No. 19-5329

In The
Supreme Court of the United States

ORIGINAL

Supreme Court, U.S.
FILED
JUL 2 2 2019
OFFICE OF THE CLERK

JAMES LESTER WILLIAMS, JR.,

Petitioner,

v.

JAMAI F. SAMUELS,

Respondent.

On Petition For Writ Of Certiorari
To The Supreme Court of Florida

PETITION FOR WRIT OF CERTIORARI

JAMES LESTER WILLIAMS, JR.
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QUESTION(S) PRESENTED

1) Whether Florida's Appellate Court(s) denial of Petitioner's timely and duly filed Petition's for Appeal, without any judicial reasoning or analysis to support their decisions whatsoever deprives a *pro se* litigant of their right to petition the government or the redress of grievances and to the enjoy meaningful access to the Court's in violation of the 1st and 14th Amendment?

2) Whether the decisions of the Circuit Court of Polk County, Florida, along with the Florida Court of Appeals, and the Supreme Court of Florida, denying Petitioner's timely and proper Petition for Writ of Prohibition, without any explanation as to facts or case law involved, or the legal or factual basis upon which their decision rested, comports with the Due Process Clause and Equal Protection Clauses of the 14th Amendment?

3) Whether the Supreme Court of Florida's decision to dismiss Petitioner's appeal, holding that it "lacks jurisdiction to review an unelaborated decision from a district court of appeal that is issued without opinion or explanation' deprives a *pro se* litigant of his right to petition his government for the redress of grievance or is violation of right to be heard in a meaningful time and in a meaningful manner in violation of the Due Process Clause of the 14th Amendment?

PARTIES TO THE PROCEEDINGS

Petitioner is James Lester Williams, Jr., the Father/Plaintiff in the Family Law Court Case in the Circuit Court of Polk County, Florida, Case Number: 14-DR-2307.

Respondent is Jamai F. Samuels, the Mother/Defendant in the Family Law Court Case in the Circuit Court of Polk County, Florida. Case Number 14-DR-2307.

TABLE OF AUTHORITIES

Cases

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OPINIONS BELOW

Petitioner filed in the Circuit Court of Polk County, State of Florida, *Plaintiff's Verified Motion for Recusal*, on October 17th, 2018 (App. A)

The judgment of the Circuit Court of Polk County, State of Florida, denying Petitioner's timely, legally sufficient, and properly filed *Plaintiff's Verified Motion for Recusal* was entered on October 24th, 2018 (App. B) .

A *Notice of Appeal* was filed on October 29th, 2018, and the case was docketed in the Supreme Court of Florida on that date (App. C).

In accordance with Rule 9.100(a) of the Florida Rule of Appellate Procedure, Petitioner timely filed his timely *Petition for Writ of Prohibition* in the Supreme Court of Florida on October 30th, 2018 (App. D) The Supreme Court of Florida

transferred jurisdiction of the *Petition for Writ of Prohibition* to the Florida Second District Court of Appeals also on October 30th, 2018 (App. E).

The Florida Second District Court of Appeals denied Petitioner's *Petition for Writ of Prohibition,* without stating any reasons for the Court's determination or the evidence relied upon, on February 27th, 2019 (App. F).

Petitioner's timely Motion for Rehearing *en banc* was filed on March 11th, 2019 (App. G), which was denied by the Florida Second District Court of Appeals, again without any justification or reasoning for its decision, on April 12th, 2019 App. H).

Thereafter Petition filed a timely Notice of Appeal to the Supreme Court of Florida, on April 22nd, 2019 (App. I).

