No. 18-9283

IN THE

SUPREME COURT OF THE UNITED STATES

Constance F. Russell, *Petitioner pro se*

v.

State of Alabama, ET., AL. *Respondent*

Submitted

May 12, 2019

10

On Petition for a Writ of Certiorari to the

Alabama Supreme Court

PETITION FOR A WRIT OF CERTIORARI

Constance F. Russell, *Petitioner pro se*
4882 James Street
Huntsville, Alabama 35811
(256) 851-6658

QUESTIONS PRESENTED

I.

Did the Alabama Supreme Court violate petitioner pro se' State and Federal Constitutional Rights of *due-process*, when they refuse to adjudicate a case that presented violation by the lower court(s) of not following the statutes and Rules as it pertained to case of an Independent Action under the (saving clause) pursuant to Rule 60(b)(6) along with the issue of ineffective assistance of counsel, by issuing a "no opinion ruling?"

II.

Is the Alabama Supreme Court and Court of Civil Appeals' authority to issue a "no opinion ruling" part of the same lock-step doctrine of the high federal courts ability to also issue a "no opinion ruling? Was this authority to issue these "no opinion rulings" on appellate review made possible through the Federal Judicial Act of 1925 and its updated amendments? And if so, did the Congress of this period pass an unconstitutional law that has now caused the State and Federal Appellate Courts to improperly exercise the Mandatory and Appellate Review System.

PARTIES TO THE PROCEEDING

Constance F. Russell is natural born citizen of this country and resides in the city of Huntsville, and the county of Madison Co. of the state of Alabama, and is of age, in these matters, and is the *petitioner pro se'*, in this case.

The Honorable Justices of the ***Alabama Supreme Court***, Bryan J.- Stuart, C.J., and Parker, Main, Mendheim and J J. concurred in presenting a "no opinion ruling", in these matters.

The Honorable Justices of the ***Alabama Court of Civil Appeals***, Thompson, P.J., Pitman, Thomas, Moore, Donaldson, and J.J. concurred in presenting a "no opinion ruling" in petitioner's *hearing and rehearing*.

James Nadler, of First Resolution Investment, Martin Brent Yarborough, attorney w/ Zarzaurt & Schwartz, who were both labeled as the debt buyers of this judgment, Michael F. Robinson, petitioner's retained attorney, only in the Circuit Court of Madison Co. and the United States of America are all *Respondents.*

ORAL ARGUMENTS

Petitioner pro se' Constance F. Russell request that this Hon. U.S. Supreme Court, would grant Oral Arguments in these matters, and would appoint her ***assistance of counsel***, so that she may properly stand before this court, on an issue that is of Constitutional matters and that is ***of public importance.***

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Case law

Statutes

Other references

Table of Cont. (cont.)

PETITION FOR A WRIT OF CERTIORARI

Petitioner pro se' is respectfully seeking a Writ of Certiorari and is asking this U.S. Supreme Court to instruct the Alabama Supreme Court that it cannot refuse adjudication on a case of controversy, that involves a citizen of its state and that denies that citizen not only of its Federal Constitutional Rights of *due process* but also, that the State of Alabama cannot deny a citizen of their State, their State Constitutional Rights to *due process* as well, in accordance with the State's own guideline for administering that *due process*, in the manner that pertains to the subject matter and provisions of the (Saving Clause) of Rule 60(b)(6).

OPINIONS BELOW

The "No Opinion" Order of the Alabama Supreme Court was entered on October 12, 2018 and is an unpublished opinion and is found in petitioner's Appendix A1.

The "No Opinion" Order(s) of the Alabama Court of Civil Appeals was entered on July 13, 2018 and August 17, 2018 and is an unpublished opinion and is found in petitioner's Appendix B1-B4.

The Opinions of the Circuit Court of Madison Co. Alabama were entered on October 24, 2017 and November 28, 2017 and is an unpublished opinion and is found in petitioner's Appendix C1-C2.

The opinion of the Madison Co. District Court of Alabama were entered on May 2, 2017 and May 25, 2017 and is an unpublished opinion and is found in petitioner's Appendix D1-D2.

