22-5272

No. _____

SUPREME COURT OF THE UNITED STATES

In the Matter of M.R., a child

JAMES ARTHUR ROSS, FATHER – PETITIONER

VS.

STATE OF NORTH DAKOTA - RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI TO

THE NORTH DAKOTA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

JAMES ARTHUR ROSS S.I.D.#12599830
TWO RIVERS CORRECTIONAL INSTITUTION
82911 BEACH ACCESS RD.
UMATILLA, OR 97882

QUESTION(S) PRESENTED

1. Did the Juvenile Court's record contain substantial Evidence to Support the Courts' Jurisdictional Findings as to Father.....2

2. Did the Juvenile court abused it's discretion in failing to fully and adequately address the 2012 Supplemental Divorce Judgment.....4

3. Did Father's trial counsel provide him unreasonable, inadequate and/or ineffective assistance of counsel by giving ill advice, misleading, lying and failing to fully and/or adequately advise father of his rights, options and any consequences of not contesting the deprivation determination in regards to both his and his Daughter's lawful and constitutional rights in those proceedings.....9

4. Did the North Dakota Supreme Court error and/or abuse it's discretion in using the Father's criminal convictions as a "harmless error" standard in dismissing claims of reasonable and potential prejudice from the result of the Juvenile Court's finding of deprivation against him.....9

5. Is the North Dakota Supreme Court's determination that father failed to submit any evidence in support of his allegations as to the potential and long term ramifications of the Juvenile Courts' finding of deprivation against him an unreasonable application of burdens concerning the issues before that court? Alternatively, is not such a direct result of ineffective, if not, malicious assistance of appellate counsel during those proceedings.....9

6. Is the North Dakota Supreme Court's determination of mootness contrary to the standard as applied to pure legal claims related to a court acting in excess of its jurisdiction, which generally are not subject to the forfeiture doctrine.....9

7. Did the North Dakota Supreme Court abuse it's discretion in denying the filing of Father's Petition for Review, and, alternatively, his motion to allow a delayed filing under the circumstances.....9

8. Did either or both of the lower courts in the State of North Dakota abuse their discretion in any regards as described throughout these proceedings in those lower court proceedings and ultimate conclusions as cited throughout all of these proceedings.....9

9. Did Father's appellate counsel provide him unreasonable, inadequate and/or ineffective assistance of counsel throughout the appellate proceedings.....9

10. Is the State of North Dakota's laws, determinations or processes concerning this case Constitutional.....9

LIST OF ALL PARTIES

*All parties do not appear in the caption of 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:

*James Arthur Ross, father;
*State of North Dakota;
*M.R., a child;
*N.K., mother;
*Christopher Votava, Father's trial counsel;
*Kiara Krauss-Parr, Father's appellate counsel;

(Please Note: This appeal is only being sought in regards as to the Father's constitutional rights. As such, father is not absolutely sure as to whom all should be listed as "parties" in these proceedings. However, father has listed all of whom he believes may be necessary or required to do so.)

TABLE OF CONTENTS

OPINIONS BELOW....7

JURISDICTION....7

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED....8

STATEMENT OF THE CASE....9

STATEMENT OF THE FACTS....11

REASONS FOR GRANTING THE WRIT....12

CONCLUSION....

INDEX TO APPENDICES

APPENDIX A - North Dakota Supreme Court's ORDER Denying Delayed Petition For Review;

APPENDIX B - Father's Petition For Review;

APPENDIX C - North Dakota Supreme Court's ORDER/JUDGMENT Dismissing Appeal;

APPENDIX D - North Dakota Supreme Court's ORDER Denying Father's Filing of Pro Per Supplemental Brief and Motion for Delayed filing;

APPENDIX E - Father's Pro Per Supplemental Brief;

APPENDIX F - Appellate Counsel's Opening Brief;

APPENDIX G - Father's Notice of Appeal;

APPENDIX H - Father's Pro Per Motion for Reconsideration in the State of North Dakota's Juvenile Circuit Court;

APPENDIX I - Redacted Transcripts of the June 11th, 2021 trial proceedings;

APPENDIX J - North Dakota's Juvenile Circuit Courts' Honorable Circuit Court Judge Robin Schmidt's ORDER;

APPENDIX K - Father's Affidavit in the North Dakota's Juvenile Circuit Court proceedings;

APPENDIX L - Affidavit of Jessica Swenson of North Star Human Services Zone;

APPENDIX M - North Dakota's Juvenile Circuit Courts' Honorable Circuit Court Judge Kirsten M. Sjue's ORDER;

APPENDIX N - Filings of Bailey Hunt of North Star Human Services Zone;

APPENDIX O - ORDER appointing Toney Hanson as Lay Guardian Ad Litem;

APPENDIX P - North Dakota's Juvenile Circuit Courts' temporary custody ORDER;

APPENDIX Q - Partial Trial Transcripts from the State of Oregon 2012 Supplemental Divorce Judgment, County Circuit Court Judge Randolph Lee Garrison, presiding;

APPENDIX R - 2004 Oregon General Judgment of Dissolution of Marriage, the Honorable Circuit Court Trial Judge William Lasswell, presiding.

