

OCT 18 2022

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No. 22-6114

IN THE

SUPREME COURT OF THE UNITED STATES

PHILLIP S. GRIGALANZ - PETITIONER

VS.

KRISTI L. GRIGALANZ - RESPONDENT

ON A PETITION FOR WRIT OF CERTIORARI TO THE
INDIANA COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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ORIGINAL

QUESTIONS PRESENTED FOR REVIEW

- I. SHOULD RESPONDENT BENEFIT FROM A CONSPIRACY TO COMMIT A FELONY CRIME?
- II. DOES THE CONDUCT OF THE INDIANA COURTS VIOLATE PETITIONER'S FIFTH AND FOURTEENTH AMENDMENT RIGHTS?

LIST OF PARTIES

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

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner prays that a Writ of Certiorari issue regarding the judgment below:

The opinion of the highest court to review the merits of the case appears at Appendix A and is unpublished.

JURISDICTION

The date on which the highest state court decided my case was 7/8/22. A copy of that decision appears at Appendix A.

Rehearing was denied on 8/9/22. A copy of that decision appears at Appendix E.

The state court of last resort denied discretionary review on 10/11/22. A copy of that decision appears at Appendix G.

The jurisdiction of this Court is invoked under 28 USC 1257(a).

Constitutional and Statutory Provisions Involved

U.S. Constitution, Amendment 5:

"[...] nor be deprived of life, liberty or property without due process of law; [...]"

U.S. Constitution, Amendment 14:

"[...] nor shall any State deprive any person of life, liberty or property, without due process of law; nor to deny to any person within its jurisdiction the equal protection of the laws [...]"

STATEMENT OF THE CASE

On 8/17/15 Respondent filed a Petition for Dissolution of Marriage. On 11/13/15 Petitioner filed a Motion for Modification of Custody. This motion was denied without hearing. On 5/10/16 the Trial Court issued a Summary Decree of Dissolution of Marriage. Absent in the decree was any language⁴ pertaining to Petitioner's stepdaughter.

On 8/23/16 Petitioner filed a Motion to Modify. This motion was denied without hearing. On 8/31/16 Petitioner filed a Motion to Reconsider. This motion was denied without hearing.

On 9/19/16 Petitioner filed a Motion for Change of Venue. This motion was denied without hearing. On 11/8/16 Petitioner filed a Motion to Correct Error citing Petitioner's 14th Amendment rights. This motion was denied on 11/14/16. An appeal ensued which was dismissed with prejudice for want of timely filing of an Appellant's Brief.

On 11/12/19 Petitioner filed a Petition for Parenting Time which was returned without review. An appeal ensued which affirmed the Trial Court due to Petitioner's inability to secure vital documents for the appendix. In this appeal, Petitioner addressed his 5th and 14th Amendment rights. Certiorari was denied on 11/19/21. Rehearing was denied on 1/10/22.

On 1/13/22 Petitioner filed a Petition to Modify before a new panel of the trial court. On 1/14/22 the Trial Court dismissed same suo sponte. On 2/2/22 Petitioner filed a Motion to Correct Error, which was denied on 2/23/22. An appeal ensued. The Indiana Court of Appeals affirmed the Trial Court on 6/8/22 on the basis

that the first appeal was dismissed with prejudice. Petitioner filed a Petition for Rehearing addressing the fact that a criminal conspiracy existed which delayed Petitioner's Appellant's Brief. On 8/9/22 the Petition for Rehearing was denied. Petitioner filed a Petition to Transfer re-iterating the criminal conspiracy and addressing Petitioner's 5th and 14th Amendment rights. On 10/11/22 the Indiana Supreme Court denied discretionary review.

This petition follows.

REASONS FOR GRANTING THE PETITION

I. RESPONDENT SHOULD NOT BENEFIT FROM A CONSPIRACY TO COMMIT A FELONY CRIME.

Petitioner established in his Petition for Rehearing and Petition to Transfer that Respondent engaged the Sheriff of Jersey County, IL into a conspiracy to obstruct Petitioner's filings with the Indiana Court of Appeals and Indiana Supreme Court (Appendices D, F). This obstruction led to Petitioner's first appeal being dismissed with prejudice (Appendix H). This dismissal was upheld by the Indiana Supreme Court (Appendix I).

