

No. _____

**In the
Supreme Court of the United States**

EDGAR DALE DILLON,

Petitioner,

v.

**WESTMORELAND DEPARTMENT
OF SOCIAL SERVICES,**

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF VIRGINIA

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI

Timothy V. Anderson
Counsel of Record
ANDERSON & ASSOCIATES, PC
2492 N. Landing Rd 104
Virginia Beach VA 23456
(757) 301-3636
Timanderson@virginialawoffice.com

Counsel for Petitioner

*Gibson*Moore Appellate Services, LLC
206 East Cary Street ♦ Richmond, VA 23219
804-249-7770 ♦ www.gibsonmoore.net

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[FILED OCTOBER 11, 2024]

VIRGINIA:

*In the Supreme Court of Virginia held at
the Supreme Court Building in the City of
Richmond on Friday the 11th day of October,
2024.*

EDGAR DALE DILLON,

PETITIONER,

against

Record No. 230735

WESTMORELAND DEPARTMENT OF
SOCIAL SERVICES,

RESPONDENT.

UPON A PETITION FOR A WRIT
OF HABEAS CORPUS

Upon consideration of the petition for a writ of habeas corpus filed October 13, 2023, the respondent's motion to dismiss, and petitioner's reply, the Court is of the opinion that the motion should be granted and the petition should be dismissed.

In December 2021, the Westmoreland County Department of Social Services (DSS) removed G.D. and C.S. from petitioner's home due to abuse and neglect.¹ On January 5, 2022, following a hearing, the Westmoreland Juvenile and Domestic Relations Court (JDR court) entered orders adjudicating G.D. and C.S. abused and neglected. Petitioner did not appeal those orders to the circuit court.

¹ G.D. is Dillon's biological child, and Dillon stood in loco parentis for C.S

In February 2022, the JDR court entered Dispositional Orders transferring custody of the children to DSS and approving an initial foster care plan with a “Return Home” goal for the children.

In early October 2022, DSS alleged petitioner violated the court orders by attempting to contact the children and moved the court to issue a show cause. Thereafter, petitioner and DSS reached an agreement under which DSS would ask the JDR court to dismiss the show cause. In exchange, petitioner agreed to: (1) DSS’ plan to change the foster care goal from “Return Home” to “Placement with Relatives/Adoption” and that he would not appeal any order approving that goal; (2) the entry of child protective orders prohibiting petitioner from contacting the children “until or unless otherwise ordered by a court of competent jurisdiction”; and (3) not mention or communicate with the children on social media. This agreement was presented to the JDR court at a hearing, and on October 26, 2022, the JDR court entered an “Agreed Child Protective Order” for each child and a Permanency Planning Order for each child reflecting the permanent goal of “Placement with relatives/Adoption.” The protective orders provided that they would expire when the children turned 18 unless otherwise modified by court order. The orders also stated, “Any future visitation must be court ordered after recommendation by [petitioner’s and the children’s] therapist[s].”

In August 2023, a relative petitioned for custody of G.D. and C.S., and the children were subsequently placed in the relative’s care. The children expressed their desire not to be returned to petitioner’s custody.

On May 8, 2024, the court entered orders approving the foster care plans for the children and transferring custody of the children to the relative. DSS did not file a petition for the termination of petitioner's parental rights because DSS found it was not in the children's best interest.

Contemporaneous with the JDR proceedings, DSS conducted administrative investigations regarding petitioner's treatment of the children. In March 2022, DSS issued an administrative decision determining multiple abuse and neglect allegations against petitioner were founded. Petitioner appealed that decision on March 25, 2022. After filing his appeal, petitioner was charged with ten counts of providing marijuana to an unrelated minor. As a result of the criminal proceedings, DSS stayed the administrative appeal, citing Code § 63.2-1526. Because of the stay, petitioner's appeal of the administrative finding was not heard until August 29, 2023. Following the hearing, DSS' administrative findings of abuse and neglect were overturned.

Throughout the JDR court and administrative proceedings, petitioner was represented by retained counsel. Petitioner was represented by Barbara H. Earp from the start of the proceedings until March 1, 2023, when new retained counsel was substituted for Earp.

