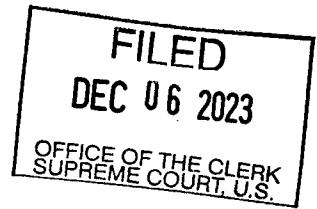


23-6322
No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



RICARDO DODSON,

Petitioner,

vs.

**OHIO DEPARTMENT OF REHABILITATION
AND CORRECTIONS & OHIO ADULT PAROLE AUTHORITY**

Respondents,

PETITION FOR CERTIORARI TO OHIO SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

**Ricardo Dodson, #239-129
Belmont Correctional Institution
68518 Bannock Road, St. Rt. 331
P.O. Box 540/St. Clairsville, Ohio
43950**

(740) 695-5169: FAX 526-0511

QUESTIONS PRESENTED FOR REVIEW

1. WHETHER PETITION WAS DENIED HIS FOURTEENTH AMENDMENT DUE PROCESS RIGHT TO A FAIR PAROLE HEARING WHERE THE PAROLE BOARD, DURING PAROLE CONSIDERATION, DETERMINED PETITIONER TO BE THE BIOLOGICAL FATHER OF THE CHILD BORN TO THE RAPE VICTIM, DENIED THE PETITIONER'S REQUEST FOR A DNA BLOOD GROUPING-GENETIC TEST TO EITHER ESTABLISH OR REFUTE THE PATERNITY, RESPONDENTS DETERMINATION, THEN DENIED PAROLE BASED ON THE DETERMINATION THAT PETITIONER CAUSED THE VICTIM TO BECOME PREGNANT DUE TO THE RAPE;
2. WHETHER THE RESPONDENTS, OHIO DEPARTMENT OF REHABILITATION AND CORRECTIONS ("ODRC"), AND THE OHIO ADULT PAROLE AUTHORITY (OAPA"), IS REQUIRED BY LAW TO PROVIDE PETITIONER WITH A DNA BLOOD GROUPING-GENETIC TEST, UPON REQUEST, TO EITHER ESTABLISH OR REFUTE THE RESPONDENTS DETERMINATION THAT PETITIONER IS THE BIOLOGICAL FATHER OF THE CHILD BORN TO THE RAPE VICTIM;
3. WHETHER THE RESPONDENTS DENIAL OF A BLOOD GROUPING TESTS TO AN INDIGENT PATERNITY DEFENDANT, WHO IS UNABLE TO PREPAY FOR SUCH TESTS, AND WHO FACES THE STATE (OHIO PAROLE BOARD) AS AN ADVERSARY WHEN THE MOTHER IS ASSERTING THAT PETITIONER IS THE BIOLOGICAL FATHER, VIOLATES THE DUE PROCESS GUARANTEE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AS SET FORTH IN *Little v. Streater*, 452 U.S. 1, 13-17, 68 L. Ed. 2d 627, 101 S. Ct. 2202 (1981);
4. WHERE THE RESPONDENT'S ODRC & OAPA DETERMINES THAT PETITIONER IS THE BIOLOGICAL FATHER OF THE CHILD, WHEN THERE HAS BEEN NO COURT ADJUDICATION, AND FOR THE PURPOSE OF DETERMINING PAROLE, DOES THAT DETERMINATION-ADJUDICATION ESTABLISH ANY LEGAL RELATIONSHIP WITH THE RAMIFICATIONS OF IMPOSING OR CONFERRING ANY PARENTAL RIGHTS, PRIVILEGES, DUTIES, AND OBLIGATIONS?
5. WHETHER UNDER STATE OR FEDERAL LAW, WHEN THE PAROLE BOARD (STATE AGENCY) MADE THE DETERMINATION THAT PETITIONER IS THE BIOLOGICAL FATHER OF THE CHILD BORN TO THE RAPE VICTIM, AS PART OF THEIR DECISION PROCESS REGARDING PETITIONER'S PAROLE RELEASE CONSIDERATION, IS TANTAMOUNT TO LEGALLY ESTABLISHING THE PATERNITY OF THE CHILD BORN TO THE VICTIM?
6. WHETHER OHIO LAW, WHICH ALLOWS THE PAROLE BOARD TO MAKE PATERNITY DETERMINATION AS PART OF THEIR DECISION MAKING PROCESS REGARDING RELEASE CONSIDERATION ON PAROLE, EVEN WHERE THERE HAS BEEN NO PRIOR PATERNITY ADJUDICATION BY A COURT OF COMPETENT JURISDICTION, VIOLATES

THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT?

LIST OF ALL PARTIES

1. Ricardo Dodson, Petitioner
2. Ohio Department of Rehabilitation & Corrections, Respondents,
3. Ohio Adult Parole Authority, Respondents,

RELATED CASES

State ex rel. Dodson v. Ohio Dep't of Rehab. & Corr., 2022-Ohio-2552, P1, 2022 Ohio App. LEXIS 2415, *1, 2022 WL 2951709 (Ohio Ct. App., Franklin County July 26, 2022);

State ex rel. Dodson v. Ohio Dep't of Rehab. & Corr., 2023-Ohio-2263, 2023 Ohio LEXIS 1325 (Ohio, July 6, 2023);

State ex rel. Dodson v. Ohio Dep't of Rehab. & Corr., 2023-Ohio-3169, 2023 Ohio LEXIS 1790 (Ohio, Sept. 12, 2023);

Dodson v. Mohr, 2018 U.S. Dist. LEXIS 160910, 2018 WL 4518018 (S.D. Ohio, Sept. 20, 2018).

