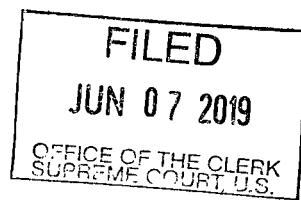


ORIGINAL

No. 18-9766

In The
Supreme Court of the United States



RAYMOND TYRONE LEWIS

Petitioner

Vs.

WILLIAM O. FARMER ET, AL.

Respondent

**ON PETITION FOR WRIT OF CERTIORARI TO
ELEVENTH CIRCUIT COURT OF APPEALS**

Petition for Writ of Certiorari

**RAYMOND TYRONE LEWIS
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07-10
Provided to Graceville Correctional Facility on
for mailing by *SLP/GR*

QUESTIONS PRESENTED

WHETHER THE ELEVENTH CIRCUIT COURT OF APPEAL ABUSED ITS DISCRETION AND DEVIATED FROM THE ESSENTIAL REQUIREMENTS OF LAW WHEN THEY DENIED PLAINTIFFS MOTION FOR RECONSIDERATION FOR NOT PROVIDING ANY NEW ARGUMENT EVIDENCE WHEN PLAINTIFF DID PROVIDE THE PROPER STATUTE OF LIMITATIONS TO BE APPLIED AND PROVIDED EVIDENCE THAT THE NAMED DEFENDANTS DID COMMIT THE VIOLATIONS NAMED IN THE COMPLAINT WHICH WAS IN THE ORDER TO DISMISS THE CASE TO MAKE A FACTUAL SHOWING THAT THE PLAINTIFF WAS NOT TIME BARRED AND PROOF OF THE INFRACTION PROVIDED IN THE COMPLAINT WHICH CREATED A DUE PROCESS VIOLATION UNDER THE U.S. CONSTITUTION XIV AMENDMENT AND VIOLATED F.S. 95.11(2)

WHETHER THE U.S. MIDDLE DISTRICT COURT (OCALA) ABUSED ITS DISCRETION AND DEVIATED FROM THE ESSENTIAL REQUIREMENTS OF LAW WHEN THEY DENIED PLAINTIFF A C.O.A., ALLEGING THAT THE PLAINTIFF WAS TIME BARRED BY A 4 YR. STATUTE OF LIMITATIONS AND BASING ITS DECISION SOLELY ON THE MERITS OF THE COMPLAINT WHEN THERE WAS CONSTITUTIONAL RIGHTS VIOLATIONS AND A REASONABLE JURIST COULD HAVE RULED DIFFERENTLY RAMSEY V. FUENTES 858 F.3d 1360 (11TH CIR. 2017); U.S. 322, 336 123 S.CT 1029, 154 L.ED.2D 931 (2003) AND BUCK V. DAVIS, 137 S. CT. 759, 775, 197 L. ED. 2D 1 (2017) WHICH CREATES DEVIATION FROM THE ESSENTIAL REQUIREMENTS OF LAW VIOLATING THE U.S. CONSTITUTION DUE PROCESS AFFORDED BY THE XIV AMENDMENT AND F.S. 95.11 (1)

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page of this petition

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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

The opinion of the United State Court of Appeals appears at Appendix (A) to the Petition and is unpublished.

The opinion of the United States District Court appears at Appendix (B) to the petition and is unpublished.

JURISDICTION

The date on which the United State Court of Appeals decided my case was Feb. 19, 2019. A timely petition for rehearing was denied by the United State Court of Appeals on April 17, 2019 a copy of the order denying rehearing appears at Appendix (D).

The Jurisdiction of this court is invoked under 28 U.S.C. 1254(1), See Camreta v. Greene, 563 US 692, 131 S Ct 2020, 179 L Ed 2d 1118, (2011) (28 U.S.C.S. 1254(1) confers unqualified power on the United States Supreme Court to grant certiorari upon the petition of any party.)