TABLE OF AUTHORITIES CITED

CASES **PAGE NUMBER(S)**

In re J.N., 62 Cal. App.5th 767, 276 Cal. Rptr. 3d 885 (Cal. App. 2021) 1

In re Noe F. (2013) 213 Cal. App. 4Th 358, 366, 152 Cal. Rptr. 3D 484 2

In re S. D., supra, 99 Cal. App.4th at p. 1077, 121 Cal. Rptr.2d 518 .....3 and 4

In the Matter of C.R.P. v. C.M.P., 244 Or. App. 221, 260 P.3d 654 (Or. App. 2011) 3

Isayah C., supra, 118 Cal. App.4th at pp. 696-699, 13 Cal. Rptr. 3D 198 .....3 and 4

Brittany S., supra, 17 Cal. App.4th at p. 1402, 22 Cal. Rptr.2d 50 4

In re Christopher B. (1996) 43 Cal. App. 3Th 551, 558, 51 Cal. Rptr.2d 43 4

In re R.V. (2012) 208 cal. App. 4Th 837, 848, 145 Cal. Rptr.3d 772 4

Constitutional Provisions

United States Constitution .....1 and 11

United States Const, Amend XIV .....1 and 11

Statutes, Rules, Codes

N.D.C.C. § 27-20-02 8

Full Faith and Credits Clause 8

Oral Argument:

Oral argument has been requested to emphasize and clarify the Father's written arguments on their merits.

Transcript References:

The names of the child and her father in this brief are pseudonyms. The Adjudication Hearing for this matter was conducted on June 11, 2021. The transcript of that hearing is referred to as *"Tr." in this petition.*

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

State Courts:

The opinion of the Supreme Court of North Dakota appears at Appendix C to the petition and is:

[x] reported at: State v. J.R. (In re M.R.), 2022 ND 68 (N.D. 2022);
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the Juvenile Circuit Court appears at Appendix J to the petition and is:

[ ] reported at:
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

JURISDICTION

State Courts:

The date of which the Supreme Court of North Dakota decided my case was March, 31st, 2022:

[x] A petition for rehearing was filed out of time in my case, and, denied as such on May 03rd, 2022, and a copy of this order appears as Appendix A.
[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____ and a copy of the order denying rehearing appears at Appendix _____.
[ ] An extension of time to file the petition for writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____ A _____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1245(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

First Amendment to the United States Constitution

Fourteenth Amendment to the United States Constitution

North Dakota Constitution Article 1, Section 1

North Dakota Constitution Article 1, Section 9

N.D.C.C. § 27-20-02

Full Faith and Credits Clause

STATEMENT OF THE CASE

Good Morning Your Honors and May it Please the Court. This is an appeal from the State of North Dakota's Divide County's juvenile circuit court Order that a child "is found to be a deprived child, with no specific admittance by any party, and is hereby removed from the care, custody and control of her parents." Juvenile Findings of Fact and Order for Disposition (Order).

A notice of appeal was filed in the North Dakota Supreme Court on July 21st, 2021.

An adjudication hearing in these matters was held in Divide County, case number 12-2021-jv-00002 (In the Interest of M.R>), on June 11th, 2021. The court determined that the child was deprived within the meaning of N.D.C.C. § 27-20-02 and ordered her care, custody and control be given to North Star Human Service Zone(NSHSZ) for placement in a suitable foster care setting, or, other appropriate placement. As stated above, petitioner(hereinafter referred to as "Father") timely appealed the Divide County juvenile circuit court's Order on July 21st, 2021.

Also, Father tried to file his own pro se brief in the North Dakota Supreme Court by sending it to his attorney for filing[1]. However, by the time counsel had filed the brief with the Supreme Court, it was denied as untimely. Counsel did not try to get it filed "out of time" or under any other exception.

Ultimately, the Supreme Court of North Dakota denied Father's appeal on March 31st, 2022. The court held that:

> "Because M.R. has reached the age of eighteen, the juvenile court order has expired, and the father has failed to show the order caused any collateral consequences, we conclude no actual controversy remains and the appeal is moot".
>
> However, Crothers, Justice, specially concurring, wrote:
>
> "I agree with the majority opinion that the collateral consequences exception to the mootness doctrine does not apply because M.R. reached the age of majority and the father did not sufficiently prove consequences actually exist. Majority opinion, ¶¶ 7-8. I do not agree with the majority that extraneous likely adverse effects from the father's convictions and current incarceration should be considered collateral consequences in this deprivation appeal".

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1 Noting that in State of Oregon, courts will not accept filings from represented litigants.