After accepting Petitioner's filing fee but before any briefing, the Supreme Court of Florida entered an order on April 25th, 2019. dismissing Petitioner's case (App. J) holding:

> This case is hereby dismissed. This Court lacks jurisdiction to review an unelaborated decision from a district court of appeal that is issued without opinion or explanation or that merely cites to an authority that is not a case pending review in, or reversed or quashed by, this Court. See *Wells v. State*, 132 So. 3d 1110 (Fla. 2014); *Jackson v. State*, 926 So. 2d 1262 (Fla. 2006); *Gandy v. State*, 846 So. 2d 1141 (Fla. 2003); *Stallworth v. Moore*, 827 So. 2d 974 (Fla. 2002); *Harrison v. Hyster* Co., 515 So. 2d 1279 (Fla. 1987); *Dodi Publ'g Co. v. Editorial Am. S.A.*, 385 So. 2d 1369 (Fla. 1980); *Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980). No motion for rehearing or reinstatement will be entertained by the Court.

Pursuant the Court's Order, it would not consider a Petition for Rehearing.

JURISDICTON

The Supreme Court of Florida entered judgment on April 25th, 2019 (App. J). This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." *1st Amendment to the United States Constitution.*

> "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." *Section One of the 14th Amendment.*

INTRODUCTION

This action is predicated upon the summary denial of *Petitioner's Verified Motion for Recusal* by Circuit Court Judge Michael P. McDaniel, in his official capacity, sitting in Florida's Tenth's Circuit. *Petitioner's Verified Motion for Recusal*, was timely filed, and substantively and procedurally complied, in all respects, with FL Stat § 38.10, in connection with a Family Law case wherein Petitioner is a *pro se* litigant, and the Respondent in the Circuit Court is represented by Mr. Nicholas C. Mohr, Esq.,

On or about October 15th, 2018, Petitioner was reviewing the Honorable Michael P. McDaniel, Circuit Judge's order and reflecting on the sequence of events that took place in court to include the apparent "chemistry" between the Judge and the Respondent's Lawyer during the trial, which the Petitioner found to be significantly different from his lawyer and the Judge.

Petitioner, through his research, discovered a conflict of interest whereby the Judge and the Respondent's lawyer had more than just a working relationship as a member of the judiciary and a member of the Bar. Subsequent to his research, Petitioner properly motioned the recusal especially because most ordinary citizens would discern the same appearance of impropriety, and due to Petitioner's legitimate fear of prejudice of Judge McDaniel, Petitioner merely requested a legitimate recusal of Judge McDaniel from his Family Law Case.

Petitioner discovered that Nicholas C. Mohr, Esq. is a current associate of William J. Lobb. It was also discovered that Judge Michael P. McDaniel was a partner and associate of William J. Lobb (Lobb and McDaniel, PA) from April of 1999 until August of 2000.

Furthermore, William J. Lobb was both a partner and associate of the Law office of C. Ray McDaniel from September of 1996 to April of 1999 (the father of Judge Michael P. McDaniel).

Judge Michael P. McDaniel also started practicing trial law within his Father's

Law Office in 1995 (Law office of C. Ray McDaniel) and appears to have worked as an associate alongside attorney William J. Lobb within his father's Law Office.

Given Judge McDaniel's business, personal and professional relationship with attorney William J. Lobb (lawyer office that Nicholas C. Mohr, Esq is currently an associate and representing the Respondent), there is an appearance of impropriety and Petitioner legitimately fears prejudice.

Petitioner's Verified Motion for Recusal was timely, proper, and legally sufficient. Despite the clear and unambiguous appearance of impropriety and legitimate fear of bias believed by the Petitioner, substantiated by the evidence attached thereto, the Petitioner's perfected Appeal in accordance with Florida Law, the Florida Second District Court of Appeals entered an order denying the appeal. Within less than 10 days from the date Petitioner filed his Notice of Appeal to the Supreme Court of Florida, dismissed Petitioner's appeal claiming that the Court of Appeal's order not addressing the issue on the merits, deprived that Court jurisdiction, holding it would not entertained a Petition for Rehearing.

The Florida Supreme Court's willful blindness to the Petitioner's complaints that he was denied a fair and impartial Judge is repugnant to the most basic principles of Due Process as set forth by this Court.

