

IN THE SUPREME COURT OF THE UNITED STATES

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CASE NO.: 19-8195

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ALENS CHARLES

Petitioner,

v.

RIC BRADSHAW, PALM BEACH COUNTY SHERIFF

Respondent.

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ON PETITION FOR WRIT OF  
CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE  
ELEVENTH CIRCUIT

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BRIEF OF RESPONDENT IN  
OPPOSITION TO PETITION FOR WRIT  
OF CERTIORARI

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Respectfully submitted,  
Carri S. Leininger, Esq.  
cleininger@wlclaw.com  
Williams, Leininger & Cosby, P.A.  
11300 US Highway One, Suite 300  
N. Palm Beach, FL 33408  
Counsel for Respondent

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## **I. Question Presented**

Was the court of appeals correct in finding that Plaintiff failed to timely serve the Sheriff with process within the ninety (90) day time limit required under Fed. R. Civ. P. 4(m) and in affirming the district court's dismissal of the case without prejudice?

## **II. Parties to the Proceeding and Rule 29.6 Statement**

The petitioner is Mr. Alens Charles, *pro se* (hereinafter "the Plaintiff"). The respondent is Ric. L. Bradshaw in his official capacity as Sheriff of Palm Beach County, Florida (hereinafter "the Sheriff").

The Palm Beach County Sheriff's Office is a governmental entity within the State of Florida.

## **OPINIONS BELOW**

The opinion of the court of appeals (Pet. App. 1a p. 2-5) was not selected for publication but may be found at 782 F. App'x 991 (Mem). The opinion of the district court (Pet. App. p. 10-15) was likewise not selected for publication *see* S.D. Fla. case no. 9:17-cv-80861-DMM.

## **JURISDICTION**

The judgment of the court of appeals was entered on November 1, 2019 (App. 1). The petition for writ of certiorari was filed on December 13, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATEMENT OF THE CASE

Plaintiff originally filed a Complaint pursuant to 42 U.S.C. § 1983 against the Sheriff on July 20, 2017. On August 7, 2017, the district court, noting that Plaintiff was *pro se*, issued a set of instructions to Plaintiff which described the service requirements under Rule 4 of the Federal Rules of Civil Procedure. On August 28, 2017, Plaintiff filed an Amended Complaint but did not follow the district court's instructions for service. On October 5, 2017, the district court ordered Plaintiff to serve the Sheriff by October 18, 2017, the ninety (90) day deadline set forth under Federal Rule of Civil Procedure 4(m).

On November 1, 2017, the district court issued an order requiring Plaintiff to file proof of service or to show good cause as to why the deadline to serve the Sheriff should be amended. On December 6, 2017, the district court instructed Plaintiff again how to demonstrate to the district court that process was served on the Sheriff. In total, Plaintiff was advised on three different occasions how to demonstrate to the district court that he properly served the Sheriff. (App. 2, 3, 4, 5). Plaintiff was also advised on three different occasions that failure to comply with the service requirements under Federal Rule of Civil Procedure 4 would result in the dismissal of his lawsuit. *Id.* The Plaintiff never sought an extension of time from the district court.

On December 12, 2017, Plaintiff filed a note with the district court claiming proper service on the Palm Beach County Sheriff's Office. The date of the alleged

service was November 30, 2017<sup>1</sup>; well over a month beyond the ninety (90) day deadline required by the Rule 4(m). Fed. R. Civ. P. 4(m). On December 20, 2017, the Sheriff filed a Motion to Dismiss Plaintiff's Complaint for Failure to Effectuate Timely and Proper Service. The district court granted the Sheriff's Motion to Dismiss because the Plaintiff did not timely serve the Sheriff within the 90 days allotted under Rule 4(m). (Pet. App. C). The district court examined whether there was good cause to extend the deadline. The district concluded good cause did not exist because Plaintiff was instructed on a number of occasions how to properly serve process on the Sheriff. The district court also found that service was improper because the Plaintiff, himself, personally served the Sheriff. Plaintiff appealed the Order dismissing the case to the Eleventh Circuit Court of Appeals.

