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The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

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MCDONALD, C. J., dissenting. I dissent from the majority's decision that the writ of habeas corpus is not the appropriate vehicle to raise the claim of ineffective assistance of counsel in the proceedings to terminate the petitioner's parental rights.

In this case, the petitioner claimed that his two court-appointed attorneys in the termination proceeding in 1998 gave him ineffective assistance that led to his abortive pro se appeal. In 2000, the trial court dismissed the petition for the writ filed in 1999.

The majority assumes that the petitioner did have the right to effective counsel. That assumption is unnecessary. In *Lassiter* v. *Dept. of Social Services*, 452 U.S. 18, 32, 101 S. Ct. 2153, 68 L. Ed. 2d 640 (1981), the United States Supreme Court decided that the decision whether to appoint counsel in termination proceedings is ''to be answered in the first instance by the trial court, subject, of course, to appellate review.'' In this case, the trial court did determine that the appointment of counsel was required.

As to the question of whether the appointed counsel must be effective, in *State* v. *Anonymous*, 179 Conn. 155, 160, 425 A.2d 939 (1979), this court stated that

''[b]ecause of the substantial interests involved, a parent in a termination of parental rights hearing has the right not only to counsel but to the effective assistance of counsel.'' In *Lozada* v. *Warden*, 223 Conn. 834, 838, 613 A.2d 818 (1992), we also concluded that appointed counsel must be effective counsel. ''It would be absurd to have the right to appointed counsel who is not required to be competent.'' Id.

The majority's sweeping conclusion that the writ may not be used to vindicate that right to effective counsel is based upon the interest of the child in the finality of the termination and the availability of other remedies. Those other remedies, however, are subject to time limits between four months; General Statutes §§ 52-212 and 52-212a; and three years. General Statutes §§ 52-270 and 52-582. Once the time has run, the parent is without any remedy.

The majority refers to *Lehman* v. *Lycoming County Children's Services Agency*, 458 U.S. 502, 513, 102 S. Ct. 3231, 73 L. Ed. 2d 928 (1982), holding that federal habeas corpus may not be used to challenge a state's termination of parental rights owing to the interest in finality. The court in *Lehman*, however, also recognized that state habeas corpus had traditionally been used in child custody cases in many of the states and referred to *Boardman* v. *Boardman*, 135 Conn. 124, 138, 62 A.2d 251 (1948). *Boardman* is but one of a long line of Connecticut cases upholding the use of the writ by a parent to contest the custody of a child at any time.

Custodial rights are part of the bundle of parental rights. As custody and parental rights are coexistent and inseparable, it would be necessary for the same reason to deny the use of the writ to question a child's custody. Allowing the state's interest in finality to mitigate against use of the writ here would require us to overrule *Boardman* and years of precedent.

While I do not agree that a trial court should dismiss every writ, I would hold that the writ might be dismissed on discretionary ''prudential'' grounds. *Lehman* v. *Lycoming County Children's Services Agency*, supra, 458 U.S. 519–20 (Blackmun, J., dissenting). This would allow a trial court in its discretion and in only ''the most extraordinary cases'' to issue the writ. Id., 526 (Blackmun, J., dissenting). There are, unfortunately, those extraordinary cases where the writ may be needed. Such a rule would allow the writ to issue only in those rare cases that demanded the writ's unique ''capacity to . . . cut through barriers of form and procedural mazes . . . .'' *Harris* v. *Nelson*, 394 U.S. 286, 291, 89 S. Ct. 1082, 22 L. Ed. 2d 281 (1969).

I would require the relator to do much more than simply allege in general terms that he did not have competent counsel. In this case, the petitioner merely asserted that his appointed trial counsel failed to proffer

evidence, call particular witnesses or pursue arguments. He also claimed that his second appointed counsel "failed to comply with the requirements of his appointment, and neither filed an appeal on behalf of the petitioner, nor made any effort to notify the court that there were grounds for filing an appeal." A petitioner must allege facts detailing his claim and allege further facts demonstrating that the issuance of the writ would be in the best interests of the child.

The trial court would then assess the circumstances of each case before it and might determine that the writ should be dismissed. In this case, the trial court would consider the petitioner's age of sixty years, his ongoing heroin addiction, and the fact that he admitted that he was not yet ready to parent Jonathan. "On such a record, I believe that the [trial] [c]ourt could have found, as a discretionary matter, that petitioner had not made a sufficient showing that [he] acted in the interests of the [child] to warrant issuing [him] the writ . . . ." *Lehman* v. *Lycoming County Children's Services Agency*, supra, 458 U.S. 525 (Blackmun, J., dissenting).

The majority's denial of the writ in all termination cases does not serve the best interests of children. The majority cites a number of cases that assert that parental rights are "essential, basic civil rights of man . . . ." (Internal quotation marks omitted.) *In re Alexander V.*, 223 Conn. 557, 561, 613 A.2d 780 (1992). We should not forever deny a petitioner and his child the writ in order to challenge this gravest of rulings—the irrevocable loss of a child.

Accordingly, I dissent.