STATEMENT OF THE CASE

The Petitioner hereby asserts that he has been oppressed and suppressed of his

civil rights as well as his 1st and 14th Amendments rights as conveyed in the United States Constitution, by the deprivation of a fair and impartial Judge, Procedural and Civil Due Process, denial of Equal Protection and Abuse of Power/Authority.

Based upon the clear and unambiguous appearance of impropriety withstanding Judge McDaniel and the facts of Petitioner's underlying case, Petitioner respectfully moved the Circuit Court of Polk County Florida to enter an order that would require the Respondent to show cause why the requested relief should not be granted and thereafter, enter an order prohibiting any judge in the entire Tenth Judicial Circuit from presiding over Petitioner's Circuit Court Case, and enjoin the enforcement of any and all orders entered by Judge McDaniel in Polk County Circuit Court Case of *Williams v. Samuels*, Case No. 24-DR-2307 *et seq.*, and further proceeding relevant thereto, and additionally randomly assign a judge from a different circuit in Florida to hear Petitioner's case(s).

To demonstrate legal sufficiency, Petitioner need only show: 'a well-grounded fear that he will not receive a fair [hearing] at the hands of the judge. It is not a question of how the judge feels; it is a question of what feeling resides in the affiant's mind and the basis for such feeling.' *State ex rel. Brown v. Dewell*, 131 Fla. 566, 573, 179 So. 695, 697- 98 (1938). See also *Hayslip v. Douglas*, 400 So. 2d 553 (Fla. 4th DCA 1981). The question of disqualification focuses on those matters from which a litigant may reasonably question a judge's impartiality rather than the

judge's perception of his ability to act fairly and impartially. *State v. Livingston,* 441 So. 2d 1083, 1086 (Fla. 1983) (emphasis added).

The Petitioner timely filed his *Writ of Prohibition* as a result of his research yielding a relationship and financial ties between the last Judge, the counsel for the mother, Mr. Mohr and the law firm owner of Lobb and Mohr. This Court has ruled that in certain circumstances, the due process clause of the Fourteenth Amendment requires a judge to recuse himself on account of a potential or actual conflict of interest. The Petitioner's *Motion for Recusal* was denied, even with the compelling evidence that was provided for review. The Court entered multiple orders, all of which were rendered in "Bad Faith", given the compelling evidence, highlighting an appearance of impropriety.

The First Amendment of the United States Constitution prohibits any laws that abridge the freedom of speech or prohibit citizens from petitioning for a governmental redress of grievances. The right to petition the government for a redress of grievances guarantees people the right to ask the government to provide relief for a wrong through the courts (litigation) or other governmental action.

The *Writ of Prohibition* was accepted by the second District Court of Appeals, with both parties filing arguments. The second District Court of Appeals failed to render a decision; a staunch violation of Petitioner's right to both procedural and civil due process. Furthermore, the Supreme Court of Florida dismissed the case and

waived Jurisdiction.

The Supreme Court of Florida, the Second District Court of appeals along with Circuit Court of the Tenth Judicial Circuit in and for of Polk County all denied Petitioner's right of fair procedure; denied Petitioner's right to be heard and denied Petitioner's right to receive a decision made by a neutral decision maker before depriving me of life, liberty and/or property.

All judicial entities failed to provide me an unbiased tribunal, the right to cross-examine adverse witnesses, a decision based exclusively on the evidence presented and written findings of fact and reasons for its decision. Procedural and civil due process guarantees that where an individual is facing a deprivation of life, liberty, or property, he or she is entitled to adequate notice, a hearing, and a neutral judge.

REASONS FOR GRANTING THE PETITION

Article VI of the U.S. Constitution makes "the Constitution the Supreme Law of the Land," *Cooper v. Aaron,* 358 U.S. 1, 18 (1958), "which is also the Supreme Law of [Florida]," *Poindexter v. Greenhow*, 114 U.S. 270, 292 (1885). "An unconstitutional law will be treated by the Courts as null and void," *Board of Liquidation v. McComb*, 92 U.S. 531, 532, 541 (1875), because "the constitution and laws of a State, so far as they are repugnant to the constitution and laws of the United States, are absolutely void" *Cohen v. Virginia*, 19 U.S. 246, 414 (1821) accord

Maybury v. Madison, 5 US 137, 174, 176 (1803). "In other words, no state can, in respect to any matter, set at naught the paramount provisions of the National Constitution." *Braxton v. West Virginia*, 208 U.S. 192, 197 (1908).