The Indiana Code outlaws this conduct at I.C. 35-44.1-2-2(a)(3) as a level 6 felony. The legislative intent of this statute is clear: To deter interference with the Indiana courts. Despite this statute, Respondent and the Sheriff of Jersey County, IL (acting under color of Illinois law) chose to delay Petitioner's Appellant's Brief by 22 days-- sufficient to cause the appeal to be dismissed with prejudice pursuant to Indiana Appellate Rule 45(B)(1)(b) (Appendix H).

The FEDERAL courts (and indeed this Court) have authority to review and action this matter under existing case law. *Ortiz v. Downey*, 561 F.3d 664, 671 (7th Cir. 2009) (stating that the Constitution protects a prisoner's right of access to the courts and enjoining state actors against impeding a prisoner's efforts to pursue legal claims).

Petitioner's position is that Respondent has violated Petitioner's Fifth Amendment right of access to the courts -- in violation of the Indiana Code and creating an unanswered question at-law as to how to proceed with such a case and instance. It is also Petitioner's

position that it is of National import for the Court to assert its authority and to give the lower courts guidance as to how to navigate such an interstate conspiracy. Finally, Petitioner argues that the State of Indiana has failed to enforce its own laws in a manner congruent with the legislative intent of those laws and thus requiring Petitioner's invocation of this Court's authority for the third time.

II. THE CONDUCT OF THE INDIANA COURTS VIOLATES PETITIONER'S FIFTH AND FOURTEENTH AMENDMENT RIGHTS.

As stated in Argument I, the State of Indiana has permitted Respondent to benefit from the proceeds of a felony crime of which Petitioner is the victim through multi-phase refusal to investigate and/or prosecute Respondent under I.C. 35-44.1-2-2(a)(3) and by refusing to advance Petitioner's appeals. Petitioner also argues that this also acts as a state actor impeding Petitioner's efforts to pursue legal claims under the *Ortiz v. Downey* principle. This directly violates Petitioner's Fifth and Fourteenth Amendment rights of access to process by removing Petitioner's access-- albeit obliquely-- to the Indiana Court of Appeals. The State of Indiana has also violated Petitioner's Fourteenth Amendment right of equal protection under the law by failing to protect Petitioner's rights established in the Indiana Code to an unimpeded access to the Indiana Courts.

Petitioner supports the position that the State of Indiana has also diverged from standing *starre decisis* of the Federal Courts (including the seventh circuit). Federal courts have (since

1988) used the date of deposit into a prisoner's legal mail system as the effective date of filing. This practice-- known as the "prisoner mailbox rule"-- protects a prisoner's right of access to the courts by assuring that malactors cannot quench a prisoner's ability to communicate with the courts. *Houston v. Lack*, 487 U.S. 266, 275-76, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988). This practice is also adopted by the Seventh Circuit Court of Appeals (of which Indiana is a member). *Ingram v. Jones*, 507 F.3d 640, 643 (7th Cir. 2007).

While Petitioner recognizes that this Court lacks the jurisdiction to force the State of Indiana to adopt its own "prisoner mailbox rule", Petitioner argues that this Court does have the authority to enforce the Constitution of the United States by vacating the Indiana Court of Appeals' decision to affirm the trial court (despite same being a clear violation of Petitioner's rights at-law.

CONCLUSION

Respondent and the State of Indiana have violated Petitioner's rights under the Indiana Code and the Constitution of the United States. Courts have an inherent responsibility to ensure that access to the courts remain unimpeded and it is the responsibility of all state actors in the chain of access to a prisoner to protect a prisoner's unhampered access to the courts.

The Petition for Writ of Certiorari should be granted.

/s/

Phillip S. Grigalanz, pro se
Petitioner