Dodson v. Mohr, 2021 U.S. District. LEXIS 30970, 2021 WL 664034 (S.D. Ohio, Feb. 19, 2021);

State v. Dodson (Oct. 31, 1991), Franklin App. No. 91AP-498, 1991 Ohio App. LEXIS 5264;

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1. **State ex rel. Dodson v. Ohio Dep't of Rehab. & Corr., 2023-Ohio-2263, 2023 Ohio LEXIS 1325 (Ohio, July 6, 2023);**

1. **Reconsideration denied by State ex rel. Dodson v. Ohio Dep't of Rehab. & Corr., 2023-Ohio-3169, 2023 Ohio LEXIS 1790 (Ohio, Sept. 12, 2023)**

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O.R.C. 3111.01

O.R.C. 5120.60.

O.R.C. 5120.10

O.R.C. 5149.101

O.R.C. 2930.17

O.R.C. 2967.03

O.R.C 2967.12

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

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

OPINION BELOW

[x] Case from State Court

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

2. **State ex rel. Dodson v. Ohio Dep't of Rehab. & Corr., 2023-Ohio-2263, 2023 Ohio LEXIS 1325 (Ohio, July 6, 2023);**

2. **Reconsideration denied by State ex rel. Dodson v. Ohio Dep't of Rehab. & Corr., 2023-Ohio-3169, 2023 Ohio LEXIS 1790 (Ohio, Sept. 12, 2023)**

JURISDICTION

[x] For cases from state courts:

The date on which the highest state court decided my case was July 6, 2023. There is also a timely filed Reconsideration decision decided on September 12, 2023. A copy of that decision appears at Appendix A.

[x] A timely motion for reconsideration was thereafter denied on the following date: September 12, 2023, and a copy of the order denying reconsideration appears at Appendix B.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Fourteenth Amendment to the Constitution of the United States

Fourteenth Amendment to the Constitution of the United States:

The Fourteenth Amendment provides in relevant part: Nor shall any state deprive any person of life, liberty, or property, without due process of law." Appellant argues that the lower courts' refusal to authorize blood grouping tests without prepayment thereof violated his right to due process. Specifically, appellant claims that the courts below denied him "fundamental fairness" and "a meaningful opportunity to be heard." See **Boddie v. Connecticut** (1971), 401 U.S. 371, 377. The United States Supreme Court analyzed the due process claim in Little with reference to the three-pronged standard enunciated in **Mathews v. Eldridge** (1976),

at page 335. Identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail."

The Eldridge test requires a court to balance three interests in determining what process is constitutionally due: "[1] the private interests at stake; [2] the risk that the procedures used will lead to erroneous results and the probable value of the suggested procedural safeguard; and [3] the governmental interests affected." Little, *supra*, at page 636. The Supreme Court in Little, at page 637, analyzed the private interests at stake in this manner:

"The private interests implicated here are substantial. Apart from the putative father's pecuniary interest in avoiding a substantial support obligation and liberty interest threatened by the possible sanctions for noncompliance, at issue is the creation of a parent-child relationship. This Court frequently has stressed the importance of familial bonds, whether or not legitimized by marriage, and accorded them constitutional protection. See **Stanley v. Illinois**, 405 U.S. 645, 651-652 (1972). Just as the termination of such bonds demands procedural fairness, **see Lassiter v. Department of Social Servs. of Durham Cty.**, 452 U.S. 18, 101 S. Ct. 2153, 68 L. Ed. 2d 640 (1981), so too does their imposition. Through the judicial process, the State properly endeavors to identify the father of a child born out of wedlock and to make him responsible for the child's maintenance. Obviously, both the child and the defendant in a paternity action have a compelling interest in the accuracy of such a determination."

While each of the three private interests catalogued by the court in the above passage is "substantial," only the third interest, that touching on "the creation of a parent-child relationship," was held to be "compelling." We take the term "compelling" to mean that the primary private interest attending a paternity action concerns the creation of the parent-child relationship. Appellant herein has the same "compelling interest in the accuracy of such a [paternity] determination" as the putative father had in **Little**. As for the other private interests discussed in Little, appellant surely faces "a substantial support obligation," even if, *arguendo*, it would be constitutionally impermissible to jail him for noncompliance with a support order by reason of his indigency.

The second prong of the Eldridge test concerns the risk of erroneous deprivation and the probative value of the proposed additional procedure. In Little, at page

637, the Supreme Court offered this analysis as its second step: "Given the usual absence of witnesses, the self-interest coloring the testimony of the litigants, and the State's onerous evidentiary rule and refusal to pay for blood grouping tests, the risk is not inconsiderable that an indigent defendant in a Connecticut paternity proceeding will be erroneously adjudged the father of the child in question. * * * Further, because of its recognized capacity to definitively exclude a high percentage of falsely accused putative fathers, the availability of scientific blood test evidence clearly would be a valuable procedural safeguard in such cases. Unlike other evidence that may be susceptible to varying interpretation or disparagement, blood test results, if obtained under proper conditions by qualified experts, are difficult to refute. Thus, access to blood tests for indigent defendants such as appellant would help to insure the correctness of paternity decisions in Connecticut."

