

No. 24-5207

ORIGINAL

In the Supreme Court of the United States

In the Interest of R.C., a child

FILED

JUN 10 2024

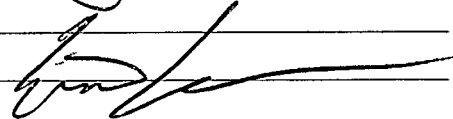
OFFICE OF THE CLERK
SUPREME COURT, U.S.

On Appeal from Cause No. 24-0066 in the Supreme Court of Texas; Cause No. 02-23-00260-CV in the Second District of Appeals in Fort Worth, Texas; and Cause No. 21-2973-462 467 Judicial District Court in Denton County, Texas.

Petition for Writ of Certiorari

Petitioner, Eric Crone, hereby files this Petition for Writ of Certiorari in the above Court.

Respectfully Submitted,



Eric Crone, Pro Se
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Questions Presented For Review

1. Were Petitioner's rights of Due Process trampled when the trial court, along with opposing counsel, did not follow the policy and procedure for an inmate of the Texas Department of Criminal Justice (TDCJ) to appear, be present and heard at the time of the hearing that resulted in a Default Judgment against him terminating his parental rights, even though the record reflects Petitioner's incarceration and his request to participate in said proceeding? Does Petitioner have a right to be heard while incarcerated before deprived of a right?
2. In Petitioner's original answer (Respondent at the time of hearing) he states, "If dismissal is not valid in the above cause, 21-2973-462, we will contest termination of parental rights vigorously." Contest can only mean one thing. Does the court agree that this is an official request to participate at the final hearing?
3. If in the above agreement that the request to participate at the final hearing was official or can be taken as such, was said request denied when the trial court never ruled on request for petitioner to be physically present or to proceed in an alternative form. And was that alternative form selected when the trial court choose Zoom for the hearing?
4. Was the final hearing unfair and harmful to petitioner when the trial court failed to follow the TDCJ policy that would have allowed Petitioner to be heard at the final hearing and continued the hearing in his absence, knowing that petitioner was pro se, knowing full well he could not cross-examine witnesses called to testify against him, introduce or contradict evidence and present some sort of defense?
5. Is it a direct violation of Due process to the petitioner when the trial court prescribed such a method for the final but then blatantly disregards the policy and procedure set forth by TDCJ, explicitly outlining the paperwork the court is required to submit to the incarcerated individuals unit of assignment for that individual to appear via that method and then holds them wholly in default for not appearing and renders a judgment against them after holding the

proceeding in their absence?

6. Since petitioner was never afforded the opportunity to testify in his defense, or as a matter of fact, his only defense, did this violate due process?

7. Does petitioner have a Constitutional right to defend himself and present a defense in a Civil Action? If so, and petitioner was not afforded such an opportunity, does this demand the Court remand the case?

Identity of Parties, Counsel, and Directly Related Cases

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Directly Related Cases

Supreme Court of Texas
24-0066

In Re: R.C.; A Child

Petition of Review denied February 23, 2024

Motion for Rehearing denied April 12, 2024

Court of Appeals of Texas, Second District, Fort Worth

02-23-00260-CV

In the Int. of R.C.; A Child

Judgment affirmed December 7, 2023

Motion for Rehearing denied January 4, 2024

467th District Court, Denton County, Texas

21-2973-462

In the Interest of P [REDACTED] M [REDACTED] C [REDACTED]: A Child

Order of Termination September 28, 2021

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342 F.3d 911

Citations to Opinions Below

- (i) Petition for Review Denied
- (ii) Motion for Rehearing for Petition for Review Denied
- (iii) In appellant father's pro se restricted appeal from a post-answer default judgment terminating his parental rights, appellant received constitutionally adequate notice of the final hearing and the timeliness of the notice did not offend due process because under Tex. R. Civ. P. 21(b)
- (iv) Appeal Motion for Rehearing denied.

Statement of Jurisdictional Grounds

- (i) Petition for Review in the Supreme Court of Texas denied 23rd of February, 2024
- (ii) Motion for Rehearing for Petition for Review in the Supreme Court of Texas denied 12th of April, 2024
- (iii) In the Court of appeals Second District of Fort Worth, Texas the respective court affirmed the trial court's judgment 7th of December, 2023
- (iv) Motion for Rehearing denied and recommended the judgment stand unchanged 4th of January, 2024
- (v) Petitioner's parental rights were terminated on 28th of September, 2021
- (vi) A state court has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Relevant Constitutional, Statutory, and Related Provisions

Relevant Constitutional Provisions

U.S. Const. Amend V

Rights of Accused Persons in Criminal Proceedings

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or in public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall he compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. Amend XIV §1

Citizen rights not to be abridged by States

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.

