

IN THE
SUPREME COURT OF THE UNITED STATES
APRIL TERM, 2024

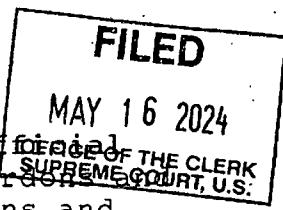
24-5705 ORIGINAL

NORRIS HICKS

Petitioner,

v

TEXAS BOARD OF PARDONS AND PAROLES, each member in official capacity; DAVID GUITERRIEZ, Chairman, Texas Board of Pardons and Paroles; RESSIE OWENS, Chairman, Texas Board of Pardons and Paroles; PAUL KEIL, Boardmember/Commissioner, Texas Board of Pardons and Paroles; JOHN LNU; JANR LNU, Respondents.



PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

USCA NO 22-40765
USDC NO. 6:22-cv-134

Pro Se
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QUESTIONS PRESENTED

1. Where the Texas Board of Pardons and Paroles(TBPP) fail to follow its own Rules & Guidelines, the Texas Constitution, and the Adminstrative Procedures Act(APA); Can the TBPP promulgate Rules and Regulations and arbitrarily and capriciously refuse to follow them consistent with the due process clause, as set out by this Court in **WILKINSON v DOTSON**, 125 S.Ct. 1242?

2. Where the District Court and the Appeals Court fail to address an issue of First Impression(i.e. **THE CUMULATIVE EFFECT OF THE TEXAS CONSTITUTION, TEXAS STATUTES, THE APA, AND TBPP'S OWN GUIDE LINES COMBINE TO GIVE A LIBERTY INTEREST, OR IN THE LEAST A REASONABLE EXPECTATION THAT PAROLE PROCEDURES WILL BE CONDUCTED WITH A MODICUM OF JUST AND FAIT TREATMENT**); Does this failure conflict with the Fifth Circuit's holding in **MYERS v KLEVENHAGEN**, 97 F.3d, 91, where the Court held that prison officials failure to follow the prison's own policies, procedures or regulations does not constitute a violation of due process, if constitutional minimas are nevertheless met; and conflict with this Court's holding in **WILKINSON v AUSTIN**, 545 U.S. 209, where it held that an intetrest may arise from an expectation or interest created by State Laws or policies?

3. Where the District Court and the Appeals Court holding is in conflict with the holding in the 9th Circuit in **PEARSON v MUNTZ**, 639 F.3d 1185(2001);the 2nd Circuit in **GRAZIAN v PATAKI**, 2006 WL 2023082;with the understanding that this Court has NOT Explicedly stated what the minimum process is in regards to the denial of parole, Petitioner ask this Court to make a ruling that will put all of the Circuits on the same page?

LIST OF PARTIES

PETITIONER - NORRIS **HICKS**

V

RESPONDENTS:

TEXAS BOARD OF PARDONS AND PAROLES, Each Member In Official Capacity; David Guiterriez, Chairman, Texas Board of Pardons and Paroles; Ressie Owens, Chairman, Texas Board of Pardons and Paroles; Paul Keil, Boardmember/Commissioner, Texas Board of Pardons and Paroles; John LNU; Jane LNU

RELATED CASES

ACCORDI v SHAUGNESSY, 347 U.S. 260, 265(1954)

IN RE GEE, 941 F.3d 153

IN RE KEMMLER, 136 U.S. 436, 10 S.Ct. 930, 34 L.Ed 519(1980)

IN RE LAWRENCE, 44 Cal. 1181, 190 P.3d 535(2008)

JOHNSON v MISSOURI, 143 S.Ct. 417

MYERS v KLEVENHAGEN, 97 F.3d 91(5th Cir.1987)

WILKINSON v AUSTIN, 535 U.S. 209

WILKINSON v DOTSON, 125 S.Ct. 1242

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PETITION FOR WRIT OF CERTIORARI TO THE
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USCA NO.22-40765
USDC NO.6:22-cv134

PETITION FOR WRIT OF CERTIORARI

COMES NOW, NORRIS HICKS(Hereinafter)Petitioner), petitions for a writ of certiorari to review the judgment~~s~~ of the United States Court of Appeals for the Fifth Circuit, rendered in appeal, which judgment affirmed the denial of the District Court's failure to address the gravaman of Petitioner's complaint; i.e.the TBPP's failure to follow its own rules and Statutes, as well as legislative intent; and refusal to state EXPLICITELY what procedures a prisoner is entitled to in a parole hearing in the State of Texas.