In claim (1)(a) petitioner contends counsel was ineffective for failing to appeal or advise him of his right to appeal the entry of the abuse and neglect orders.

This Court finds this claim is untimely. "A petition for writ of habeas corpus ad subjiciendum, other than a petition challenging a criminal

conviction or sentence, shall be brought within one year after the cause of action accrues.” Code § 8.01-654. Petitioner’s cause of action accrued when counsel failed to timely file a notice of appeal, which counsel was required to do on or before January 15, 2022, ten days after the JDR order was entered. *See* Code § 16.1-296(A) (requiring appeals from JDR court to circuit court be noticed within ten days of the JDR court’s final order). Petitioner failed to file his petition for a writ of habeas corpus until October 2023, far more than a year after the cause of action accrued. Accordingly, petitioner’s claim is time-barred.

In claims (1)(b) and (1)(c) petitioner makes additional ineffective assistance of counsel claims. In claim (1)(b), petitioner contends he was denied the effective assistance of counsel when counsel failed to advise him of his right to petition for a writ of mandamus to remove the stay of his appeal of DSS’ administrative decisions while his criminal charges were pending. In claim (1)(c), petitioner contends he was denied the effective assistance of counsel when counsel brokered the agreement under which petitioner agreed to the entry of the child protective orders and the October 26, 2022 permanency planning orders with the goal of relative placement/adoption in exchange for DSS’ agreement to ask the court to withdraw the show cause.

This Court rejects these claims because petitioner had no constitutional right to counsel or concomitant right to the effective assistance of counsel during the JDR proceedings. There is no bright-line rule requiring the appointment of counsel in every case involving the termination of parental rights. *Lassiter v. Dep’t of Social Services*, 452 U.S. 18, 31 (1981).

Rather, there is a presumption against the right to counsel in cases where the litigant is not at risk of losing his personal liberty. *Id.* at 25-26. In *Lassiter*, however, the United States Supreme Court recognized the importance of a parent's interest in their relationship with their children and that a proceeding where a state terminated a parent's parental rights "worked a unique kind of deprivation." *Id.* at 27. Based in part on the parent's significant interest in their relationship with their children, the U.S. Supreme Court determined the Due Process Clause of the Fourteenth Amendment and its guarantee of "fundamental fairness" may require the appointment of counsel for an indigent defendant in a termination of parental rights proceeding in some—but not all—circumstances. *Id.* 26-33. Based on the ruling in *Lassiter*, many states have recognized parents' rights to bring ineffective assistance of counsel claims following the termination of their parental rights. See *In re Carrington H.*, 483 S.W.3d 507, 530 n.25 (Tenn. 2016) (collecting cases).

Here, the record, including the manuscript record, demonstrates petitioner's parental rights were not terminated during the proceedings. The final order granting custody of the children to the relative demonstrates DSS did not petition to terminate petitioner's parental rights because DSS concluded termination would not be in the children's best interest. Further, although the agreed protective orders prevent petitioner from contacting the children at present, the orders leave open the possibility that petitioner may eventually be permitted to contact the children. Thus, petitioner did not suffer the "unique kind of deprivation" at

issue in *Lassiter* and other termination cases. Because the loss to petitioner was not as severe as the loss at issue in cases involving the termination of parental rights, petitioner did not have a constitutional right to counsel during the proceedings. See *Lassiter*, 452 U.S. at 26 (“[A]s a litigant’s interest in personal liberty diminishes, so does his right to appointed counsel.”); *People ex rel. L.B.*, 254 P.3d 1203, 1206 (Colo. Ct. App. 2011) (holding that where “the state seeks only to award custody of a child to other persons rather than to terminate parental rights, a parent has no due process right to counsel”). Therefore, because petitioner did not have a constitutional right to counsel during the proceedings, he also did not have a constitutional right to the effective assistance of counsel.

Upon consideration whereof, petitioner’s Motion for Relief from Rule 5:7(a)(2) is granted.

Accordingly, the petition is dismissed.

A Copy,

Teste:

Muriel-Theresa Pitney, Clerk

By: 

Deputy Clerk