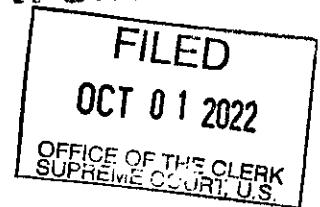


No. 22-5783

ORIGINAL



IN THE

SUPREME COURT OF THE UNITED STATES

Kofi Kyei

— PETITIONER

(Your Name)

State of Oregon and
Tessica Swift

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Oregon Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Kofi Kyei

(Your Name)

c/o Kyei Family JC (Justice for our Children)
PO Box 961

(Address)

Newport, OR 97365

(City, State, Zip Code)

707-289-1020

(Phone Number)

QUESTION PRESENTED

Whether the Oregon State courts violated *pro se* Petitioner's federal due process and equal protection rights under the Fourteenth Amendment of the United States Constitution, by declining to apply the existing Oregon statutory mandate at UTCR 5.050(1), or effectuate the well-established and on-point precedent at *Zehr v. Haugen*, 318 Or 647, 652-53, 871 P2d 1006 (1994), in order to conduct oral argument so that Petitioner can have his day in court?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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:

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

reported at *State of Oregon v. Kyei, 315 Or App 69 (2021)*; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION**[] For cases from federal courts:**

The date on which the United States Court of Appeals decided my case was _____.

[] No petition for rehearing was timely filed in my case.

[] 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 a 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. § 1254(1).

[X] For cases from state courts:

7/7/2022

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix D.

[] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment of the US Constitution, Section One

“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; nor deny to any person within its jurisdiction the equal protection of the laws.”

Oregon Uniform Trial Court Rules -- UTCR 5.050(1)

“There must be oral argument if requested by the moving party in the caption of the motion or by a responding party in the caption of a response. The first paragraph of the motion or response must include an estimate of the time required for argument and a statement whether official court reporting services are requested.”

STATEMENT OF THE CASE

4

This case presents a novel question of federal constitutional law. It is the simplest and most direct vehicle to address Oregon State courts' inconsistent application of well-settled law to pro se litigant, such as the selective refusal to conduct a due process hearing that is mandated by State law and well-established precedent. Petitioner presents this violates the due process and equal protection clauses of the United States Constitution. The relevant issue is well-preserved below. The relevant facts are straight-forward and uncontested.

On 9/18/2018, a motion to expand the evidentiary record in this case was filed on behalf of Petitioner that requested a hearing. The opposing party was the State of Oregon. The motion sought to expose and detail the categorically false testimony from the State's witnesses while under oath before the trial court on 3/30/2018, by using evidence from the State's own files and independent government agencies. The record indicates that the State representatives had conflicts of interest. On 3/30/2018, the trial court had based its oral ruling on the State witnesses' false sworn statements. The Petitioner motion and request for a hearing was filed before the trial court's judgment, which was also based on the State falsehoods, was drafted by the State and was then entered into the court record on 9/27/2018.

The 9/18/2018 Petitioner motion before the trial court was captioned:
"MOTION FOR ORDER ALLOWING OBLIGOR [PETITIONER] TO
SUPPLEMENT THE EVIDENTIARY RECORD" and

“ORAL ARGUMENT REQUESTED.”

The motion further stated in the first paragraph that:

“Obligor [Petitioner] estimates the time of oral argument hearing to be 15 minutes. Official court reporting services are requested.”

The Petitioner motion and captions exactly followed the effective UTCR 5.050(1) before the trial court at that time, which stated:

“There must be oral argument if requested by the moving party in the caption of the motion or by a responding party in the caption of a response. The first paragraph of the motion or response must include an estimate of the time required for argument and a statement whether official court reporting services are requested.”

The record also shows that the support for the Petitioner’s motion before the trial court, and the issue for which the motion sought oral argument, was included in the discovery materials that the State had sent to Petitioner by regular USPS mail on 3/29/2018, the night before the 3/30/2018 false sworn statements, and were therefore not delivered until sometime after the trial and oral ruling.

By order dated 9/19/2018, the trial court denied the 9/18/2018 Petitioner motion, but without conducting the oral argument that was requested, or providing any other opportunity for Petitioner to be heard or to make any record for appellate review at any time. The entire trial court order was:

“Obligor [Petitioner’s] motion for order allowing obligor to supplement the evidentiary record is denied.”

An example of the fallouts from the trial court basing its ruling on the false sworn statements, is that Petitioner was then required to pay \$995 per month over 132 months for a total of \$131,340. Had the falsehoods and tainted record been corrected by way of the oral argument hearing that was denied, then in the worst-case scenario, Petitioner would have been required by the trial court to pay only a maximum of \$100 per month over 132 months for a total of \$13,200. The court would more likely have ruled that the State did not establish personal jurisdiction.