OPINIONS BELOW

This petition intends to seek review of the order dated October 18, 2023 for which a timely rehearing was denied on Mardch 20, 2024 by the Fifth Circuit Court of Appeals in case No.22-40765(Pet.1a-2a;3a-4a) and the District Court(Pet.App.5a-8a;9a-10a)

JURISDICTION

This petition is timely filed pursuant to 28 U.S.C.2101(c); as the order dated October 18, 2023 for which a timely rehearing was denied on March 20, 2024 by the Fifth Circuit Court of Appeals in cause No.. 22-40765. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The 14th Amendment to the U.S. Constitution provides in relevant part: "...nor shall any state deprive any person of life, liberty, property without due process of law..."

In the 14th Amendment, words "due process of law" refer to that law of the land in each state which derives its authority from inherent and reserved powers of State, exerted within limits of those fundamental principles of liberty and justice which lie at the base of all civil and political institutions.-see **IN RE KEMMLER**, 136 U.S. 436, 10 S.Ct. 930, 34 L.Ed. 519, 1890 US.LEXIS 2223

Even Aliens whose presence in this country is unlawful, have long been recognized as persons guaranteed due process of law by the Fifth and Fourteenth Amendments.-see **SHAUGHNESSY v MEZEI**, 345 U.S. 206, 212(1953); **WONG WONG, v UNITED STATES**, 163 U.S. 228, 238 (1896); **YICK WO v HOPKINS**, 118 U.S. 356, 369(1886)

Chief Justice Taney, in the **DRED SCOTT DECISION** Stated that one of African Decnt had no right that must be acknowledged.-see **SCOTT v SANFORD**, 60 U.S. 393 It would appear that the same is True in Texas about what a prisoner is entitled to in a parole hearing if the Fifth Circuit's ruling is allowed to stand without this Court stating EXPLICITEDLY what a prisoner is entitled to. This cannot be done without an analysis of the Legislative Intent when they enacted Statutes to govern the procedures of the Texas Parole Board.-see Tex.Gov.Codes.508.001 thru 508.1445; Tex.Code.Cr. Pro., Art.37.07,Sec.4(a); Tex.Const.Art.1,Sec.19; and Tex.Gov. Code.Ann., Sub-sec.311.021(2)

PRELIMINARY STATEMENT

Petitioner has been in prison over 34-four years on a life sentence for murder. He is 70-years old. He has been denied parole 10-times without being allowed to review his parole file. In addition, Petitioner has been denied parole repeatedly for the Serious Nature of Offense and Criminal Behavior Pattern. He has repeatedly requested to review his file, but each request has been denied stating that the Freedom of Information Act does not apply to prisoners, or information is denied due to confidentiality of information as provided for in Tex.Gov.Code.508.313.

Petitioner has not only completed all Rehabilitative Programs available to him, he has taught several of them; he was an instruc-

tor for about 5-years for Peer Health and PREA Programs, and a Facilitator for a Veterans-PTSD Program, which is a clear demonstration of his rehabilitative accomplishments. Yet he has been repeatedly denied parole 10-times based solely upon prior conduct of 20 and 30-years ago, and a record that he has never had an opportunity to review.

These proceedings involves several questions of exceptional importance that have never been addressed in the 5th Circuit, nor this Court:

1. WHAT IS A PRISONER ENTITLED TO IN A PAROLE HEARING IN THE STATE OF TEXAS? -see PEARSON v MUNTZ, 639 F.3d 1185(9th Cir.2001)

2. In an Issue of First Impression Petitioner ask; Does the Cumulative Effect of the Texas Constitution, Texas Statutes, The APA, and the TBPP'S own Rules and Guidelines give a reasonable expectation that one will receive a fair and just parole hearing.-see IN RE GEE, 941 F.3d 153 and WILKINSON v DOTSON, Supra.