CONSTITUTIONAL PROVISIONS INVOLVED

Article I of the U.S. Const. *establishes Congresses authority to create the Laws of this nation, to the citizens that it will governs, through a Senate and House of Representative and the power to ordain and establish the inferior courts.*

Article III of the U.S. Const. *The Judicial power shall extend to all cases, in law and equity, arising under this Constitution, the Laws of the United States, to all cases and controversies, to which the United States shall be a Party, and between a State or the Citizens thereof.*

The first (10) Amendments to the U.S. Constitution, otherwise known as ***"The Bill of Rights"*** *not only guarantee these enumerated rights to every citizen, of every state in this country, but moreso these rights were intended to restrict the State and Federal Governments from interfering with these God Given Rights.*

The 14th Amendments *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.*

STATEMENTOF JURISDICTION

Petitioner pro se' Constance F. Russell respectfully presented a timely appeal for a Writ of Certiorari to the Alabama Supreme Court on August 21, 2018, and was denied her Writ, ***"without an opinion,"*** on October 12, 2018. On January 8, 2019, petitioner pro se' presented an application to extend the time to file her Direct Appeal to this Honorable Court, within the guidelines and Statutes that are listed below and that would allow for such direct appeal, to this court. The Hon. Clarence Thomas extended the time to file her Writ to this court, on ***March 11, 2019, Application No. 18A724.***

Upon this court receiving petitioner's timely ***March 12, 2019,*** Writ to this court, petitioner was then presented with a letter by the Clerk of this Court dated ***March 13, 2019,*** with instruction to decide whether she would present a Writ of Mandamus, a Constitutional Complaint, or a Writ of Certiorari, and was granted an additional (60) days, if she were to present a Writ of Certiorari, which would make the Writ of Certiorari due on Sunday, ***May 12, 2019.***

Wherefore, Petitioner pro se' states that this Hon. U.S. Supreme Court has the ***Original Jurisdiction under Article III of the U.S. Const.,*** to hear and decide this case of "extraordinary circumstances" pursuant to ***28 U.S.C §§ 1254(1).***

Petitioner pro se' has also presented an application request that her husband would be allowed to intervene on her behalf, pursuant to **Rule 24(a) of Intervention** in *The Federal Rules of Civil Procedures* and **Rule 12.4** *of this U.S. Supreme Court's rules.*

* Due to this case being one that challenges the ***Constitutionality of a Federal Law***, Petitioner pro se' presents ***full disclosure***, in this Petition, that she and her husband is about to **file a Constitutional Challenge to this Federal and State Statute, in the Federal District Court** along with a motion that the Challenged Complaint **w**ould be placed in the appropriate court, pursuant to 28 U.S.C. §1631 with notification to the State and Federal Attorney General, pursuant to 28 U.S.C. § 2403(a) on a subject matter that is of *extraordinary circumstances.*

INTRODUCTION

As a now petitioner pro se, in these matters, I am not only the wife of a husband, whom the record will now show, has made several great attempts at seeking justice through our court system, on civil matters that not only involved our property rights, but moreso me and my husband's Constitutional Rights, that has ended only to be denied review, as to whether these rights were violated, ***"without an opinion," by the high courts***, for which I am now one who also comes before this same high court, now hoping, praying and seeking this court's review on State Court matters that I am now prepared to argue, has violated my Property and Constitutional Rights.

After participating and experiencing, with my husband, the hard, sacrificial, and drawn-out effort in seeking this equity and justice of the Guaranteed Rights of our Federal and State Laws along with our Constitutional Rights, that we as citizens supposed to have, and only to be denied review without any comment from the high courts as to whether these rights were violated, I along with my husband have now frantically ask the question, How can a judicial system that was established by our Founding Fathers, with the intent of appointing judges, who would take an oath of presenting equity and equal justice to all who come before them, by upholding the laws, through the guide of a State and Federal Constitution, refuse to hear cases that may carry constitutional violations to the very citizens, whose Constitutional Rights, for which an oath was taken, through this constitution, to uphold and protect?

