

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JOHN SMITH
PETITIONER

vs.

FLORIDA DEPARTMENT OF CORRECTIONS
RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

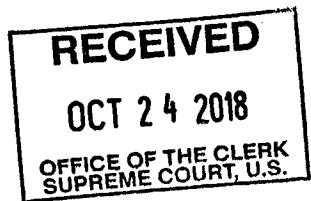
ELEVENTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

John Smith, DC # 749343
Zephyrhills Correctional Institution
2739 Gall Boulevard
Zephyrhills, Fl 33541-9701

Petitioner, Pro Se

PROVIDED TO
ZEPHYRHILLS C.I.
ON 14/10/18
FOR MAILING



QUESTION PRESENTED

Petitioner, John Smith tenders this question, which should be agreed upon to hear and decide:

Does treating a dismissed appeal of a mentally incompetent prisoner's case, who in good faith, untimely filed a motion to proceed in forma pauperis, constitute a denied right under the Due Process and Equal Protection Clauses of the Fourteenth Amendment, United States Constitution if appeal is not reinstated once the deficiency is corrected.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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TABLES OF AUTHORITIES

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from federal courts:

The ORDER of the United States Court of Appeals appears at Appendix A to the petition and is

[] reported at _____
[] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix ____ to the petition and is

[] reported at _____
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

[] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix ____ to the petition and is

[] reported at _____
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ court
Appears at Appendix ____ to the petition and is

[] reported at _____
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

[X] For cases from federal courts:

The date on which the United States Court of Appeals issued its order dismissing my case on 8-21-18.

[X] No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the Order denying rehearing appears at Appendix ____.

[] An extension of time to file the petition for writ of certiorari was granted to and including _____ (date) on _____ (date) In Application No. ___A_____.

The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1).

[] For cases from state courts:

The date on which the United States Court of Appeals decided my case was _____.

[] No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the Order denying rehearing appears at Appendix ____.

[] An extension of time to file the petition for writ of certiorari was granted to and including _____ (date) on _____ (date) In Application No. ___A_____.

The jurisdiction of this court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Due Process and Equal Protection Clause of the Fourteenth Amendment, United States

Constitution:

Sec. 1. [Citizens of the United States.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On 7-16-18 the Northern District Court of Florida dismissed petitioner's appeal, case number 17-11516-J for failing to timely file a motion to *proceed in forma pauperis* or pay the required filing fee.

On 8-17-18 petitioner filed in the Northern District Court of Florida, case number 17-11516-J, a motion to *proceed in forma pauperis* on appeal to the United States Court of Appeals for the Eleventh Circuit.

Petitioner, John Smith now seeks *leave to proceed in forma pauperis* in order that he may *nunc pro tunc* proceed on appeal to the United States Court of Appeals for the Eleventh Circuit of a denied 28 U.S.C. §2254 Petition for Writ of Habeas Corpus on a criminal case.

Petitioner has no previous filings and does not exceed the 3 strike rule of 28 U.S.C. §1915.

REASONS FOR GRANTING THE PETITION

Petitioner is currently housed in a mental health unit within the Florida Department of Corrections and is mentally incompetent. At the time the motion to proceed in forma pauperis was required to be filed in the court, petitioner was being transferred to the mental health unit. However, in good faith, petitioner did file in the court a motion to proceed in forma pauperis.

Petitioner's circumstance of mental incompetence should constitute as an "extraordinary circumstance" that severely impaired his ability to timely file a motion to proceed in forma pauperis in the Northern District Court of Florida for appealing to the Eleventh Circuit Court of Appeal.

Accordingly, this Honorable Court should grant this Petition for Writ of Certiorari, thus affording petitioner his right to Due Process and Equal Protection of Law under the Fourteenth Amendment of the United States Constitution.

Congress first enacted an in forma pauperis statute in 1892. See Act of July 20, ch. 209, 27 Stat. 252. Congress recognized that "no citizen sh[ould] be denied an opportunity to commence, prosecute, or defend an action, civil or criminal, in any court of the United States, solely because his poverty makes it impossible for him to pay or secure the costs." Adkins v. E. I. DuPont de Nemours & Co., 335 U.S. 331, 342, 69 S. Ct. 85, 93 L. Ed. 43 (1948) (internal quotation marks omitted). It therefore permitted a citizen to "commence and prosecute to conclusion any such . . . action without being required to prepay fees or costs, or give security therefor before or after bringing suit." 1, 27 Stat. 252. [3] The current statute permits an individual to litigate a federal action in forma pauperis if the individual files an affidavit stating, among other things, that he or she is unable to prepay fees "or give security therefor." 28 U.S.C. 1915(a)(1).

In addition, Rule 10(a) of the United States Supreme Court provides that this court will grant a Petition for Writ of Certiorari when a United States Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or **has so far departed from the accepted and usual course of judicial proceedings**, or sanctioned such a departure by a lower court, **as to call for an exercise of this Courts supervisory power.**

Constitutional Law § 746 - due process - procedure

The United States Supreme Court, in order to determine what process is constitutionally due where there is an allegation of a deprivation of due process, will generally balance three distinct factors: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest.

Under the Due Process and Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, no State shall deprive any person of life, liberty, or property, without due process of law.

CONCLUSION

In light of decisions among the Circuits, this Honorable Court should grant Mr. Smith's Petition for Writ of Certiorari.

Respectfully submitted,

/s/ 
John Smith, DC# 749343
Zephyrhills CI
2739 Gall Blvd.
Zephyrhills, Florida 33541

Date: October 15, 2018.