

25-6126

No. _____

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

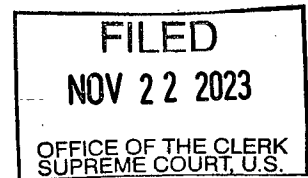
WAYNE ENGLISH,

Petitioner,

V.

PARCEL EXPRESS, INC.,

Respondent.



ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF TEXAS

PETITION FOR A WRIT OF CERTIORARI

WAYNE ENGLISH

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QUESTIONS PRESENTED

The Texas judiciary is obligated to provide due process rights under the Fourteenth Amendment of the United States Constitution and Article 1, section 3a, 15, and 19 of the Texas Constitution to all litigants in state court whether they are state license attorneys or appearing pro se. The Texas Courts' throughout this case has shown only a de minimis effort in allowing Petitioner to present his case. Beginning in the Justice Court through the Texas Supreme Court, it is evident that the courts have violated the due process rights of Petitioner based on his lack of legal representation. A fundamental requirement of due process is "the opportunity to be heard." *Grannis v. Ordean*, 234 U.S. 385, 234 U.S. 394. "It is an opportunity which must be granted at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545 (1965). The Texas Courts while meeting the basic covenants of the Federal and State Constitutions, failed to provide Petitioner a non-discriminatory, fair and proper hearing that meets the standards required under the due process clause. The Petitioner was charged an appeal bond five times the statutory amount; the courts' discarding, misplacement, or disappearance of only the Petitioner's court filings, pleadings, and motions in both state and appellant courts whether hand delivered or mailed; the court's refusal to acknowledge Petitioner's jury trial request; the courts'

refusal to hold hearings on the Petitioner's motions; and the courts' allowance of testimony without personal knowledge in violation of prior decisions of the Texas Supreme Court and the Texas Rules of Evidence.

The questions presented are:

1. Can the State of Texas through its judiciary ignore the state's own legislative intent, the Texas Bill of Rights, the Federal Constitution and the due process and equal protection rights of litigants because they cannot afford nor have any means to acquire legal representation.
2. Can the State of Texas lose documents and pleadings, refuse to hold hearings on properly and timely filed motions, ignore the submissions of government documents and to continually fine, sanction, and award attorney fees against litigants because they are not able to hire, retain, and financial support their own selected counsel.

RELATED PROCEEDINGS

This case arises from and is related to the following proceedings in the Justice Court, the County Court at Law 4, and the Fifth Court of Appeals in Dallas County, Texas, and the Supreme Court of Texas.

-English v Parcel Express, Inc., Justice Court Dallas County Precinct 2 Place 2, No. JS-1800658E, judgment November 5, 2019.

-English v Parcel Express, Inc., Dallas County Court at Law 4, No. CC-20-00291-D, judgment August 7, 2020.

-English v Parcel Express, Inc., Court of Appeals Fifth District of Texas at Dallas, No. 05-20-00961-CV, judgment November 7, 2022.

-English v Parcel Express, Inc., Supreme Court of Texas, No. 23-0255, judgment June 2, 2023, Motion New Trial judgment July 28, 2023.

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Appendix A – Texas Supreme Court decision denying Petition for Review (June 2, 2023) and denial of rehearing (July 28, 2023).

Appendix B – Texas Fifth Court of Appeals Memorandum Opinion denying appeal (November 7, 2022).

Appendix C – Texas County Court of Law 4 denying the lawsuit (August 7, 2020) and granting the motion for sanctions (September 8, 2020).

Appendix D – Texas Justice Court denial of the lawsuit and award of \$2,500 in sanctions (November 5, 2019) and the notice of appeal requesting a Jury Trial (January 3, 2020).

Appendix E – relevant portions of the Texas Constitution.

Appendix F – Relevant portion of Chapter 10 of the Texas Civil Practice and Remedies Code.

Appendix G – USPS tracking report (12/5/2019), intranet tracking report signed by postmaster (12/7/2019), and screen shot of phone call to USPS customer support center (12/6/2019).

Appendix H – Denial by the Justice Court of Petitioner's freedom of information request.

Appendix I – Copies of pleadings filed a second time with the original filing date whited out.

TABLE OF AUTHORITIES

<i>Armstrong v. Manzo</i> , 380 U.S. 545 (1965)	2, 9, 22
<i>Broddie v. Connecticut</i> , 401 U.S. 371 (1971)	22
<i>Covey v Town of Somers</i> , 351 U.S. 141 (1956)	22
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Statutes

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Constitution

Texas Constitution Article 1, Sec. 3	19,22
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IN THE SUPREME COURT OF THE UNITED STATES

WAYNE ENGLISH,

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V.