Petitioner appealed the resultant 9/27/2018 judgment that abided by the oral ruling of 3/30/2018, which in turn was based on State witnesses' false statements. Before the Oregon Court of Appeals, the State argued that the trial court correctly exercised its discretion to deny Petitioner's motion, and therefore did not err.

By its order dated 2/24/2021, the Oregon Court of Appeals denied any oral argument in the appellate process against *pro se* Petitioner, who was up against all the resources of the State of Oregon. In his Reply briefing, *pro se* Petitioner highlighted the gravamen of the trial court error on appeal as follows:

“The trial court erred by summarily denying Petitioner’s motion without a hearing”.

The subsequent 10/06/2021 published opinion and ruling from the Court of Appeals concluded that:

“Appellant’s [Petitioner’s] challenges also do not establish any legal error or provide any basis for reversal of the circuit [trial] court’s judgment.”

See *State of Oregon v. Kyei*, 315 Or App 69 (2021) at 70.

However, in *Zehr v. Haugen*, 318 Or 647, 652-53, 871 P2d 1006 (1994), the Oregon Supreme Court had made it clear that:

“UTCR 5.050(1) is expressed in mandatory terms: “There must be oral argument” if requested in the form specified. If the text of the rule leaves any doubt, the history of the rule’s creation demonstrates conclusively that UTCR 5.050(1) requires a trial court to grant oral argument if it is requested in the form specified. See Minutes, Uniform Trial Court Rules Committee, February 23, 1985, p. 3 (listing considerations militating in favor of allowing parties to obtain oral argument as a matter of right). Neither is the rule an empty gesture. Oral argument is an important way in which counsel communicate to the court the efficacy of their clients’ positions, and it is the only opportunity for the court fully to inform itself through a process of questions and answers. The trial court erred in refusing plaintiffs’ request, made in the form specified in the rule, for oral argument.”

And the same Court of Appeals that had ruled against Petitioner’s appeal on 10/06/2021 in *State of Oregon v. Kyei*, 315 Or App 69 (2021), had ruled the opposite by ruling in favor of this same oral argument and hearing issue less than 8 months earlier on 2/18/2021 in *Caswell v. Day Law and Associates, P. C.*, 309 Or App 367 (2021). Specifically, at 309 Or App 376, under footnote 4, the court reiterated its adherence to the *Zehr* precedent with approval as follows:

“The court may have been required to hold a hearing for an additional reason as well. UTCR 5.050 requires a hearing on a motion when requested and so noted in the motion’s title, as was the case here. See *Zehr v. Haugen*, 318 Or 647, 652-53, 871 P2d 1006 (1994).”

Petitioner was thus denied the fundamental right to have his day in court as guaranteed under the Fourteenth Amendment of the United States Constitution. The record indicates that the difference from the reversals in *Caswell* and *Zehr*, was that Petitioner appeared *pro se*, and was not allowed any hearing or any oral

argument or to make any form of corrective record for appellate review at any time. At its discretion, the Oregon Supreme Court declined to reconsider *pro se* Petitioner's appeal and quest to be heard. Hence this Petition for Certiorari.

REASONS FOR GRANTING THE PETITION

The uneven application of State law and well-established precedent by the Oregon courts is a novel issue implicating federal due process and equal protection rights in a way that affects all litigants across the country. Also, the fundamental right to have their day in court is guaranteed to the people under the Fourteenth Amendment of the United States Constitution. The issue must therefore be clearly addressed by the United States Supreme Court to show the entire country that each person is equal under the law and before the Court, and that each person is equally entitled to due process and equal protection across the land. This case presents to this Court, the perfect opportunity to do so for the American public.

Counsel and Amici Curiae who assist the many underprivileged and *pro se* litigants that appear before the courts, are also available to further argue or advise the Court on this issue and in this case, at no cost to Petitioner. This is because the irregular non-application of settled State law and precedent to similarly-situated persons, so far departed from the accepted and usual course of judicial proceedings and equal justice, as to call for an exercise of this Court's supervisory power.

This case presents that the uneven application of well-settled State law to separate people in equivalent positions, is an issue of critical national import that equally affects the quest for truth for everyone who appears before the courts of the United States. The right to be treated the same before the law and to be allowed to have one's day in court should belong to "the vital personal rights essential to the

orderly pursuit of happiness by free men". *Loving v. Virginia*, 388 US 1 (1967). The Oregon courts' disparate treatment of the identical issue for different types of litigants furthers no legitimate State interest which can justify differential rulings.

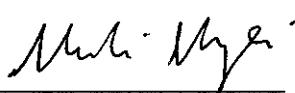
By blocking Petitioner from having a hearing and to develop the record, as mandated by State law, the State courts deprived Petitioner of his day in court and blocked any opportunity to create a record for subsequent appellate review, thus deciding an important issue of due process and equal protection to be in direct conflict with the Fourteenth Amendment of the United States Constitution.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kofi Kyei



Date: 8/20/2022