

DOCKET NO.: TSR-CV14-4005806-S : SUPERIOR COURT
 RICHARD ANNULI : JUDICIAL DISTRICT OF
 V. : TOLLAND at G.A.#19
 WARDEN : December 4, 2014

STATE OF CONNECTICUT
 SUPERIOR COURT
 G.A.19
 2014 DEC 4 PM 2 07

MOTION FOR PROTECTIVE ORDERS FOR THE VICTIM

A.D., the victim of the sexual assault committed by the petitioner, moves this court for an order protecting her and members of her family from harassment by the petitioner, his counsel, or private investigators in their employ. This request includes:

(1) an order precluding the petitioner or his agents from approaching the victim or her family without prior judicial authorization following a hearing in which the petitioner demonstrates that the information sought from those persons is relevant to the claims in the petition; and

(2) an order precluding the petitioner or his agents from issuing subpoenas for the victim or for members of the victim's family without prior judicial authorization following a hearing in which the petitioner demonstrates that the subpoenaed person can provide testimony relevant to the claims in the petition.

FACTS:

The petitioner is presumptively guilty of sexually assaulting the victim. He was convicted by a jury of six after a full trial, and that conviction was affirmed on appeal by both the Appellate and Supreme Courts. *State v. Annulli*, 130 Conn.App. 571, 574-75 (2011); *State v. Annulli*, 309 Conn 482 (2013). The

petitioner is subject to a Standing Criminal Protective Order that he have no contact with the victim, direct or indirect.

Despite that order, and in violation of its terms, private investigators, presumably hired by counsel for the petitioner, went to the victim's workplace on November 19, 2014, aggressively and loudly announcing themselves as private investigator-detectives in front of her co-workers and clients, and demanding to speak with her.

The same firm of private investigators has been asking questions about the victim in the community, from people who have no knowledge of the crime committed by petitioner. These inquiries naturally cause people to ask the victim what is going on. Because most of her acquaintances, and many of her family members have no knowledge that she was sexually assaulted, the inquiries are unnecessarily re-victimizing her.

LAW

A crime victim has a "right to be treated with fairness and respect throughout the criminal justice process." Conn. Const. Amend. XXIIb(1). Maintaining privacy is a primary interest of victims of crime. One aspect of "fairness and respect" is the affirmative duty of the court to protect a victim from invasion of the victim's privacy unless there is a clear demonstration that invasion of that privacy is "material to the fairness of the trial." *Pennsylvania v. Ritchie*, 480 U.S. 39, 60 (1987).

The United States Supreme Court has expressly recognized a constitutional right to privacy based upon the Fourteenth Amendments guarantee

of "liberty;" *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925); *Cruzan v. Missouri*, (1990); *Lawrence v. Texas*, 539 U.S. 558, 578 (2003)(" The petitioners are entitled to respect for their private lives."). In *Sweezy v. New Hampshire*, 354 U.S. 234, 254 (1957) the Court announced Due Process protection from state court inquiry into private matters and beliefs. The Due Process clause also supported the right to personal privacy in *Planned Parenthood v. Casey*, 505 U.S. 833, 852 (1992)("At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life.") Other Supreme Court opinions have found a privacy right in the Ninth Amendment; *Griswold v. Connecticut*, (Goldberg, J. concurring)¹; and in the "pursuit of happiness." *Olmstead v. United States*, 277 U.S. 438, 478 (1928)(Brandels, J., dissenting):

"The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings, and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations."

Id.

A criminal bringing a habeas corpus action does not have a right to re-victimize the person he has already violated. An investigation into the background of the victim has no demonstrable relevance to the determination of whether his counsel was ineffective. This court has the power to protect the victim of this sexual assault by issuing protective orders. The orders requested by the victim in this case seek to protect her right to personal privacy. Those

¹ "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." U.S. Const., Amend. IX.

rights, once breached either intentionally or inadvertently, cannot be returned.

These orders reduce the risk of such a breach.

Respectfully submitted,

The Victim of Crime, A.D.

By:



James Clark
Victim Rights Center of Connecticut, Inc.
8 Research Parkway
Wallingford, CT 06492
203-350-3515
203-745-0073 fax

ORDER

The foregoing motion having been considered, it is hereby ORDERED:

SWR 1) the petitioner and his agents are ordered not to approach the victim ~~or her~~ family without prior judicial authorization following a hearing in which the petitioner demonstrates that the information sought is relevant to the claims in the petition; and

SW 2) the petitioner is precluded from issuing subpoenas for the victim ~~or for~~ members of the victim's family without prior judicial authorization following a hearing in which the petitioner demonstrates that the subpoenaed person can provide testimony relevant to the claims in the petition.