"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." U.S Const. Amend. 14.

"It is State action of a particular character that is prohibited. Individual invasion of individual rights is not the subject-matter of the [14th] amendment. It has a deeper and broader scope. It nullifies and makes void all State legislation, and State action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty or property without due process of law, or which denies to any of them the equal protection of the laws. *United States v. Stanley*, 103 U.S. 3, 11-12 (1883).

It is axiomatic that "[a] fair trial in a fair tribunal is a basic requirement of due process." *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 876, 129 S. Ct. 2252, 2259, 173 L. Ed. 2d 1208 (2009).

This Court has established that even convicted felons serving active sentences as prisoners and children have a fundamental right to enjoy meaningful access the courts in a series of important cases, including *Ex parte Hull*, 312 U.S. 546 (1941),

Johnson v. Avery, 383 U.S. 483 (1969), and *Bounds v. Smith*, 430 U.S. 817 (1977). *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. at 428 U. S. 74. *Prince v. Massachusetts*, 321 U. S. 158, 321 U. S. 170 (1944). See *Ginsberg v. New York,* 390 U. S. 629 (1968). See also *McKeiver v. Pennsylvania*, 403 U. S. 528 (1971).

"Fraud upon the court" has been defined by a United States Court of Appeals for the Seventh Circuit to "embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." *Kenner v. C.I.R.*, 387 F.3d 689 (7th Cir. 1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23. "There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgments." *United States v. Throckmorton*, 98 U.S. 61 (1878).

Lawyers are professionally and ethically responsible for accuracy in their representations to the Court. Rule 3.1 of the Model Rules of Professional Conduct states that lawyers "shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good-faith argument for an extension, modification or reversal of existing law." Similarly, Rule 3.3 provides that "[a] lawyer shall not knowingly . . .

make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer." *Id.* at 3.3(a).

In *Kupferman v. Consolidated Research & Manufacturing Corp*, the court stated that

> [w]hile an attorney "should represent his client with singular loyalty that loyalty obviously does not demand that he act dishonestly or fraudulently; on the contrary his loyalty to the Court, as an officer thereof, demands integrity and honest dealing with the court." And when he departs from that standard in the conduct of a case he perpetrates a fraud upon the court. *Id.* 459 F.2d 1072, 1078 (2d Cir. 1972).

In *Aoude v. Mobil Oil Corp*, the Court stated:

> The requisite fraud on the Court occurs where "it can be demonstrated, clearly and convincingly, that a party has sentimentally set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party's claim or defense." *Id.* 892 F.2d 1115, 1118 (1st Cir.1989).

"Tampering with the administration of justice ... is a wrong against the institutions set up to protect and safeguard the public ... in which fraud cannot be complacently tolerated with the good order of society." *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246, 64 S. Ct. 997, 88 L. Ed. 1250 (1944).

Because fraud on the courts pollutes the process society relies on for dispute-resolution, subsequent courts reason that "a decision produced by fraud on the court is not in essence a decision at all, and never becomes final. Judgments ...

obtained by fraud or collusion are void and confer no vested title." *League v. De Young*, 52 U.S. 185, 203, 13 L. Ed. 657 (1850).

Due process does not permit fraud on the court to deprive any person of life, liberty or property. A biased Court also violates constitutional due process guarantees by tolerating that fraud. As long ago as *Mooney v. Holohan*, 294 U.S. 103, 112, 55 S.Ct. 340, 342, 79 L.Ed. 791 (1935), this Court made clear that deliberate deception of a court ... by the presentation of known false evidence is incompatible with 'rudimentary demands of justice' ... the same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears.'" *Giglio v. United States*, 405 U.S. 150, 153, 92 S. Ct. 763, 766, 31 L. Ed. 2d 104 (1972).