What has now been discovered is that the ability of the High Courts (Federal and State) to deny citizens who come before them, adjudication of these possible Constitutional violations, without any comment, is part of an Unconstitutional Federal Law of the Judicial Act of 1925 and its Amendments, that has caused ***Unconstitutional changes to the Mandatory and Discretionary Review of cases.***

STATEMENT OF THE CASE

This case involves Petitioner pro se' Constance F. Russell, and her husband DeAndre' Russell, (who is the primary income of his household) who are citizens of this country and who are residents of the City of Huntsville, in the State of Alabama, whom sought to have a 2005 judgment involving a credit card debt from Providian Financial, set-aside in the Madison Co. Courthouse, pursuant to the Rules found in the (Saving Clause) Provisions of Rule 60(b)(6) and Rule 60(b)(3), of *the Alabama Rules of Civil Procedures.*

It has been petitioner's argument, in the Alabama Courts that the judgment that she has received should be set-aside and dismissed because of a ***later discovery,*** that the contract of this judgment debt was so filled with intrinsic fraud, that prior to receiving a judgment, the California Attorney General and the Office of Comptroller had to step in and sue the creditor, Providian Financial, on Constance Russell's behalf, for their predatory practices and behavior.

Constance F. Russell and her husband attempted vigorously to approach the Alabama Court(s) with these matters, in accordance with the Alabama Rules

and Procedures, governing Rule 60(b)(6) and the requirements needed, *(the Kirkland Doctrine)* only to first be denied by the Alabama District Court of a basic hearing, to present these matters. It has further been Petitioner's claim that it would be an injustice to have to pay a debt buyer for a debt, in which the company has been long out of business) and that the facts prove indisputably, issued contracts of ***intrinsic fraud,*** *United States v. Beggerly, 524 U.S. 38 (1998)*[1]

After appealing this matter, for ***an abuse of discretion,*** of being denied, this basic hearing of due- process in accordance with Alabama's Declaration of Rights, Art. I sections 6, of the Alabama Constitution of 1901, (that entails the trial court's responsibility and the determining factors required in maintaining a defendant's due process in the arena of setting-aside a judgment),[2] as well as being told that she should seek counsel, petitioner retained counsel, who presented such ***ineffective assistance of counsel*** in the Madison Co. Circuit Court, that she was forced to present, in this same court, a Motion pursuant to Rule 60(b)(3), in order that she may ***properly preserve her argument of the abuse of discretion, by the district court***, that she had already placed on the docket, before her retained attorney was hired.

It is from this point that this case that is now before this Hon. U.S. Supreme Court has its subject matter. For it is here, (after the denial by the Circuit Court of

[1] In the case of United States v. Beggerly, the Hon. Chief Justice Rehnquist ended by stating the following: "Independent Actions must, if Rule 60(b) is to be interpreted as a coherent whole, must be reserved for those cases of 'injustices.'"

[2] Accordingly, the Constitution of Alabama's Declaration of Rights Art. I §13(2) states the following; This section and Article I section 6, Alabama Constitution of 1901, by guaranteeing the due process rights of citizens, and section 10, by holding inviolate a person's rights to defend himself in a civil action to which he is a party, elucidate this state's commitment to protect an individual's right to attain adjudication on the merits and to afford litigant's an opportunity to defend. Therefore, a trial court, in determining whether to grant or deny a motion to set-aside a default judgment, should exercise its broad discretionary powers with liberality and should balance the equities of the case with a strong bias toward allowing the defendant to have his day in court. *Kirkland v. Ft. Morgan Authority and sewer Services, Inc., 524 So. 2d 600 (Ala. 1988).*

Madison Co., and the Appeals made to the ***Alabama Court of Civil Appeals and the Alabama Supreme Court, who denied these matters, without any comment***, that petitioner now presents the question and argument on; how it is possible that the Alabama high Court(s) can ignore these matters, with the issuance of a denial by a ***"no opinion ruling."***

REASONS FOR GRANTING THE WRIT

[a]

The Judicial Act of 1925 and its Amendments violate Article III, Section 2, clause 1 of the U.S. Const.