The third Eldridge criterion, the state's interest, was discussed in these terms, at pages 637-638, in Little: "The State admittedly has a legitimate interest in the welfare of a child born out of wedlock who is receiving public assistance, as well as in securing support for the child from those legally responsible. In addition, it shares the interest of the child and the defendant in an accurate and just determination of paternity. * * * Nevertheless, the State also has financial concerns; it wishes to have the paternity actions in which it is involved proceed as economically as possible and, hence, seeks to avoid the expense of blood grouping tests."

However, the court determined, at page 638, that "the state's monetary interest 'is hardly significant enough to overcome private interests as important as those here.'"

Upon weighing the three Eldridge factors, the Little court, at pages 638-639, concluded: "Without aid in obtaining blood test evidence in a paternity case, an indigent defendant, who faces the State as an adversary when the child is a recipient of public assistance and who must overcome the evidentiary burden Connecticut imposes, lacks 'a meaningful opportunity to be heard.' *

Pursuant to It is axiomatic that "[the] fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" **Mathews v. Eldridge**, 424 U.S. 319, 333 (1976), quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

ARGUMENT FOR ALLOWANCE OF WRIT

On writ of certiorari to the Supreme Court of Ohio, Petitioner putative father seeks review of recent established Ohio Supreme Court law that authorize the Ohio Parole Board (State Agency) to make paternity determinations-adjudications, for the purpose of determining parole suitability, without providing petitioner with a DNA blood grouping-genetic test, upon request, to either establish or refute the paternity determination-adjudication within the parameters of R.C. 2151.23(B)(2) and R.C. 3111.01 as to legally establish paternity.

This Honorable Court should review this case and allow the writ based on the following arguments. To wit:

1. Review of this case is required to permit comprehensive review of matters of public importance as to which there is a substantial conflict between Ohio State law and United States Supreme Court Law, as set forth **in Little v. Streater**, 452 U.S. 1, 13-17, 68 L. Ed. 2d 627, 101 S. Ct. 2202 (1981), on whether it is legally permissible for the parole board (State Agency) to deny an indigent inmate a DNA Blood Grouping paternity test where the parole board made a paternity determination without such test, in consideration of release;
2. At the heart of the Due Process Clause is the right to be heard before one is stripped of life, liberty or property. See *Board of Regents v. Roth*, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972); *Woodard v. Ohio Adult Parole Auth.*, 107 F.3d 1178, 1183 (6th Cir. 1997), rev'd on other grounds, 523 U.S. 272, 118 S. Ct. 1244, 140 L. Ed. 2d 387 (1988). The putative father claimed a right to notice and an opportunity to be heard pursuant to the Due Process and Equal Protection Clauses of the Fourteenth Amendment, U.S. Const. amend. XIV;

3. The Ohio Court has erred in significant respects which have the effect of depriving Putative Fathers of Due Process Protection. Important questions involving the constitutional right to paternity DNA blood grouping test to prove or disprove paternity are presented.

STATEMENT OF THE CASE

In this case, Petitioner asserts that during several Administrative parole hearing proceeding, the Ohio Parole board adjudicated and determined that Petitioner is the biological father of the minor child, A.M., born 7/6/91, as a result of rape, and that relator is responsible for the child being placed up for adoption. The Relator further pled that the parole board denied parole, based on the paternity adjudications and determinations that relator is the biological father, for causing the victim to become pregnant, and for causing the victim to place the child up for adoption. Relator further attached to the complaint supporting documents of the parole decisions demonstrating where the parole board adjudicated and determined that Relator is the biological father of the child, and denying parole based on that adjudication and determination.

Relator asserts that in taking the below cited factual allegation made in the complaint as true, this Honorable Court is required to, coupled with the supporting documents attached to the complaint, find that Relator has sufficiently pled the element for a writ of prohibition and mandamus.

Relator was found guilty by jury verdict in 1991 for one count of kidnapping and one count of rape and sentenced to serve 10 to 25 years. **State v. Dodson (Oct. 31, 1991), Franklin App. No. 91AP-498, 1991 Ohio App. LEXIS 5264.**

Complaint, ¶ 10. On July 6, 1991, the victim of the rape case gave birth to said minor child, A.M., Complaint, ¶ 11. On July 31, 1992, FCCSEA filed an administrative paternity action for the purpose of determining the parentage of A.M., born 7/6/91. The case was identified by administrative order number 92-AO-

4678. Relator Dodson, husband Robert Mills, and Larry Stuckey was named as being the possible putative father. Complaint, ¶12. The Franklin County Child Support Enforcement Agency scheduled an administrative hearing for September 14, 1992 at 10:00 a.m. where all interested parties had the opportunity to produce evidence proving or disproving the allegation of the existence of a parent-child relationship. Complaint, ¶ 13. Prior to the adjudication- determination of paternity relating to relator Dodson, on December 22, 1992, the FCCSEA filed a complaint in the Court of Common Pleas, Franklin County, Ohio Division of Domestic Relations- Juvenile Branch naming the husband Robert Mills, Larry Valaldo Stuckey, and Relator Dodson as the possible putative fathers of said minor child, A.M. Complaint, ¶ 14. On June 10, 1993 the paternity action was dismissed by the Court without prejudice for failure of plaintiff-victim to prosecute the case-failure to appear. Complaint, ¶ 15. Following his incarceration in 1991, relator has appeared before the Ohio Parole Board ("OPB") on eight occasions in 2000, 2005, 2006, 2009, 2012, 2015, 2018, and 2021. Relator was denied parole on each of these occasions. Relators next parole hearing is set for May 1, 2024. Complaint, ¶ 16. On April 1, 2009, relator was scheduled to appear before the parole board for determination of suitability for parole. Complaint, ¶ 17. Ohio Revised Code Section§ 5120.60 created the office of victims' services within the division of parole and community services. The office of victims' services provides assistance and to victims of crime, victims' representatives, and members of the victim's family concerning the policies and procedures of the department of rehabilitation and correction and the status of offenders. The office also assists victims in the parole department about problems with offenders under the supervision of the adult parole authority or confined in state correctional institutions under the department's jurisdiction. The office is additionally charged with identifying victims' issues and making recommendations to the parole board. **Ohio Rev. Code § 5120.60.** Complaint, ¶ 18. Ohio Revised Code Section§ **5120.10 (B)** provides in relevant part: The director of rehabilitation and correction, in consultation with the governor, shall appoint one member of the board, who shall be a person who has been a victim of crime or who is a member of a victim's family or who represents an organization that advocates for the rights of victims of crime. Complaint, ¶ 19.

