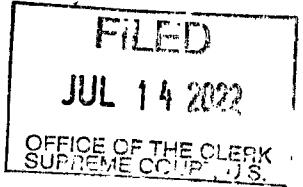


22-5130 ORIGINAL
Case No. _____

SUPREME COURT
OF THE
UNITED STATES



TIMOTHY J. MAZIQUE

Petitioner,

Vs.

STATE OF LOUISIANA,

Respondent.

On Petition for a Writ of Certiorari to the Louisiana Supreme Court

PETITION FOR WRIT OF CERTIORARI

Submitted By:

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I. QUESTIONS PRESENTED

1. The district court, Fifth Circuit Court of Appeals, and Louisiana Supreme Court erred in finding the petitioner responsible for paying arrears in the amount of \$70,875.00.

According to Louisiana Revised Statute 9 § 311.1 Child support during the obligor's incarceration, which clearly states that "every order of child support shall be suspended when the obligor will be or is incarcerated."

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XI. APPENDIX INDEX

- A. Copy of the 40th Judicial District Court's Order pertaining to the instant case. (3 pages)
- B. Copy of the Fifth Circuit Court's Denial and Rulings pertaining to the instant case. (6 pages)
- C. Copy of the Louisiana Supreme Court's denial. (1 page)

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IV. PETITION FOR WRIT OF CERTIORARI

Petitioner, Timothy J. Maziique in proper person, respectfully petitions this Court for a writ of certiorari to review the judgment of the Louisiana Supreme Court.

V. OPINIONS BELOW

The decision by the Louisiana Supreme Court denying Petitioner's direct appeal is attached (see Appendix C) and has been designated for publication but is not yet reported.

VI. JURISDICTION

Petitioner's petition to the Louisiana Supreme Court was denied on April 20, 2022. No petition for rehearing was timely filed in my case. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1257(a), having timely filed this petition for a writ of certiorari within ninety days of the Louisiana Supreme Court's judgment.

VII. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime. Unless on a presentment 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 put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a 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.

United States Constitution, Amendment XIV:

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 due process of law; or deny to any person within its jurisdiction the equal protection of the laws.

VIII. STATEMENT OF THE CASE

Now into this Honorable Court comes the pro-se Petitioner, Timothy J. Mazique, who respectfully moves this Honorable Court to grant writs in this case, as the following writ and attachments will clearly show that the lower courts have overlooked some of the facts in this case and have made judgments that are contrary to laws of this state and country.

Statement of the Facts

This writ challenges the Louisiana Supreme Court, Fifth Circuit Court of Appeals and district court's ruling that petitioner should pay arrears in the amount of \$70,875.00 for back child support though Petitioner was incarcerated during the time that the arrearages accumulated.

Petitioner was never delinquent on child support payments until becoming unemployed due to incarceration. Petitioner was incarcerated from 3/27/2009 to 1/1/2019. Delinquency and arrearages began accumulating after incarceration. The Honorable Judge J. Sterling Snowdy did not forgive the arrearages based upon the fact that petitioner was incarcerated for 10 years without any employment or funds available.

On approximately July 27, 2020, petitioner received notice from the St. John District Attorney's Office of Notice about Redirection of Child Support Payments. Prior to receiving this notice, petitioner was under the impression that his child's mother was not pursuing child support due to understanding the petitioner's situation with incarceration and loss of wages due to incarceration. Petitioner's child's mother informed petitioner's mother that she would not pursue child support or arrears due to petitioner's incarceration and her knowledge of his situation.

Petitioner's mother is an honest woman who provided childcare to the current sheriff of St. John Parish's two children when they were young. Petitioner's child's mother also visited him in prison and stated the same facts to him that petitioner's child's mother would not pursue child

support with their son. Not long after receiving the notice from the St. John Parish District Attorney's Office, petitioner then received notice from the State of Louisiana Division of Family Support that he was ordered to pay child support on case number 000647930-02 in the amount of \$525.00 per month. Since petitioner had a right to request a review of the child support via written request, petitioner wrote to the Division of Family Support twice requesting a review of the child support and arrearages based upon the fact that he is unemployed and had returned home after serving 10 years in prison (not pertaining to child support) on 1/1/2019. Petitioner then received notice via being served papers from the St. John Parish Sheriff's Office informing him of a hearing on September 24, 2020, regarding a Rule to Show Cause for Child Support and/or Medical Support. Petitioner was present at that hearing and the Honorable Judge J. Sterling Snowdy recalculated his current child support amount from \$525.00 to \$181.79 per month. However, the Honorable Judge did not recalculate or forgive arrears that had accumulated on petitioner during his period of incarceration. Petitioner was then served Notice of Judgment by the St. John Parish Sheriff's Office on September 30, 2020 (see attached copy of Notice of Judgment in Appendix-A).

Petitioner was never delinquent on child support payments until he lost his employment due to incarceration. Petitioner went to trial and was incarcerated from 3/27/2009 to 1/1/2019. Petitioner's child support delinquency did not start until after incarceration. Petitioner's child support amount was initially based upon his then employment with Shell Oil Company with a salary of \$80,000 per year. The Honorable Judge J. Sterling Snowdy did recalculate petitioner's present child support from \$525.00 per month to \$181.79 per month based upon petitioner's unemployed situation. However, the Honorable Judge did not forgive the arrearages and petitioner requested that the arrearages be recalculated based upon his 10-year incarceration period without any employment or funds available to him.