This Court has made it clear that pleadings of *pro se* litigants are to be held to less rigorous standards than those drafted by attorneys. *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). Furthermore, *pro se* filings should be construed liberally and courts have a duty to ensure that *pro se* litigants do not lose their right to a hearing on their claim due to ignorance of technical procedural requirements. *Balisteri v. Pacifica Police Department*, 901 F. 2d 696, 699 (9th Cir. 1990); *Borzeka v. Heckler*, 739 F. 2d 444, 447 n. 2 (9th Cir. 1984); *Cripps v. Life Ins. Co. of North America*, 980 F. 2d 1261, 1268 (9th Cir. 1992) (Default judgment vacated in part due to *pro se* status of Petitioner and unfamiliarity with court procedures).

Pro se litigants, as well as those represented by counsel, are entitled to meaningful access to the courts. See *Bounds v. Smith*, 430 U.S. 817, 828 (1977); *Wolff v. McDonnell*, 418 U.S. 539, 579 (1974); *Ross v. Moffitt*, 417 U.S. 600, 612-15 (1974) ; *Johnson v. Avery*, 393 U.S. 483, 485 (1969); *Rudolph v. Locke*, 594 F.2d 1076, 1078 (5th Cir. 1979).

Sufficient access to the courts, is a right protected by the Due Process Clause of the Fourteenth Amendment. See *Wolff*, 418 U.S. at 579-80; *Corpus v. Estelle*, 409 F. Supp. 1090, 1097 (S.D. Tex. 1975), aff'd, 542 F.2d 573 (5th Cir. 1976); *Potuto, The Right of Prisoner Access: Does Bounds Have Bounds*?, 53 Ind. L.J. 207, 215-19 (1977-78); Note, *Prisoners' Rights- Failure to Provide Adequate Law Libraries Denies Inmates' Right of Access to the Courts,* 26 U. Kan. L. Rev. 636, 643-44 (1978).

Sufficient access to the courts is equally a fundamental right protected by the First Amendment, which guarantees to all persons use of the judicial process to redress alleged grievances. See *Cruz v. Beto*, 405 U.S. 319, 321 (1972) (right to petition Government for redress of grievances); *NAACP v. Button*, 371 U.S. 415, 428-29 (1963)(same), *Bounds v. Smith*, 430 U.S. 817, 825 (1977); *Wolff v. McDonnell*, 418 U.S. 539, 579 (1974); *Johnson v. Avery*, 393 U.S. 483, 488 (1969).

Procedural due process imposes constraints on governmental decisions which deprive individuals of "liberty" or "property" interests within the meaning of the Due

Process Clause of the Fifth or Fourteenth Amendment, even in the civil context at issue here, See, e. g., *Richardson v. Belcher*, 404 U. S. 78, 80-81 (1971); *Richardson v. Perales*, 402 U. S. 389, 401-402 (1971); *Flemming v. Nestor*, 363 U. S. 603, 611 (1960).

The "right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society." *Joint Anti-Fascist Comm. v. McGrath,* 341 U. S. 123, 168 (1951) (Frankfurter, J., concurring). The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U. S. 545, 552 (1965). See G*rannis v. Ordean*, 234 U. S. 385, 394 (1914); *Fuentes v. Shevin,* 407 U.S. 67, 81, 92 S.Ct. 1983, 1994, 32 L.Ed.2d 556 (1972). The right to notice and the opportunity to be heard "must be granted at a meaningful time." *Fuentes,* 407 U.S. at 81, 92 S.Ct. at 1994; *Cleveland Bd. of Education v. Loudermill,* 470 U.S. 532, 542, 105 S.Ct. 1487, 1493, 84 L.Ed.2d 494 (1985).

