to a meaningful hearing by the Court of Appeals itself; and denied Appellants a decision by that Court of Appeals solely resting on the basis of the record, and precluded any further review of its violations on the basis of the record.

5. Whether the state Supreme Court violated Appellants' constitutional rights to due process, equal protection of the law, and access to the court when it denied the Appellants the right to a hearing before disposition of Appellants' claims of the court of appeals' own violations of Appellants' constitutional rights, which were only revealed after the Court of Appeals issued its opinion; especially that the Appellate Rules of Procedure do not allow rehearing after denial of the petition for review.

6. Whether repetitive violations of the constitutional rights of more than one single litigant of a special racial group by the same state appellate court necessitate "scrutiny" of the State Court proceedings.

PARTIES TO THE PROCEEDINGS

Petitioners

- Ronald Simon
- Teresa Simon

Respondents

- Wayne Janke
- Doris Strand

LIST OF PROCEEDINGS

Supreme Court of Washington

No. 101060-5

Wayne Janke, et al., *Respondents*, v.
Ronald Simon, et al., *Petitioner*

Date of Final Order: November 9, 2022

Washington Court of Appeals, Division III

No. 38056-4-III

Wayne Janke and Doris Strand, *Respondents*, v.
Ronald Simon and Teresa Simon, *Appellants*

Date of Final Opinion: June 2, 2022

Superior Court of Washington, Spokane County

No. 15-3-02130-1

In re: C.S., *Child*, Doris Strand, *Petitioner*, and
Ronald Simon, Teresa Simon, *Respondents*.

Date of Final Order: February 9, 2021

Note: To protect the privacy interests of the minor child, the Washington Court of Appeals policy is to use the child's first and last name initials. Gen. Order 2012-1 of Division III, *In re Use of Initials or Pseudonyms for Child Victims or Child Witnesses* (Wash. Ct. App. June 18, 2012), https://www.courts.wa.gov/appellate_trial_courts/?fa=atc.genorders_orddisp&ordnumber=2012_001&div=III.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner seeks review of the Supreme Court of the State of Washington denying Petitioners' Petition for review of the decision of the Washington Court of Appeals, filed June 2, 2022.

OPINIONS BELOW

The Opinion of the Court of Appeals of the State of Washington Division III, dated June 2, 2022, reported at App.3a. The Order of the Supreme Court of Washington, dated November 9, 2022, reported at App.1a. These Opinions were not designated for publications.

JURISDICTION

The opinion of the Washington Court of Appeals was entered on June 2, 2022. Appellant timely filed a petition for review in the Washington Supreme Court, which was denied on November 9, 2022. The Clerk of this Court extended the time for filing a petition for a writ of certiorari until April 8, 2023. This Court's jurisdiction rests on 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. amend. XIV

The Fourteenth Amendment to the United States Constitution provides, in relevant part:

> No State shall . . . deprive any person of life, liberty, or property, without due process of law.

The Fourteenth Amendment to the United States Constitution also provides in relevant part:

> No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A. Summary of the Facts of the Case at the Trial Court.

Ronald and Teresa Simon are biracial married couple and are the biological parents of their child ("C.S"). In early 2015, a white couple, Wayne Janke and Doris Strand filed a petition for parental custody of C.S. The white couple were not the parents nor the guardians of C.S. at any time prior to filing their petition. The trial court also found that we are fit parents. The trial court, through multiple orders, made the findings and decreed that the white couple committed fraud upon the court in order to procure custody of C.S. App.36a, at para 121, 123, App.40a at para 16, 17; 23a-24a. The trial court, however, allowed the non biological couple to proceed through

maneuvering of the records to procure non parental custody of C.S in 2018. The Simons were deprived from their rights to parent their own child when they were fit, and the trial court ordered and decreed the white couple were committing fraud.

