

No. 19-8830

SUPREME COURT OF THE UNITED STATES

Valentin Spataru,

Petitioner,

-vs-

Florida Department of Transportation, et al.,

Respondents.

**ON PETITION FOR WRIT OF CERTIORARI
TO THE FLORIDA SUPREME COURT**

**BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI**

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QUESTION PRESENTED

Whether this Court should grant certiorari review where the Florida Supreme Court declined to accept jurisdiction of Petitioner's case that was dismissed for failing to follow a judicial order and determined Petitioner was a vexatious litigant, which is based on adequate, independent state grounds; the issues present no conflict between decisions of other state courts of last resort or federal courts of appeal; the issues do not conflict with this Court's precedent; and the issues do not otherwise raise an important federal question.

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OPINION BELOW

The decision of the Florida Supreme Court to decline to accept jurisdiction appears at *Spataru v. Fla. DOT*, No. SC19-1325, 2019 Fla. LEXIS 1895 (Nov. 4, 2019). The Court of Appeal of Florida, Third District, opinion appears at *Spataru v. Fla. DOT*, 44 Fla. L. Weekly D1716 (Fla. Dist. Ct. App. July 3, 2019).

JURISDICTION

This Court's jurisdiction to review the final judgement of the Florida Supreme Court is authorized under 18 U.S.C. § 1257. However, because the Florida Supreme Court declined to accept jurisdiction based on adequate and independent state grounds, this Court should decline to exercise jurisdiction. Sup. Ct. R. 14(g)(i). Additionally, the Florida Supreme Court's decision does not implicate an important or unsettled question of federal law, does not conflict with another state court of last resort or a United States court of appeals, and does not conflict with relevant decisions of this Court. Sup. Ct. R. 10. No compelling reasons exist in this case and this Petition for a writ of certiorari should be denied. Sup. Ct. R. 10.

BACKGROUND

Petitioner is seeking discretionary review for the dismissal of his case for failure to show cause, as well as barring Petitioner from further pro se filings. *Spataru v. Fla. DOT*, 44 Fla. L. Weekly D1716 (Fla. Dist. Ct. App. July 3, 2019). After filing his complaint, Petitioner chose not to respond to the Judge's *sua sponte* order to show cause why his complaint should not be dismissed for failure to state a cause of action, and why he should not be barred from further filings unless represented by an attorney. *Id.* Instead, Petitioner filed a first amended complaint and moved to disqualify the trial court judge. *Id.*

The Third District Florida Court of Appeals affirmed the trial court's decision finding 1) that Spataru failed to show cause why his initial complaint should not be dismissed for failure to state a cause of action, and 2) that Spataru willfully ("in defiance to this Court's prior orders") disregarded the order prohibiting him from further pro se filings without the signature of a licensed Florida attorney. *Id.* In addition, the Florida Court of Appeals noted that "[t]he record provides that [Petitioner] has filed at least eight meritless complaints against various entities and persons in the past five years." *Id.* at n.1. The Florida Supreme Court declined to accept jurisdiction on November 4, 2019, based on Article V, Section 3(b) of the Florida Constitution. *Spataru v. Fla. DOT*, No. SC19-1325, 2019 Fla. LEXIS 1895 (Nov. 4, 2019).

REASONS FOR DENYING THE WRIT

There is no basis for Certiorari of the Florida Supreme Court's order declining to accept jurisdiction of Petitioner's case being dismissed for failing to follow a judicial order which is based on adequate independent state grounds or finding that Petitioner is a vexatious litigant; and the issue presents no conflict between decisions of other state courts of last resort or federal courts of appeal, does not conflict with this Court's precedent, and does not otherwise raise an important federal question.

The Court lacks jurisdiction over the case because there are independent and adequate state grounds for the lower court ruling to dismiss the case for failing to follow a judicial order and ruling that Petitioner is a vexatious litigant. In addition, the court correctly decided this case.

Here, the trial court found that Petitioner willfully disregarded a court order and dismissed the case. The failure to comply with an order of the

court is grounds for dismissal with prejudice. *Slack v. McDaniel*, 529 U.S. 473, 489, 120 S. Ct. 1595, 1606 (2000).

An action may be dismissed if the Petitioner fails to prosecute it or if he fails to comply with any court order. Fed.R.Civ.P. 41(b); *see also Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-631, 82 S.Ct. 1386, 1388-1389, 8 L.Ed.2d 734 (1962) (interpreting Rule 41(b) not to restrict the court's inherent authority to dismiss *sua sponte* an action for lack of prosecution); *see World Thrust Films, Inc. v. Int'l Family Entm't, Inc.*, 41 F.3d 1454, 1456 (11th Cir. 1995) ("A district court has authority under Federal Rule[] of Civil Procedure 41(b) to dismiss actions for failure to comply with local rules."); *Blunt v. U.S. Tobacco Co.*, 856 F.2d 192 (6th Cir. 1988) (unpublished) (affirming district court's dismissal of pro se Petitioner's action for failure to prosecute when Petitioner failed to respond to the summary judgment notice or to show cause why the action should not be dismissed). The Eleventh Circuit has specifically held that a "district court may *sua sponte* dismiss a case under Rule 41(b)." *Brutus v. Internal Revenue Service*, 393 Fed. Appx. 682, 682 (11th Cir. Aug. 23, 2010)(citing *Betty K. Agencies, Ltd. v. M/V MONADA*, 432 F.3d 1333, 1337 (11th Cir. 2005)); *see also Sanders v. Barrett*, 2005 U.S. App. LEXIS 22496, 2005 WL 2640979, *1 (11th Cir. Oct. 17, 2005) ("The court may dismiss an action *sua sponte* under Rule 41(b) for failure to prosecute."). "*Sua sponte* dismissal is appropriate 'to prevent undue delays in the disposition of pending cases and to avoid congestion in the calendars of the District Court.'" *Brutus*, *supra*, quoting *Equity Lifestyle Properties, Inc. v. Florida Mowing & Landscape Serv., Inc.*, 556 F.3d 1232, 1240 (11th Cir. 2009).