"Finality requirement for constitutional claims of due process violation that implicate a due process right either to a meaningful opportunity to be heard or to seek reconsideration of an adverse [] determination. *Evans v. Chater,* 110 F.3d 1480, 1483 (9th Cir. 1997)."

The United States Court has established what is essentially a two-tiered analysis for due process challenges to conduct which, like the one in this case, involves property rather than liberty interests. The first "tier" involves a two-fold inquiry: (1) an examination of whether there has been a significant deprivation or threat of a deprivation of a property right, see *Fuentes v. Shevin*, 407 U.S. 67 (1972), and (2) an examination of whether there is sufficient state involvement of that deprivation to trigger the Due Process Clause, see *Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982). If there is state action and if that action amounts to the deprivation or threat of a deprivation of a cognizable property interest, the Court proceeds to the second "tier" to then determine what procedural safeguards are required to protect that interest. *Connecticut v. Doehr*, 501 U.S. 1 (1991). The Court traditionally uses the three-factor test first discussed in *Mathews v. Eldridge*, 424 U.S. 319 (1976), to assess what safeguards are necessary to pass muster under the Due Process Clauses of the Fifth and Fourteenth Amendments. The *Mathews* analysis weighs (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 safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. at 335; see also Doehr, 501 U.S. at 26-28.

There can be no serious question that Petitioner's *Motion for Recusal* and *Petition for Writ of Prohibition* satisfied the first-tier requirement. This Court has been a steadfast guardian of due process rights when what is at stake is a person's right to possess their property because loss of one's ability to pay their bills and keep a roof over their family's head is "a far greater deprivation than the loss of furniture." *United States v. James Daniel Good Real Property*, 510 U.S. 43, 53-54 (1993).

Courts have held that even "a small bank account" is sufficient to trigger due process protections. See *Nat'l Council of Resistance of Iran v. Dept. of State*, 251 F.3d 192, 202-205 (D.C. Cir. 2001) (citing *Russian Volunteer Fleet v. United States*, 282 U.S. 481, 489-42 (1931)).

The issues complained of herein were committed by the Circuit Court for the State of Florida whose power deprives from the Constitution of the Great State of Florida. Therefore, this prong is satisfied. "First, the deprivation must be caused by the exercise of some right or privilege created by the State.... Second, the party charged with the deprivation must be a person who may fairly be said to be a state actor." *Lugar v. Edmondson Oil Company*, 457 U.S. 922, 937 (1982).

The risk of an erroneous deprivation when the decision rests on fraudulent evidence manufactured by the opposing party should be self-evident. Denying each of everyone if the Petitioner's Motions and Appeals without any substantive

reasoning or judicial analysis whatsoever is not an unconstitutional practice on its face, but it "involve[s] a corruption of the truth-seeking function of the trial process." *United States v. Agurs*, 427 U.S. 97, 107 (1976). See also *Miller v. Pate,* 386 U.S. 1 (1967) (finding that a deliberate misrepresentation of truth to a jury is a violation of due process); *Caldwell v. Mississippi*, 472 U.S. 320 (1985) (finding that an uncorrected, misleading statement of law to a jury violated due process); *Darden v. Wainwright*, 477 U.S. 168, 181- 82 (1986) (improper argument and manipulation or misstatement of evidence violates Due Process).

Due Process protects against the arbitrary deprivation of property and reflects the value our constitutional and political history places on the right to enjoy prosperity, free of governmental interference. *Fuentes v. Shevin*, 407 U.S. 67, 80-1, 92 S.Ct. 1983, 1996 (1972).

Under the Magna Carta, the Due Process Clause limits the powers of all branches of government, including the judiciary. *Truax v. Corrigan*, 257, U.S. 312,333, 42 S.Ct. 124, 129 (1921). Chief Justice Taft wrote: Our whole system of law is predicated on the general fundamental principle of equality of application of the law. 'All men are equal before the law,' 'This is a government of laws and not of men,' 'No man is above the law,' are all maxims showing the spirit in which legislatures, executives and courts are expected to make, execute and apply laws." *Id.*

The guaranty of due process "was aimed at undue favor and individual or class privilege.... *Id.* This is why "Equal Justice Under Law" is etched in all caps across the front of the U.S. Supreme Court. "The vague contours of the Due Process Clause do not leave judges at large." *Rochin v. People of California*, 342 U.S. 165, 170, 72 S.Ct. 205, 209 (1952).