After the North Dakota Supreme Court denied Father's appeal, Father petitioned for reconsideration in which Father tried to asserts several jurisdictional issues, Appendix B. The petition for reconsideration was accompanied with a motion for an "out of time" filing, Appendix .

Ultimately, they were both denied as "out of time". The reason(s) for this are discussed in detail throughout the arguments made in this petition.

Therefore, the Father now seeks Certiorari from this Honorable Supreme Court of the United States in the hopes to preserve and retain his rights as a Father. Father does not wish to disturb the findings of Mother's abuse of daughter, which mother conceded and is not herself, appealing at this time.

STATEMENT OF FACTS

M.R. (hereinafter referred to as "Mary") is Father's daughter. Father is currently incarcerated in the Oregon Department of Corrections. Mary had been living with her mother. However, Mary was removed from her Mother's home due to abuse(verbal, physical and sexual) and neglect. Additionally, Mary's mother refused to follow the safety plan set out by the lower courts and the NSHSZ, Appendix __, affidavit of _____, p. ____.

Prior to Mary's removal from her mother's home, she was already spending roughly 5-6 nights a week with a family friend due to the issues stated above. NSHSZ in their affidavit supporting the petition for deprivation stated that Mary's mother threatened the family friend, Appendix __, Affidavit of _____, p. ____.

At the juvenile court's hearing in this case, the State said "It's my understanding that we don't need to go ahead and have any specific findings; just that if there was a contested hearing there would be enough evidence to prove that the juvenile would be found as deprived by clear and convincing evidence" *Tr.* p. 5 *In* 10-14.

The Supreme Court of North Dakota does not seem to have reached any of the merits or determinations made by the lower court. Rather, they appear to have ultimately upheld the lower Court's conclusions by dismissing Father's appeal based on mootness. The Supreme Court relied on Father's Counsel's failures to submit evidence and Father's prior convictions and current incarceration, which has nothing to do with his abilities and rights as a Father or his rights to retain that legal status, as a Father, as also asserted by Crothers, Justice, specially concurring in the opinion.

Therefore, this case now comes before this most Honorable and highest Court of our land in hopes that you will ensure a Father's rights regardless of his convictions and incarceration status.

REASON(S) FOR GRANTING THE PETITION

1. The Juvenile Court's record does not contain substantial Evidence to Support the Courts' Jurisdictional Findings as to my persons;

2. The Juvenile court abused it's discretion in failing to fully and adequately address the 2012 Supplemental Divorce Judgment;

3. My trial counsel provided me unreasonable, inadequate and/or ineffective assistance of counsel by giving me ill advice, by misleading me, by lying to me and by failing to fully and/or adequately advise me of my rights, options and any consequences of not contesting the deprivation determination in regards to both, my own persons, and, my Daughter's lawful and constitutional rights in the lower court proceedings;

4. The North Dakota Supreme Court erred and/or abuse it's discretion in using my criminal convictions as a "harmless error" standard in dismissing claims of reasonable and potential prejudice from the result of the Juvenile Court's finding of deprivation against me;

5. The North Dakota Supreme Court's determination that I failed to submit any evidence in support of my allegations as to the potential and long term ramifications of the Juvenile Courts' finding of deprivation against my persons, was an unreasonable application of burdens concerning the issues before that court? Alternatively, is not such, a direct result of ineffective, if not, malicious assistance of appellate counsel during those proceedings;

6. The North Dakota Supreme Court applied the wrong analysis in it's determination as to mootness contrary to the standard as applied to pure legal claims related to a court acting in excess of its jurisdiction, which generally are not subject to the forfeiture doctrine;

7. The North Dakota Supreme Court abused it's discretion in denying the filing of my Petition for Review, and, alternatively, my motion to allow a delayed filing under the circumstances;

8. Either or both of the lower courts in the State of North Dakota abused their discretion in many regards as described throughout these proceedings in those lower court proceedings and ultimate conclusions as cited throughout all of these proceedings;

9. My appellate counsel provided me unreasonable, inadequate and ineffective assistance of counsel throughout the appellate proceedings;

10. The State of North Dakota's laws, determinations or processes concerning this case were not Jurisdictional,nor, Constitutional.

Therefore, I first wish to apologize in advance to this Honorable Court for any of my failures in this writ as I am not a trained nor professionally licensed lawyer.

As such, I believe the best way for my persons to approach my claims, is to have my questions

presented stand as my claims of assigned error, as laid out above, and give this Honorable Court my arguments to them, as outlined below:

First, I believe it is important to set out a brief history of my case. In 2004 I was arrested and ultimately convicted for several crimes against my wife, Mary's mother, in a domestic violence case. As a result of these convictions, I was sentenced to 40 years in prison. Immediately after my sentencing, my divorce proceedings took place, which included the custody and parenting plans involving our two children. One of which, is Mary, the child in reference in the matters of this case.