American History and early Case laws such as, *Marbury v. Madison, (1803)* present the beginning arguments , of our Founders, intent, purpose and the set-up of the structural functions of a Jurisdictional Judicial Systems, that was to be established for the people, and by the people, for maintaining law and order to the citizens thereof from the various states, under Federal Laws and the provisions of a United States Constitution.

Under this newly established (3) tier divided system of governing that was to be comprised into one Federal Government, for all the States, the judicial branch soon faced its first challenge of its jurisdiction, purpose and intent, in accordance with the provisions set forth in ***Article III, Section 2, clause 1 which reads in part:***

"The judicial power shall extend to all cases, in law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;- to all Cases affecting Ambassadors,

other public Ministers and Consuls; to all Cases of Admiralty and Maritime Jurisdiction; to Controversies to which the United States shall be a party;- to Controversies between two or more states; between a State and Citizens of another State; between citizens different states, between Citizens of the same state claiming Land under grants of different states, and between a state, or the Citizens thereof, and foreign states, Citizens or subjects."

What is clear from the above statements made in Art. III, Section 2, clause 1 of the U.S. Constitution is that the Judicial Power had ***a duty and responsibility to all cases or controversies that were brought before it*** that sought law and fairness, to issues pertaining to the Constitution, that may involve controversies between a citizen and a state, as well as controversies where the United States may be a party. It is also clear and unambiguous from Art. III that this duty and responsibility to hear and decide these types of issues were not based in a discretionary review setting, but rather, that of a mandatory review setting, based on the language, that this fairness of the laws of the Constitution ***"shall extend to all cases."***

This language of mandatory review was best made known in the early historic and landmark cases such as *Craig v. Missouri, 29 U.S. (4Pet.) 410,437-38 (1830) and Worcester v. Georgia, 31 U.S. (6Pet.) 515 (1832)* in which the argument that the court had no power to review final decisions of state courts, Chief Justice John Marshall replied:

"It is then, we think too clear for controversy, that the acts of congress, by which this court is constituted has given it the power, and of course imposed on it the duty of exercising jurisdiction in this case. This duty, however unpleasant, cannot be avoided. Those who fill the judicial department have no discretion in selecting the subjects to be brought before them." Id. at 541.

If this was the intent, that all who brought serious and important matters of controversies, that would involve a citizen's constitutional rights to our judicial department, would have their matters heard and decided , then how did our Appellate Judicial System veer so far into an arena whereby the high State and Federal Courts now decide whether a case will be adjudicated based on a discretionary review of what they (the high state and federal court justices) deem important enough to them, ***rather than the seriousness and importance of a subject?***

History now show that this modern day change from the way the higher state and federal courts decide which cases they will hear, has been made possible by President William Taft, (who also became Chief Supreme Court Justice) and the Congress of this period, who, under the complaint of a U.S. Supreme Court that was being over-loaded with cases, drafted and signed into law, ***the Federal Judicial Act of 1925.***

It is this law, that was passed by the U.S. Congress, that has all but removed mandatory review of a case, that may be brought by a citizen of the public, and has now given the higher State and Federal Courts the discretionary review powers to ignore a case of controversy, based on the notion of what the justices, of these high courts, deem as a matter of importance. But was this Judicial Act that was passed by Congress, unconstitutional? Is this Judicial Act and all its Amendments, now depriving the very citizens of their Constitutional Rights, who are seeking a redress of grievance from those who may have violated their Constitutional Rights? And was there a better way for the high court(s) to handle

the over-load of cases, that were being presented to them? And finally, has this Judicial Act harmed the integrity of our court system?

Petitioner(s) state that their answers to the above questions are an overwhelming, "yes" and that they are prepared to present a brief and oral arguments, ***with the assistance of appointed counsel,*** to this Hon. Court, to show how the Judicial Act of 1925 and its updated Amendments should be declared unconstitutional? Petitioner pray that this court would grant their Writ, in the Interest of Justice.

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[b]

The Judicial Act of 1925 violates every citizen right to the (Bill of Rights)

The 1st Ten Amendments to the U.S. Const.

