THE SUPREME COURT OF THE
UNITED STATES

Raymond Tyrone Lewis,
Petitioner,

Vs. Case No.: 18-9766

William O. Farmer Et. Al.,
Respondent(s).
_____/

Petition for Panel Rehearing

Comes Now, Petitioner Raymond Tyone Lewis acting pro se in accordance with the Fed.R.Civ.P. 44 do hereby request this Honorable Court to re-consider and rehear the issues previously denied on October 07, 2019 as Petitioner was notified by letter from Clerk. (Exhibit A letter from clerk)

Procedural History and Statement of Facts

Petitioner filed the instant writ of Certiorari on June 07, 2019 thru officials hands at Graceville Correctional Facility. On June 24, 2019 the petition was placed on the Court docket and a notice was provided by the Court and mailed to me advising the respondents to file a brief in opposition by July 24, 2019. (Exhibit B Notice). And also a waiver of no response was also provided (Exhibit C Waiver). These documents were sent to the respondents on July 8, 2019 as indicated by date stamp on both documents labeled exhibit B and C. On July 17, 2019 the attorney

for the respondents filed a "waiver of no response" (Exhibit D) which was received by the Clerk of this Court as noted by it being entered on the Court docket (Exhibit E).

Argument

(1) Petitioner would first add that a Notice of Inquiry was sent to the Clerk of this Court Sept. 04, 2019 informing the Clerk of the waiver of no response that was received by him from the respondents Attorney and questioned the clerk was there anything else that was required by Petitioner was the court docket sheet (Exhibit E) with no other instructions provided. It was reflected that on July 24, 2019 the Petition was distributed for conference of October 1, 2019. According to the Federal Rule of Civil Procedures 55(a) which states (A) Entering a Default.

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk "must" enter the party's default. As the record and docket reflects no such order or notice was filed by the Clerk of this Court which was required by the Clerk to do so according to Rule 55(a) of the Federal Rules of Procedure which creates a Due Process law violation and manifest injustice that this court is obligated by the law to correct as it is shown by the record.

(2) Petitioner would further add that as further grounds for this Honorable Court to grant this rehearing is that the Court was provided with material and factual

evidence that the denial of the 1983 claim by the Middle District Court (Ocala) proclaiming a 4yr statute of limitations is incorrect (see Exhibit G statute of limitations) statue to apply as this complaint is not directed to the recovery of real property, and involves the violations of rights that are guaranteed by the constitution and requires a jury to decide the issues. The violation was already established by a Court of jurisdiction in where the defendants did in fact participate in the infringement of the Petitioners 4th, 5th, 6th, and 14th amendment rights afforded by the Federal and Fla. Constitution as well. Therefore a certificate of appealability should have been issued. The mere facts that no argument to the allegations provided by the Petitioner within the complaint gives a prima facie showing of guilt and the Court must accept as true the allegations and construe them in the light most favorable to the Petitioner. See Resnick v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000). Which allows for this Court to make its ruling favorable to the Petitioner to proceed to oral arguments on the merits if necessary in where Petitioner would ask this Honorable Court to provide him with the assistance of counsel by appointment through this Court to do so.

(3) Petitioner would further add that The Eleventh Circuit Court of Appeals allowed Petitioner to present evidence and argument that refuted the ~~minor~~ Middle Districts claim of being time barred by a 4yr statute of limitations and in doing so, Petitioner filed a Motion for Reconsiderations (Appx. D) with the proper statute of limitations

that should be applied in this case (Exhibit G) which is 95.11(1) for the recovery of anything other than real property. Which was denied and stated it was denied based on the grounds that no new evidence or argument or merit to warrant relief was provided. However the Petitioner did provide both evidence (Appx. G) and (Appx. H) as argument and nowhere in the record has there been anything to refuted the evidence of the complaint or the application of the 20yr statute of limitations that must be applied according to the statute. Therefore this Court must correct this infringement on the Petitioners due process rights.

(4) Petitioner would further add as argument that a Default occurs when a defendant has failed to plead or otherwise respond to the complaint within the time required by Fed.R.Civ.P. 15.3. An entry of default is what the Clerk must enter when the default is established by affidavit or otherwise (Exhibit C waiver of no response) according to the Fed.R.Civ.P. 55(a). After such default has been entered then the plaintiff may apply for a judgment based on such default. However the Clerk never filed the entry which denied the Petitioner the Due Process of law to pursue a judgment based on that parties default and failed to inform the Court of the defendants failure to defend and instead provided a waiver of no response (Exhibit C) which violates the Due Process by failing to enter default. Ashby v. McKenna, 331 F.3d 1148 (10th Cir. 2003). As a direct result of this abuse of discretion by the Clerk, the Court made a ruling without applying the failure of response by the

defendants which could only allow them to take as true the uncontested motion State ex rel Libtz v. Coleman, 149 Fla. 28, 5 So.2d 60 and under the Fla.R.App.P. 9.100(k) failure to deny or defend or otherwise impeach the facts contained in the writ constitutes an admission that the unchallenged facts are true. Cooper v. Sinclair, 66 So.2d 702 (Fla. 1953). Furthermore had the Court been informed of the default action it could have been used its discretion to order a default judgment as Rule 7(1) provides them the discretion to do so. It is the Courts duty when shown, to correct an injustice if it can. In correcting the violation of one's due process rights the Court has the authority to do so as the argument and facts provided herein warrants relief of judgment. With the Court acknowledging the fact that a judgment is void only if the Court that rendered it lacked jurisdiction of subject matter or, of the parties, or if it acted in a manner inconsistent with the due process of law. Where as in this case due process was violated when the clerk failed to provide the default as Rule 55(a) instructs.

Pro Se Status

Petitioner request this Honorable Court to construe his petition in the most liberal fashion since he has always been pro se during these proceedings and would adapt Haines v. Keener, 404 US 519, 520-21, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972) and (1) Schlant v. Galan (In re. Galan) 522 BR 744 (Bank R.W.D.N.Y. 2014). And would further add that this Petition is presented in good faith and without delay.

Relief Sought

The Petitioner would request this Honorable Court to reconsider it's previous denial on October 7, 2019 and grant this Panel Rehearing with directness to the clerk to enter a default as required by Ruel 55(a) of the Fed.R.Civ.P. with the entrance dated July 20, 2019 as the waiver was received July 17, 2019, supplement the record to reflect the default, and allow the Petitioner to address the merits of his claim with the Court adhering to the requirements of Rule 7(1) and/or a judgment of default and/or any other relief this Court may deem appropriate and fair.

Declaration

I hereby declare under penalties of perjury that I understand English language or have had it read to me and understand and state that the facts set forth are true and correct.

/s/ Raymond T. Lewis

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