Ohio Rev. Code Sections § 5149.10(A), and §5149.101(B) gives certain crime victims, their families, and their representatives the ability to request a full parole board hearing concerning the proposed parole or re-parole of the person who committed the crime. Upon receipt of such a request, "the board shall hold a full board hearing." **Ohio Revised Code§ 5149.101(A)(2)**. At that hearing, these individuals, as well as the prosecuting attorney, law enforcement officials, and the judge who imposed the original sentence, may also give testimony or submit written statements. **Ohio Rev. Code 5149.101(B)**. Complaint, ¶ 20. On or about March of 2009, prior to relator's parole hearing date, during the scheduled Administrative conference proceeding, held before the panel of the Ohio Adult Parole Authority with the victim and her husband, as mandated pursuant to Ohio Revised Code Sections **§§§ 2930.17, 2967.03, and 2967.12**, the victim and husband testified that, "on July 6, 1991 she gave birth to a child, A.M., as a result of the rape, and that relator is the biological father of said minor child, A.M., born 7/6/91 and that she placed the child up for adoption." Complaint, ¶ 21. On June 4, 2009, during relator Dodson's Administrative parole hearing proceeding, the Ohio Parole board adjudicated and determined that relator Dodson is the biological father of the minor child, A.M., born 7/6/91 as a result of the rape, and that relator was responsible for the child being placed up for adoption. The parole board then denied parole, in relevant part, based on the paternity adjudication determination that relator is the biological father, that relator caused the victim to become pregnant as a result of the rape, and that relator was the cause of the victim giving the child up for adoption. Complaint, ¶ 22. On April 12, 2012, during the parole hearing proceeding, consisting of the same 2009 panel board members whom previously adjudicated paternity, once again adjudicated- determined that relator is the biological father of the child as a result of the rape, and again denied relator parole, in relevant part, for causing the victim to become pregnant as a result of the rape and giving birth to the child, and causing the victim to place the child up for adoption. Complaint, ¶ 23. On September 22, 2015 relator appeared before the parole board consisting of the same panel members whom had previously adjudicated relator to be the biological father of said minor child, A.M., born 7/6/91 in 2009 and 2012. During the administrative parole hearing proceedings, the panel

questioned Relator about why he has not admitting to being the biological father of the alleged rape child, and asking relator why have he not taken any responsibility for the child. Relator informed the panel that he was not the biological father of said minor child, A.M., born 7/6/91. Relator was again denied parole in consideration of the paternity adjudication-determination. Complaint, ¶ 24. On July 12, 2018, relator appeared before the parole board for the seventh time. Again, the panel consisted of the same parole board panel members whom had previously adjudicated-determined relator to be the biological father of said minor child, A.M., born 7/6/91, in 2009, 2012, and 2015. During the parole hearing proceeding, the panel once again questioned relator about not admitting to being the biological father of said minor child, A.M., born 7/6/91, and, refusing to take any responsibility for the said minor child. Relator again denied being the father of said minor child. Relator was again denied parole, in relevant part, in consideration of the paternity adjudication determination. Complaint, ¶ 25. on August 20, 2018, Defendant filed a law suit in The United States District Court claiming, in relevant part, but not limited to, that the allegation used to deny parole relating to the paternity adjudication determination that relator is the biological father of the said minor child, A.M., born 7/6/91, was false because he is not the biological father of said minor child, A.M., born 7/6/91. See **Dodson v. Mohr, 2018 U.S. Dist. LEXIS 160910 S.D. Ohio 2018**) Complaint, ¶ 27. On February 19, 2021, the Honorable Magistrate Judge Ovington submitted her Report and Recommendation. **Dodson v. Mohr, 2021 U.S. District. LEXIS 30970, 2021 WL 664034 (S.D. Ohio, Feb. 19, 2021)**. The magistrate concluded, in relevant part, the statement provided by the victim and her husband during the Victim Conference claiming relator to be the biological father of minor child was sufficient to support evidence that relator is the biological father. The Magistrate further concluded that without DNA evidence relator cannot support his claim that he is not the biological father. *Id.* **Dodson v. Mohr**. See also Doc. No. 1-3, Page ID 47). Finally, the Magistrate judge made the following conclusion: "The evidence in the present case also includes a copy of a letter sent to Dodson by his victim, postmarked March 15, 2018, wherein she states that he impregnated her, that she gave birth to a daughter, and that the child was later put up for adoption. (Doc. 1-3, Page ID 113). Although Dodson alleges that

these statements are false, he fails to point to evidence within or outside his parole records sufficient to either cast doubt on his victim's statements." Complaint, ¶ 28. On February 19, 2021, in the civil action, **Dodson v. Mohr, 2021 U.S. Dist. LEXIS 30970 (S.D. Ohio Feb. 19, 2021)**, the District Court concluded that during the 2018 parole hearing the parole board reviewed and considered previous parole records relating to the paternity adjudication from the 2009, 2012, and 2015 parole hearings. Complaint, ¶ 26. On July 26, 2021, District Judge Morrison, affirmed the Magistrate Judge's Report and Recommendation and granted the Parole Board Summary Judgment. **Dodson v. Mohr, 2021 U.S. Dist. LEXIS 138303. (S.D. Ohio July 26, 2021)**. Relator has filed an appeal to the Court of Appeals, Sixth Circuit. Complaint, ¶ 29