CONSTITUTION AND STATUTORY PROVISIONS

Pertinent provisions are the U.S. Constitution Amendments XIV, and 28 U.S.C. 1254(a), F.S. 95.11(1)

STATEMENT OF THE CASE

This case concerns a denial of a Motion for Reconsideration claiming Petitioner's right to a Certificate of Appealability concerning a dismissal of a District Courts determination of Plaintiffs 1983 Civil Rights Action in which State officials violated Petitioner's Constitutional Rights under the U.S. Constitution. And in so the District Court of Appeal denied the Petitioner due process of law. The Federal questions were presented to The Federal District Court, Middle District of Florida (Ocala Div.). The District Court dismissed the complaint due to a perceived violation of a 4 year time limitation of action, when petitioner was actually timely under the State of Florida's statute of limitations 95.11 (1) that allowed 20 year time limitation when there is an action on a judgment or decree of a court of record in that State. The District Court refused to grant a Certificate of Appealability (C.O.A.) The Petitioner sought application for a C.O.A. in the Eleventh Cir. Court of Appeals and was subsequently denied. The Eleventh Circuit Court of Appeal abused its discretion and deviated from the essential requirements of law when they denied plaintiffs motion for reconsideration.

The District Court nor the Eleventh Circuit Court of Appeals have the authority to overrule a decision handed down by the U.S. Supreme Court on issues similar to or exactly alike the case in question, nor do they have the authority to deny a C.O.A. when there is Constitutional Rights violations at stake. A decision of a Federal Court that is persuasive and well-reasoned is binding in any federal court. Federal Courts are bound by law to follow the rulings of the highest court in the land which is the United States Supreme Court, irregardless to whether they believe the law should be different. Putnam County Sch. Bd. v. Debose, 667 So. 2d 447, 449 (Fla. 1st DCA 1996); State v. Dwyer, 332 So.2d 333 (Fla. 1996); Hoffman v. Jones, 280 So.2d 431 (Fla. 1973). The doctrine of stare decisis, or the obligation of the court is to abide by its own precedents is grounded on the need for stability in the law and has been a fundamental tenet of Anglo-Americans jurisprudence for centuries; N. Fla. Women's Health & Counseling Servs., Inc. v. State, 866 So. 2d 612 (Fla. 2003). The stare decisis is a fundamental importance to the rule of law because among other things, it promotes stability and protects expectations; it means that like facts will receive like treatment in a court of law - - Irwin v. Department of Veterans Affairs, 498 U.S. 89, 92-93, 112 L. Ed. 2d 435, 111 S. Ct. 453 (1990); Flowers v. United States, 764 F.2d 759 (11th Cir.1985).

On April 25, 2018, Petitioner placed in G.R.C.F. official's hands for mailing to the Middle District Court (Ocala) his original 1983 complaint on the issues involved in this complaint (See App. F). Petitioner was ordered by

the court to place the complaint on a court provided form which Petitioner complied and placed the document in the hands of G.R.C.F. officials for mailing to the Middle District Court (Ocala) marked as Amended. (See App. E), On May 25, 2018 with attachments pages 1 thru 9. On Sept. 6, 2018 the court denied Petitioners claim stating it was time barred and I could prove no facts which would avoid a statute of limitations bar. (See App B). An appeal was timely filed in the Eleventh Circuit Court of Appeals and was denied on Feb. 19, 2019 (See App. A) A Motion for Reconsideration mailed to the Eleventh Circuit Court on March 8, 2019 (See App. C) was denied by the Eleventh Circuit on April 17, 2019 (See App. D), Stating that no new evidence or argument of merit was provided to warrant relief, however, the statute of limitations was provided to show the court that the Petitioner was not time barred (See App. G) and a copy of the trial courts order dismissing the case was provided to the Eleventh Circuit Court which is attached to the Motion for Reconsideration (App. C) to prove that the named defendants were found to have violated several Constitutional Rights including the 14th Amendment.

