

20-5968

APPEAL NO.:

IN THE SUPREME COURT
OF THE
UNITED STATES

ORIGINAL

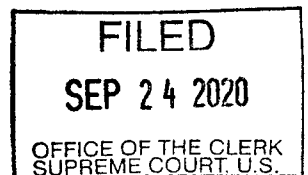
IN RE: ROCHELLE DRIESSEN, Mother of
BRITTANY OLIVER, a developmentally
disabled person,

Petitioner/Appellant,

-VS-

MIAMI-DADE COUNTY, and
MIAMI-DADE COUNTY SCHOOL BOARD,

Respondents/Appellees.

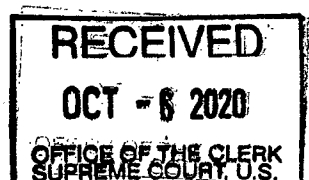


ON APPEAL FROM THE SUPREME COURT OF FLORIDA
CASE NO.: SC20-73

PETITIONER'S PETITION FOR WRIT OF CERTIORARI

Respectfully submitted,

Rochelle Driessen, pro se
945 NW 142nd Street
Miami, FL 33168



QUESTION (S) PRESENTED

**WHETHER THE SUPREME COURT OF FLORIDA
DENIED PETITIONER ACCESS TO THE COURT
PURSUANT ARTICLE 1, SECTION 21 OF THE FLORIDA
CONSTITUTION WHEN IT DECLINED TO ACCEPT
CERTIORARI JURISDICTION OF THE PETITIONER'S
APPEAL**

LIST OF PARTIES

- ☒ All parties in the caption of the case are listed on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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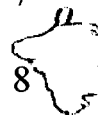
APPENDIX A	Supreme Court of Florida's June 29, 2020, Order Declining To Accept Jurisdiction Of Appeal
APPENDIX B	Third District Court of Appeal of Florida November 27, 2019 Order Affirming the Trial Court
APPENDIX C	The Supreme Court of Florida's June 19, 2019, Order Dismissing the Appeal for Lack of Jurisdiction
APPENDIX D	Third District Court of Appeal of Florida June 13, 2019, Order denying the Petition for Writ of Certiorari, the Response, and the Reply
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IN THE SUPREME COURT OF THE
UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Appellant respectfully prays that a writ of certiorari be granted to review the Judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the U.S. Court of Appeals for the Second Circuit appears at Appendix ___ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the U.S. District Court appears at Appendix ___ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at **Appendix A,B,C,D,E** to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the state court appears at **Appendix ___** to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from the **federal courts**:

The date on which the U.S. Court of Appeals decided my case was on _____.
A copy of the decision appears at Appendix ____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing at Appendix ____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was on **June 29, 2020**. A copy of that decision appears at **Appendix A**.

☐ A timely petition for rehearing was denied by the Supreme Court of the United States on the following date: _____, and a copy of the order denying rehearing appears at Appendix ____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____ A _____.

The jurisdiction of this Court is invoked 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Florida Constitution – Article 1, Section 21

Access to courts.—The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

Fla. Stat. § 68.093(2)(d)

“Vexatious litigant” means

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 Florida Small Claims Rules, which actions have been finally and adversely determined against such person or entity.

STATEMENT OF THE CASE

Appellant seeks the certiorari jurisdiction of this Court pursuant to 28 USC § 1257(a). The Supreme Court of Florida entered an Order on June 29, 2020, declining to accept certiorari jurisdiction of the Petitioner's appeal thereby denying Petitioner discretionary jurisdiction of the Supreme Court of Florida. (See Appendix "A").

This cause initially came up on appeal with the Third District Court of Appeal of Florida under Appeal No. 3D19-1092 wherein on November 27, 2019, the Third District Court of Appeal of Florida affirmed the decision of the lower tribunal in declaring Petitioner a vexatious pro se litigant without affording Petitioner a show cause hearing. (See Appendix "B"). Petitioner filed a timely petition for rehearing which was denied by the Third District Court of Appeal of Florida.