Statement of the Case

This is a termination of parental rights suit on appeal arising out of Denton County, Texas, where the father's parental rights were terminated while incarcerated. Due to his incarceration, father was not given an opportunity to attend the final hearing and be heard as guaranteed by the U.S. Constitution. The trial court blatantly disregarded the prison policy for an inmate to appear in court through the trial court's prescribed method, which was Zoom (CR 18, 21, 22) even though father conveyed in his original answer he wanted to participate in the above proceeding by stating, "If dismissal is not valid for above cause number 21-2973-462, we will contest termination of parental rights vigorously (CR 24)

The final hearing was set to take place via Zoom. All parties were notified the 29th of April, 2021, two months prior to father filing his original answer dated the 21st of June and filed-stamped the 25th of June, 2021 conveying his wish to participate (CR 22)

Since father is incarcerated, the prison system (Texas Department of Criminal Justice or TDCJ) has a policy outlined for the above scenario, one that the trial court blatantly ignored. For father to appear at the final hearing, a court order or letter had to be signed by the judge on official letterhead of the respective court and sent to his unit of assignment requesting him to attend but the record is absent of any such document. The record, however, does contain numerous pages stating father's incarceration. (CR 5, 14, 17, 18, 19, 20, 21, 24, 25) The opposing counsel informed the trial court of father's incarceration as well. (2RR 4: 21-23) (2RR 5: 7-8) Father requested the outlined policy mentioned above that the Supreme Court of Texas take Judicial Notice. He has also attached a Judicial Notice Request to this petition with the same outlined policy printed from the TDCJ Handbook. See pages 13-15 for Judicial Notice Request.

The trial court proceeded without father present. Due to this, father could not cross-examine witnesses against him or bring forth any witnesses he would have liked to call in his defense, could not dispute any evidence offered against him, testify for his defense or be heard to craft a meaningful defense to any allegations against him.

At the conclusion of this unfair hearing, the trial Court held father wholly in default, terminating his parental rights. The appeals ensued.

A review of this state-court judgment is sought by father, (also known as petitioner) and the specification of the stage in the proceedings when the federal questions sought to be reviewed were raised in the Second Court of Appeals at Fort Worth, Texas through the Brief of Appellant stating he had a constitutional right to be heard at a meaningful time in a meaningful manner citing *Lanson v. Giesenschlag* 368 S.W. 3d 792, 796-97 (Brief of Appellant; issues presented, issue number one) (Brief of Appellant, Summary of the argument) (Brief of Appellant, Argument and Authorities, last four lines of page) The court respectively overruled this issue for two reasons. Respondent (Petitioner) never requested a bench warrant and he also failed to adequately brief the issue by presenting no argument, record references, citations or authority to support his issue. (Second Court of Appeals Opinion, I.V. Father's First issue: Bench warrant) Petitioner raised the issue in future filings but adequately briefing them this time. (Appellant's motion for Rehearing) (Petitioner's Petition for review in the Supreme Court of Texas) (Petitioner's Motion for Rehearing for Petition for Review in the Supreme Court of Texas) (Petitioner also attached outlined policy for Judicial Notice Request to each filing.)

All stated due process violations under the 14th amendment and all were denied without published opinion.

Request for Court to Take Judicial Notice

Eric Crone, Petitioner, Request for this Court to take Judicial Notice in accordance with USCS Fed Rules Evid R 201 and Shows the following:

The document Petitioner is requesting for Judicial Notice is of the Texas Department of Criminal Justice (TDCJ) Handbook explaining how an inmate is to appear via Zoom or an alternate method. This section of the Handbook is attached and printed from the Department's web page. It is as follows:

<https://www.tdcj.texas.gov/documents/Offender-Orientation-Handbook-English.pdf>

Page(s): 134 of the physical handbook and 148 of the PDF viewer.

Although the TDCJ handbook was not made a part of the record, the court can take Judicial Notice of the handbook listed on the TDCJ website. See *Huskey v. Jones*, 860 F. Appx. 322, 325 n. 3 (5th Cir 2021) (per curiam).