During the divorce hearings, Mary's mother had agreed to a very restricted and articulated parenting plan. This plan allowed my persons to have written contact with my Mary 4 times a year, indirectly through Mary's great aunt, RW, see Appendix R. Basically, I am aware that my case was, and is, a very political one, as it involves domestic violence issues. Even during these original proceedings there were marches of 5,000 women taking to the streets over domestic violence issues. My case just happened to be a "Token' case for all involved, except myself and my own rights.

Therefore, I agreed to these terms, as well as relinquishing all property assets, including a home as documented in the judgment, in the hopes that my children might be able to know me through the contact with RW. I also had fear that they would be abused from my personal experience with knowing whom my wife is. Obviously, I did not just wake up one day and commit crimes against my wife and partner of 8 years. However, my crimes are not issue here, only a brief history of my knowledge and my fears for my children. I just wanted some comfort in knowing that my Childrens' great aunt would be involved in their lives to some extent.

However, after several years, Mary's mother severed all contact with RW, thus, severing all contact between Mary and I. This happened approx. in 2008. After this, I filed some "prison template" paperwork to address the issues through contempt of court and modification of the judgments motions that I filed with the circuit court. This became very political due to the intense environment surrounding domestic violence as discussed above. As such, several advocates, including the Battered

Persons Advocacy (BPA), started getting involved in a manner of which I believe completely prejudiced those proceedings.

At first, my filings were dismissed by the State of Oregon Douglas County circuit court and I had to file a direct appeal in the Oregon Court of Appeals. I won that appeal, see *Ross v. Ross,* (Or. App. 2011). This winning judgment sent me back for trial proceedings that ultimately led to the State of Oregon, Douglas County 2012 Supplemental Divorce Judgment, Appendix Q.

Unfortunately, I believe that winning my appeal only intensified the matter as the matter gained further lashing from the political field. This led to the Oregon district judge, Randolph Lee Garrison's 2012 opinion and order, which he allowed to be drafted solely by the BPA and Legal Aide Services of Oregon (LASO).

More specifically, even though the original divorce judgment that granted contact between my children and I, which was quoted and used in my winning Oregon appellate judgment as granting such, and, which was rendered immediately after the trial, conviction and sentencing of my persons back in 2004, and, which was verbally agreed to by Mary's mother, was all thrown out by Judge Garrison without any evidence whatsoever that I, myself, had violated any aspect of the 2004 order, Appendix R.

Thus, instead of acknowledging that I was only acting in response to my ex-wife's own actions of directly and intentionally disobeying the 2004 judgment herself as the initiating mechanism in front of the court, Judge Garrison treated the hearing as if I was just arrested the day before. Judge Garrison ignored all of this and instead, congratulated the advocacy groups in the room and proceeded to implement an order that I believe clearly shows the biasness that took place in the 2012 proceedings.

However, Mary's mother's own counsel, LASO and the BPA jointly filed the 2012 Supplemental Divorce Judgment in which they attached a portion of the colloquy between my persons, the court and LASO, concerning the intentions of the judgment, Appendix Q.

More specifically, in the colloquy documented in the transcripts of the 2012 Supplemental Divorce Judgment, Judge Garrison specifically stated on the record, that he was not taking away my

parenting rights, nor was he taking away my parenting time rights.

Rather, Judge Garrison was simply not imposing any "parenting time" at that specific point in time. Judge Garrison went on further to state that his reasoning was based on the fact that he did not want Mary to come and visit me and then go home to her mother and talk about daddy as Judge Garrison felt that would only cause further trauma to Mary's mother, my ex-wife and victim of my crimes, at that specific point in time.

However, Judge Garrison specifically stated that he would be open to addressing the issue in 5-10 years after Mary's mother had the chance for some counseling and when she might be in a mental place where she might be able to handle such contact taking place.

Furthermore, Judge Garrison stated that there may come a time in an unfortunate event where such contact between Mary and my persons might be necessary due to unforeseen or tragic circumstances. All of the above is referenced from the transcripts of those proceedings, Appendix Q.

Therefore, to me, it is clear that the Oregon 2012 Supplemental Divorce Judgment was never intended to permanently sever all contact between Mary and I. It also shows that the court at no time in point or case ever determined that such contact between Mary and my persons was detrimental to Mary. The judgment was exclusively for the protections and welfare of Mary's mother, whom by the way and terms of the lower court proceedings in this instance case before this honorable court now, is no longer in the "picture" at this point. I believe that all of this now brings us up to the circumstances leading to the initiation of the proceedings before this Honorable Court now.

On April 13th, 2021, I received some copies of the filings of representatives of the North Star Home Service Zone(NSHSZ), to wit, Bailey Hunt(Appendix N), which is the State of North Dakota's equivalent to Child Protective Services. Along with these filings were copies of an order appointing a Lay Guardian Ad Litem, Appendix O, and a Juvenile Temporary Custody Order, Appendix P.