PARCEL EXPRESS, INC.,

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ON PETITION FOR A WRIT OF CERTIORARI TO THE
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PETITION FOR A WRIT OF CERTIORARI

Petitioner Wayne English respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Texas.

OPINIONS BELOW

The Supreme Court of Texas' denying review (App.A) and the denial of the rehearing (App. A) are unreported. The Court of Appeals Fifth District of Texas at Dallas Memorandum Opinion (App.B), the Dallas County Court at Law 4 (App. C), and the Dallas County Justice Court Judgment (App. D) are unreported.

STATEMENT OF JURISDICTION

The judgment of the Supreme Court of Texas denying rehearing was filed on July 28, 2023. App. A. This Court has jurisdiction pursuant to 28 U.S.C. #1257.

STATUTES INVOLVED

The Fourteenth Amendment of the United States Constitution provides in relevant part: 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.

The Texas Constitution Article 1, section 3a provides in relevant part: Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin. App.E.

Texas Constitution Article 1, section 15 provides in relevant part: The right of trial by jury shall remain inviolate. Id.

Texas Constitution Article 1, section 19 provides in relevant part: No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land. Id.

Texas Civil Practice and Remedies Code, Chapter 10.001(1) & (3): The signing of a pleading or motion as required by Texas Rules of Civil Procedure constitutes a certificate by the signatory that to the signatory's best knowledge information, and belief, formed after reasonable inquiry: (1) the pleading or motion is not being presented for any improper purpose, including to harass or to cause unnecessary delay or needless increase in the cost of litigation; (3) each allegation or other factual contention in the pleading or motion has evidentiary support App. F.

Texas Rules of Evidence 602: A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.

STATEMENT OF THE CASE

This case presents an indisputable conflict over the court's ability to meet the standard required by the due process clause while its actions provide evidence that the efforts were not made "at a meaningful time in a meaningful manner." *Armstrong v Manos*, 380 U.S. 545, 552 (1965).

JUSTICE COURT

Petitioner, Wayne English, filed suit against Parcel Express, Inc., a Texas independent mailing servicer, for failing to transfer his priority mail package containing his brief to the Third Circuit Court of Appeals, for seven days, making the document late. Because of the actions of Parcel, Petitioner was forced to draft a motion of extension of time, reprint and professionally rebind his brief, and send the documents to the Third Circuit by overnight mail. Petitioner sued for the extra expenses he incurred, for court cost, and for the negligence in the handling of his USPS priority mail.

The package was mailed on November 30, 2018, and the brief was due on December 6, 2018. Attached to his complaint was a December 5, 2018, USPS tracking report that provided "USPS awaiting your item"; a screen shot of a one hour phone call to USPS customer service on December 6th, which confirmed the postal service did not have the package; a December 7, 2018 USPS intranet tracking report produced at the Mesquite, Texas post office showing no movement of the mail up to and including December 7th signed by the postmaster "No Physical Scan @ USPS"; and an overnight mail receipt of Petitioner's package mailed a second time. App. G. Defendant Parcel hired

counsel and filed a timely answer without any evidence or any documents attached.

In the Justice Court, parties are not required to have any legal representation for any entity including business companies or corporations and discovery is not allowed unless a motion is filed in the court.

Approximately six months later, Parcel filed a motion for sanctions alleging that the mail was delivered on December 10th, 2018, and that the Petitioner harassed the Defendant and the lawsuit was filed without any evidentiary support and for an improper purpose. Attached to the motion was an affidavit of Richard Swanner, owner of Parcel, providing that the priority mail package was delivered to USPS on November 30, 2018. No evidence or documents were attached to the motion that supported Parcel's allegation and the affidavit was made without any personal knowledge that Swanner was at the store at the time it was mailed or that he had reviewed any document or log concerning the transfer of the package. Rule 602 of the Texas Rules of Evidence require that "A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." Tex. R. Evid. 602.

At trial the court denied the lawsuit and ordered Petitioner to pay \$2,500 in attorney fees. App.D. Chapter 10 of the Texas Civil Practice and Remedies Code requires the party to prove that the pleading was filed for an improper purpose or harassment and that the litigant had no evidentiary support for each allegation or factual contention. At that time Petitioner had only filed the lawsuit and attended the hearing, no discovery was allowed.

