

24-5063

No. 23A909

SUPREME COURT OF THE UNITED STATES

Bruce Rowan,
Petitioner,

vs.

Brian Emig, Warden, James T. Vaughn Correctional Center, et al.
Respondent.

On Petition for a Writ of Certiorari to
The United States Court of Appeals
For the Third Circuit

PETITION FOR A WRIT OF CERTIORARI



Bruce Rowan
James T. Vaughn Corr. Ctr.
1181 Paddock Road
Smyrna, DE 19977

I. Question Presented

Does a conviction for breach of bail conditions-set by lower court-violate the protections of the Fourteenth Amendment right to due process, where trial court set bail conditions, yet failed to reimpose quondam conditions?

II. List of Parties & Related Cases

The Respondents in this case are as follows, and were represented by Andrew J. Vella, DAG, Bar No. 3549, Del. DOJ, 820 N. French Street, Wilmington, DE 19801:

- Robert May, Warden of James T. Vaughn Corr. Ctr.
 - Kathleen Jennings, Attorney General for the State of Delaware
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- ❖ *Rowan v. State*, No. 95, Supreme Court of Delaware. Judgment entered May 16, 2012.
 - ❖ *State v. Rowan*, No. 0910020105, Superior Court of Delaware. Judgment entered November 21, 2017.
 - ❖ *Rowan v. State*, No. 249, Supreme Court of Delaware. Judgment entered December 10, 2018.
 - ❖ *Rowan v. May*, No. 19-576-CFC, U.S. District Court for the District of Delaware. Judgment entered February 8, 2022.
 - ❖ *Rowan v. Warden James T. Vaughn Corr. Ctr.*, No. 22-1298, U.S. Court of Appeals for the Third Circuit. Judgment entered December 11, 2023.

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V. Petition for Writ of Certiorari

Bruce Rowan, proceeding *pro se* whom is currently incarcerated at James T. Vaughn Correctional Center in Smyrna, DE respectfully moves this Court for a writ of certiorari to review the judgement of the Third Circuit Court of Appeals.

VI. Opinions Below

The decision by the Court of Appeals for the Third Circuit denying Mr. Rowan's 28 U.S.C. § 2254 habeas corpus petition is reported as Rowan v. Warden James T. Vaughn Corr. Ctr., 2023 U.S. App. LEXIS 32655 (3rd Cir. 2023). The Court of Appeals denied Mr. Rowan's petition for rehearing on January 31, 2024. That order is attached at A – 19.

VII. Jurisdiction

The original opinion of the Third Circuit was entered on December 11, 2023. Mr. Rowan invokes this Court's jurisdiction under 28 U.S.C. § 1254, having timely filed this petition for a writ of certiorari on, or before the time extension of July 1, 2024. A – 35 – 36.

VIII. Constitutional Provisions Involved

United States Constitution, Amendment XIV:

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 of the laws.

IX. Statement of the Case

Over 150 years ago, the forefathers of our great nation ratified the Fourteenth Amendment of the United States Constitution wherein forbids a state from taken any person's life, liberty, or property without due process of law. U.S. Const., Amdt. 14 § 1. This provision is commonly known as the Due Process Clause and was "borrowed from Magna Charta¹, substituting "due process of law" for "law of the land."” *Ex Parte A. H. Garland*, 18 L. Ed. 366, 367 (1867).

This Court has consistently held that an infringement of the right to due process, regardless the nature of the case, is unconstitutional. See *Randall v. Brigham*, 19 L. Ed. 285, 286 (1869). In *Lankford v. Idaho*, this Court held that imposing the death penalty after state provided notice that it would not seek capital punishment abridged the constitutional protections to due process because of insufficient notice that penalty could be imposed. 114 L. Ed. 2d 173 (1991). The Supreme Court also explained, in *Burns v. United States*, that before sentencing courts could impose a higher sentence than required by the guidelines, it must provide reasonable notice to the parties. 501 U.S. 129 (1991). Then, in *Peralta v.*

¹ Magna Charta 1297, cl. 25 ("No freeman shall be taken or imprisoned, or disseised, or outlawed, or banished, or any ways destroyed, nor will we pass upon him, nor will we send upon him, unless by the lawful judgment of his peers, or by the law of the land.")

Heights Medical Center, Inc., this Court held the consequence of default judgment was violative of the right to due process because proper notice was not provided. 485 U.S. 80 (1988).

This case presents the question of whether the doctrine of procedural due process is satisfied when state judiciary-after case is transfer to another court-fails to provide adequate notice that prior bail conditions remain in effect.