On September 10, 2021, Relator filed the complaint for writ of prohibition against named respondents, "ODRC and OAPA," pursuant to Supreme Court of Ohio's holding in **State ex rel. Tubbs Jones v. Suster (1998), 84 Ohio St.3d 70, 1998 Ohio 275, 701 N.E.2d 1002** arguing that he is entitled to a writ of prohibition because; (1) respondents, pursuant to **State ex rel. McKee v. Cooper (1974), 40 Ohio St.2d 65**, had previously exercised judicial or quasi-judicial powers , and/or is about to exercise judicial or quasi-judicial power during the upcoming parole hearing; (2) the exercise of judicial or quasi-judicial power adjudicating-determining paternity matters and/or making paternity determination that relator is the biological father of minor child during a parole hearing proceeding is unauthorized by law pursuant to **Ohio Revised Code Section 2151.23(B)(2)** that states in relevant part "The juvenile court has exclusive original jurisdiction To determine the paternity of any child alleged to have been born out of wedlock pursuant to sections **3111.01 to 3111.18**; and (3) the denial of the writ will cause injury for which no other adequate remedy in the ordinary course of law exists. Complaint, ¶ 32. In addition, Relator seeks a writ of mandamus against named respondents, "ODRC and OAPA," pursuant to **State ex rel. Berger v. McMonagle (1983), 6 Ohio St.3d 28**, arguing that he is entitled to a writ of mandamus because he can show by clear and convincing evidence that: (1) relator has a clear legal right to receive-take a DNA blood test regarding the judicial or quasi-judicial administrative parole proceeding adjudicating- determining

the existence or non-existence of a parent-child relationship between relator and said minor child, A.M., born 7/6/91, pursuant to **Anderson v. Jacobs (1981), 68 Ohio St.2d 67, citing Little v. Streater, 452 U.S.1 (1981)**; (2) Relator also has a clear legal right to the appointment of counsel during the judicial or quasi-judicial administrative parole proceeding that is adjudicating-determining paternity establishing the existence or non-existence of father-child relationship, as an indigent paternity inmate, pursuant to **State ex rel. Cody v. Toner (1983), 8 Ohio St.3d 22, 24, OBR 255, 257, 456 N.E.2d 813, 815, certiorari, denied (1984), 466 U.S. 938.**; (3) the respondents has a clear legal duty to conduct a DNA blood test regarding the judicial or quasi-judicial administrative parole proceeding adjudicating- determining the existence or non-existence of a parent-child relationship between relator and said minor child, A.M., born 7/6/91, Id., see also **Hulett v. Hulett (1989), 45 Ohio St.3d 288, 292**. Furthermore, the respondents have a clear legal duty to provide indigent relator with counsel. **Id. Cody v. Toner**; and (4) Relator Dodson has no plain and adequate remedy in ordinary course of the law. Complaint, ¶ 33.

Thus, taking the above factual allegation cited in the complaint as true, this court is required to, coupled with the supporting documents attached to the complaint, find that Relator has sufficiently pled Under the proper legal standards, and Relator's complaint stated a claim for Prohibition relief because it sufficiently alleged: (1)The Ohio Department of Rehabilitation and Corrections & Ohio Adult Parole Authority did exercise judicial or quasi-judicial power to adjudicated paternity matter during an Administrative Parole Hearing proceeding determining that Relator is the father of the child[see parole hearing records attached to complaint]; (2) the exercise of that power to adjudicated paternity during those Administrative Parole Hearing proceeding is unauthorized by law, see **Ohio Revised Code Section 2151.23 (B)(2) and Ohio Administrative Code 5101:12-40-05(C)**; and (3) denying the writ would result in injury for which no other adequate remedy exists in the ordinary course of the law. **State ex rel. Elder v. Camplese, 144 Ohio St. 3d 89, 2015-Ohio-3628, 40 N.E.3d 1138, ¶ 13.** (See exhibits attached to complaint and the Complaint, cause of action section, writ of prohibition section, ¶4).

On September 10, 2021, Petitioner filed his complaint in prohibition and mandamus in the Tenth Appellate District Court of Appeals against Respondent's, Ohio Department of Rehabilitation and Correction ("ODRC"), the Ohio Adult Parole Authority ("OAPA"), and the Franklin County Child Support Enforcement Agency ("FCCSEA"). With regard to the request for a writ of prohibition, Petitioner sought an order finding that ODRC and OAPA lacked jurisdiction to adjudicate paternity at his parole hearings and prohibiting ODRC and OAPA from enforcing its paternity adjudication during past, present, and future parole-determination hearings. With regard to the request for a writ of mandamus, Petitioner sought an order directing ODRC, OAPA, and FCCSEA to order a DNA test to determine paternity, appoint him counsel for any administrative parole hearing, and an order directing FCCSEA to provide complete and unredacted copies of records regarding the determination of parentage in an administrative paternity action filed in 1992. The ODRC, OAPA, and FCCSEA filed motions to dismiss. Petitioner also filed a November 18, 2021, motion to exclude matters of fact and arguments not contained in the complaint; a December 7, 2021 motion to strike and for sanctions; and a December 7, 2021, motion to dismiss Respondent's motions to dismiss.