As a result of these filings, a hearing was set to determine the temporary custody status of my daughter, Mary. The hearing was scheduled due to reported abuse(verbal, physical and sexual) and

neglect in the home, care and supervision of Mary's mother, which was and is extremely detrimental to the overall health, welfare and safety of Mary.

Immediately after I received this information, I began trying to figure out what was the welfare of my daughter, Mary, as any truly loving parent and father would do.

Ultimately, there was an initial hearing in which the State of North Dakota's Divide County Circuit Court Judge Kirsten M. Sjue, concluded that such evidence submitted by NSHSZ, it's affiliates and the Court Appointed Lay Guardian Ad Litem, as well as the concessions by Mary's mother, concerning the abuse and neglect of Mary as described above, was clear and convincing and without contestation. An emergency temporary custody order was granted to NSHSZ for the immediate welfare of Mary and a full hearing was scheduled for June 11th, 2021, to brief the case fully, Appendix M. I was then appointed Christopher Votava as counsel to help represent me in the upcoming hearing.

Fortunately, I was able to be present for the initial hearing at which point my daughter, Mary, specifically stated to the juvenile court that she wanted to speak to me. The honorable Judge Kirsten M. Sjue granted a few minutes for Mary to speak with me, however, after that, I was prevented from speaking to Mary any further by the State of North Dakota and it's representatives of NSHSZ. This was despite the fact that Mary herself and her court appointed foster mother's continuous attempts for Mary to be allowed to speak with me.

NSHSZ and the State of North Dakota, were preventing my persons any further communication with Mary due to the Oregon 2012 Supplemental Divorce Judgment as described above.

However, while waiting for the hearing and to talk to my newly appointed counsel, I was contacted multiple times by Jessica Swenson, a representative of NSHSZ. It was through these communications of which I learned of their reasoning(Oregon 2012 Judgment) in not allowing any further contact between my daughter and myself. I tried to work with Ms. Swenson to no avail. While she acknowledged that both, Mary and her foster parents, wanted Mary to have contact with my persons(as documented in Ms. Swenson's Affidavit, Appendix L), and, that Ms. Swenson, herself, was

doing everything she could to ensure that would happen, it never did happen. I now believe that NSHSZ was just trying to delay and appease me, explained in more detail below.

Ultimately, I was finally able to contact my newly appointed counsel. After which, I never heard from Ms. Swenson or NSHSZ again.

Unfortunately, after speaking with my counsel, Mr. Votava, he told me that my mere incarceration alone was the only factor needed to determine the deprivation against me and that there was nothing that I could do about it.

Mr. Votava told me that the only chance I had in this case was to work with State's Attorney, Seymour Jordan and NSHSZ representative, Jessica Swenson, and, the juvenile trial court judge Robin A. Schmidt, to be allowed to communicate with my daughter. Mr. Votava even ensured me that both the State's Attorney, Seymour Jordan and NSHSZ representative, Jessica Swenson, were all in agreement with Mary being able to communicate with me. That all I needed to do is wait for the trial where judge Schmidt agreed to address the issue.

However, as documented in the *Tr.*, Appendix I, not one person mentioned anything whatsoever about the issue. In fact, I, myself, had to persist upon the court that I had a question regarding the matter as Judge Schmidt was ready to end the proceedings without addressing anything.

Albeit, this did not get me anywhere, it is proof of the misleading, false information and maybe even outright lying that I received from my trial counsel, which is the very definition of inadequate and ineffective assistance of counsel, if not malpractice as well. It is clear from the record that my trial counsel, Christopher Votava, did absolutely nothing in his representation of my persons that I could not have done myself as absolutely nothing happened of any benefit whatsoever of Mr. Votava's representation of me. In fact, I would have had more control in the courtroom representing myself and the outcome would have been different as I would not have conceded to anything when relying on my own advice. Any such concession only came through and was provided based off of nothing more than counsels' advice, assertions and promises.

Ultimately, my counsel provided false and misleading information preventing me from knowing any consequences whatsoever of not contesting the deprivation of my daughter Mary as applied to my own persons. My trial counsel, Mr. Votava, rendered me inadequate and ineffective assistance of counsel causing my persons prejudice as a result.

For example, without counsel's interference, all parties would have had to communicate directly with my persons just as they were doing so before I was able to contact counsel. The court itself would have had to address me specifically concerning my stance on the matter, which after not being allowed to communicate with my daughter, would have been a totally different position, especially concerning how I proceeded. Not to mention, that, ultimately, I was abandoned at the hearing anyways. Unlike the assurances and promises made to me by my counsel that all parties were in agreement with communication taking place between my persons and my daughter, and, that the judge had agreed to address the Oregon 2012 Judgment, I was left to my own actions anyways in insisting upon the court the issues in regards to the contact between my daughter and myself. And, this was only after I realized and came to the conclusion that no one was going to address the matter, before I insisted upon the court to do so. As it turns out, I was right in doing so and the trial court should have ruled as much.