FURTHERMORE, the panel's decision conflicts with this Court's holding in WILKINSON v AUSTIN, 545 U.S. 209, where this court held that an interest may arise from an expectation or interest created by State Laws or policies. The panel's decision also conflicts with its own decision in MYERS v KLEVENHAGEN, 97 F.3d 91, where it held that prison officials failure to follow the prison's own policies, procedures or regulations does not constitute a violation of due process, if constitutional minia are nevertheless met.

ARGUMENTS FOR GRANTING PETITION

The Fifth Circuit reasoning is flawed... The 9th Circuit reasoning correctly captures the requirements of WILKINSON, Supra:

Although this Court has not clearly defined the minimum process required by the due process clause for the denial of parole under the Texas System, it made clear that the requirements were satisfied where the inmates were allowed to speak at their hearings and to contest the evidence against them, were afforded access to their records in advance, and were notified as to the reasons why parole was denied.-see U.S. v AL-HAMI, 356 F.3d 564 where this Court requires courts to consider three factors when determining if the procedures are constitutionally sufficient:(1) the private interest to be affected by the action;(2) the risk of erroneous

deprivation of that interest through the procedures that were used; and (3)the government's interest, including the fiscal administrative burdens of added procedures.

The private interest of Petitioner is a just and fair hearing that may or may-not result in his freedom. The risk of erroneous deprivation is admitted by Boardmembers.-see the Exhibit-1 at Para.19-25 of the Original Complaint) It cost no more for the TBPP to allow Petitioner to review his files, and it surely cost no more for the TBPP not to redact the Parole Score from the Minute-sheet. Actually leaving it saves resources and fulfills the Legislative Intent. Thus, Petitioner ask;Can the TBPP promulgate rules and regulations and arbitrarily and capriciously refuse to follow them consistent with the due process clause?

In the District Court, Petitioner alleged that the Cumulative Effect of the Texas Constitution, State Statutes, the APA, and the TBPP's on Rules and Guidelines combine to create a right to a fair and just parole review procedure.

The District Court and the 5th Circuit Court of Appeals failed to address this issue on the basis that Petitioner could not attack parole review procedures because he held no liberty interest in parole. However, in WILKINSON, Supra this Court held that prisoners can challenge parole procedures used to determine parole suitability. Like the Petitioners in WILKINSON, Petitioner seeks relief that will render invalid the State procedures used to deny parole suitability,(i.e.the arbitrary failure to follow its own rules).

Valid rules and regulations promulgated by an administrative agency acting within its statutory authority have the force and effect of legislation and they are so by bound. SERVICE v DULLES, 354 U.S. 363, 388(1957) It has long been established that government officials must follow their own regulations, even if they were not compelled to have them at all.-see ACCORDI v SHAUGNESSY, 347 U.S. 260, 265(1954)(Where the ACCORDI DOCTRINE was formed, binding government officials to comply with their own rules) The ACCORDI DOCTRINE is alive and well and in rare cases, a litigant can credibly claim that a State's erroneous interpretation of, or refusal to comply with its own regulations can amount to a due process violation.-see JOHNSON v MISSOURI, 143 S.Ct. 417

and cases cited therein. The Accordi Doctrine stands for the un-remarkable proposition that an agency must abide by its own regulations. Worthy civil rights claims are often never brought to trial; that's because government officials have a number of legal tools at their disposal to avoid being held accountable in the courts. To be clear, its not suppose to be this way. But judges often dismiss cases whether out of an excessive sense of deference to public officials, fear of deciding controversial cases - the Cumulative Effect Theory- or simple good faith mistake, and when that happens fundamental constitutional freedoms frequently suffer as a results. With so many splits in the Circuits as to what due process is required during parole review, Petitioner ask this Court to grant Certiorari and put this issue to rest by stating EXPLICITELY what is required?

II. The Fifth Circuit is conflicted with numerous holdings of this Court and other Circuits:

The District Court and the Fifth Circuit's reliance on MYERS, *Supra*, is misapplied because the facts of this matter are distinguishable from MYERS in that the Defendant met the constitutional minimum. The Constitutional Minimum was not met in this case. Petitioner was not given notice of what evidence was to be used against him in order that he might challenge it's accuracy. Thus, the question arises: "WHAT IS THE CONSTITUTIONAL MINIMUM FOR A FAIR AND JUST PAROLE HEARING IN TEXAS?" If the TBPP is allowed to ignore their own guidelines, why did the Legislature command them to make these rules? See Tex.Gov.Codes.508.001 thru 508.1445, particularly, but not limited to 508.144, which must be provided here to demonstrate how the MANDATORY Language leads the prisoner to expect a fair and just parole hearing.