Judges have an ethical obligation to be fair and impartial, but as here, there are circumstances where a litigant is within their rights to move to disqualify judges to ensure judicial neutrality. Disqualification is governed by rules and statutes, and litigants in Florida are given a statutory ***right*** to disqualify judges if prejudice is feared. 38.10, Fla. Stat. (2012) .

Judges and attorneys are expected to be respectful to one another and friendship alone has not been found to be disqualifying. However, the mere appearance of improper access to a judge has been held to be disqualifying if the judge's "impartiality might reasonably be questioned." Fla. Code Jud. Conduct, Canon 3E.

Judges have an ethical obligation to disclose information on the record that could be relevant to their disqualification, even if they don't think it merits disqualification. Fla. Code Jud. Conduct, Canon 3E.

Litigants are given the statutory right to seek disqualification when, as here, prejudice is feared, and this is another area which is in conflict with the Rules of

Judicial Administration. 38.10, Fla. Stat. (2012). The pertinent part states, once a party files an affidavit fearing prejudice "the judge ***shall*** proceed no further, but another judge shall be designated." *Id.* (emphasis added).

Florida Rule 2.160(d)(1) provides that a ground for disqualification is the prejudice or bias of the judge. Rule 2.160(e) states that a motion shall be made within a reasonable time not to exceed ten days after discovery of the facts constituting the grounds for disqualification; subsection (f) of that rule states that a trial judge shall determine only the legal sufficiency of the motion and not the truth of the facts alleged and shall grant the motion if it is legally enough. Fla. R. Jud. Admin.2.160; see also *Livingston v. State*, 441 So.2d 1083 (Fla. 1983).

Once the motion is made either orally or written, it must be ruled on immediately. If a motion to disqualify is made orally, a judge must stop all proceedings and give counsel an opportunity to file the motion. *Rodgers v. State,* 630 So. 2d 513, 516 (Fla. 1993). The rules state that the motion should be made within 10 days from discovering the grounds for disqualification. However, if the motion is based on the judge's relationship, a party has 30 days to file the motion. 38.02, Fla. Stat. (2012). Petitioner's *Motion for Recusal* was timely.

A judge cannot make any factual determinations with the motion to disqualify, all must be taken as true at the time of the ruling, and any commentary on the truthfulness of the motion may be a new basis for disqualification. *Dominquez*

v. State, 944 So. 2d 1052, 1053 (Fla. 4th D.C.A. 2006).

If a judge denies a motion to disqualify, as in the case *sub judice*, prohibition is available for immediate review. *Sutton v. State,* 975 So. 2d 1073, 1076-77 (Fla. 2008). Prohibition is used as the justification for allowing judges to rule on their own motions to disqualify, as attorneys are given another means to have a judge disqualified.

A writ of prohibition is available only where, as here, there is no other "appropriate and adequate legal remedy." *S. Records Tape Serv. v. Goldman*, 502 So.2d 413, 414 (Fla. 1986) (citing *English v. McCrary*, 348 So.2d 293 (Fla. 1977)). "[A] defendant cannot resort to a writ of prohibition where he [or she] has an adequate remedy via appeal." *Sparkman v. McClure*, 498 So.2d 892, 895 (Fla. 1986) (citing *State ex rel. Turner v. Earle*, 295 So.2d 609 (Fla. 1974); State ex rel. Schwarz v. Heffernan, 142 Fla. 137, 194 So. 313 (1940); *Benton v. Circuit Court for Second Judicial Circuit*, 382 So.2d 753 (Fla. 1st DCA 1980)).