As noted earlier, the first ten amendments to the Constitution otherwise known as the "Bill of Rights" were not only designed to guarantee every citizen of this country certain fundamental and basic rights, it was also designed to restrict a newly established government, from interfering with these basic, yet necessary God given Rights. This brings attention to the question that must now be raised, ***has the Judicial Act of 1925 and its updated Amendments, that was passed by Congress, now interfered with these fundamental and guaranteed rights?***

On page CRS-7 of the May 16, 2005 CRS Report for Congress on Congressional Authority over the Federal Courts, the report stated, and I quote:

" Thus, it is clear that while Congress has significant authority over administration over the Judicial System, it may not exercise its authority over the courts in a way that violates the Fifth Amendment due-process clause or that violates precepts of equal protection."

Petitioner contends that the above statement is important because it raises a fundamental, yet important question of; How can a citizen of this nation, who is supposed to be guaranteed these Enumerated Rights to the "Bill of Rights" claim these "rights of freedom" if when he or she enters a court setting, on Appellate Review, that may pertain to a violation of these guaranteed Constitutional Rights, that are being committed against him by others, if those of the high courts have predetermine, ***"without an opinion,"*** that the matter is not important enough for them, to address. It is why petitioners argue that the Judicial Act of 1925 and its updated Amendments, have created a great conflict between the Mandatory and Discretionary Review clauses and a citizen's rights to the "Bill of Rights".

Petitioner(s) request permission to reserve the right to present further arguments, to this conflict, caused by the passing of this judicial act, upon the prayed hope, that this Writ would be granted.

CLOSING REMARKS

In closing this Petition for a Writ of Certiorari, Petitioner's husband DeAndre' Russell request permission, from this Hon. Court, to make a closing statement.

//.

Your Honorable Chief Justice and Justices of this U.S. Supreme Court, for the record, although this case involves our claim of the unconstitutionality of the discretionary review process, of the higher state and federal courts, (that was made possible, in its current form, by the Judicial Act of 1925 and its updated Amendments) we do not take the view that discretionary review, in and of itself is unconstitutional, but rather, that the current process, is greatly flawed and that the current process must be either ***Abolished or Amended.***

It is our argument that the greatest example for the need of change, to this Federal Law stems from the recent decision that was handed down, by this court in February of 2019, involving ***Timbs v. Indiana,*** whereby this court ruled in favor of Mr. Timbs, of violations of his Eight Amendment Rights, by the State of Indiana on their attempt to confiscate his $40,000 Land rover, to pay a small debt or fine. Although we agree and are encouraged, by this court's ruling, our problem lies once again in the process. In other words, how many of us litigants, in the past, have had to endure extreme loss, broken families, heartaches and more because the high courts (State and Federal) decline to hear our cases, because you, Justices of the high State and Federal Courts, decided that the issue was not important enough, rather than, as Justice Marshall stated, exercising the Authority, Jurisdiction, and Duty, to confront an issue of an important subject.

My study on how this U.S. Supreme Court operates, has displayed that this court often deals with a matter, once it seems to have metastasize, to the degree that it has harmed many. Our argument is that this wrong, in accordance with the provisions of Art. III, Section 2, Clause 1. For it is our argument that whatever party first made an appeal, similar to *timbs,* to the high court's, in regard to this

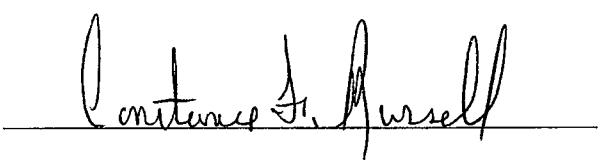
subject did not exercise proper discretion, because wisdom should have enable those justices to see that the unlawful taking of asset, would become a huge problem, to the public, in the future and it is for that reason that the issue was important, and not because the high court's may have thought it was or was not.

It is this needed change, by Congress, to address the review process to accommodate mandatory subjects that our appeal address. For these reasons, Petitioner request that the Writ should be granted and that this case should be heard and decided.

CONCLUSION

Petitioner(s) pro se' respectfully request and pray that the Writ would be Granted.

Respectfully submitted,



Constance F. Russell

4882 James Street

Huntsville, Alabama 35811

Petitioner(s) pro se'

(256) 851-6658

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