During the hearing, Petitioner noticed that the judge was awarding attorney fees to every represented litigant against every litigant that had not retained counsel. To confirm his suspicions, Petitioner filed a freedom of information request to see over the last year, all cases that proceeded to trial and the resulting court ruling. The request was denied and both the clerk and the Justice Court judge Karen Whitfield, refused to answer any questions concerning the awarding of sanctions and attorney fees to almost all non-represented litigants. App. H.

Pursuant to newly discovered evidence, Petitioner filed a motion for new trial challenging the denial of his claims and the awarding of sanctions for his actions in filing the lawsuit and attending the trial. The new evidence, which was attached to his motion, consisted of the discovery of a Stamps.com IT scan sheet

showing the movement of Petitioner's priority mail. Stamps.com is the mailing and tracking system used by Parcel in their receipt and delivery of USPS, FedEx, and UPS mail. The document confirmed the package was purchased at Parcel's on November 30, 2018, and that for the next seven days the mail was neither delivered to the postal service nor had it moved from Parcel. The court denied the motion for new trial and left in place the awarding of attorney fees and sanctions.

Petitioner filed an appeal and requested a jury trial but was told he had to submit \$2,500 to the court for his appeal bond. App. D. In the Justice Court, a plaintiff filing an appeal is required to submit a bond in the amount of \$500. "If the Plaintiff wishes to appeal the judgment of the court, the plaintiff or its agent or attorney shall file a bond in the amount of \$500 with the judge no later than the 20th day after the judgment is signed". Tex. R. Civ. P., Part V-Rules of Practice in Justice Courts, Rule 560(a). Both the Judge and the clerk refused to lower the bond amount. Due to his financial hardship, Petitioner was forced to sell his car to get the appeal bond money.

COUNTY COURT AT LAW NO. 4

After timely submission of the notice of appeal, Petitioner filed a motion for the return of the over payment of appeal bond which was granted by the Court.

Approximately four months later \$2,000 was returned to Petitioner. The court ordered mediation which was unsuccessful. In his notice of appeal, Petitioner made demand for jury trial which was refused by the County Court. App.D.

Parcel filed several motions and pleadings including motion for summary judgment, motion to increase appeal bond, Parcel's original counterclaim, and motion for sanctions. On Tuesday July 21, 2020, Petitioner filed several responsive pleadings and motions that were hand delivered. The filings included a motion for continuance, response to motion for summary judgment, response to Parcel's counterclaim, response to motion for sanctions, and Petitioner's motion for summary judgment and Petitioner's motion for sanctions. Although all the pleadings were hand delivered to the clerk for the county court on July 21, 2020, all filings by Petitioner were lost, misplaced, and/or discarded by the clerk. On August 3, 2020, Petitioner refilled and hand delivered the same pleadings he filed in July. The pleadings in the docket show the previous documents had the July date "whited out" and a statement that this was the second submission.

App. I. All of Petitioner's pleadings filed in July now show the August 3, 2020 date. No document or pleading filed by Parcel was lost, misplaced, or missing from this case. All fillings submitted by Parcel's counsel are listed in the docket and were made part of the record on appeal.

The County Court denied Petitioner's claims within his complaint and scheduled Parcel's motion for sanctions. App. C. The court denied Parcel's other motions and the counterclaim, and refused to hear any motion or pleading filed by Petitioner including his response, the motion for summary judgment or the motion for sanctions. At the August 5, 2020 trial the court could not locate nor reference the responses and pleadings filed by Petitioner.

On September 2, 2020 the trial court granted Parcel's motion for sanctions ruling pursuant to Texas Practice and Remedies Code chapter 10, Petitioner had harassed and improperly filed his original petition in the Justice Court and that he had no evidentiary support to his allegations concerning the lack of the movement, delivery, and the transfer of his priority mail to the postal service. App. C, G. The Court would order Petitioner to pay \$4,500 in attorney fees as sanctions. Id. The Court refused to recognize Petitioner's submission of USPS tracking reports, the screen shot of the phone to the postal service and the intranet tracking report signed by the postmaster, all submitted with Petitioner's original complaint. App. G. The Stamps.com IT scan report was attached to Petitioner's motion for new trial in the Justice Court. Parcel did not submit any documents, logs, or receipts to support that the package was transferred to the postal service in November 2018. Additionally, the court ruled that the