The crux of the Petitioners argument is that the Middle District Court (Ocala) dismissed the claims as frivolous and time barred by a 4 year limitation. Petitioner provided material evidence and law in the Motion for Reconsideration (App. C) to show the court that Petitioner was not time barred, however, the court still denied relief. This court has ruled in previous cases that when substantial doubt exists about the answer to a material

State law question, a Federal court should avoid making unnecessary state law guesses and offer the State court the opportunity to explicate State law. See Fuentes v. Ramsey, 858 F.3d 1360 (11th Cir. 2017). Since the applicants case evolved from an action on a judgment of a court of record in the State of Florida the proper statute of limitations to apply is Fla. Stat. § 95.11(1), which is within twenty (20) years of the State action in question, thus applicant did timely file his complaint and to deny applicant a C.O.A. when a factual showing of evidence has been provided along with proof of the actual statute of limitations to be applied, provides a showing that the courts deviated from the essential requirements of the law, in addressing the C.O.A.

The C.O.A. inquiry is not co-extensive with the merits analysis. At the C.O.A. stage the only question is whether the applicant has shown that jurists of reason could disagree with the District Courts resolution of his Constitutional Claims or that jurist could concluded that issues presented are adequate to deserve encouragement to proceed further. The threshold question should be decided without full consideration of the factual or legal basis adduced in support of the claim. When a court of appeals side steps the C.O.A. process by first deciding the merits of the appeal and then justifying its denial of a C.O.A. based on its adjudication of the actual merits it is in essence deciding an appeal without jurisdiction. See Miller V. Cockerell, 537 U.S. 322, 326, 154 L.Ed.2d 931, 123 S.Ct. 1029 (2003). The actions of the named defendants in the complaint was placed before a judge of competence and

decided that Government Officials orchestrated an illegal operation against the Constitution and the rights of the Petitioner, which offended the cannons of decency and fairness. The District Court and the Eleventh Circuit Court of Appeals in denying relief clearly imposed on the integrity and judgment of the trial court and to deny Petitioner relief is clear deviation of what is required by law according to the rules and precedents set in tact by this Honorable Court. Which again violates the due process law.

There is no Federal Statute that dictates a time limit for bringing a 1983 action, so Federal District Courts are directed by 42 U.S.C. § 1988 (a) to apply the statute of limitations in effect in the State where the lawsuit is brought unless the application of the statute would conflict with the Constitution or Federal Law.

The statute of limitations to be applied is the one governing actions to recover damages for personal injuries. Wilson v. Garcia, 471 U.S. 261 (1985). If there are two statute of limitations in the State – one covering claims involving the intentional infliction of personal injuries and a catch-all statute the encompasses all other personal-injury actions, the more general statute of limitations is to be applied. Owens v. Okure, 488 U.S. 235 (1989) and resolving punitive damages. Haynes v. Stephenson, 588 F.3d 1152 (8th Cir. 2009); Smith v. Wade, 461 U.S. 30 (1983). This court has ruled that in order for a prisoner to obtain a Certificate of Appealability one must “demonstrate that jurists of reason could disagree with the district courts resolution of his constitutional claims or that

jurist could conclude that issues presented are adequate to deserve encouragement to proceed further." Miller V. Cockerell, 537 U.S. 322, 327, 154 L.Ed.2d 931, 123 S.Ct. 1029 (2003). The plaintiff has provided material fact and evidence to prove the showing of the proper statute of limitations to be applied (See App. G), and provided material evidence decided by a court of competency showing the named defendants did violate the Constitutional Rights of the Plaintiff, (See App. H) which was provided to the lower courts as evidence. Therefore, the Plaintiff is entitled to relief and is not time barred as the District Court has ruled as their reason for dismissing this claim.

REASONS FOR GRANTING THE WRIT

This complaint involves the violation of Constitutional Right that are guaranteed by the U.S. Constitution. The Petitioner filed this complaint with the U.S. Middle District of Florida (Ocala Division) (See App. E and F) complaint and amended complaint) which was dismissed as being frivolous and time barred by a 4 year statute of limitations. (See Dismissal App. B) Upon appealing to the Eleventh Circuit Court of Appeals a Motion for Reconsideration was timely filed (See App. C). Which was denied for no new evidence or arguments of merit to warrant relief (See App. D). However, the Petitioner provided the Eleventh Circuit Court of Appeals with the proper statute to be applied according to Fla. Stat. 95.11(1) for the recovery of anything other than real property (See