A prior appeal was filed in the action by the Petitioner on May 1, 2019 with the Third District Court of Appeal of Florida under Appeal No. 3D19-834, and under the same lower tribunal Case No. 18-37974 CA (05), appealing the lower tribunal's April 17, 2019, Order On Defendant School Board's Motion To Bar Plaintiff From Further Pro Se Filings Or, Alternatively, To Designate Plaintiff As A Vexatious Litigant, And Motion For Show Cause-Order under Appeal No. 3D19-834.

The School Board filed a motion to dismiss the appeal on May 9, 2019. The Appellant filed a response to the School Board's motion to dismiss on May 10, 2019. And on May 14, 2019, the Third District Court of Appeal of Florida entered a

miscellaneous order treating Appellant's May 1, 2019, Notice of Appeal as a Petition For Writ Of Certiorari ordering the Appellant to file a Petition for Writ of Certiorari with an accompanying appendix within fifteen (15) days of entry of the order. (See Appendix "E").

Appellant filed the Petition For Writ of Certiorari with accompanying appendix on May 17, 2019. The School Board filed a response to the Appellant's Petition for Writ of Certiorari on June 6, 2019, the Appellant filed a Reply to the School Board's response on June 10, 2019, and on June 13, 2019, the Third District Court of Appeal of Florida denied the Petition for Writ of Certiorari, including the response and reply, respectively. (See Appendix "D"). The Appellant appealed the Third District Court of Appeal of Florida's June 13, 2019, Order to the Supreme Court of Florida which was dismissed for lack of jurisdiction on June 19, 2019. (See Appendix "C").

Pursuant to Article 1 Section 21 of the Florida Constitution "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay."

In Delgado v. Hearn, 23 805 So. 2d 1017 (Fla. 2d DCA 2002) the court decided that "[w]hile it is clear that a litigant's right to access the courts may be restricted upon a showing of egregious abuse of the judicial process, due process requires that courts first provide notice and an opportunity to respond before

imposing this extreme sanction.” State v. Spencer, 751 So.2d 47 (Fla.1999). Providing such notice and an opportunity to respond will serve to create a more complete record. “If the litigant is thereafter denied further pro se access to the courts, the appellate courts will have an enhanced ability to determine whether the denial of access is an appropriate sanction under the circumstances.” Spencer, 751 So.2d at 49.

It was held in Harris v. Gattie, 17-5170 (Fla. Dist. App. 2019) In the context of sanctioning a pro se litigant by barring further pro se pleadings, the supreme court has recognized that there must be a balance between a litigant’s rights of access to the courts and any abuse of that process.

We have recognized the importance of the constitutional guarantee of citizen access to the courts, with or without an attorney. See e.g., Rivera v. State, 728 So. 2d (1165) at 1166 (Fla. 1993)]; Attwood [v. Singletary], 661 So. 2d (1216) at 1217 ((Fla. 1985)]; see also art. 1, § 21, Fla. Const. (The courts shall be open to every person for redress of any injury. ...). Thus, denying a pro se litigant the opportunity to file future petitions, is a sanction, especially where the litigant is a criminal defendant who has been prevented from further attacking his or her conviction, sentence, or conditions of confinement, as in Spencer and Hoffman.

However, to balance the pro se litigant’s right of access against the need of the court’s to prevent abusive filings, the court must provide the pro se litigant with notice and an opportunity to be heard before such a sanction is imposed. Spencer, 751 So. 2d at 48. And this due process requirement applies to litigants involved in

civil proceedings as well as criminal ones. See, e.g. Lomax v. Taylor, 149 So. 3d 1136 n. 2 (Fla. 2014) (citing Spencer as providing the required procedure before sanctioning a litigant in a civil case); Reithmiller v. Reithmiller, 133 So. 3d 926, 926 n. 3 (Fla. 2013) (same); Delgado v. Hearn, 805 So. 2d 1017, 1018 (Fla. 2d DCA 2001) (applying the Spencer standard to civil litigants).

The Third District Court of Appeal of Florida's November 27, 2019, Order affirming the trial attached at Appendix "B" which Petitioner appealed to the Supreme Court of Florida cited the cases in the Order that determined Petitioner a vexatious pro se litigant, which included federal cases that are outside the scope of Florida Rules of Civil Procedure, and therefore cannot be used in determining Petitioner a vexatious pro se litigant.