1. **Rowan's arraignments and contact with victim**

In October 2009, Petitioner was initially arraigned by a Delaware justice of the peace on charges of rape and child sexual abuse of a minor victim and set bail and other pretrial conditions. A no-contact order was one of these conditions. A – 2. Rowan did not make bail and was detained pending trial. Notably, he was mistakenly released a few weeks later.

At a second arraignment, this time before the Delaware Superior Court, the court set a higher bond at \$270,000 **but did not expressly describe or reference the no-contact order**. Unable to post bond, Rowan was again detained.

From February to August 2010, Petitioner called his victim over fifty times while incarcerated. Rowan was later charged with fifty-six counts of *knowingly* breaching the no-contact order.

2. Direct appeal and postconviction relief proceedings

Petitioner, on direct appeal, challenged his convictions for the breach of condition of release. The lion's share of Rowan's argument was that trial court failed to reimpose the no-contact order imposed during his first arraignment. Rowan v. State, 45 A.3d 149 (Del. 2012). The Supreme Court of Delaware rejected this and affirmed the lower courts decisions. *id.*

Rowan raised this issue on his Superior Court Criminal Rule 61 motion for postconviction relief ("PCR"). However, the PCR court procedurally barred this claim as previously adjudicated. A - 25. The Delaware Supreme Court subsequently found the claim meritless and affirmed the PCR court's denial. A - 21.

3. Federal habeas and circuit court proceedings

Petitioner argued in his habeas corpus proceeding, *inter alia*, that there was insufficient evidence to secure convictions for breach of conditions of release. A - 11 -12. The district court denied relief in a three-part rationale. First, the court opined that statutory law contradicted his claim of insufficiency of evidence. The court next asserted that it could not disregard the Supreme Court of Delaware's "factual determination" because nothing "clearly and convincingly" rebutted the determination and "the Superior Court's silence did not act to discharge the original no-contact prohibitions." Rowan v. May, 2022 U.S. Dist. LEXIS 22884. Although

not presented as a due process claim, the court *sua sponte* further asserted that it would reject it if it had been. *Id.*

Rowan argued in the Circuit Court of the Third Circuit that his due process rights were violated by the trial court failing to explicitly reimpose the lower court's bail conditions. A – 3. The Circuit Court affirmed the district court's denial to this claim. A – 4. The Court explained that the no-contact order remained in effect and although he was mistakenly released, nothing transpired prior to or during second arraignment that would to believe that the no-contact order was vacated.

X. REASONS FOR GRANTING THE WRIT

A. To prevent unconstitutional abridgements of the right to due process, this Court should vacate the Circuit Court's order and remand with instructions for that court to determine whether the convictions for violating the no-contact order should be vacated for lack of notice.

As the facts demonstrate, Mr. Rowan's constitutional right to due process was circumscribed by his convictions for breaching his bond conditions where, at second arraignment, trial court failed to give reasonable notice that the no-contact order set by different court was still in place. In light of the particular circumstances of this case and the well settled principles of due process, Petitioner's breach of bond convictions cannot survive constitutional scrutiny.

"[H]istory reflects the traditional and common-sense notion that the Due Process Clause, like its forebear in the Magna Carta...was " 'intended to secure the individual from the arbitrary exercise of the powers of government,' " *Hurtado v*

California, 110 US 516, 527, 28 L Ed 232, 4 S Ct 111 (1884) (quoting *Bank of Columbia v Okely*, 4 Wheat 235, 244, 4 L Ed 559 (1819)). By requiring the government to follow appropriate procedures when its agents decide to "deprive any person of life, liberty, or property," the Due Process Clause promotes fairness in such decisions." *Daniels v. Williams*, 474 U.S. 327, 331 (1986) (internal citations omitted) (cleaned up).

Notably, the Due Process Clause is not exclusive to protection against the federal government exercising its powers arbitrary. See *Traux v. Corrigan*, 257 U.S. 312, 332 (1921) (explains limitations of due process clause on executive, legislative, and judicial branches); see also, *Ex Parte A. H. Garland*, *supra* ("By this is not meant simply an act of the general assembly or of Congress, but law in its regular course of administration through courts of justice.").

According to *McBoyle v. United States*, this Court opined that even though miscreants probably will not consider the law before committing an offense, "it is reasonable that a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed. To make the warning fair, so far as possible the line should be clear." 283 U.S. 25, 27 (1931).