In 2018, the Simons moved for relief from judgment under CR 60. The trial court denied the motion. In 2019, the Simon's filed a motion for relief under CR 60 which was found by the trial court non duplicative. (App.16a-17a para 3.1, 3.2). The trial court however denied the relief under CR 60. In 2020, the Simons obtained evidence from the Washington State Bar Association that established the tribunal partiality through Ex Parte communication through which the trial court solicited a declaration from the GAL to assert known false facts so as the court would be able to make final judgment and grant the non parental custody. The Simons moved under CR 60 for relief from judgment using the evidence that they did not nor could have presented to the court at any time prior. The trial court ordered to strike the motion and sanction the Simons "Based on the repetitive nature of several successive CR (60) motions on the same ground". App.14a. The trial court also prohibited the Simons from filing motion under CR 60 (including relief from void judgment for violation of their constitutional rights and lack of standing of the white couple in court and lack of jurisdiction of the court over the subject matter until the Appellate courts decide the current appeal. App.14a. para 3.3. The Simons timely appealed.

B. Summary of the Facts of the Case at the Court of Appeals.

1. The Court of Appeals Acknowledged Its Failure to Review or Consider the Simons' Records When Reviewing the Assigned Errors of the Trial Court Decisions and Findings. The Court of Appeals Acknowledged the Loss of Said Records Within Its Court.

In its Opinion filed June 2, 2022, the Court of Appeals asserted that The records of the Simons' first motion for relief under CR 60 was lost and was not part of the review by the appellate court. The record (CP 696-712) was confirmed have been electronically transmitted among all of the records from the trial court. Also, *see*, App.50a showing the index of the Clerk's papers transmitted and had become part of the Court of Appeal record.

At footnote 1 at page 2 the Court of Appeal stated.

> The Simons appear to have filed a similar motion in August 2018. See Clerk's Papers (CP) at 3584; 1 Report of Proceedings (Apr. 12, 2019) at 31. This motion does not appear to be included in the appellate record.

The records of the first CR 60 motion for relief from judgment was fundamentally essential for review of the trial court decision striking the third CR 60 Motion as repeatedly duplicative, especially that the trial court itself found that none of the prior CR 60 motions were in fact related or duplicative, and especially the evidence of the trial court ex parte communication was not and could not have been

possibly part of nor introduced to any of the prior motions.

C. The Washington Supreme Court Denying Petitioners' Petition and Disposition of the Case Without Review of the Court of Appeals' Violations of Appellants Constitutional Rights.

On November 9, 2022, The Washington Supreme Court ordered: "That the petition for review is denied.", and disposed of Appellants' case without addressing the court of appeals' violations of their constitutional rights.

REASONS FOR GRANTING THE PETITION

The Petition for Certiorari Is Warranted Under the Rules. The questions presented in this case involves important issues of federal law, and represent important constitutional issue that should be settled by this Court. (Supreme Court Rule 10(c)).

As shown throughout the petition, the petition for cert should be granted because:

I. This Case Represents Exceptionally Unique Constitutional Matters at the Level of the State Appellate Court Which Necessitates Review by This Court of the Appellate Court Proceedings.

To lose selective records in the Court of Appeals, fundamentally essential for its review and which were electronically transmitted among the other records of the case is exceptionally unique, Not addressing the loss of said records and denying any corrective process in

order to redress or correct the records is also unique. What is more unique, an almost identical loss of selective essential records by the same court of appeal at almost the same time in another different case involving a litigant of the same racial group as Appellants in this case. Appellants were deprived of their constitutional rights in a manner almost identical to another litigant in the same court, at almost the same time. Filed in the Appendix of the petition attached thereto in this court Case No. 22A704 linked with 22-994 is a Decision in the Washington Court of Appeals, Division III, dated April 19, 2022, in the matter entitled. *Wall Street Apartments, LLC, Alaa Elkharwily, MD, et al. v. All Star Property Management, LLC, et al.*, Case No. 37512-9-III.