Judges have long been required to give a public reasoned opinion from the bench in support of their judgment. *Id.* at fn. 4. The reason given to support state action that takes property may not be so inadequate that it may be characterized as arbitrary. *Jeffries v. Turkey Run Consolidated School Distric*t, 492 F.2d 1, 4 (7th Cir. 1974).

State action is "arbitrary" when it takes without reason or for merely pretextual reasons. *Decarion v. Monroe County*, 853 F. Supp 1415, 1421 (S.D. Fla. 1994). The "arbitrary and capricious" standard requires a state to examine the relevant data and to articulate a satisfactory explanation for its action. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm*, 463 U.S. 29, 43, 103 S.Ct. 2856, 2867 (1983) citing *Burlington Truck Lines v. United States*, 371 U.S. 156, 168, 83 S.Ct. 239, 245-246 (1962). As the Florida Supreme Court has held, "one of the best procedural protections against arbitrary exercise of discretionary power lies in the requirement of findings and reasons that appear to reviewing judges to be rational." *Roberson v. Florida Parole and Probation Commission*, 444 So. 2d 917, 921 (Fla. 1983).

Heretofore, evidenced by the Record of this case, Petitioner has been diligent in pursuing his rights and notwithstanding each and every attempt, all of Petitioner's Motion and Appeals have simply been denied without any substantive reasoning ever being provided by a Court in Florida.

CONCLUSION

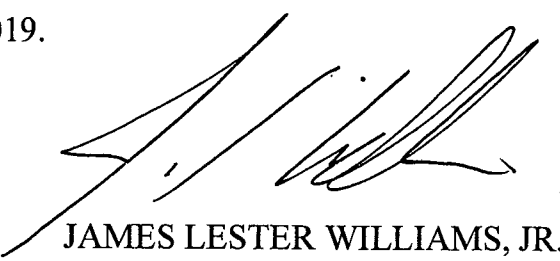
For the foregoing reasons the Petition for Writ of Certiorari should be granted.

Respectfully Submitted,

JAMES LESTER WILLIAMS,JR.
2729 Saint Cloud Oaks Dr.
Valrico, Florida33594
Telephone:(813)239-6115
Email:jam8willia@yahoo.com

CERTIFICATE OF SERVICE

I, the undersigned, hereby certifies that a true and correct copy of the above and foregoing Petition for Writ of Certiorari was furnished by the United States Mail to Nicholas C. Mohr, counsel for the Respondent/Mother, at 295 West Summerlin Street, Bartow, Florida 33830 and Respondent/Mother, at Post Office Box 1253, Bartow, FL 33831 on this 22nd day of July, 2019.



JAMES LESTER WILLIAMS, JR.
2729 Saint Cloud Oaks Dr.
Valrico, Florida 33594
Telephone: (813) 239-6115
Email: jam8willia@yahoo.com

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

JAMES LESTER WILLIAMS, JR. — PETITIONER
(Your Name)

VS.

JAMAI F. SAMUELS — RESPONDENT(S)

PROOF OF SERVICE

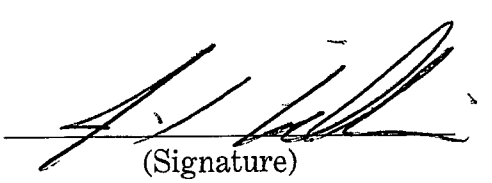
I, JAMES LESTER WILLIAMS JR, do swear or declare that on this date, 22 July, 2019, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

NICHOLAS C. MOHR COUNSEL FOR THE RESPONDENT
295 WEST SUMMERLIN ST.
BARTOW, FLORIDA 33830

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 22 July, 2019

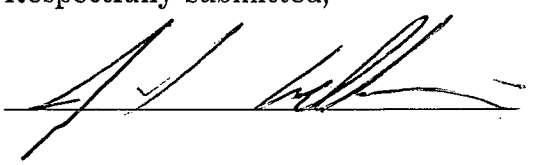


(Signature)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 22 July 2019