The matter was referred to a court-appointed magistrate pursuant to **Civ.R. 53** and **Loc.R. 13(M)** of the Tenth District Court of Appeals. The Magistrate issued the decision, including findings of fact and conclusions of law, and recommended that the court of appeals grant the motions to dismiss filed by ODRC, OAPA, and FCCSEA. Petitioner filed objections to the magistrate's decision on April 1, 2022.

On May 3, 2022 Petitioner filed additional objections further requesting that the court strike Respondent's response to Petitioner's initial filed objections. After Respondent's filed a response to Petitioner's May 3, 2022 filing on May 16, 2022, on June 1, 2022 Petitioner filed another response. The court found that both Petitioner's May 3, 2022 filing and his June 1, 2022 filing were filed out of rule without leave, was not properly before the court and would not be considered, and order them stricken from the record.

With regard to Respondent's motion to dismiss Petitioner's request for a writ of mandamus, the magistrate found that, even construing all of the allegations in Petitioner's complaint as true, Petitioner failed to establish that FCCSEA had a clear legal duty under either R.C. **§3125.15, §3125.16**, or Ohio Adm. Code **§5101:12-1-20.1** to provide him a complete and un-redacted copy of the records pertaining to the 1992 administrative paternity action; that Petitioner failed to establish that, ODRC, OAPA, and FCCSEA have a clear legal duty under either R.C. **§3111.09(A)(1), §3111.10(C)**, and/or **Anderson v. Jacobs, 68 Ohio St.2d 67, 428 N.E.2d 419 (1981)** to order a DNA blood test to establish paternity to be used at his next parole hearing; and that Petitioner failed to establish that Respondent's had a clear legal duty under either R.C. **§2151.352, §2151.23**, and/or **State ex rel. Cody v. Toner, 8 Ohio St.3d 22, 8 Ohio B. 255, 456 N.E.2d 813 (1983)** to appoint legal counsel to represent Petitioner at parole hearings at which his parentage is considered.

With regard to Respondent's motion to dismiss Petitioner's request for a writ of prohibition, the magistrate found that Petitioner could prove no set of facts entitling

him to a writ of prohibition because, contrary to Petitioner's assertions, ODRC and OAPA have not previously exercised and/or are not about to exercise judicial or quasi-judicial power at his next parole hearing by making a paternity determination in contravention of R.C. **§2151.23(B)(2)** or R.C. **§3111.01**. The Court found Instead, the magistrate determined that ODRC and OAPA properly considered Petitioner's status as A.M.'s father, consistent with the victim's statement, for the purpose of determining parole as is authorized by Ohio Adm. Code **§5120:1-1-11** (procedure of release consideration hearing) and **§5120:1-1-14** (victim conference). In other words, ODRC and OAPA did not establish any legal relationship with the ramifications of imposing or conferring any parental rights, privileges, duties, and obligations as set forth in **R.C. §3111.01(A)** and did not adjudicate the paternity of the child born to the victim under **R.C. §2151.23(B)(2)**.

Petitioner filed his timely objections.

On July 26, 2022 the Court of Appeals rendered its decision. See, **State ex rel. Dodson v. Ohio Dep't of Rehab. & Corr., 2022-Ohio-2552, P1, 2022 Ohio App. LEXIS 2415, *1, 2022 WL 2951709 (Ohio Ct. App., Franklin County July 26, 2022)**. The Court concluded that in his objections, Petitioner presented no new issues and merely rehashes the same arguments presented to the magistrate. The Court further found that although Petitioner's delineates at least ten separate objections, in essence, all boil down to the following two arguments: (1) Respondent's, ODRC and OAPA, improperly adjudicated and made the determination that Petitioner is the natural biological father of the child born to

the victim and denied parole based on that adjudication; and (2) Petitioner has a clear legal right to take a DNA blood test to determine whether he is the natural biological father of the minor child prior to the next parole hearing and Petitioner is entitled to the appointment of counsel to represent him at said hearing. The court disagreed on both counts.

Regarding the first argument, the court found that Petitioner did not identify any Ohio law that prohibits ODRC and OAPA from considering the statement of the victim regarding the paternity of her child. The court further found that Appellant did not identify any legal authority that supports his theory that ODRC and OAPA somehow legally established and/or determined paternity of the child born to the victim. The court also found that Appellant did not identify any legal authority that supports his theory that ODRC and OAPA's consideration of the victim's statement fell within the parameters of **R.C. §2151.23(B)(2)** and **R.C. §3111.01** so as to legally establish paternity. In short, the court found that ODRC and OAPA's consideration of the victim's statements regarding the paternity of her child as part of their decision process regarding Petitioner's release on parole is not tantamount to legally establishing the paternity of the child born to the victim as she has stated.