PAROLE GUIDELINES-Tex.Gov.Code.508.144;

(a) THE BOARD SHALL:

(1)develope according to an acceptable research method the parole guidelines that are the basic criteria on which a parole decision is made;

(2)base the guidelines on the seriousness of the offense and the likelihood of a favorable parole outcome;

(3)ensure that the guidelines require consideration of an inmate's

progress in any programs in which the inmate participated during the inmate's term of confinement; and

(4) Implement the guidelines.

(b) If a Boardmember or Parole Commissioner deviates from the parole guidelines in voting on parole decisions, the Member or Commissioner shall:

(1) produce a written statement describing in detail the specific circumstances regarding the departure from the guidelines;

(2) place a copy of the statement in the file of the inmate for whom the parole decision was made;

(c) The Board Shall keep a copy of a statement made under Sub-section (b).

(d) The Board Shall meet annually to review and discuss the parole guidelines developed under Subsection(a). The Board may consult outside experts to assist with review. The Board Must consider:

(1) how the parole guidelines serve the needs of parole decision making;

(2) how well parole guidelines predict successful parole outcomes.

(e) Based on the Board's review of the parole guidelines under Sub-section(d), the Board may:

(1) update the guidelines by:

(A) including new risk factors; or

(B) changing the value of offense severity risk factors; or

(2) modify the recommended parole approval rates under the guidelines, if parole rates differ significantly from recommended rates.

(f) The Board is not required by subsection (b), to hold an open meeting to review the guidelines, but any modifications or updates to guidelines made by the Board under Subsection(e) must occur in an open meeting.

Petitioner submits that the foregoing is a relevant factor that should have been given significant weight in an examination of the CUMULATIVE EFFECT of Texas Statutes, which demonstrate that the Texas Legislature intended to maintain some elementary procedural rights for a fair and just parole hearing. This is but one example of Legislative Intent in creating Statutes commanding the Board to create and follow Guidelines (Tex. Gov. Code. 508.1445).

Because this issue has been addressed in other Circuits in con-

flict with the Fifth Circuit to EXPLICITEDLY state what a prisoner in Texas is entitled to in a parole hearing

In 2006, prisoners in New York filed a civil action alleging that for certain class of violent felons, State Officials had adopted a policy of denying parole based exclusively on the prisoners' primary offense, despite the prisoners' institutional records. The Court ruled in favor of the prisoners stating; even in the absence of a State-created liberty interest in release to parole, there is an entitlement to a process of decision-making which complies with the statutory guidelines of consideration to all relevant statutory factors.-see GRAZIAN v PATAKI, 2066 WL 2023082; see also GRAZIO, 2007 WL 4302483; COOPER v SOUTH CARLINA DEPT. OF PROB. & PAROLE, 661 S.E.2d 106 11-12 S.C.2008); GOESv LOPEZ, 419 U.S. 565; and IN RE LAWRENCE, 44 Cal. 1181, 190 P. 535(2008)

These cases also point to the matter of TBPP following Statutes enacted to govern Parole Hearings. Therefore an examination of those Statutes, guidelines, and the Texas Constitution is absolutely essential. These have been set-out in Petitioner's original appeal, which the panel chose not to address, however, Petitioner submits that if these are not examined it will lead to the ongoing grave miscarriage of justice; in that TBPP will be allowed to continue to act in an arbitrary and capricious manner.-see U.S. v MORETT, 478 F.2d 419

This leads to another issue that the Fifth Circuit, nor the District Court failed to address, which is an exceptional issue of First Impression. This issue calls for the examination of the Legislature Intent in enacting statutes to govern parole hearings in Texas. Thus, Petitioner ask this Court to discuss/examine the CUMULATIVE EFFECT of the Texas Constitution, Texas Statutes, the APA, and the TBPP's own rules and guidelines? -see IN RE GEE, 941 F.2d 153 where the Court explained the CUMULATIVE EFFECT is one of First Impression that requires the interpretation of recent Supreme Court precedent without the benefit from the Fifth Circuit. Without a clearly expressed Legislative Intention to the contrary, statutory language must usually be considered controlling.-see VEASEY v ABBOTT, 830 F.3d 216 Legislative Intent or Motivation is a paradigmatic fact question.-see also U.S. v REEVES, 752 F.2d 995

