

IN THE SUPREME COURT OF OHIO

In Re C.J., a MINOR
323 West Cherry Street
Georgetown, Ohio 45121

Relator,

v.

THE HAMILTON COUNTY JUVENILE
COURT
800 Broadway
Cincinnati, Ohio 45202

and

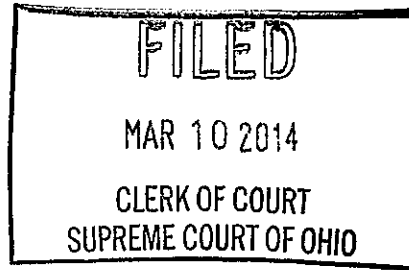
THE HON. JOHN M. WILLIAMS
Administrative Judge
Hamilton County Juvenile Court
800 Broadway
Cincinnati, Ohio 45202

Respondents.

Case No.

14-0357

AN ORIGINAL ACTION



COMPLAINT FOR AN ORIGINAL WRIT OF PROHIBITION

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NEED FOR IMMEDIATE RELIEF

1. This is an original action for a writ of prohibition to restrain Respondent court and judge from continuing to enforce a patently unconstitutional policy of indiscriminately shackling juveniles who appear before the court without first conducting a hearing to determine if shackling of that particular juvenile is necessary.

JURISDICTION

2. This court has original jurisdiction over this action pursuant to Article IV, Section 2(B)(1) and 5(A)(1) of the Ohio Constitution, S.Ct.Prac.R. 12.02, and pursuant to this Court's established precedent holding that, "a prohibition action may only be commenced by a person who is either a party to the proceeding sought to be prohibited * * * or [who] demonstrates an injury in fact to a legally protected interest." *State ex rel. Cordray v. Marshall*, 123 Ohio St.3d 229, 2009-Ohio-4986, 915 N.E.2d 633, ¶12.

PARTIES

3. Relator, C.J. is a minor-child charged with a two-count delinquency complaint pending before the Hamilton County Juvenile Court ("HCJC".) Her Public Defender has filed a motion pursuant to Ohio House Bill 262, or the "Safe Harbor Bill" to divert her from the juvenile court system because it is believed that C.J. is the victim of human trafficking, and that the allegations that led to the filing of a delinquency are directly related to her being subjected to this treatment by an adult male that was harboring her in his home. C.J. is a mere fourteen-years-old and is only 5 feet 2 inches tall. Her current charges are both non-violent drug offenses. She has no prior adjudications for offenses of violence. C.J.'s guardian, her father, failed to appear for initial hearings at the HCJC Youth Center. Her father did appear for a later hearing, however; the court determined that a guardian ad litem had to be appointed. C.J is also currently undergoing a

competency evaluation pursuant to Juv.R. 32. She has been held continuously in detention since February 2, 2014. On, February 28, 2014, counsel for C.J. filed a Motion to Appear Free of Physical Restraints at her hearing scheduled for March 2, 2014. The Court denied her motion without having a hearing to determine if there was an individual need to have her appear in shackles before the court.

4. The Respondents in this action are, Hamilton County Juvenile Court and the Honorable John M. Williams, a duly appointed judge of the Respondent court, acting in his official capacity as Administrative Judge.

RESPONDENTS' UNCONSTITUTIONAL CONDUCT

5. The Hamilton County Juvenile Court has a blanket policy of shackling all juveniles that appear before the court, rather than holding hearings to determine if there is an individual need to shackle a child. (Exhibit A, Aff. Gordon Magella, ¶ ¶ 5, 15.)

6. The Hamilton County Juvenile Court's current policy is that all juveniles being escorted to and from the courtrooms will be shackled including the use of handcuffs, a belly belt chain restraint system, and shackling at the feet. (Exhibit B, Aff. Gordon Magella ¶ ¶ 7-8.)

7. On or about February 3, 2014, a complaint alleging that C.J. is a delinquent child was filed by the Hamilton County Prosecutors Office, and an arraignment hearing was held. C.J. entered a plea of not guilty and a hearing was set before Magistrate Kelley on March 7, 2014.

8. On February 28, 2014, defense counsel for C.J. filed a motion with the court to appear without physical restraints at the hearing scheduled for March 7, 2014. Despite this motion, C.J. was forced to appear before the court shackled and the magistrate indicated she would continue to do so "until some other finding has been made." (Exhibit A, ¶¶ 5-7.)

9. Every day, children in HDJC are forced to appear before judges and magistrates shackled, without being given the opportunity to have a hearing to determine if there is a need to shackle the individual child. (Exhibit A, ¶ 15.)

10. The children appearing before the Hamilton County Juvenile Court are restrained and/or shackled, regardless of age, even if it is alleged that they have committed low level delinquency charges, unruly charges, or they are being held pending placement with the Department of Children and Family Services because of allegations of dependency, neglect or abuse. (Exhibit A, ¶ 5.)

RESPONDENTS' REFUSAL TO HOLD INDIVIDUALIZED HEARINGS TO DETERMINE WHETHER SHACKLING IS NECESSARY IS A VIOLATION OF THE U.S. AND OHIO CONSTITUTIONS

11. The indiscriminate shackling of juveniles without first holding a hearing to determine the need to shackle that particular juvenile, violates the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 10 to the Ohio Constitution.

12. Juveniles in delinquency proceedings must be afforded the same due process rights that adults are entitled to in criminal proceedings, including: 1) notice of the charges against them, 2) the right to confront witnesses, 3) right to counsel, 4) right against self-incrimination, and 5) the standard of proof beyond a reasonable doubt. *In re Gault*, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967).