Here, in the case before you, the line was far from clear. Coursing upward to the Third Circuit Court of Appeals from Petitioner's direct appeal, each court has

essentially held that because the provisions of 11 Del. C. §2108(b) applied to Mr. Rowan's case the trial court did not have to expressly reimpose the previously set no-contact order. Rowan v. State, 45 A3d 149 ¶ 7-8 (Del. 2012); Rowan v. May, 2022 U.S. Dist. LEXIS 22884, at *14-18; Rowan v. Warden James T. Vaughn Corr. Ctr., 2023 U.S. App. LEXIS 32655, at *5-7. Contrarily, in the same chapter and title of the Delaware Code exist §2112 whereto provides guidance on bail's after transfer to another court. It evinces that the trial court may "continue the original bail" but it does not say that bail transfers automatically.

In Re Gault, this Court held a due process of law violation because proceedings did not measure up to the essentials of due process and fair treatment. 387 U.S. 1 (1967). The Court opined that: "Failure to observe the fundamental requirements of due process has resulted in instances, which might have been avoided, of unfairness to individuals and inadequate or inaccurate findings of fact and unfortunate prescriptions of remedy. Due process of law is the primary and indispensable foundation of individual freedom. It is the basic and essential term in the social compact which defines the rights of the individual and delimits the powers which the state may exercise." Mr. Rowan was not given due process and unfortunately needs this Court to remedy this constitutional violation.

The Supreme Court has also explained that "a valid criminal conviction and prison sentence extinguish a defendant's right to freedom from confinement." Vitek

v. Jones, 445 U.S. 480, 493 (1980) (citing *Greenholtz v. Nebraska Penal Inmates*, 442 U.S. at 7). Simply put, Petitioner's convictions for breach of bail conditions are invalid due to his right to due process being abridged.

Moreover, in the *Peralta* case, this Court evinced the insufficiency of not rectifying a due process violation because there was "no adequate defense upon the merits". *Supra*, at 87. The Court further opined that "only 'wip[ing] the slate clean ... would have restored the petitioner to the position he would have occupied had due process of law been accorded to him in the first place.'" *Id.* Petitioner's case deserves the same treatment.

Even penalties for breach of bail conditions are afforded the protections of the Fourteenth Amendment. See *United States v. Morse*, 2023 U.S. App. LEXIS 2638 *8 ("Due process requires that the conditions of supervised release be sufficiently clear to give [a] person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that [the defendant] may act accordingly.") (internal cites omitted); *United States v. Martin*, 911 F.2d 725 (4th Cir. 1990) (sentence can only be imposed where defendant receive sufficient notice of conditions and penalties). Mr. Rowan did not receive this treatment despite being erroneously released and having new bail hearing. A – 37 – 38.

It is also common to reimpose previously set bail conditions when developments occur in cases. See *State v. Scott*, 2018 Del. Super. LEXIS 75

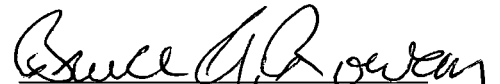
(reimposed bail when granted new trial); Williams v. State, 1996 Del. LEXIS 240 (“The amount of bail and the conditions of release set by the Court of Common Pleas...were reimposed...by the Superior Court at his arraignment.”); Brown v. United States, 392 F.2d 189 (5th Cir. 1968) (set new bail amount but reimposed other conditions); United States v. Ruedlinger, 1997 U.S. App. LEXIS 36177 (bail conditions reimposed).

In sum, penalties for impermissible conduct without proper notice are invalid. In Hatahley v. United States, this Court made an unanimous decision to reverse the convictions for unlawful grazing of livestock where “no notice was given to the plaintiffs. 351 U.S. 173 (1953). The Court of Appeals for the Third Circuit, in United States v. Belgrave, reversed conviction for violations of the Selective Service Act where proper notice was not provided. 484 F.2d 915, 919 (3rd Cir. 1973). Then, in United States v. Johnson, the Ninth Circuit reversed conviction for failure to meet the requirements that notice of postponement along with a copy be placed in appellant’s file. 457 F.2d 942, 943 (9th Cir. 1972). Again, the 9th Circuit in Yates v. United States, the court of appeals reversed a conviction on due process violations because the lower court failed to properly notify defendant of liability for additional sentencing. 227 F.2d 848, 850-51 (9th Cir. 1955). In the case at bar, Petitioner seeks the same relief because as the record reflects his right to due process was infringed upon.

XI. Conclusion

For the forgoing reasons, Mr. Rowan respectfully requests that this Court issue a writ of certiorari to review the judgment of the Third Circuit Court of Appeals.

Respectfully Submitted,


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Date: June 27, 2024