

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

SEALED
Petitioner

vs.

SEALED
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE STATE OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

Question Presented

- 1. Does the decision of the Florida State Courts to deny the Petitioner opportunity for belated appeal of the Lower Court's decision to terminate her parental rights, due to the Florida Appellate Court's creation of any adversity which hindered the Petitioner violate the Petitioner's Fifth and Fourteenth Amendment right to a fair proceeding, right to equal protection of the law and due process, thereby creating manifest injustice?**

LIST OF PARTIES

[X] 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 the 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 at Appendix
____ to the petition and is

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 is unpublished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 is unpublished

For Cases from State Courts:

The opinion of the highest state court to review the merits

reported at _____; or
 has been designated for publication but is yet reported to;
or
 is unpublished

No opinion was given by the Fourth District Court of Appeals
[] reported at _____; or,
[] has been designated for publication but is not yet reported
to; 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[] is unpublished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 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)

[X] For cases for State Courts:

The date on which the Supreme Court of Florida decided my case was NOVEMBER 2nd 2022.

[X] The Supreme Court of Florida dismissed my case on November 2nd, 2022 stating that no motion for Rehearing or reinstatement would be entertained

The Lower Court, the Fourth District Court of Appeals, denied my Motion for Rehearing, Motion for Clarification and Request for written opinion in the reference to the Petition for Belated Appeal (Petitioner for Writ of Habeas Corpus), denied on July 26th, 2022,

[] 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

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution Fifth Amendment guaranteeing a fair proceeding.

United States Constitution Fourteenth Amendment right to Due Process and Equal Protection by the law. The right to access the court and fairly present an appeal and the treatment of similarly situated individuals.

Florida Law, enumerated a Florida Statute Section 39.815 governing a parents right to appeal, Florida Rule of Appellant Procedure 9.030 (b)(1)(A), Jurisdiction of Courts and Florida to review final orders of Lower Tribunals

STATEMENT OF THE CASE

On July 27th, 2020, the Petitioner was arrested in Criminal Case Number 20CF006202AMB and subsequently charged by information for one (1) count of Second Degree Murder with a Firearm and one (1) count of Felon in Possession of Firearm or Ammunition (actual possession) for the death of J.C., the father of the minor children who are the subject of this petition: M.N.C., 2014, L.K.C., 2020, and D.Q.C. 2020.

On July 29th, 2020, the Fifteenth Judicial Circuit in and for Palm Beach County, State of Florida, found probable cause to shelter the children and the minor children referenced above were placed in the custody of M.C., the Paternal Grandmother, under protective supervision of the Florida Department of Children and Families.

On September 3, 2020, a Summons and Notice of Advisory Hearing for Termination of Parental Rights and Guardianship was filed in the Fifteenth Judicial Circuit, Palm Beach County, Florida and a Petition for Termination of Parental Rights of the Mother, (the Petitioner in the cause), Permanent Commitment and Manifest Best Interest was also filed. The Petitioner was represented by Gerald Salerno in these proceedings.

On September 16th, 2020 an Advisory Hearing for a Termination of Parental rights was held.

On August 21st, 2021, an Adjudicatory Hearing on Petition for Termination of Parental Rights was filed by the Florida Department of Children and Families.

On Sep. 30 2021, the Honorable Murphy of the Fifteenth Judicial circuit entered a Non-Final Order for Termination of Parental Rights of the Mother, Permanent Commitment and Manifest Best Interest.

The Petitioner subsequently entered a plea of guilty to the charges of Second Degree Murder and Possession of a Firearm by a Convicted Felon in her criminal case on October 15th, 2021 and signed a negotiated plea for 10 years in the Florida Department of Corrections. This was after she refused an 8 year plea offer that included voluntary termination of parental rights. On October 25th, 2021, the Petitioner's parental rights were terminated after the Honorable Murphy signed a Final Order or Termination.

A timely Notice of Appeal was thereafter filed by Gerald Salerno, Attorney for the Petitioner and on October 25th, 2021, the Fourth District Court of Appeal, State of Florida, filed an Acknowledgment of a new case, assigning the Petitioner DCA Case Number 4D21-3038.