declaration of Richard Swanner was properly admitted evidence even though he did not have any personal knowledge. Tex. R. Evid. 602 (A witness may testify to a matter only if evidence is introduced ... that the witness has personal knowledge). The Texas Supreme Court has provided that under Chapter 10 of the Civil Practice and Remedies Code, "Incompetent evidence, surmise, or speculation will not suffice for the proof required." *Unifund CCR Partners v. Villa*, 299 S.W.3d 92 (Tex. 2009)(per curiam). An affidavit without personal knowledge is insufficient to support an award of sanctions against Petitioner. *GTE Communications Systems Corp. v. Tanner*, 856 S.W.2d 725 (Tex. 1993)(The only evidence plaintiffs offered ... was the testimony of Charles James ..." and he had "no personal knowledge ... Under these circumstances, James' testimony is no more than mere surmise.").

At the hearing, Petitioner attempted to offer USPS tracking reports of mailings sent from Parcel and voice recordings of calls to the postal service that confirm the postal service did not have his package as rebuttal evidence but was denied by the Court. The County Court denied Petitioner's motion for new trial that had attached the additional evidence.

IN THE COURT OF APPEALS FIFTH DISTRICT TEXAS AT DALLAS

The Texas Fifth District Court of Appeals lost several filings that were hand delivered. This included the docketing statement and the statement of inability to afford cost. Each document had to be submitted a second time. After the record was sent to the court, several pleadings and motions filed by Petitioner had either disappeared or were removed from the record. This forced Petitioner to file a motion to supplement the record which was unable to supply all filings as the clerk would not provide records that were not in the docket or were not reproducible because they would not print. Several records filed by Petitioner would show up online but could not be printed or confirmed filed. All of the pleadings and motions filed by Parcel were readily available and would print. None of the records filed by Parcel had to be filed a second time and none of their filings disappeared or could not be printed from the docket.

After the parties timely submitted briefs, the Court of Appeals affirmed the decision reached by the County Court at Law 4. App. B. The Court of Appeals ruled that the affidavit by Richard Swanner without personal knowledge was the best evidence and it supported the judgment and that the Petitioner had no evidentiary support. This ruling conflicted with the Rule 602 of the Texas Rules of Evidence concerning testimony without personal knowledge and stare decisis by the Texas Supreme Court in GTE, supra. Additionally, the Court ignored the

tracking reports, the Stamps.com IT Scan Report, the intranet tracking report signed by the postmaster and the screen shot of Petitioner's phone to USPS customer support. App. G. The Court did reference Petitioner's evidence in its opinion while simultaneously stating that he had no evidentiary support. The Court denied Petitioner's motion for new trial.

THE SUPREME COURT OF TEXAS

The Supreme Court of Texas denied Petitioner's Petition for review and the motion for new trial without issuing any opinion or memorandum. App. A.

REASONS FOR GRANTING THE PETITION

Petitioner, a Texas resident, a federal constituent, and a United States citizen was denied justice by the discriminatory and continuous actions of the Texas Judiciary. Petitioner had firsthand knowledge of the Justice Court leveling sanctions, fines, and attorney fees indiscriminately against every non-represented litigant. The Texas Courts refused a freedom of information request, demands for a jury trial, and issued an order that Petitioner had to submit an appeal bond five times the statutory amount. Tex. Const. Art. 1, Sec. 13, 15; Tex. R. Civ. P. 560. In its continuous action in violating the due process clause and the property rights of a litigant, the Texas courts lost, misplaced or discarded filed pleadings, evidence and petitions, refused to hold hearings on timely submitted motions,

and closed its eyes to USPS tracking reports as evidence of the movement and delivery of the U. S. mail. U.S. Const. 5 & 14, Tex. Const. Art 1, Sec. 3, 3a, 19.

The trial court abused its discretion in assessing sanctions against Petitioner because Parcel presented no evidence to support the findings that English violated chapter 10 of the Civil Practice and Remedies Code by filing suit against Parcel. Petitioner's original complaint had attached two USPS tracking reports showing the lack of movement of his mail, and a screen shot of his phone to the postal service's customer support line confirming they had not received the priority mail package. Additionally, the only document submitted by Parcel was the affidavit of Mr. Swanner which was without personal knowledge and was unsupported, speculative, and not competent evidence. Tex. R. Evid 602, GTE, *supra*.

The burden of proof rest with the party initiating the motion for sanctions. See GTE Communications Systems Corp. v. Tanner, 856 S.W.2d 725 (Tex. 1993)("A party seeking sanctions has the burden of establishing his right to relief.").