Assignment of Errors

1. Louisiana Supreme Court's judgment denying petitioner's supervisory writ for forgiveness of child support arrearages due to his incarceration was in error and must be reversed.

Law and Argument

1. Error One - Louisiana Supreme Court's judgment denying petitioner's supervisory writ for forgiveness of child support arrearages due to his incarceration was in error and must be reversed

In accordance with Louisiana Revised Statute 9 § 311.1 petitioner's child support should have been suspended. "Suspension" means the modification of a child support order to zero dollars during the period of an obligor's incarceration. (See Mazique v. Mazique, #42,992 "C", La. unpublished writ decision: circa 4/29/2017.). In this case the State of Louisiana forgave the child support arrearages due to the incarceration of Mr. Mazique on circa 4/29/2017.

The trial court erred in its interpretation and application of the above-mentioned statute and ordered petitioner to have arrears made executory.

Law and Argument in Support of Error 1

The trial court erred in its interpretation and application of the above-mentioned statute and ordered Appellant to have arrears made executory.

According to Louisiana Revised Statute 9 § 311.1 Child support during the obligor's incarceration:

A. In accordance with the provisions of this Section, every order of child support shall be suspended when the obligor will be or is incarcerated for any period of one hundred eighty consecutive days or more, unless any of the following conditions exist:

(1) The obligor has the means to pay support while incarcerated.

(2) The obligor is incarcerated for an offense against the custodial party or the child subject to the support order.

(3) The incarceration resulted from the obligor's failure to comply with a court order to pay child support.

B. As used in this Section:

(1) "Incarceration" means placement of an obligor in a county, parish, state or federal prison or jail, in which the obligor is not permitted to earn wages from employment outside the facility. "Incarceration" does not include probation or parole.

(2) "Support enforcement services" shall have the same meaning as provided in R.S. 46:236.1.1.

(3) **"Suspension" means the modification of a child support order to zero dollars during the period of an obligor's incarceration.**

C. The Department of Public Safety and Corrections or the sheriff of any parish, as appropriate, shall notify the Department of Children and Family Services of any person who has been in their custody and may be subject to a child support obligation if either:

(1) The person will be or is incarcerated for one hundred eighty consecutive days or longer.

(2) At least six months before the person who was the subject of notification under Paragraph (1) of this Subsection is scheduled to be released from incarceration as defined in Subsection B of this Section.

D.(1) When the Department of Children and Family Services is providing support enforcement services, the department shall, upon receipt of notice in accordance with Paragraph (C)(1) of this Section, verify that none of the conditions in Subsection A exists.

(2) Upon finding that none of the conditions in Subsection A exists, the department shall provide notice to the custodial party by certified mail, return receipt requested. The notice shall state all of the following:

(a) The child support order **shall be suspended** unless the custodial party objects no later than fifteen calendar days after receipt of such notice on any of the following grounds:

(i) The obligor has sufficient income or assets to comply with the order of child support.

(ii) The obligor is incarcerated for an offense against the custodial party or the child subject to the order of child support.

(iii) The offense for which the obligor is incarcerated is due to the obligor's failure to comply with an order to pay child support.

(b) The custodial party may object to the proposed modification by delivering a signed objection form, indicating the nature of the objection to the department no later than fifteen calendar days after receipt of the notice in this Paragraph.

(3) If no objection is received from the custodial party in accordance with Paragraph (2) of this Subsection, the department shall file an affidavit with the court that has jurisdiction over the order of child support. The affidavit shall include all of the following:

- (a) The beginning and expected end dates of such obligor's incarceration.
- (b) A statement by the affiant of all of the following:
 - (i) A diligent search failed to identify any income or assets that could be used to satisfy the order of child support while the obligor is incarcerated.
 - (ii) The offense for which the obligor is incarcerated is not an offense against the custodial party or the child subject to the order of child support.
 - (iii) The offense for which the obligor is incarcerated is not due to the obligor's failure to comply with an order to pay child support.
 - (iv) A notice was provided to the custodial party in accordance with Paragraph (2) of this Subsection and an objection was not received from such party.
- (4) The suspension of the order of support shall begin upon the date that the department files the affidavit.
- (5) If the custodial party makes a timely objection, the department shall file a contradictory motion with the court that has jurisdiction over the order of child support.
- (6) If a timely objection is made, the order of child support shall continue until further order of the court.

E. Nothing in this Section shall prevent either party from seeking a suspension or a modification of the order of support under this Section or any other provision of law.

F.(1) Upon motion of either party or the Department of Children and Family Services, after notice and hearing, the court shall suspend the child support obligation unless it finds one of the conditions in Subsection A of this Section exists.

(2) If one of the conditions in Subsection A of this Section exists, the court shall use the child support guidelines in R.S. 9:315 et seq. to determine an obligor's support obligation during his period of incarceration.