On Oct. 25, 2021, the Fourth District of Appeal ordered that the Petitioner had fifteen 15 days from the date of its order to provide a conformed copy of the order being appealed. At which time, on October 31st, 2021, a copy of the LT's order was electronically remitted to the Fourth District Court of Appeal, on

October 25th, 2021 also ordered an Expedited Review of the Petitioner's Appeal in accordance with applicable Florida Case Law.

The Petitioner was subsequently assigned Kevin Coyle Colbert to represent her on appeal. On December 27th, 2021, Attorney Colbert filed a Motion to Withdraw as Appellate Counsel citing he had found no justiciable issue on appeal.

On December 28, 2021, the Fourth District Court of Appeal entered an order granting Attorney Colbert's Motion to Withdraw, giving the Petitioner (20) days from the date of the receipt of its order to submit a brief, to be served on the Florida Department of Children and Families.

On December 29th, 2021, the Fourth District Court of Appeal postmarked the envelope with its order inside to send to the Petitioner with just her initials, "L.S., the Mother" and included an incorrect DC number for the Petitioner.

On December 29, 2021, Attorney Colbert filed a Motion for Rehearing on his own behalf requesting that the Petitioner be granted (20) days from the receipt of her Record on Appeal to file her Initial Brief, since he was withdrawing as counsel and since she had been transported from the county detention to the Florida Women's Reception Center of the Florida Department of Corrections, while her Record on appeal was in route to her.

On December 30, 2021, the Fourth District Court of appeal ordered that Attorney Colbert's Motion for Rehearing be treated as a

Motion for Extension of Time to file an initial brief affording the Petitioner until January 20th, 2022 to serve and initial brief.

On January 6th, 2022, the order rendered on December 29th, 2021 by the Fourth District Court of Appeal which contained only the initials of the Petitioner and an inaccurate DC Number which was mailed to Florida Women's Reception Center, was returned to sender unable to be forwarded by prison staff, because it did not contain the required information for the Petitioner.

On February 9th, 2021, the Fourth District Court of Appeals entered an order sua sponte dismissing the Petitioner's case for lack of prosecution.

On February 10th, 2021, a postmarked envelope containing the Fourth District Court of Appeal's order was mailed to the Petitioner at Florida Women's Reception Center, still containing only the Petitioner's initials of "L.S., the Mother", but with a correct DC number, however by this time the Petitioner had been transferred to Gadsden Correctional Facility, a private facility within the Florida Department of Corrections.

On February 16th 2022, the order was forwarded by FWRC prison staff to Gadsden Correctional Facility, the first order she received.

On or about July 6th 2022, the Petitioner filed a Petition for Writ of Habeas Corpus requesting a Belated Appeal in her cause, filed in the Fifteenth Judicial Circuit, Palm Beach County, Florida, of which treated such as a Notice of Appeal.

On July 13th, 2022, the Fourth District Court of Appeal assigned DCA case number 22-1899 and remitted to the Petitioner Acknowledgment of New Case.

On July 26th, 2022, the Fourth District Court of Appeal entered an order, treating the Petitioner's Petition for Writ of Habeas Corpus as a petition to reinstate her timely appeal of the trial court's order terminating her parental rights, alleging the appeal in 4D21-3038 was properly dismissed on February, 9th, 2022 for failure to prosecute, denying the Petitioner's request for reinstatement of that appeal with prejudice.

On August 9th, 2022, the Petitioner filed a Motion for Rehearing, Motion for Clarification and Request for written opinion in the Fourth District court of Appeal.

In August 2022 the Fourth District court of Appeal denied her motion.

In October of 2022, the Petitioner filed a Motion for Certification in the Supreme Court of Florida.

On October 24th, 2022, the Supreme Court of Florida filed an Acknowledgment of New Case, assigning Supreme Court Case Number SC22-1416, treating the Petitioner's Motion as a Petition for Writ of Mandamus with Appendix.

On November 2, 2022, the Supreme Court of Florida entered an order dismissing the Petition for Writ of Habeas Corpus, denying any motions or other requests for relief including that no motion for rehearing or reinstatement would be entertained.

The Petitioner hereby files this timely Petition for Writ of Certiorari.

REASONS FOR GRANTING THE PETITION

QUESTION:

Does the decision of the Florida State Courts to deny the Petitioner opportunity for belated appeal of the lower court's decision to terminate her parental rights, due to the Florida Appellate Courts creation of an adversity which hindered the Petitioner violate the Petitioner's Fifth and Fourteenth Amendment right to a fair proceeding, right to equal protection of the law and due process, thereby creating a manifest injustice?