BY THE COURT

D. J. Tugay

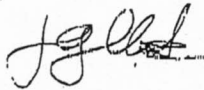
Judge / ~~Assistant Clerk~~

1/23/15

Copies mailed to all parties:
Wade Luckett - Barsky Law
Eva Lenczewski - Waterbury JD
James Clark - Victim Rights Center

CERTIFICATE OF SERVICE

Service is certified pursuant to Practice Book §14-10 to :
Attorney Wade Lockett, Bansley Law Office, 267 Orange Street, New Haven, CT
06510, and
SASA Eva Lenczewski, State's Attorney's Office, 400 Grand St., Waterbury, CT,
on December 4, 2014.



James Clark
Commissioner of the Superior Court

NO: TSR-CV14-4005806-S : SUPERIOR COURT
EDWARD PARKER : JUDICIAL DISTRICT
OF TOLLAND
V. : AT ROCKVILLE, CONNECTICUT
WARDEN : JANUARY 23, 2015

M E M O R A N D U M
OF
D E C I S I O N

BEFORE THE HONORABLE STANLEY T. FUGER, JR., JUDGE

A P P E A R A N C E S :

Representing the Petitioner:

ATTORNEY DANIEL WADE LUCKETT
Assigned Counsel
Bansley Law Offices LLC
205 Orange Street
New Haven, Connecticut 06510

Representing the Respondent:

ATTORNEY EVA B. LENCZEWSKI
Supervisory Assistant State's Attorney
Office of State's Attorney
400 Grand Street
Waterbury, Connecticut 06702

Representing the Victim:

ATTORNEY JAMES CLARK
Victim Rights Center of Connecticut, Inc.
8 Research Parkway
Wallingford, Connecticut 06492

Recorded By:
Ellen Eybel

Transcribed By:
Ellen Eybel
Court Recording Monitor
20 Park Street
Rockville, Connecticut 06066

2015 JAN 23 PM 4 17

STATE OF CONNECTICUT
SUPERIOR COURT
C.A.19

+ - +

THE COURT: Well, let me make some observations.

First, reliance upon the victims' rights amendment is misplaced. It does not apply in the circumstances of this proceeding. This is not a criminal prosecution. It is a civil proceeding in which the petitioner is seeking the issuance of a writ of habeas corpus.

Likewise, the reliance on *State v Gault* by the petitioner is also misplaced. As noted, this is not a criminal proceeding, and *Gault* holds that even though there are rights to be protected of a victim in a criminal proceeding, it does not give the victim in a criminal proceeding standing to raise issues other than what might be included within the amendment.

What is clear is that discovery in a habeas corpus proceeding is extremely limited as per Section 23-38 of the *Connecticut Practice Book*. It is also clear from Section 23-38 that discovery that extends beyond that very limited delineation in Section 23-38 is under the control and at the discretion of the judicial authority.

So while I will find that the victims' rights amendment does not apply, *Gault* does not apply, I will find that this Court possesses and can exercise appropriate supervisory jurisdiction over discovery.

1 Now, there's been a comment that -- about the
2 special protection for victims, and I think perhaps
3 counsel for the petitioner may be operating under a
4 little bit of a misconception. This is not a
5 criminal proceeding. Mr. Annulli has been convicted
6 of this offense.

7 As he stands before this Court today, he is not
8 a criminal defendant, nor is Ms. AD or AF an alleged
9 victim. Mr. Annulli is a convict, not in the sense
10 that somebody is locked up in jail with chains coming
11 off of him. But he is a convict in the sense that he
12 has been convicted and found guilty beyond all
13 reasonable doubt.

14 Is this a -- it was a jury. He has been found
15 guilty by a jury beyond all reasonable doubt of these
16 offenses; so at this point, he, in fact, is guilty of
17 this offense, and Ms. AD/AF has, in fact, been
18 victimized. Now whether that remains the case or not
19 depends on how the habeas petition proceeds.

20 So while the victims' rights amendment does not
21 expressly apply, it's clear in this Court's view that
22 a victim of a crime is entitled to a certain amount
23 of protection from the person who has victimized her.

24 At the same time, that convict, that person who
25 has victimized Ms. AD/AF, has a right to file the
26 constitutionally recognized writ of habeas corpus,
27 and it is completely inappropriate to tie his hands

1 in a way that will prevent him from pursuing his
2 ancient and time-honored right to file the habeas
3 corpus.

4 Indeed, there are several instances here in
5 Connecticut where prisoners, through the use of
6 repeated writs of habeas corpus, repeated vexatious
7 litigation, have actually been ordered not to file
8 any further legal proceedings.

9 Now, by no stretch of the imagination -- at
10 least based on what I have in front of me, by no
11 stretch of the imagination does Mr. Annulli enter
12 into that arena yet. Nevertheless, the point is the
13 Court does have the ability to protect people.