The court of appeals found that Plaintiff failed to timely serve the Sheriff under Rule 4(m) or demonstrate good cause for his failure to do so. Therefore, the district court did not abuse its discretion in dismissing Plaintiff's Amended Complaint. The court of appeals also found that the district court correctly considered whether the circumstances of the case warranted an extension of time as required by Eleventh Circuit precedent.

### **REASONS FOR DENYING THE WRIT**

#### **a. Plaintiff Solely Seeks Review of the Appellate Court's Factual Findings**

Plaintiff's Statement of the Case fails to articulate the basis of the appellate court's opinion: the issue before the court of appeals was solely procedural. Plaintiff

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<sup>1</sup> The Sheriff also argued that the method of the alleged service on November 30, 2017 was improper. However, the court of appeals did not consider this issue because they found that service was untimely.

emphasizes the facts of his civil rights claim; however, such issues were never considered on the merits. The only issue for this Court's consideration is whether Plaintiff timely served the Sheriff with process in compliance with Federal Rule of Civil Procedure 4(m). The court of appeals correctly found that Plaintiff failed to serve the Sheriff within the time permitted by Rule 4(m). Plaintiff argues that service was timely. Plaintiff asks the Court to consider whether this factual finding by the court of appeals was erroneous.

"A Petition for writ of certiorari will be granted only for compelling reasons." See Rule 10 of the Rules of Supreme Court of the United States. Further, "A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." *Id.* The issues before the Court in Plaintiff's Petition do not invoke any of the considerations for review described in Rule 10; rather, the petition solely seeks review of the court of appeals' factual findings and its application of a procedural rule. The petition for writ of certiorari should be denied.

**b. Plaintiff Confuses and Mischaracterizes the Issues Before the Court**

The bulk of Plaintiff's petition discusses the 2017 traffic stop which formed the basis of his §1983 claim. This was not the subject of the court of appeals' opinion because Plaintiff's Complaints were never considered on the merits. The facts of the traffic stop have no bearing on the procedural issues at issue. Plaintiff spends the remaining portion of his petition describing a completely separate incident; a shooting, which occurred in 2009. This incident has no bearing on the issues in this



petition because it was the subject of a prior lawsuit and was not considered by the district court or the appeals court.

Plaintiff's Petition fails to explain why the court of appeals' decision was incorrect. He only briefly raises the service issue towards the end of his Petition, claiming that service was timely made. (Pet. p. 4). To support this, Plaintiff cites to rules of procedure that do apply to service of process. (*Id*)<sup>2</sup>. Under Rule 4(m), service was clearly untimely because it was not even attempted until November 30, 2017, over a month past the ninety (90) day deadline. Plaintiff provides no factual or sound legal basis as to how the November 30, 2017 date is supposedly timely. Thus, the Petition only challenges whether the court of appeals correctly calculated the deadline for service.

The decision below correctly applied the Federal Rules of Procedure and also properly considered whether the district court abused its discretion in declining to extend the time for service. In doing so, the court of appeals followed well settled precedent. The decision below does not warrant certiorari review.

### CONCLUSION

The petition for writ of certiorari should be denied.

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<sup>2</sup> Specifically Plaintiff cites to Fed. R. Civ. P. 58 and Fed. R. App. P. 4

## CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been sent via email and US Mail to Alens Charles (youngking0403@gmail.com), 4070 Arthurium Avenue, Lake Worth, Florida 33462 this 6<sup>th</sup> day of May, 2020.

*s/ Carri S. Leininger, Esq.*

Carri S. Leininger, Esq. (eService@wlclaw.com)

Florida Bar No. 0861022

Attorney for Appellee, MAM Management, Inc.

Automobile Insurance Company

Williams, Leininger & Cosby, P.A.

11300 US Highway One, Suite 300

North Palm Beach, Florida 33408

Telephone No. (561)615-5666

Facsimile No. (561)615-9606