This document is central to Petitioner's claims.

Under the above rule, the document "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." (USCS Fed Rules Evid R 201 (b)(2) See Texas Department of Criminal Justice, Offender Orientation Handbook, page(s) 134 physical copy; 148 PDF viewer

Under the same rule but subsection (c)(2) the court must take Judicial Notice if a party requests it and the court is supplied with the necessary information.

Petitioner is also requesting an opportunity to be heard.

Respectfully Submitted

ARGUMENT

Honorable Justices of the Supreme Court of the United States

Good morning.

This is a case-styled termination of parental rights that terminated the parent-child relationship of the petitioner (father) and the child (R.E.) arising out of Denton County, Texas that has proceeded up the appellate ladder to this current court. Petitioner identifies and brings forth multiple faults from the lower courts, all which are concerning due process and presents these claims to this Honorable Court.

Before getting started, Petitioner would like to ask the Justices to review the previous 3 pages, if not already, for they are central to many of petitioner's arguments. Petitioner's request for Judicial Notice is transcribed in those pages. See pages 13-15.

Due process was not upheld to any standard that the United States Constitution demands. When this case was originally filed on the 12th of April, 2021, Petitioner was currently incarcerated since the year 2019. (CR 2) Petitioner was served notice of this suit the 2nd of June, 2021, along with the citation and notice of final hearing addressed to petitioner by his name, Texas Department of Criminal Justice (TDCJ) number at his unit of assignment Joe F. Gurney on Jester 3 Unit. (CR 14, 18, 22) Other service documents that list the same information as above are as follows: (CR 5, 17, 19, 21) Petitioner's original answer was dated the 21st of June and filed - Stamped the 25th of June, 2021, where petitioner's signature is at the bottom of the page, followed by his TDCJ number and address of his unit. (CR 24) There are multiple documents that notify petitioner the date and time the final hearing is set and the prescribed method of how it is to proceed. The date is the 28th of September, 2021 at 9:00 A.M. via Zoom video conference. (CR 18, 21) Petitioner's request for Judicial Notice applies here. The previous page(s) are taken from the Texas Department of Criminal Justice Offender Orientation Handbook displaying the policy outlined and explaining how an inmate is to appear for a court proceeding when it is over telephone or video conference. This policy has been in effect since at least 2017, the year the handbook was issued and produced. See previous

page: Texas Department of Criminal Justice Offender Orientation Handbook page 134. This also can be accessed at anytime online through their website because the handbook is available to the public. See <https://www.tdcj.texas.gov/documents/Offender-Orientation-Handbook-English.pdf>; (2017 edition) (Policy for an inmate to appear via telephone or video conference; page 134) (See printout attached to Judicial Notice Request) Both State:

'A judge may request that a court hearing be conducted via telephone conference call or video conference rather than bench warrant the offender to the court room. The TDCJ requires a court order or letter signed by the judge on official letterhead, requesting the offender participate in a telephone or video conference. The court order or signed letter should be sent to the offenders unit of assignment. The court order or letter shall state the offenders name, number, date, time, and collect telephone number where the call can be facilitated in the case of a telephone conference call. In the case of a video conference, the court order or letter shall provide appropriate information, so that the video conference may be facilitated. No collect telephone number need be provided if the court intends to initiate the telephone conference call. The TDCJ shall verify the order or letter and facilitate the call using a speakerphone or a regular handset if a telephone conference has been requested.'

The record from the trial court is absent of any such letter or order because it never existed. It would be different if the court had no knowledge Petitioner was incarcerated but as petitioner has already shown with all of his record references listed, all parties including the court knew petitioner was in prison. The facts point to nothing else.

Furthermore, it would be entirely a different story if petitioner never requested to participate in the proceeding in any way, shape, or form, but as the facts remain, Petitioner did in his original answer, which reads:

"If dismissal is not valid for above cause number, 21-2973-462, we will contest termination parental rights vigorously." (CR24)

Merriam-webster's Dictionary and Thesaurus ISBN #978-0-

§7779-863-7 defines contest as, "To engage in a struggle or competition; compete; To make the subject of dispute, contention or litigation. Petitioner asks the court to take Judicial Notice of this as well. For Petitioner to contest termination of parental rights, he would have had to be present in some form of way but since he was not, and the trial court never attempted to make that possible, Petitioner's 14th amendment, the right to be heard and present a meaningful defense was violated, along with Petitioner's 5th amendment, the right to testify in his own defense. Since the trial court allowed neither, Petitioner's parental rights were terminated unfairly.