The Appellants in that case apparently suffered from identical selective electronic loss of the Court of Appeal's records fundamental to the review process after having been electronically transmitted amongst the rest of the records of the case (CP 1382-1407). Appellants in Wall Street Apartments' case were identically denied the right to due process through denying their rights to hearing and to decision solely based on the records; and their rights to equal protection of the law as Appellants are of the same racial group like Appellants in this case; and to their right to access to the court. Furthermore, identical to this case, footnote 2 of the petition for cert of the following case in court is a Decision of the Opinion of the Court of Appeal in that case (at page 8). (No. 22-994, Wall Street Apartments petition filed April 10, 2023 in this court, at App.9a).

> Neither the trial court's order granting the appellants' motion in part nor the amended

findings of fact and conclusions of law are included in the record on review.

The decision in this case came just five days before the court of appeals' decision on the other Appellants 'motion for reconsideration dated June 7, 2022. It was by the same court. The Supreme Court also denied their petition for review on the same day of November 9, 2022. The Appellate court took judicial notice of the Simons' case prior to rendering its decisions of disposing Appellants claims of constitutional violations on November 9, 2022. Appellants in Wall Street Apartment's case have filed their petition for Cert on April 10, 2023. (No. 22-994)

Respectfully, this Court may take a judicial notice of said case. The Simons also respectfully request that the two cases are reviewed together.

II. The Questions Presented Are of Crucial Jurisdictional and Constitutional Importance and Warrant Review.

1. Whether the State Courts have the inherent power or jurisdiction to allow a white couple, or any person, to proceed in court to gain custody of a child when the trial court already decreed that they were not the parents nor the guardian, nor had any custodian relation to the child, and when the court ordered and decreed that the biracial biological parents of the child are fit to parent their child, and when the trial court ordered and decreed that the white couple committed fraud upon the court to procure the court jurisdiction so as to determine their petition for "parental custody"

Under chapter 26.10 RCW, a third party can petition for child custody, but the State cannot interfere with the liberty interest of parents in the custody of

their children unless a parent is unfit or custody with a parent would result in "actual detriment to the child's growth and development." *In re Custody of E.A.T.W.*, 168 Wash.2d 335, 338, 227 P.3d 1284 (2010); *In re Custody of Shields*, 157 Wash.2d 126, 142–43, 136 P.3d 117 (2006). The law's concept of the family rests in part on a presumption that "natural bonds of affection lead parents to act in the best interests of their children," *Parham v. J.R.*, 442 U.S. 584, 602, 99 S.Ct. 2493, 61 L.Ed.2d 101 (1979) (citing 1 William Blackstone, COMMENTARIES *447), and only under "'extraordinary circumstances'" does there exist a compelling state interest that justifies interference with the integrity of the family and with parental rights.

Here, the State Court lacked jurisdiction to allow the white couple to proceed to gain custody and by retaining jurisdiction it violated Appellants' constitutional rights. The court determined the Simons were fit.

More, the state court lacked jurisdiction over the subject matter and lacked the inherent power to allow the white couple to proceed for custody once it was established through the court's findings and orders that the Simons were fit and the court jurisdiction was procured through fraud.

Furthermore, by allowing the white couple to proceed interfered with and violated Appellants' due process which itself failed the jurisdiction over the subject matter, *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019 (1938);

2. Whether the State Court has the inherent power to bar the Appellants' from accessing the court bringing motions under CR 60 to challenge the

Jurisdiction of the court or violation of Appellants' constitutional rights until the Appellate court has rendered its decision on Appeal and issue of the mandate.

Here, the state court violated Appellants' constitutional rights when it barred Appellants from access to court, by ordering the Appellants not to bring any motion under CR 60 to challenge the jurisdictional and constitutional matters until the mandate was issued.