G.(1) An order of support suspended in accordance with this Section shall resume by operation of law on the first day of the second full month after the obligor's release from incarceration.

(2) An order that suspends an obligor's order of support because of the obligor's incarceration shall contain a provision that the previous order will be reinstated on the first day of the second full month after the obligor's release from incarceration.

(3) Unless the terms of the order of support have been otherwise modified, the suspended order of support shall resume at the same terms that existed before the suspension.

H. The suspension of an order of support in accordance with this Section shall not affect any past due support that has accrued before the effective date of the suspension.

I. The provisions of this Section shall not apply if a court does not have continuing exclusive jurisdiction to modify the order of child support in accordance with Children's Code Article 1302.5.

J. The secretary of the Department of Children and Family Services, in consultation with the courts, the Department of Public Safety and Corrections, and law enforcement entities, shall promulgate rules in accordance with the Administrative Procedure Act necessary to implement the provisions of this Section.

Federal Register Rules and Regulations 45 CFR Parts 301, 302, 303, 304, 305, 307, 308, and 309:

The rule requires states to implement due process safeguards from the Supreme Court case *Turner v. Rogers*, 564 U.S. 431 (2011). The rule addresses the use of civil contempt in child support cases and seeks to reflect the ruling of the U.S. Supreme Court in the 2011 case, *Turner v. Rogers*, which provided guidance on the factors to be considered when determining which cases should be referred to the court for civil contempt, including a determination of the noncustodial parent's ability to pay.

Federal law incorporates rules regarding individuals who are incarcerated with a Child Support Order: the rule ensures the right of all parents to seek a review of their order when their circumstances change. While these provisions apply to all parties involved, they specifically address incarcerated noncustodial parents and their ability to have the child support order reviewed and potentially modified while they are incarcerated.

Most federal and state prisoners are parents, and many have child support orders that were established before incarceration. Incarceration can result in the accumulation of high levels of child support debt because parents have little to no ability to earn income while they are incarcerated and reduced ability to pay off the debt when released. Studies find that incarcerated parents leave prison with an average of \$20,000 or more in unpaid child support, with no means to pay upon release. This accumulated child support debt is rarely paid. Research finds that uncollectible debt substantially reduces noncustodial parent earnings, which in turn reduces child support payments to their families. One study found that people released from jail are unemployed 9 weeks more per year and annual earnings are reduced by 40%. On the other hand, reducing uncollectible debt can increase payments. The goal of the final rule revisions is to

increase consistent child support payments for children by setting child support orders based on the noncustodial parent's earnings, income, or other evidence of ability to pay, including for incarcerated parents. Children do not benefit when their parents engage in a cycle of nonpayment, underground income generation, and re-incarceration. Support orders modified for incarcerated parents, based on their current ability to pay, result in less debt accrual, more formal employment, more child support payments, and less need for enforcement after they are released.

The new rule prohibits states from legally barring modification of support obligations during incarceration. The rule adds a requirement that state child support agencies may elect in its state plan to initiate review of an order after learning that a noncustodial parent will be incarcerated more than 180 calendar days. If the state has not elected this new option, then within 15 business days of learning that the noncustodial parent will be incarcerated more than 180 calendar days, the state must notify both parents of their right to request a review.

Setting and modifying realistic child support obligations for incarcerated parents can improve their ability to provide consistent support for their children upon release from prison. Other collateral consequences associated with orders set beyond a noncustodial parent's ability to pay may also decline, such as increased underground employment activity and reduced contact with their children."

IX. REASONS FOR GRANTING THE WRIT

MAY IT PLEASE THE COURT:

NOW INTO COURT, comes Petitioner, Timothy J. Mazique, pro se, who moves this Honorable Court pursuant to the Fifth, and Fourteenth Amendments of the United States Constitution and other applicable laws set out herein that justifies the granting of relief in this matter, for the following reasons, to-wit:

1. Resolution to this case can affect many other incarcerated individuals who are released from prison and must begin transitioning their lives after having loss time and resources.
2. Resolution to this case can cause rule revisions that can increase consistent child support payments for children by setting child support orders based on the noncustodial parent's earnings, income, or other evidence of ability to pay, including for incarcerated parents.
3. Support orders modified for incarcerated parents, based on their current ability to pay, result in less debt accrual, more formal employment, more child support payments, and less need for enforcement after they are released.

X. CONCLUSION

The district court, Fifth Circuit Court of Appeals, and Louisiana Supreme Court erred in finding the petitioner responsible for paying arrears in the amount of \$70,875.00. According to Louisiana Revised Statute 9 § 311.1, Child support during the obligor's incarceration, which clearly states that, "every order of child support shall be suspended when the obligor will be or is incarcerated.

For the foregoing reasons, petitioner respectfully requests that this Honorable Court issue a writ of certiorari to review the judgment of the district court, Fifth Circuit Court of Appeals, and the Louisiana Supreme Court and grant relief in the form of a reversal of the Louisiana Supreme Court's judgment and grant forgiveness of petitioner's child support arrearages accumulated while incarcerated.

DATED this 14th day of July 2022.

Respectfully submitted,



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