The Supreme Court of Florida denied Petitioner access to the Court in declining certiorari jurisdiction of the Petitioner's appeal pursuant to Article 1, Section 21 of the Florida Constitution wherein pursuant to Fla. Stat. § 68.93(2)(a) "Action" means a civil action governed by the Florida Rules of Civil Procedure and proceedings governed by the Florida Probate Rules, but does not include actions concerning family law matters governed by the Florida Family Law Rules of Procedure or any action in which the Florida Small Claims Rules apply.

REASONS FOR GRANTING THE WRIT

In Harris v. Gattie, As noted above, while Harris filed a notice of appeal directed to the sanctions order, we treat this appeal as a petition for writ of certiorari. To be entitled to the issuance of such a writ, Harris must show “(1) a departure from the essential requirements of the law; (2) resulting in material injury for the remainder of the case (3) that cannot be corrected on postjudgment appeal.” Williams v. Owen, 62 So. 3d 1129, 1132 (Fla. 2011) (quoting Reeves v. Fleetwood Homes of Fla., Inc., 889 So. 2d 817, 822 (Fla. 2004)). The departure from the essential requirement of the law sufficient to warrant relief through certiorari is something more than simple legal error. Instead, “[a] district court should exercise its discretion to grant certiorari review only when there has been a violation of a clearly established principle of law resulting in a miscarriage of justice.” Allstate Ins. Co. v. Kaidamanos, 843 So. 2d 883, 889 (Fla. 2001) (citing Ivey v. Allstate Ins. Co., 774 So. 2d 679, 682 (Fla. 2000)). Such a miscarriage can occur when a party’s due process right to notice and an opportunity to be heard has been abridged by the court. See, e.g. Presidio Networked Sols, Inc. v. Taylor, 115 So. 3d 434, 435 (Fla. 2d DCA 2013) (noting that the trial court’s failure to provide notice and opportunity to be heard to Presidio was a “complete denial of due process” sufficient to “constitute[] the type of irreparable harm that is subject to certiorari review”); K.G. v. Fla. Dep’t of Children & Families, 60 So. 3d 366, 368-69 (Fla. 1st DCA 2011)

(holding that the court's failure to afford the mother an opportunity to be heard at the shelter hearing constituted a departure from the essential requirements of the law sufficient to be subject to review by certiorari).

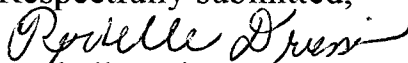
The Supreme Court of Florida's, the Third District Court of Appeal of Florida's, and the trial court's departure from the essential requirement of law of affording Appellant a show cause hearing on Appellee's motion resulted in Appellant being denied access to the court pursuant to Article 1, Section 21 of the Florida Constitution, and to redress the injury of designating Appellant a "vexatious litigant" that persists for the remainder of the case which cannot be corrected on postjudgment appeal are sufficient grounds to grant Petitioner's Petition for Writ of Certiorari.

In Delgado v. Hearn, While it is clear that a litigant's right to access the courts may be restricted upon a show of egregious abuse of the judicial process, see, e.g. Attwood v. Singletary, 661 So. 2d 1216 (Fla. 1995), due process requires that courts first provide notice and an opportunity to respond before imposing this extreme sanction. Spencer v. State, 751 So. 2d 47 (Fla. 1999). Providing such notice and an opportunity to respond will serve to create a more complete record.

Petitioner was denied notice and opportunity to respond before the trial court imposed the sanction of designating Petitioner a vexatious litigant, and was therefore denied access to the courts.

CONCLUSION

Petitioner respectfully request the Court to grant Petitioner's Petition for Writ of Certiorari, and any and all other relief as required under the law.

Respectfully submitted,

Rochelle Driessen, pro se
945 NW 142nd Street.
Miami, FL 33141

Date: September 24, 2020

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

IN RE: ROCHELLE DRIESSEN, Mother of
BRITTANY OLIVER, a developmentally
disabled person,

Petitioner/Appellant,

-vs-

MIAMI-DADE COUNTY, and
MIAMI-DADE COUNTY SCHOOL BOARD,

Respondents/Appellees.

PROOF OF SERVICE

I, ROCHELLE DRIESSEN, do swear or declare that on this date **September 24, 2020**, as required by Supreme Court Rule 29 I have served the enclosed 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, via e-service.

The names and addresses of those served are as follows:

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