The affidavit of Mr. Swanner who had no personal knowledge of the transactions is in violation of several decisions by the Supreme Court of Texas and is insufficient to support a claim for sanctions. Tex. R. Evid 602, GTE, *supra*.

The Texas Supreme Court in GTE explained that “The only evidence plaintiffs offered ... was the testimony of Charles James ...” and he had “no personal knowledge ...” *Id.* The Court went on to explain that the testimony presented without any personal knowledge was insufficient for awarding sanctions. “Under these circumstances, James’ testimony is no more than mere surmise.” GTE, *supra*.

The court records also provided that Petitioner had submitted several USPS tracking reports that are federal government documents, authentic, easily verifiable, and provided the movement, lack of movement, and the delivery of Petitioner’s priority mail. The allegation that the lawsuit was filed for an improper purpose has no evidentiary support is against the weight of the evidence submitted and Parcel did not supply any log, receipt, or document in support of their allegation. At that time, Petitioner had only filed the lawsuit as discovery was not allowed in the Justice Court unless a motion is filed. The facts were undisputed, Petitioner went to Parcel to mail a federal brief to the U. S. Court of Appeals in Philadelphia and the package did not move for seven days making the filing late.

After trial in the Justice Court, Petitioner was charged with \$2,500 in attorney fees as sanction although he had only filed the lawsuit and attended the trial. App. D. No discovery is allowed and attorneys are not required for any entity in the Justice Court. Tex. R. Civ. P., Part V-rule 507. The Court also issued an order for Petitioner to submit an appeal bond five times the amount allowed. Tex. R. Civ. P. 560. After he observed his treatment and the treatment of other non-represented parties, Petitioner filed a freedom of information request to the Justice Court. Petitioner wanted to research the actions of the court and to confirm his suspicions that the court was issuing fines and sanctions against only litigants based on whether they had legal counsel and not on the facts of the case. The Court denied the request. App. H.

VIOLATIONS OF STATE AND FEDERAL CONSTITUTIONS

The 5th and 14th Amendments of the U. S. Constitution guarantee legal equality. U.S.Const. 5, 14. The due process clause within the 5th and 14th Amendments require that the federal and state governments must follow fair and equal legal procedures in matters pertaining to an individual's rights to life, liberty, and property. Id. Just following rudimentary efforts to comply with the due process clause is insufficient. In this case, missing and discarded filed pleadings, excessive amounts required for an appeal bond, the denial of a jury

trial, refusal by the court to hold hearings on timely and properly filed motions, and having the court docket incomplete and missing only the Petitioners pleading shows the Texas Judiciary's complete disregard of a parties right to due process. Id; Tex. Const. Art. 1, Sec. 3, 3a, 13, 15, 19. To comply with due process clause a trial court must hold a hearing "at a meaningful time and in a meaningful manner." *Manzo, supra*. A fundamental requirement of due process is "the opportunity to be heard." *Grannis v. Ordean*, 234 U.S. 385, 394. The courts do not allow insufficient efforts to comply with the due process clause. *Manzo* at 545 (Failure to give petitioner notice of the proceeding deprived him of his rights without due process of law); *Covey v Town of Somers*, 351 U.S. 141 (1956)(Notice to an incompetent person does not measure up to the requirements of the due process clause of the Fourteenth Amendment.); *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306 (1950)(Notice by publication was insufficient under the Due Process Clause to known beneficiaries.); and *Broddie v. Connecticut*, 401 U.S. 371 (1971)(the Due Process Clause of the Fourteenth Amendment requires that appellants be afforded an opportunity to go in court without payment of fees.).

The Texas judiciaries violated both the federal and state constitutions and usurp its authority to the detriment of Petitioner and his rights. Missing pleadings, denial of a jury trial, excess amounts required for appeal bonds, and

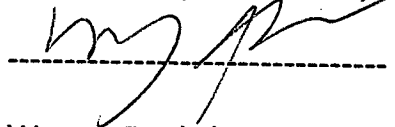
the refusal to hold hearings on timely and properly filed motions all are in contravention of the rights of the parties and the obligation of the State of Texas.

CONCLUSION

The Court should grant the petition for writ of certiorari.

Date October 25, 2023

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE

The word processing used to write this brief reports its length at 3,993 words including the contents that may be excluded under Rule 33.



Wayne English

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this pleading was sent via fax, mail, e-mail, electronic service, or hand delivered to all counsel of record on October 25, 2023.



Wayne English