14 Despite the lack of evidence and the dispute as
15 to whether this is a confrontational, aggressive, or
16 polite encounter, it is clear from statements of
17 counsel -- and I believe counsel more or less agree
18 -- that there was an approach, whether intentionally
19 or unintentionally, to the victim.

20 It is also clear to this Court that the victim
21 is represented by counsel, who has made it clear that
22 his client is not to be contacted in connection with
23 this matter. As I indicated earlier, counsel or his
24 agents, if they approach her without permission of
25 Mr. Clark or successor counsel -- should there be one
26 -- does so at his or her peril. Similarly, both
27 parties agree that there is a protective order in

1 place that prohibits contact from Mr. Annulli with
2 the victim.

3 To the extent contact through counsel or
4 investigator can be tied back directly to
5 Mr. Annulli, it is possible that upon a complaint, a
6 warrant might be sought -- and a judicial authority
7 might sign it -- for violation of a protective order.
8 It is possible that -- again, depending upon
9 circumstances -- that a conspiracy to commit
10 violation of a protective order charge could be laid.

11 That, of course, is not this Court's brief. I
12 make that observation only because it strikes me as
13 there's the potential that something like that could
14 be -- could end up coming down the pike.

15 So given the emotions, given the fact that this
16 Court has what I believe is a common-law duty to
17 protect witnesses, a common-law duty to ensure that
18 the petitioner in a habeas corpus proceeding is able
19 to pursue that properly, and the clear mandate
20 contained within Practice Book Section 23-38, I am
21 going to find that the Court has full authority to
22 supervise discovery and pretrial investigation.

23 So in that regard, I don't view it as an onerous
24 burden upon petitioner or his counsel to require,
25 prior to the issuance of a subpoena -- and that would
26 be for testimony at the trial, probably in --
27 whenever it was -- 2016 -- that prior judicial

1 authorization for that subpoena be obtained.

2 It is true that if a subpoena is issued, the
3 victim in this matter can, of course, file a motion
4 to quash; but having already been the victim of a
5 sexual assault, it's not too much of a stretch of the
6 imagination to suppose that receiving a subpoena to
7 testify in a court proceeding involving the
8 victimizer can be, simply in and of itself, an
9 anxiety-producing situation.

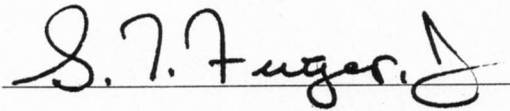
10 And in the end, whether the Court requires
11 petitioner's counsel to seek the Court's approval
12 before issuing a subpoena or whether the Court -- I'm
13 sorry -- or whether the Court addresses the question
14 of whether the subpoena is properly issued -- i.e.,
15 is there relevant testimony that could be obtained
16 from this particular person -- the determination is
17 going to be the same.

18 This order will extend only to the victim, at
19 least at this point. That is not to say that counsel
20 for the victim, counsel for the respondent, counsel
21 for the petitioner can -- if they can find ground to
22 cooperate with each other -- perhaps try to obviate
23 the necessity. But I'm getting the sense that
24 there's not a lot of common ground out there, at
25 least not yet.

26 So in issuing this order, I think that what I am
27 doing is balancing off the interests of the victim in

1 being allowed to put this crime and trauma associated
2 with being the victim of that crime behind her
3 without having to be reminded, bothered, harassed --
4 whatever words either side wants to use about it --
5 through further questioning.

6 At the same time, it protects the rights of the
7 petitioner to seek further information should he be
8 able to prove that or be able to convince the Court,
9 the judicial authority, that the information he seeks
10 is relevant.

11
12
13
14
15 

16 Stanley T. Fuger, Jr., Superior Court Judge
17
18
19
20
21
22
23
24
25
26
27

NO: TSR-CV14-4005806-S

: SUPERIOR COURT

RICHARD ANNULLI

: JUDICIAL DISTRICT
OF TOLLAND

V.

: AT ROCKVILLE, CONNECTICUT

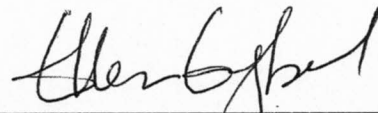
WARDEN

: JANUARY 23, 2015

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Tolland, Rockville, Connecticut, before the Honorable Stanley T. Fuger, Jr., Judge, on the 23rd day of January, 2015.

Dated this 23rd day of January, 2015 in Rockville, Connecticut.



Ellen Eybel
Court Recording Monitor

Copy mailed to: Wade Luckett-Bansley
Law Offices

- Eva Lenczewski
Waterbury JD

- James Clark
Victim Rights

1/23/15 (K) JAC