The United States of America was founded on a set of inalienable rights, the Constitution, which established the rights of every born and naturalized citizen is entitled to enjoy and designates, with specificity, that rule the individual states, under the Fourteenth Amendment:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection laws.

And that due process right encompasses the conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a tribunal with the power to decide

the case. These rights are so fundamentally important as to require compliance with due process standards of fairness and Justice. (See Black's Law Dictionary, 4th Pocket Edition, Bryan A. Garner, J.D. 2011)

In Troxel v. Granville, 120 S.Ct. 2054 (2000), the United States Supreme Court held:

"The Fourteenth Amendment's Due Process Clause has a substantive component that provides heightened protection against government interference with fundamental rights and liberty interests. Washington v. Gluckbert, 521 U.S. 702, 720, 138 L.Ed. 772, 117 S.Ct. 2258"

A born or naturalized citizen of the United States liberty interest invokes freedom from arbitrary or undue external restraint by the government, which includes a citizen's right to be free from the government's impediment and infringement upon a substantive and fundamental due process to access the courts for opportunity to pursue an appeal of the termination of her parental rights.

Substantive due process rights hones in on the essential fairness of State ordered proceedings anterior to adverse State

action. The State Action is also subject to review under the Equal Protection Clause of the Fourteenth Amendment.

The Fourteenth Amendment's Equal Protection Clause guarantees that the government's treatment of similarly situated persons or classes are equal under the law and "legislation that discriminates must have a rational basis for doing so. (Black's Law Dictionary 4th Pocket Edition 2011)

A State of Florida Petitioner has a statutory right Pursuant to Florida Statutes, Section 39.815, following the termination of her parental rights, to appeal the State Court's decision and when a State Court inadvertently or advertently impedes upon that right, a Court must then exercise a rational basis test to analyze a statute and if the Court did not implicate a fundamental right under the Due Process and Equal Protection Clause in making such determination.

In the instant case, the Petitioner, upon the termination of parental rights becoming final on September 30th, 2021, exercised her right to appeal the lower court's (Fifteenth Judicial Circuit) decision, via her assigned attorney, Gerald Salerno, by timely filing

a Notice of Appeal on October 25, 2021 pursuant to Florida Rule of Appellate Procedure Rule 9.146 to the Fourth District Court of Appeals, State of Florida. The Appellate Court assigned Kevin Coyle Colbert to represent the Petitioner on her appeal.

On December 27th, 2021 Attorney Colbert filed a Motion to Withdraw as Appellate Counsel in the Fourth district Court of Appeal Case Number 4D21-3038, filing a Motion for Rehearing on his own behalf but requesting that 20 days extension of time be granted to the Petitioner to file a pro se initial brief upon receipt of her Record on Appeal.

The Fourth District Court of Appeals entered an order granting Mr. Colbert's Motion and granting the Appellant twenty days from the date of its order to file a brief. The Fourth DCA sent out its order, envelope postmarked December 29th, 2021, however, it did not properly designate the Petitioner's full legal name, the Petitioner's DC Number contained on the envelope was also incorrect and therefore it was impossible to forward this order to the Petitioner. Further, the order was sent to the Florida Women's Reception Center (FWRC) within the Florida Department of

Corrections, the Petitioner was in transit top Gadsden Correctional Facility in North Florida and therefore it was returned. The Fourth DCA re-sent its order in a postmarked envelope of February 10, 2021 to FWRC, still lacking the Petitioner's full legal name. However, the DC number was correct but because the Petitioner was no longer housed at FWRC, FWRC's Mailroom Staff forwarded the order to the Petitioner at Gadsden Correctional Facility, envelope postmarked February 16th 2021. In the interim, the 4th DCA entered an order of dismissal in her cause on February 9th, 2022 for lack of prosecution, in essence concluding that the Petitioner no longer wished to prosecute her appeal when in fact the Petitioner never timely received the Fourth DCA's orders as evidenced in the Appendix. The Petitioner had no knowledge of these order's which were rendered before she had an opportunity to change her address with the Court, or to comply with the contents thereof. Moreover, the Petitioner had no knowledge Mr. Colbert was no longer assigned to her appeal.