Petitioner asserts that this Panel's decisions is not only in conflict with other circuits, but it is in conflict with holdings in the Fifth Circuit, which indicate an agency must follow the APA and/or its own guidelines where the Constitutional Minimum is not met. -see U.S. v WHITE, 431 F.3d 431 In the case of U.S. v MORGAN, 193 F.3d 252, the Court held, where an entire procedural framework, designed to insure the ~~fall~~ processing of an action affecting an individual is created but not followed by an agency, it can be deemed prejudicial. -see U.S. v GUITERRIEZ, 443 Fed. Appx. 898, where this Court held that it is an unremarkable proposition that an agency must follow its own regulations. Only a review of the Statutes, Regulations, as well as the Texas Constitution will allow this Court to properly address this matter. Then it will be glaringly clear to what extent the TBPP has repeatedly failed to follow the Mandatory Language of the Texas Legislature to safeguard elementary procedural rights to a fair and just parole hearing.

Petitioner will point out one other particular aspect of this failure where it is glaringly evident that the procedures are not being followed. The Texas Legislature created the Point System to be used as a mandated guide regarding the consideration of parole review and release procedures. An Offense Class as well as a Risk Assessment Instrument when considered into a matrix, a single parole guideline score is created as the salient factor. The Salient Factor Score is then inserted and placed on the inmate's Minute-Sheet as required by Tex.Gov.Code.508.1411 Yet it is being redacted, inspite of the fact that Tex.Gov.Code.508.313(b) provides: "All matters of the Board and decisions relating to mandatory supervision, parole, and clemency, SHALL be matters of public record and subject to public inspection at all reasonable times." There, fore, by redacting the parole score the TBPP fails to follow this statute, and fails to meet the Legislative Intent. The 65th Legislative Session created the Mandatory and Statutory construction to be complied with by the Judicial Committee regarding release of public records and information(PAROLE SCORE). Thus, the question must be asked; Why is the TBPP redacting the Parole Score when the Legislature has ordered them to make it a part of public records? As it is clear in BOARD OF PARDONS v ALLEN, 482 U.S. 369, 371 that

the State may create an interest from an expectation or interest created by State Laws or Policies.

Is it possible that the TBPP is Double-Counting the Parole Score? Fairness transcends the specific type of adjudicatory proceeding.. see **WITHROW v LARKIN**, 95 S.Ct. 1456 The TBPP's use of the Risk Assessment tool is twisted to achieve their desired results. They act outside of the assessment parole score without giving a reason. The redacting of the parole score renders the process unfair; it removes the elementary procedural requirements of fairness. There is ample precedent for the application of fundamental fairness principles enshrined in State Statutes, Rules, and processes that rig proceedings implacting liberty against one side. -see **CHAMBERS v MISSISSIPPI**, 93 S.Ct. 1038 If a protocol is designed to systematically produce unreliable evidence of parole unsuitability and thus results in denials of parole, that process is fundamentally unfair. -see **MADDOX v U.S.PAROLE COMM.**, 821 F.2d 997(5th Cir.1987) and **EX PARTE HENDERSON**, 654 S.W.2d 469(Tex.Crim.App.1983)

Throughout this litigation this matter has been wholely ignored, for neither the District Court nor the Fifth Circuit has addressed this matter of redacting and Double-Counting. Thus, this is yet another question of Exceptional Importance that Petitioner ask this Court to address?

CONCLUSION

The foregoing Exceptionnal Questions of Law have been addressed by the Fifth Circuit in Conflict with rulings in the Fifth Circuit, in other Circuits, and in conflict with rulings in this Court. In addition, there is an issue pf First Impression that has not been addressed in the Fifth Circuit, another Circuit, nor in this Court. For these reasons, Petitioner prays this Court will grant a Writ of Certiorari that will put these matters to rest.

RESPECTFULLY SUBMITTED,

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DATED: May 16, 2024