3. Whether the state court violated Appellants' constitutional rights to parent their own child.

This Court's decisions have by now made plain beyond the need for multiple citation that a parent's desire for and right to 'the companionship, care, custody, and management of his or her children' is an important interest that 'undeniably warrants deference and, absent a powerful countervailing interest, protection.

4. A distinction needs to be established by this court between the State highest court's role established under the state constitution, in providing a process of discretionary review of the underlying case, and of its mandatory role, under the US constitution, in deciding its own violations of the constitutional rights, especially when discovered after issue of the Appellate Court Opinion. See argument of the law below.

5. The Court should clarify that denial of access to the state appellate court and denial of an opportunity to be heard are the same, and unconstitutional in the manners that Appellants suffered by the state appellate court. See argument of the law below.

6. This Court should decide whether the State's appellate court should be subject to the necessity of the "rigid scrutiny" when legal restrictions are imposed on more than one Appellant of a specific racial group. See argument of law below.

III. When a Corrective Process Is Provided by the State but Error, in Relation to the Federal Question of Constitutional Violation, Creeps into the Record, This Court Has the Responsibility to Review the State Proceedings.

Washington provides appellate review of decisions of its trial courts and courts of appeals, ultimately through discretionary review by its supreme court. However, here, at the court of appeals and supreme court levels, Appellants were denied constitutional rights as shown herein, by the appellate courts themselves, essentially by denying the Appellants the right to hearings.

As this Court in *Hawk v. Olson*, 326 U.S. 271 (1945) held, when the state does not provide corrective judicial process, the federal courts will entertain habeas corpus to redress the violation of the federal constitutional right. *White v. Ragen*, 324 U.S. 760. When the corrective process is provided by the state but error, in relation to the federal question of constitutional violation, creeps into the record, we have the responsibility to review the state proceedings. The record establishes that the appellate courts deprived Appellants the access and opportunity to be heard, and this Court should therefore review the state Appellate court proceedings.

IV. The Law Defining Violations of the Appellants' Constitutional Rights by the Appellate Court Supports the Reasons to Grant the Review.

A. Due process.

1. The Right to Hearing.

"The right to be heard, before property is taken or privileges, withdrawn which have been previously awarded, is of the essence of due process of law. It is unnecessary to recite the decisions in which this principle has been repeatedly recognized. It is enough to say it has never been questioned in this court." *Garfield v. Goldsby*, 211 U.S. 262 (1908)

The fundamental requisite of due process of law is the opportunity to be heard. *Louisville Nashville R.R. Co. v. Schmidt*, 177 U.S. 230, 236; *Simon v. Craft*, 182 U.S. 427, 436. The Fourteenth Amendment's Due Process Clause has been interpreted as preventing the states from denying potential litigants use of established adjudicatory procedures, when such an action would be "the equivalent of denying them an opportunity to be heard upon their claimed right[s]." *Boddie v. Connecticut*, 401 U.S. 371, 380 (1971). In *Boddie*, the Court established that, at least where interests of basic importance are involved, "absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard." 401 U.S., at 377.

"The "hearing" is designed to afford the safeguard that the one who decides shall be bound in good conscience to consider the evidence, to be guided by

that alone, and to reach his conclusion uninfluenced by extraneous considerations which in other fields might have play in determining purely executive action. The "hearing" is the hearing of evidence and argument. If the one who determines the facts which underlie the order has not considered evidence or argument, it is manifest that the hearing has not been given." *Morgan v. United States*, 298 U.S. 468 (1936).

If appellate review is to be meaningful, it must fulfill its basic historic function of correcting error in the trial court proceedings.

Here, the Court of Appeals did not afford the Appellants a hearing when it did not review the records of Appellants' assigned errors of the trial court's decisions after the Court of Appeals had lost said records of the trial court hearing.

The Supreme Court did not afford Appellants a hearing on the court of appeals' violation of their constitutional rights before it denied Appellants' petition.