The court also found that Petitioner's assertion that Respondent's improperly adjudicated and made the determination that he is the natural biological father of the child born to the victim and denied parole based on that adjudication does not accurately reflect the myriad factors considered by the parole board in denying Petitioner's application. The court stated that in addition to Petitioner's

consideration of the victim's statements regarding the paternity of her child, the parole board also considered that Petitioner was convicted of raping two different women on two separate occasions; that one of the victims was kidnapped prior to being raped and was also threatened with being killed by being pushed out of a second story window; that the victim who became pregnant due to the rape was mentally challenged; and that Petitioner had also been convicted of prior crimes for forgery, disorderly conduct and an assault that apparently was an incident of domestic violence. Indeed, in the July 12, 2018 Ohio Parole Board Decision and Minutes, the rationale provided for denial of release included that Petitioner's "case is aggravated by the case-specific factors of violence, brutality, multiple occurrences, multiple victims, and extensive victimization." In short, paternity of the child born to one of the rape victims was only one of multiple factors considered by Respondents and was in no way dispositive of Respondents' decision in any event.

Finally, the court found regarding Petitioner's second argument presented via his objections, Petitioner did not identify any legal authority that requires ODRC and OAPA to initiate a DNA blood test to establish or refute the paternity of the child born to the victim. There is a reason for this omission: there is no such authority. Indeed, Petitioner himself cites to the proper legal methods in which to establish paternity that Petitioner must undertake if that is truly the relief he seeks, and none of them involves any clear legal duties on the part of respondents.

The court found Petitioner's objections to be without merit and overruled them. The Court adopted the magistrate's decision as its own, including the findings of

fact and conclusions of law therein. In accordance with the magistrate's decision, Respondent's motions to dismiss was granted; Petitioner's motion to exclude matters of fact and arguments not contained in the complaint, motion to strike and for sanctions, and motion to dismiss Respondent's motions to dismiss were denied.

Petitioner filed a timely notice of appeal to the Supreme Court of Ohio.

On July 6, 2023 the Ohio Supreme Court rendered its decision. See, *State ex rel. Dodson v. Ohio Dep't of Rehab. & Corr.*, 2023-Ohio-2263, 2023 Ohio LEXIS 1325 (Ohio, July 6, 2023). The Court concluded that:

Dodson's prohibition claim:

To have stated a claim for a writ of prohibition, Dodson had to allege that the state has exercised or is about to exercise judicial or quasi-judicial power, that the state lacks authority to exercise that power, and that he lacks an adequate remedy in the ordinary course of the law. See **State ex rel. Elder v. Camplese**, 144 Ohio St.3d 89, 2015-Ohio-3628, 40 N.E.3d 1138, ¶ 13.

Dodson argues that the parole board lacked authority to consider certain statements made by B.L.M. and that by considering paternity at the parole hearings, the parole board effectively established paternity without authority to do so. He also argues that it was unlawful for the parole board to conclude that he fathered B.L.M.'s child based on her testimony alone, and he questions whether his paternity status is at all relevant to his eligibility for parole.

[*P16] We need not address these arguments, because Dodson has not challenged the Tenth District's holding that the parole board did not exercise judicial or quasi-judicial authority. See 2022-Ohio-2552, ¶ 7. By failing to address that fundamental element of his prohibition claim in this appeal, Dodson has waived any objection to that aspect of [**7] the Tenth District's decision. See **U.S. Bank Nat'l Ass'n v. Broadnax**, 2019-Ohio-5212, ¶ 11 ("When a party raises an argument below, but forsakes it on appeal, we treat it as abandoned and should not consider the point"). We therefore affirm the Tenth District's dismissal of Dodson's prohibition claim.

E. Dodson's mandamus claim

[*P17] To be entitled to a writ of mandamus, Dodson must establish by clear and convincing evidence a clear legal right to the requested relief, a clear legal duty on the part of the state to provide it, and the lack of an adequate remedy in the ordinary course of the law. State ex rel. Love v. O'Donnell, 150 Ohio St.3d 378, 2017-Ohio-5659, 81 N.E.3d 1250, ¶ 3.

[*P18] With respect to the writ of mandamus he requested, Dodson's merit brief states that he sought to compel the state "to order a DNA test to determine paternity, appoint him counsel for any administrative parole hearing, and an order directing FCCSEA to provide complete and unredacted copies of records regarding the determination of parentage in an administrative paternity action filed in 1992." Dodson's brief says nothing more about his mandamus claim. By failing to articulate any arguments in support of his mandamus claim in this court, he has abandoned the claim.

[*P19] We affirm the Tenth District's dismissal of the mandamus claim.

Petitioner filed a timely motion for reconsideration arguing that the Court committed an obvious error in its decision. The grounds of error upon which Petitioner moved for Reconsideration were:

1. LACK OF JURISDICTION CLAIMS CANNOT BE WAIVED

This Court has found that Appellant waived his challenge to the district court holding that the parole board did not exercise judicial or quasi-judicial authority. However, this determination is in error because Appellant raised that the OAPA lacked subject matter jurisdiction to hold a paternity determination status hearing, or make a paternity determination. This is a jurisdictional challenge that cannot be waived;

2. THIS HONORABLE COURT MISAPPLIED IT'S OWN LEGAL STANDARD OF REVIEW OF JURISDICTION;

3. THIS HONORABLE COURT'S DETERMINATION THAT APPELLANT DID NOT CHALLENGE THE TENTH DISTRICT'S HOLDING THAT THE PAROLE BOARD DID NOT EXERCISE JUDICIAL OR QUASIJUDICIAL AUTHORITY IS IN ERROR.