However, the State of North Dakota's Juvenile circuit court Judge Robin A. Schmidt, refused to address the issues of the Oregon 2012 Supplemental Divorce Judgment nor my persons having contact with Mary. The court simply stated that it did not have authority to interpret the judgment, which effectively allowed the Court's own State and authorities to continue to interpret the judgment as an order preventing any contact between my persons and Mary. In fact, Mary was not even allowed to attend the temporary custody hearing in order to specifically prevent her from having contact with me, which was against Mary's own wishes. There was even an officer assigned to the courtroom to ensure that such contact did not take place, which was only detrimental to Mary's and my own rights, see *Tr.*

Therefore, the juvenile court's decision in not addressing or interpreting the Oregon judgment, effectively, did that very thing. It effectively allowed all other parties to continue to interpret it in a

detrimental effect as a restraining order of sorts against both, Mary and my own persons.

Now, I understands that there is a something called the "Full Faith and Credits Clause" of the United States Constitution. This concerns State and Federal Courts giving "difference" per say to "judgments" from other State Courts.

However, I believe that the "due process" clause working in association with the "full faith and credits clause" would mandate any court to, in the very least, "interpret", as the juvenile court put it, any judgment being presented to them that is having an immediate effect on the instant proceedings, especially one that has a detrimental effect on any particular party, and, by failing or refusing to do so, was and is, an abuse of the court's discretion and violation of Mary's and my own constitutional rights.

Thus, I believe that the juvenile court should have, in the bare minimum, entertained a discussion on the matter, merits and effects of the Oregon 2012 Supplemental Divorce Judgment. I also believe, as I have continuously stated throughout all of these proceedings and my affidavit that I had previously submitted to the juvenile court in the lower proceedings, Appendix , that lower courts could only have conclude that the Oregon 2012 Judgment was, and, is, irrelevant at those specific points in time and circumstances. That the interests, fairness and justice of those proceedings as well as the best interests of Mary and my own persons, would have only justified the juvenile court in setting out a term in the order that contact should have been allowed between Mary and my own persons.

Finally, I would assert that since the State of North Dakota had taken temporary custody of Mary, any term or purpose in the Oregon 2012 Supplemental Divorce Judgment was and is no longer relevant. That for all intents, purposes and legal principles, the Oregon Judgment is, and, has been, rendered Constitutionally null and void as a result.

The juvenile court should have been well aware of this fact as a "court of judgments", "orders" and their power, nullity, constitutionality and when justice so mandates a Judges' intervention. The juvenile court failed Mary and my persons in this regard. The court should have made these facts clear to all parties and it's failures to do so, were an abuse of discretion.

As to the sound of appellate counsel, after the trial, I had found an article in my Prison Legal News magazine similar to his case. This is the issues that I wanted to bring up on appeal, however, appellate counsel was in complete conflict with this. She did not agree as to a claim of ineffective assistance of counsel for failing to appropriately advise my persons on the matters and giving me bad advise. She further stated that they could not rely on the cases out of other States, which is shockingly surprising as the North Dakota Supreme court cited multiple cases from Oregon in it's decision in this very case itself.

Thus, this was clearly bad advise from Ms. Kraus-Parr(KP), herself, which is not surprising as during my first conversation with KP, I informed her that we did not see eye-to-eye on the issues and that I wished to represent myself. I stated that I did not want her to prevent me from raising the issues that I believed to be of importance and since she was refusing to do so, there was no legitimate need for her to be on my case other than to prevent my persons from raising those very issues.

However, KP refused to remove herself from the case, which would have allowed my persons to represent myself. Representing One's self is a constitutional right, see *State v. Glasby*, 301 Or App 479, 456 P.3d 305 (Or. App. 2019) "[a] defendant in a criminal case has the constitutional right not only to be represented by counsel, but also, if he so elects, to represent himself.

After approx. 13 failed attempts to contact KP over 2 months, I wrote KP a letter to document conflicts. The letter covers some issues of self representation and requests for *Tr.*, which I never have fully received as their was 2 hearings. In late October, 2021, I received a letter from KP stating that I could file a "supplemental" brief in support. It stated that KP's brief was imminent. In addition, KP stated that the Supreme never looks at supplemental filings and that such is a waste of time. Thus, without help, I submitted my brief to KP for filing on 11-16-21. On 12-08-21, I received a letter from the Supreme Court Clerk stating it's receipt of said brief without proof of service and late, without any motion for leave to submit.