1. Petitioner was denied his Constitutional right to participate and be heard at the final hearing where the trial court was attempting to terminate his parental rights to B.C., which succeeded. This is a direct violation in regards to the 14th amendment under the United States Constitution and that amendment's equal protection clause. 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. (U.S. Const. Amend XIV § 1) Under the Constitution today concerning the equal protection clause, no American may be excluded from participation or representation in collect-decision making processes or treated adversely by decision makers on accounts of such factors such as being incarcerated. The equal protection clause of the 14th amendment provides that "No State shall... deny to any person within its jurisdiction the equal protection of the laws." (U.S. Const. amend XIV § 1) In other words, "The purpose of the equal protection clause... is to secure every person within the States jurisdiction against intentional and arbitrary discrimination, whether occasional by express terms of a statute or by its improper execution through duly constituted agents." *Willis v. Town of Marshall, N.C.*, 426 F.3d 251, 263 (4th cir 2005) (Quoting *Village of Willowbrook v. Olech*, 538 U.S. 562, 564; 120 S. Ct. 1073; 145 L. Ed 2d 1060 (2000) The incarcerated individual must be afforded the same opportunity to be heard at a court proceeding an individual that is not incarcerated is afforded because an inmate can not be denied access to the courts simply

because they are inmates. They also have a fundamental right to be heard under the federal constitution. All litigants who are forced to settle disputes through the judicial process have a fundamental right under the federal constitution to be heard at a meaningful time in a meaningful manner. Litigants can not be denied access to the courts simply because they are inmates. (Barton v. Office of AG, 2021 Tex. App. LEXIS 8496) That is exactly what the lower courts implicated when they failed to notice the TDCJ policy for incarcerated individuals to appear via Zoom when the record has shown Petitioner's incarceration. (See Judicial Notice Request) (See Offender Orientation Handbook, 2017, page 134)

With everything presented, it is blatantly obvious that any form of procedural due process was not upheld. Petitioner has already established through the facts, he was unable to be heard as his Constitutional rights demanded but on closer examination of the situation, he could neither present evidence or cross-examine witnesses called against him, a fundamental requirement of due process. The Reporter's Record only has a direct examination of witnesses called against petitioner (2 RR 3:19-20) This prevented Petitioner from a full and fair hearing as due process demands. Due process is satisfied by a full and fair hearing. (Hamilton v. United States AG 239 Fed Appx 496)

Procedural due process is defined as a fundamental requirement of fairness requiring not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing party and to meet them. Procedural due process mandates that defendant receive proper notice and have opportunity to be heard. (In re American Aluminum Window Corp., 15 B.R. 803) It has been well established in the previous pages of this petition and also Judicial Notice that the trial court deprived petitioner of being heard since the TDCJ requirement was not met for Petitioner to be present at the final hearing. See Judicial Notice Request. A due process violation must be one that deprives a party of notice or the opportunity to be heard. (Sec v. Naringer, 40 F. 4th 297) The Fourteenth amendment's right to procedural due process guarantees citizens the protection of adequate procedures before allowing a State to deprive them of their property, liberty, or life. The Supreme Court has "described the root requirement" of the Due Process Clause as being that an

individual be given an opportunity for a hearing before he is deprived of any significant property interest. (Greenwald v. Lentell, 675 F. Supp. 3d 789) As said previously many times, no opportunity was given.

Furthermore, Petitioner also did not have an opportunity to participate before depriving him of his constitutional right of life, liberty or property. Parental rights are perhaps the oldest of the fundamental liberty interests protected by the United States Constitution, and have been characterized as essential, a basic civil right of man, and far more precious than property rights. (In re K.B., 683 S.W. 3d 856) (Troxel v. Granville, 530 U.S. 57, 65; 120 S Ct 2054, 147 L. Ed. 2d 49 (2000)) (Holick v. Smith, 685 S.W. 2d 18, 20 (Tex 1985)) (citing Stanley v. Illinois, 405 U.S. 645, 651; 92 S Ct. 1208; 31 L. Ed. 2d 551 (1972)) This was another procedural due process violation. The Constitutional Claim here requires the aggrieved party have adequate notice and an opportunity to meaningfully participate before depriving individual of property rights. (Sentana v. City of Tulsa 359 F. 3d 1241, 1244 (10th Cir 2004)) Petitioner never had an opportunity to participate, which violated due process.