The Appellant asserts that he did challenge the Tenth District's holding that the parole board did not exercise judicial or quasi-judicial authority in Proposition of Law Number II when he argued that the lower court erred and abused its discretion when it found that the ODRC and OAPA properly considered Appellant's paternity status as being the biological father of the child, based on the victim's statement, for the purpose of determining parole eligibility/suitability.

4. THE SUPREME COURT FAILED TO CONSIDER ANY OF APPELLANT'S PROPOSITIONS OF LAW RAISED IN HIS BRIEF FILED OCTOBER 7, 2022, CHALLENGING THE DISTRICT COURT'S CONCLUSION OF LAW.

The Appellant raised the following proposition of law in his brief filed October 7, 2022:

PROPOSITION OF LAW NO. I:

THE LOWER COURT ERRED AND ABUSED ITS DISCRETION WHEN IT DENIED APPELLANT'S CLAIMS ON THE GROUNDS THAT APPELLANT DID NOT IDENTIFY ANY OHIO LAW THAT PROHIBIT ODRC AND OAPA FROM: (a) CONSIDERING THE STATEMENT OF THE VICTIM REGARDING PATERNITY OF HER CHILD; (b) TO SUPPORT APPELLANT'S THEORY THAT ODRC AND OAPA LEGALLY ESTABLISHED OR DETERMINED PATERNITY OF THE CHILD BORN TO THE VICTIM; AND (c) TO SUPPORT APPELLANT'S THEORY THAT THE ODRC AND OAPA LEGALLY ESTABLISHED PATERNITY WHEN IT FOUND APPELLANT TO BE THE BIOLOGICAL FATHER OF THE VICTIM'S CHILD, DESPITE THE OBVIOUS FACT THAT THESE ISSUES ARE CASE OF FIRST IMPRESSION IN OHIO.

PROPOSITION OF LAW NO II:

THE LOWER COURT ERRED AND ABUSED ITS DISCRETION WHEN IT FOUND THAT THE ODRC AND OAPA PROPERLY CONSIDERED APPELLANT'S PATERNITY STATUS AS BEING THE BIOLOGICAL FATHER OF THE CHILD, BASED ON THE VICTIM'S STATEMENT, FOR THE PURPOSE OF DETERMINING PAROLE ELIGIBILITY- SUITABILITY, AS AUTHORIZED BY OHIO ADMINISTRATIVE CODE 5120:1-1-11 AND 5120:1-1-14.

PROPOSITION OF LAW NO III:

THE LOWER COURT ERRED AND ABUSED ITS DISCRETION WHEN IT FOUND THAT, IN LIGHT OF THE FACT THAT ODRC AND OAPA IS LEGALLY AUTHORIZED TO CONSIDER PATERNITY STATUS DURING PAROLE HEARINGS, THEY DID NOT ESTABLISH ANY LEGAL RELATIONSHIP WITH THE RAMIFICATIONS OF CONFERRING ANY PARENTAL RIGHTS, EVEN THOUGH THEY FOUND APPELLANT TO BE THE BIOLOGICAL FATHER OF THE VICTIM'S CHILD AND THUS DENIED PAROLE BASED ON THAT FINDING.

PROPOSITION OF LAW NO. IV:

THE LOWER COURT ERRED AND ABUSED ITS DISCRETION WHEN IT FOUND THAT ODRC AND OAPA DID NOT ADJUDICATE THE PATERNITY OF THE CHILD BORN TO THE VICTIM

PROPOSITION OF LAW NO V:

THE ODRC AND OAPA LACKED JURISDICTION, PURSUANT TO R.C. 2151.23, TO CONDUCT A PATERNITY STATUS CONSIDERATION REVIEW, OR MAKE AN INDEPENDENT PATERNITY DETERMINATION-ADJUDICATION THAT FOUND APPELLANT TO BE THE BIOLOGICAL FATHER OF THE VICTIM'S CHILD:

PROPOSITION OF LAW NO. VI:

THE LOWER COURT ERRED AND ABUSED ITS DISCRETION WHEN IT RULED THAT APPELLANT WAS NOT ENTITLED TO BLOOD PATERNITY DNA TEST, ESPECIALLY AFTER THE OAPA AND ODRC CONDUCTED A PATERNITY STATUS CONSIDERATION REVIEW AND DETERMINED THAT APPELLANT IS THE BIOLOGICAL FATHER OF THE CHILD FROM THE RAPE AND STATEMENT MADE BY THE VICTIM.

PROPOSITION OF LAW NO. VII:

THE LOWER COURT ERRED AND ABUSED ITS DISCRETION WHEN IT CONCLUDED THAT IN LIGHT OF THE FACT THAT THE PATERNITY DETERMINATION OF THE CHILD BORN TO THE VICTIM WAS ONLY ONE OF MULTIPLE FACTORS CONSIDERED BY THE PAROLE BOARD, THE PATERNITY DETERMINATION WAS NOT DISPOSITIVE OF APPELLANT'S PAROLE DENIAL DECISION.

On September 12, 2023, the Court denied the motion for reconsideration. State ex rel. Dodson v. Ohio Dep't of Rehab. & Corr., 2023-Ohio-3169, 2023 Ohio LEXIS 1790 (Ohio, Sept. 12, 2023).

CONCLUSION

For the reasons above stated and stated in the Jurisdictional Statement filed in this Court in respect of the Ohio Supreme Court decision, the petition for a writ of certiorari should be granted.

Respectfully Submitted,

Ricardo Nodam

Date: November 30, 2023