Therefore, from the onset, KP ignored the my requests for specific claims to be addressed and to

represent myself, which in and of itself, is a violation of my rights as KP had an obligation to bring this issue to the Courts' attention. Also, I believe that it is possible that KP was biased in some form or another. Maybe due to his prior convictions as even this court did not refrain from "jumping" on the matter. Or maybe she just wanted a paycheck. It is hard for my persons to investigate such, however, KP blatantly ignored my requests to represent myself and it may explain why a professionally trained lawyer, made allegations without submitting any evidential support whatsoever . A detrimental failure that caused harm to my persons.

If I was able to represent myself, I could have in the very least raised his claims addressed above and in my supplemental brief. However, I could not even get nor obtain advise as to how to proceed, obtain copies of the *Tr.* from KP or represent myself as KP refused to withdraw from the case, a violation in itself. KP refused to be of any assistance at all, except as to her own desires. All of which was detrimental to my persons, Mary and our Constitutional rights[2].

Thus, any deficiencies should be excused and the I should be allowed a new or delayed appeal to properly address all of the issues.

However, it does not stop there. The standard of review of law in juvenile court is de novo, whereas questions of fact are reviewed under the clearly erroneous standard. *Interest of K.H.*, 2006 ND 56, 7, 718 N.W. 2D 575, 577-578. When a matter is tried before a court, without a jury, N.D.R. Civ. P 52(a) requires that a court makes it's finding of facts and conclusions of law specifically, so as to provide a "clear understanding of the court's decision." *Interest of J.A.H.*, 2014 ND 196, 12, 855 N.W. 2D 394, 398 citing Interest of T.R.C., 2014 ND 172, 9, 852 N.W. 2D 408. This Court has indicated the "[c]lear and convincing evidence means that leads to a firm belief or conviction the allegations are true." In re Adoption of S.R.F., 2004 ND 150, 7, 683 N.W. 2D 913, 916.

A finding of fact is clearly erroneous if it is induced by an erroneous view of law, there is no evidence to support the finding, or the Court is convinced, on the basis of the entire records, that a

2 Noting that I was never allowed to discuss Mary's wishes as contact was not allowed and Mary was not even allowed to be heard by the juvenile court herself as she was kept silent from the courtroom.

mistake has been made. *In re B.B.I.*, 2008 ND 51, 4, 746 N.W. 2D 411. When a party appeals a juvenile court order, this Court reviews "the files, records and minutes or transcript of the evidence." and gives "appreciable weight to the findings of the juvenile court." N.D.C.C> ● 1 27-20.2-26(1). In this case the district court found there was deprivation because of the parties' agreement. As a result of the hearing, there is no specific facts admitted or denied by my persons, nor does the court make any findings during the hearing. The Findings of Fact and Order was subsequently prepared by the State's Attorney, Mr. Jordan. Tr. p. 6, In 14. The Court presumably signed the order upon review of the files. From the record, it is unclear what aspect of deprivation I may been in agreement with, which as I stated previously, was actually based off of the erroneous advice of my counsel that my current incarceration alone was sufficient enough to find deprivation itself.

The juvenile court must first find that a child is deprived to order removal from the biological parents. A deprived was defined at the time of the hearing as, a child without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and the deprivation is not due primarily to the lack of financial means of the child's parents, guardian, or other custodian. Formerly, N.D.C.C> § 27-20-02(8)(a). Because the court made factual findings based upon my agreement there should have been some basic inquiry as to what facts I was actually agreeing to in order for the court to come to the legal conclusion that Mary was deprived. If the court relied on information from the record that I did not agree with to determine Mary was deprived then there was not a proper waiver of my right to an evidentiary hearing, to cross-examine witnesses, and to hold the State to it's burden.

Because there is no way to know what facts I agreed to nor the facts the juvenile court relied upon in making it 's legal determination the North Dakota Supreme Court could not determine if there was clear and convincing evidence that supports the court's factual findings that the child went without proper parental care and control. The phrase "proper parental care" refers to the minimum standard of care which the community will accept. *Interest of K.R.A.G.*, 420 N.W. 2D 325, 327 (N.D. 1988). The

juvenile court erred by finding clear and convincing evidence established Ashley's children are deprived under N.D.C.C. § 27-20-02(8)(a), because the findings are unsupported by evidence.

Additionally, a court should not consider whether there is evidence from which the dependency court could have drawn a different conclusion but whether there is substantial evidence to support the conclusion that the court did draw, In re Noe F. (2013) 213 Cal. App. 4Th 358, 366, 152 Cal. Rptr. 3D 484). provide a basis for a juvenile court's assertion of jurisdiction, In re S.D. (2002) 99 Cal. App. 4Th 1068, 1077, 121 Cal. Rptr. 2D 518 ["[t]here is no 'Go to jail, lose your child' rule in California"].)