13. The use of physical restraints in both the trial and sentencing stage of judicial proceedings violates a defendant's right to due process. *Deck v. Missouri*, 544 U.S. 622, 125 S.Ct. 2007, 161 L.Ed.2d 953 (2005). A court may only legally restrain a defendant in court who poses a safety risk as documented by a "history of violence or escape attempts." *State v. Adams*, 103 Ohio St.3d 508, 2004-Ohio-5845, 817 N.E.2d 29, ¶104; *Holbrook v. Flynn*, 475 U.S. 560,

568-69, 106 S.Ct. 1340, 89 L.Ed.2d 525 (1986). Additionally, when the court finds a need to use physical restraints the court must make a record to support this finding. *State v. Johnson*, 112 Ohio St.3d 210, 2006-Ohio-6404, 858 N.E.2d 1144; *see also State v. Kidder*, 32 Ohio St.3d 279, 285, 513 N.E.2d 311 (1987) (where this Court held that, “[w]e recognize that no one should be tried while shackled, absent unusual circumstances * * *.”)

14. Indiscriminate shackling of juveniles in court is a violation of a child’s substantive and procedural due process rights. “The possibility of prejudicing a jury * * * is not the only reason why courts should not allow the shackling of the accused in the absence of a strong necessity to do so * * * an accused has the right to stand trial ‘with the appearance, dignity, and self-respect of a free and innocent man.’” *In re Stanley*, 67 Ill.2d 33, 37, 364 N.E.2d 72 (1977), quoting *Eaddy v. People*, 115 Colo. 488, 492, 174 P.2d 717 (1946) (holding by the Illinois Supreme Court on an appeal from a juvenile defendant whose request to be unshackled during trial was denied); *see also In re R.W.S.*, 728 N.W.2d 326, 2007 ND 37 (2007), citing *In the Matter of Millican*, 138 Or.App. 142, 906 P.2d 857 (1995). In *In re R.W.S.*, the Supreme Court of North Dakota held that, “[w]ith respect to a juvenile court proceeding, we recognize the concerns about the effect of visible physical restraints on a jury do not apply. However, we agree with those courts holding that juveniles have the same rights as defendants to be free from physical restraints.” *In re R.W.S.* at 330.

15. Indiscriminate shackling of juveniles without first holding a hearing to determine individual need is unconstitutional. *Tiffany A. v. Superior Court*, 150 Cal.App.4th 1344, 59 Cal.Rptr.3d 363 (2007). In *Tiffany A.*, the California appellate court reviewed a writ of prohibition filed by a juvenile after the trial court denied her motion to appear without restraints and found that a “juvenile delinquency court could not use physical restraints upon all minors

who appeared in court proceedings absent an individualized determination of need” because it violated the juvenile’s right to due process. *Id.* at 1348.

16. The underlying purpose of the juvenile court system is rehabilitation, not punishment. *McKeiver v. Pennsylvania*, 403 U.S. 528, 91 S.Ct. 1976, 29 L.Ed.2d 647 (1971). Forcing children to appear in court with restraints undermines the rehabilitative purpose of the juvenile court system. Further, shackling is traumatizing to children, particularly those who have a history of emotional or physical abuse.¹

ENTITLEMENT TO A WRIT OF PROHIBITION

17. Respondents’ conduct is an exercise of judicial power that constitutes an on-going, substantial and irreparable deprivation of C.J’s constitutional rights, as well as the rights of all other children appearing before the court shackled. “[I]t is the trial court, not law enforcement personnel, that must make the decision an accused be [sic] physically restrained in the courtroom. A trial court abuses its discretion if it abdicates this decision-making responsibility to security personnel or law enforcement.” *Tiffany A. v. Superior Court*, 150 Cal.App.4th 1344, 1353, 59 Cal.Rptr.3d 363 (2007).

18. By implementing policies and issuing orders that patently violate C.J’s constitutional rights, Respondents have exercised judicial power unauthorized by law.

19. Relator has no plain and adequate remedy in the ordinary course of law by which to relieve the harms done by Respondents’ unconstitutional actions. Once a child is forced to appear before the court shackled, an injury has already occurred.

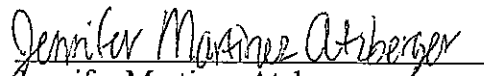
¹ Exhibit C, Affidavit of Dr. Beyer, Appendix D, motion filed by Miami County Public Defender Office. [http://www.pdmiami.com/unchainthechildren/Motion for Child to Appear Free from Degrading and Unlawful Restraints.pdf](http://www.pdmiami.com/unchainthechildren/Motion%20for%20Child%20to%20Appear%20Free%20from%20Degrading%20and%20Unlawful%20Restraints.pdf). See also, *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005).

20. Appealing a denial of a motion to appear free from restraints in court cannot reverse the injury. Further, the injury is an on-going act being committed against every child that appears before the court on a daily basis. Therefore, the most appropriate remedy of law is for this Court to issue a writ of prohibition preventing the injury from occurring again in the future.

PRAYER FOR RELIEF

WHEREFORE, Relator requests this Honorable Court to:

1. Issue a peremptory writ of prohibition, or at a minimum, an alternative writ, forbidding Respondents from exercising judicial power to indiscriminately shackle juveniles that appear in the Hamilton County Juvenile Court without first holding a hearing to determine individual need.
2. Issue a final writ of prohibition forbidding Respondents from implementing a policy or exercising judicial power to indiscriminately shackle juveniles that appear in the Hamilton County Juvenile Court without first holding a hearing to determine if it is necessary to shackle the individual juvenile appearing before the court.
3. Award to Relator costs and expenses, including reasonable attorney fees, incurred in the pursuit of this action.
4. Issue a Directive to all juvenile courts in the state of Ohio requiring them to hold hearings to determine individual need to shackle a child prior to a juvenile being made to appear before a court in restraints.
5. Award such other relief as the Court deems necessary and appropriate.


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