The state supreme court did not distinguish its role established under the state constitution, to provide a process of discretionary review of violations of the constitutional rights of appellants as part of its review of the underlying case, and of its mandatory role, under the constitution of the United State, in disposition of Appellants' claims of the appellate court's violations of their constitutional rights, especially when discovered after issue of the Appellate Court Opinion. It is therefore essential that this court make the distinction clear to the state highest courts.

2. The Right to Decision Based on the Record.

In *Goldberg v. Kelly*, 397 U.S. 254 (1970), the Court established that the decision maker's decision " must rest solely on the legal rules and evidence adduced at the hearing," *id.*, at 271. It is for that reason due process requires that the decision-maker "demonstrate compliance with this elementary requirement" by "stat[ing] the reasons for his determination and indicat[ing] the evidence he relied on." *Id.*

The Appellate court violated Appellants' right to decisions made on the records when the Court of Appeals rested its decision without the records that were adduced at the trial court hearing

The state Supreme Court also based its denial of Appellants' petition without said lost records.

3. The Right to Statement of the Reason.

As stated above, a decision maker must state the reasons for its determination and indicate the evidence relied upon. This is to ensure that the decision is based solely on the legal rules and evidence adduced at the hearing. *Goldberg v. Kelly*, 397 U.S. at 271.

The Supreme Court did not distinguish and honor its roles under the state and federal law, when it disposed of Appellants' claims of the Appellate Court's violation of appellants' constitutional rights without any statement of reasons. It is therefore crucial that this court establish the distinction.

B. Equal Protection of the Law.

In *Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 179 (Douglas, J., concurring), it was said:

> When we deny even the most degraded person the rudiments of a fair trial, we endanger the liberties of everyone. We set a pattern of conduct that is dangerously expansive and is adaptable to the needs of any majority bent on suppressing opposition or dissension. "It is not without significance that most of the provisions of the Bill of Rights are procedural. It is procedure that spells much of the difference between rule by law and rule by whim or caprice. Steadfast adherence to strict procedural safeguards is our main assurance that there will be equal justice under law.

This Court has also held:

> Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people [*291] whose institutions are founded upon the doctrine of equality.
>
> [All] legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the most rigid scrutiny.
>
> The Court has never questioned the validity of those pronouncements. Racial and ethnic distinctions of any sort are inherently suspect and thus call for the most exacting judicial examination.

Regents of Univ. of Cal. v. Bakke, 438 U.S. 265, 290-91 (1978) (citations omitted.)

For this reason, "strict scrutiny" of the state proceedings in this case is called for. This is especially true, given that the violations were imposed on multiple

litigants of specific racial group, the Appellants Simons in this case and Elkharwily in the other case, by the same appellate court almost at the same time through the same actions.

C. Denial of Access to the Court.

The Supreme Court disposed of Appellants' claims of its violations of their constitutional rights. The Washington Appellate rules do not allow to file for re-hearing or motion for reconsideration of a Supreme Court order denying a petition for review nor an order refusing to modify a ruling by the commissioner or clerk. RAP 12.4. A state may not constitutionally block access to its courts where access is required to vitiate a right. *Boddie*, 401 U.S. at 377-81, 91 S.Ct. at 785-87 (divorce may only be obtained through court action.)

The right to access to the courts is also violated whenever the control of litigation is involved. *Doe v. Puget Sound Blood Center*, 117 Wn.2d 772, 782, 819 P.2d 370 (1991). Moreover, "it is now fundamental that, once established . . . avenues [of appellate review] must be kept free of unreasoned distinctions that can only impede open and equal access to the courts." *Rinaldi v. Yeager*, 384 U.S. 305, 310 (1966). This Court has not yet been faced with the denial of access to the courts and denial of an opportunity to be heard in the manners that Appellants suffered. This case is thus an ideal vehicle to decide such crucially important and unique issue.

CONCLUSION

For all the foregoing reasons, the Petition for Certiorari should be granted.

Respectfully submitted,

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April 8, 2023