App. G) which was provided on pg. 4 line 8 thru 22 which is a facial showing factual argument and new evidence to warrant relief according to the Statute. Petitioner also provided a hard copy of the order dismissing case from the trial court (See App. H) whom found these named defendant's acted under the color of law which violated the Petitioners rights in question. The plaintiff has provided argument and evidence that a 4 year statute of limitations is not the correct statute to apply in this case because of the injury not being a solid foundation (Real Property). Real property is land, including the surface, whatever is attached to the surface such as buildings or trees, whatever is beneath the surface, such as minerals and the area above the surface i.e., the sky Real Property § 8-1 (3rd ed. 1965). This showing that a Constitutional Right violation does not fit the legal definition of Real Property as referred to in Fla. Stat. § 95.11(1) (See App. G). Wherefore, the U.S. Middle District Court deviated from the essential requirements of law when they made a ruling, and any reasonable jurist could conclude upon the correct showing of the statute to apply that the issues presented are adequate to deserve encouragement to proceed further under FR.Civ.P. Rule 15(b) this case should proceed see Slack v. McDaniel, 529 U.S. 473, 484, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000); Buck v. Davis, 137 S. Ct. 759, 775, 197 L. Ed. 2d 1 (2017); Fuentes v. Ramsey, 858 F.3d 1360 (11th Cir. 2017). And the Eleventh Circuit Court's denial of the Plaintiff's Motion for Reconsideration after the Petitioner did provide adequate evidence and argument crates a due process violation. Upon a factual showing with competent evidence and facts to support the petitions complaint and applying

the principles under 28 U.S.C. 2253(c)(2). It is well displayed that the Petitioner has made a facial showing of relief based upon evidence and fact provided. This Court should find that relief is warranted to the Petitioner, upon the showing that both the U.S. Middle District Court (Ocala) and the Eleventh Circuit Court of Appeals made rulings contrary to what the laws and statutes provide thus to resolve the issue this court has the authority to reverse the decisions of these courts to avoid a Miscarriage of Justice which is of great public importance and will show that the courts will not tolerate the violation of anyone's Constitutional Rights and will adhere to the Fla. Statutes as required regardless of whom the individuals may be.

In closing the plain reading of AEDPA leads to conclusion that C.O.A.'s are to be granted on issue-by-issue basis, thereby limiting appellate review of those issues, although appellate courts may broaden C.O.A. to cover additional claims if petitioner has made a substantial showing of the denial of Constitutional Rights. Hiivala v. Wood, 195 F.3d 1098, 1106 (9th Cir. 1999). The Justice function of the Courts demands that it not yield, in appropriate circumstances, to the equities of the particular case in order that the judgment might reflect the true merits of the case. See Brothers, Inc. v. W.E. Grace Mfg. Co., 320 F.2d 594, 610 (5th Cir. 1963); Serio v. Bodger Mutual Ins. Co., 266 F.2d at 2121. The desirability of order and predictability in the judicial process calls for the exercise of caution in such matters Fackelman v. Bell, 564 F.2d 734, 736 (5th Cir. 1977). But there can be little doubt that Rule 60(b) vests in the court power "adequate to enable them to vacate judgments whenever such action is

appropriate to accomplish justice." Klapprott v. United States, 335 U.S. 601, 69 S. Ct. 384, 93 L. Ed. 266 (1949). At the threshold stage of determining whether to issue a C.O.A. the Appellate Court is to refrain from full consideration of the factual or legal basis addressed in support of the claims. The courts focus must remain on the limited inquiry as to whether a C.O.A. should issue and avoid the merits of the appeal as a means to justify denial of a C.O.A.

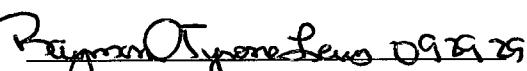
CONCLUSION

This court has the authority to decide on the Constitutional issues and the statutes provide in this petition to prove a showing of right as to the basis of the denial.

The petition for Writ of Certiorari should be granted

Respectfully Submitted

Date: 06-07-19


Raymond Tyrone Lewis #092929