Wedgeworth v. Corizon Health, Inc., No. CA 12-0010-CG-C, 2013 U.S. Dist. LEXIS 129055, at *4-5 (S.D. Ala. Aug. 9, 2013). Thus, the lower court followed Supreme Court precedent.

Petitioner contends that Florida Statute § 68.093 conflicts with the United States Constitution. Florida Statute § 68.093 is the Florida Vexatious Litigant Law and defines a "vexatious litigant" as:

1. A person as defined in s. 1.01(3) who, in the immediately preceding 5-year period, has commenced, prosecuted, or maintained, pro se, five or more civil actions in any court in this state, except an action governed by the Florida Small Claims Rules, which actions have been finally and adversely determined against such person or entity; or
2. Any person or entity previously found to be a vexatious litigant pursuant to this section.

§ 68.093(2)(d), Fla. Stat. (2005).

Florida courts have repeatedly found this statute to be constitutional. *Smith v. Fisher*, 965 So. 2d 205 (Fla. Dist. Ct. App. 2007); *Smith v. Hernandez*, 20 So.3d 905 (Fla. Dist. Ct. App. 2009); *Smith v. Hatcher*, 117 So.3d 439 (Fla. Dist. Ct. App. 2013).

The Eleventh Circuit “repeatedly has held that federal courts have the power to manage their dockets and curb vexations litigation.” *May v. Maass*, 2005 U.S. App. LEXIS 20695, 2005 WL 2298296, *7-8 (11th Cir. Sept. 22, 2005) (*citing Martin-Trigona v. Shaw*, 986 F.2d 1384, 1387 (11th Cir. 1993); *Copeland v. Green*, 949 F.2d 390 (11th Cir. 1991)); *Smith v. Bondi*, No. 4:14cv606-RH/CAS, 2015 U.S. Dist. LEXIS 80526, at *3 (N.D. Fla. May 20, 2015). The Supreme Court has noted that states have the power to restrict vexatious litigation when a petitioner uses tactics to repeatedly file. *Slack v. McDaniel*, 529 U.S. 473, 477, 120 S. Ct. 1595, 1600 (2000) (Scalia and Thomas, JJ., dissented in part from this holding)(to the extent that a petitioner might use the repeated filing of mixed petitions to delay unduly the collateral review process, this tactic can be countered by state or federal rules

restricting vexatious litigation). Thus, there is no conflict with the Constitution, this Court, or among state courts.

The determination that Petitioner is a vexatious litigant is a judicial determination. *Smith v. Bondi*, No. 4:14cv606-RH/CAS, 2015 U.S. Dist. LEXIS 80526, at *2 (N.D. Fla. May 20, 2015). Furthermore, the Florida Court of Appeals noted that “[t]he record provides that [Petitioner] has filed at least eight meritless complaints against various entities and persons in the past five years.” *Spataru v. Fla. DOT*, 44 Fla. L. Weekly D1716, *n.1 (Fla. Dist. Ct. App. July 3, 2019). As a “vexatious litigant” requires five or more civil actions in the preceding 5-year period, the threshold was exceeded. § 68.093(2)(d), Fla. Stat. (2005). Thus, the lower court’s decision was based on adequate independent state grounds.

The remaining issues mentioned in Petitioner’s writ (i.e. Florida Statute § 768.28, a conspiracy among numerous government employees, the court system creating a program to provide attorneys, requests for various investigations, etc.), would be advisory opinions as they were not ruled on by the lower courts, are outside what has been previously argued, and not within the judicial powers. The Supreme Court of the United States is not authorized or required to participate in any legislative, administrative, political or other nonjudicial function or to render any advisory opinion; and the jurisdiction conferred is limited to controversies of a justiciable nature.

Nat'l Mut. Ins. Co. v. Tidewater Transfer Co., 337 U.S. 582, 583, 69 S. Ct. 1173, 1173 (1949).

The Florida Supreme Court correctly declined to accept jurisdiction of Petitioner's case. The decisions of the lower courts are based on adequate, independent state grounds. The issues presented here contain no conflict between decisions of other state courts of last resort or federal courts of appeal, do not conflict with this Court's precedent, and do not otherwise raise an important federal question.

CONCLUSION

Respondent respectfully submits that the Petition for a writ of certiorari should be denied.

Respectfully Submitted,

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