2. In Petitioner's next argument, he complains that the trial court denied his right to present a meaningful defense as guaranteed under his 14th and 5th amendment rights.

The 5th amendment are the rights promised to an accused. No person shall... be deprived of life, liberty, or property without due process of law; (U.S. Const amend V) Among these rights are the right to present a defense compelling the attendance and presenting testimony of his own witnesses. The right to present a defense is "essential to a fair trial." "The Fifth... and Sixth Amendments concomitantly provide a criminal defendant the right to present a defense by compelling the attendance and presenting testimony of his own witnesses." (United States v. Clark, 284 Fed Appx 555); see also (Washington v. Texas 388 U.S. 14, 19; 87 S. Ct. 1920; 18 L. Ed. 2d 1019 (1967)) (holding the right to present witnesses and establish a defense is "a fundamental element of due process of law.") No State shall... deprive any person of life, liberty or property, without due process of law. (U.S. Const, amend XIV 31)

Termination of Parental Rights is far from a criminal case

but since it is a case sprouting from due process violations, the due process trumps all. Due process is not a technical conception with a fixed content, must be flexible, and calls for protections as a particular situation demands. Due process... is not a technical conception with a fixed content unrelated to time, place, and circumstances. Due process is flexible and calls for such procedural protections as the particular situation demands. (*Matthews v. Eldridge* 424 U.S. 319) Since due process must be flexible and calls for protections based upon the situations or circumstances, Petitioner had a right to testify on his own behalf under the 5th amendment since that was his only form of defense at the final hearing. Fundamental fairness and due process generally require that a person accused of wrongdoing — whether criminally or civilly — have "an opportunity to present every available defense." (*United States v. Wells Fargo Bank N.A.*, 132 F. Supp. 3d 558) (*Phillip Morris USA v. Williams*, 549 U.S. 346, 353; 127 S. Ct. 1057; 166 L. Ed. 2d. 940) (2007) As previously stated, Petitioner was unable to defend himself as a result of the trial court's error.

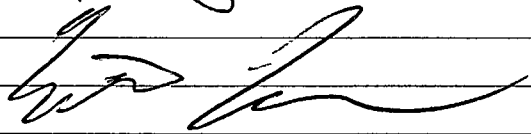
Shifting the argument to the 14th amendment, which prevents a State from punishing an individual without that individual having an opportunity to present every available defense. The due process clause prohibits a State from punishing an individual without first providing that individual with an "opportunity to present every available defense." (*Lindsey v. Norment*, 405 U.S. 56, 66; 92 S. Ct. 862; 31 L. Ed. 2d. 36) (1972) Petitioner never had that opportunity when he had a constitutional right to present a defense and he was still punished by having his parental rights terminated. Every defendant in a civil trial has a right to present a defense but not to prevent the plaintiff from replying to it. (*Sewers v. R.J. Reynolds Tobacco Co.* 975 F.3d 1112) Since Petitioner was incarcerated at the time of the final hearing and was proceeding pro se, which all parties were aware, the trial court denied him his constitutional right to testify in his own defense, because it was not only central to his defense but rather his only defense to attack the allegations against him in attempt to terminate his parental rights. The appellate court concluded that the state court's decision denying the prisoner the right to testify violated his 14th amendment right to due process and was objectively unreasonable application of clearly established federal law.

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The State failed to show an over-riding case-specific reason for denying the prisoner the right to testify. Additionally, since the prisoner's testimony was not only central to his defense, but his only defense, the denial of the right to testify deprived the prisoner of his constitutional right to present a defense. Thus the error had a substantial and injurious effect and was not harmless. (Gill v. Ayers 342 F. 3d. 911)

In conclusion, Petitioner was deprived of his constitutional rights, the right to be heard and present a defense, when the trial court terminated his parental without him present at the hearing. This was a very unfair proceeding to Petitioner and because of all the due process violations Petitioner has suffered, the law demands reversal back to the trial court to ensure a full and fair hearing, as Petitioner's Constitutional Rights demand.

Respectfully submitted,



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