Albeit, these are 4th Cir. decisions, it is not the first time that courts across this country have held "there is no 'Go to jail, lose your child' rule" standard, see also In the Matter of C. R. P., a Child DEPARTMENT OF HUMAN SERVICES, Petitioner Respondent, v. C. M. P., Appellant, In the Matter of H. G. L., a Child, DEPARTMENT OF HUMAN SERVICES, Petitioner-Respondent, v. C. M. P., Appellant. COURT OF APPEALS OF OREGON 2011 Ore. App. LEXIS 981 A147224 (Control), A147225 April 20, 2011, Argued and Submitted July 13, 2011, Filed. In this case, a mother stabbed her husband to death while he was holding their infant child. Yet, the court still found that despite Mother not having communications with her child for years and despite the fact that she is incarcerated and serving a lengthy sentence for the killing of the child's father, courts can only determine that the parents' current situation at the time of the filing is a substantial detriment to the child's safety and welfare, **not their prior convictions nor current incarceration, even if the parent had been separated from the child for an extended period of time**.

Therefore, the juvenile court lacked substantial evidential jurisdiction as pertaining to my persons and should not have found the child deprived as pertaining to my persons. The mere fact that a noncustodial parent is incarcerated does not relieve the court of its obligation to determine whether the incarcerated parent is seeking custody of the child and, if so, whether placement with that parent would be detrimental to the child. (§ 361.2, subd. (a); *Isayah C., supra,* 118 Cal. App.4th at pp. 696-699, 13 Cal. Rptr.3d 198; *In re S. D., supra,* 99 Cal. App.4th at p. 1077, 121 Cal. Rptr.2d 518; *Brittany S.,*

supra, 17 Cal. App.4th at p. 1402, 22 Cal. Rptr.2d 50.) Although Scott's prior, current and foreseeable circumstances may support a finding that placement with him would be detrimental to the children, that determination is properly made by the trial court after the parties have had an opportunity to be heard on the issue.

Furthermore, as to my arguments regarding the legal basis for the juvenile circuit court's removal order, pure legal claims related to a court acting in excess of its jurisdiction generally are not subject to the forfeiture doctrine. (see *In re Christopher B.* (1996) 43 Cal. App. 3Th 551, 558, 51 Cal. Rptr.2d 43.) As to my substantial evidence argument, a claim that the evidence is insufficient to support a disposition order in a dependency matter generally is not forfeited even if not raised below, (*In re R.V.* (2012) 208 cal. App. 4Th 837, 848, 145 Cal. Rptr.3d 772.).

Therefore, not was only the juvenile trial court acting in excess of it's jurisdiction, North Dakota's Supreme Court not only erred in factoring in my convictions into their analysis, they erred from the onset by applying the wrong legal standard as my case before them was one based off of a court acting in excess of it's jurisdiction, thus, the juvenile court's judgment was constitutionally void from the onset and the North Dakota Supreme Court should have ruled as much.

CONCLUSION

Therefore, the juvenile courts' finding that my daughter is deprived as pertaining to my own persons, was clearly erroneous, because it is unsupported by applicable evidence.

Furthermore, any admittance by my persons, was induced as a direct result of counsel's failures to fully and adequately advise my persons of my rights and any consequences whatsoever as a result of such a finding of deprivation against my persons as the father of Mary. Informing my persons that the mere fact of my current incarceration, alone, was enough to find deprivation, was ill-advise from trial counsel.

However, it does not stop there. My trial counsel intentionally misled me as to an agreement

with the State's Attorney, Seymour Jordan and the juvenile court to address the issue of the Oregon 2012 Supplemental Judgment and the State's position that they would agree to allowing contact between my persons and my daughter, Mary, a child, while she remained under State Temporary Custody. For these reasons, not only did my trial counsel render me inadequate and ineffective assistance of counsel, my appellate counsel compounded that error by refusing to raise such a claim on direct appeal, thus, rendering my persons inadequate and ineffective assistance of counsel through those proceedings as well.

Therefore, from the onset, the juvenile court erred in acting in excess of it's jurisdiction and failing to make any factual determinations beyond the scope of my current incarceration in determining deprivation. These errors were compounded by the Supreme court by applying the wrong legal standard in it's determination. It further compounded this error by relying on my convictions from almost 20 years ago, that were not against my daughter and no such determination has ever been rendered, in finding a "harmless error" standard in their determination. A wrong pointed out by one of it's own judges. All of the above proceedings were without jurisdiction as applying to my persons and I would pray that this honorable court will acknowledge such.

Alternatively, this case should be remanded for any further proceedings that this most Honorable and Supreme Court of the United States would deem reasonable, fair, just and proper.

WHEREFORE, this Honorable Court should reverse the North Dakota's Supreme Court Order dismissing this case, and, the North Dakota's juvenile courts' Factual Findings and Order determining that Mary is a deprived child as pertaining to my persons, only, while not disturbing any determination and order pertaining to mother.

CONCLUSION

The petition for a writ of certiorari should be granted.

DATED this 29th day of June, 2022.

Respectfully Submitted By:

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