Due to the Fourth DCA's inclusion of inaccurate information (incorrect DC number) and exclusion of pertinent, integral

information (Petitioner's full legal name) on the envelopes of its orders, the Fourth DCA created an adversity that was difficult to overcome. Moreover, the Petitioner never received a Record on Appeal for DCA Case Number 4D21-3038

The Petitioner then proceeded to file a Petition for Writ of Habeas Corpus on July 6th, 2022 in the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, pursuant to Article V § 5b of the Florida State Constitution and Rule 9.100 of the Florida Rules of Appellate Procedure and Rule 1.540, Florida Rules of Administrative Procedure, citing K.S. v. Department of Children and Families, 211 So.3d 1165 (Fla 5th DCA 2019) as Habeas Corpus relief is the proper avenue to seek belated appeal.

Moreover, In the interest of E.H. 609 So.2d 1289 (Fla. 1992), the Florida Supreme Court held that:

“Accordingly the appeal from the termination order is dismissed. Such dismissal is without prejudice to Appellant’s right to apply to Trial Court for belated appeal pursuant to a Petition for Writ of Habeas Corpus.”

However, once the Fourth DCA received the request for belated appeal from the Circuit Court, it was promptly denied by the Florida

Appellate Court of July 26, 2022 avverring that the appeal in 4D21-3038 had been properly dismissed on February 9th 2022 for failure to prosecute, such Appellate court never addressed the discrepancy and inaccuracies in the addressing of the envelopes containing its order which resulted in the delay of the Petitioner receiving such orders, impeding upon her right to file a timely appeal.

On August 9th, 2022, the Petitioner filed a Motion for Rehearing, Motion for Clarification and Request for Written Opinion in Appeal Case Number 4D22-1899, purporting a legitimate Florida Supreme Court basis for review, requesting clarity where the appellate Court never admitted to and failed to correct the obvious malady it created when it, again failed to include correct identifying information for the Petitioner on the envelope of its orders to the Petitioner.

The Appellate Court denied the Petitioner's Motion for Rehearing, Motion for Clarification and Request for Written Opinion.

On August 9th 2022, the Petitioner filed a Motion for Certification to the Florida Supreme Court certifying the following question:

“If it was proper to dismiss the Appellants Appeal for lack of prosecution and deny her opportunity to appeal her cause when it failed to include correct identifying information for the Appellant on the envelope of its time sensitive orders remitted to the Appellant?”

On October 24th, 2022, the Florida Supreme Court remitted to the Petitioner an Acknowledgment of New Case, treating her Motion for Clarification as a Petition for Writ of Mandamus with Appendix.

But then on November 2nd, 2022, the Florida Supreme court dismissed her Petition for Writ of Mandamus, denying all requests for relief and refusing to entertain any Motion for Rehearing or reinstatement.

Consequently, no State Court has addressed the incongruence of their decision with Constitutional Amendment and State Statutes and laws cited herein that permit the Petitioner to pursue a liberty, fundamental interest by way of an appeal without restraint or the facially apparent impediment of the State Courts.

The Fourth DCA was within its jurisdiction pursuant to G.L.S.
v. Department of Children and Families, 700 So 2d 96 (Fla. 1st DCA

1997) to entertain a Petition for Writ of Habeas Corpus requesting a Belated Appeal as the Petitioner asserts her Notice of Appeal in Case Number 4D21-3038 was timely filed.

The Fourth DCA misapprehended issues and parts of Florida Law and failed to clarify the particular point of fact in its denial of the Petitioner's Motion for Rehearing, Motion for Clarification and Request for Written Opinion.

Lastly, the Florida Supreme Court erred in dismissing the Petitioner's cause when it could have entered a *sua sponte* order directing the Fourth DCA to reinstate the Petitioner's appeal and correct the manifest injustice created when it failed to properly include accurate information for the Petitioner on the envelopes of its orders.

The Petitioner has presented a clear and convincing argument that her Fifth and Fourteenth Amendment rights have been violated by the State Courts refusal to reinstate the appeal of the termination of her parental rights.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests this Honorable court issue a Writ of Certiorari to review the judgment of the Florida Supreme Court and the Fourth District Court of Appeals of Florida.

Dated 10/18/23

Respectfully Submitted,