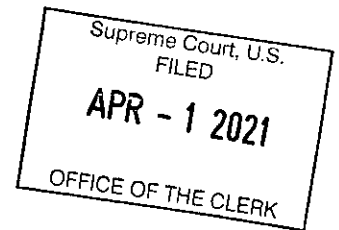


20-7954

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



DAVID ARMANDO BUTLER — PETITIONER
(Your Name)

VS.

STATE OF FLORIDA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SECOND DISTRICT COURT OF APPEAL OF FLORIDA

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

David A. Butler DCNo. 112034

(Your Name)

Gulf C. I.

500 Ike Steele Rd.

(Address)

Wewahitchka, FL 32465

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

WHETHER THE FLORIDA DISTRICT COURT OF APPEAL DENIED THE PETITIONER DUE PROCESS IN FAILING TO GRANT HIM A DIRECT APPEAL ON THE MERITS BY VIRTUE OF THE TRIAL COURT'S FAILURE TO ENTER A WRITTEN DENIAL ORDER?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case 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:

RELATED CASES

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STATUTES AND RULES

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals 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☐ is unpublished.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 United States 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☐ is unpublished.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 B 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☒ is unpublished.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 Second District Court of Appeal court appears at Appendix A 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☐ is unpublished.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 **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ 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 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 under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 11-4-20.
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied 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 under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment XIV to the United States Constitution guarantees that "no State... shall deprive any person of life, liberty or property, without due process of law."

STATEMENT OF THE CASE

The Florida Constitution provides the Petitioner the right to a direct appeal. Here, Butler directly appealed to the Second District Court of Appeal of Florida, the trial court's denial of his motion to dismiss based on statutory immunity. He had argued on appeal that the order was not supported by competent and substantial evidence; and was based on a violation of his Sixth Amendment right to confrontation.

However, the appellate court did not reach the merits of these claims of error because the trial court did not enter formal written orders, and, per curiam affirmed.

Butler sought a belated opportunity to supplement the appellate record with the requisite written orders. His motion was dismissed. Florida Supreme Court denied review.

In July of 2016, Petitioner and John Chapman, whom were both inmates in the Pinellas County Jail, got into a fight. Butler was charged with aggravated battery. Prior to trial, Butler filed a pro se motion to dismiss based on statutory immunity. The trial court held a hearing on the motion January 6, 2017.

Prior to the commencement, the trial court granted Butler's request that the State be precluded from adducing any testimonial evidence from the investigating deputies as to how Mr. Chapman sustained his injuries. Mr. Chapman did not testify at the stand your ground hearing or at the trial.

At the hearing, Petitioner testified that Mr. Chapman had provoked the fight and he was defending himself. On cross-examination, the State attempted to have Petitioner stipulate to the introduction of a purported video of the fight. Butler refused and objected on grounds of authentication. The trial court allowed the video. It then relying solely on the video, denied Butler's motion to dismiss, orally. The trial court did not enter formal written orders granting the defense motion in limine, or denying the motion to dismiss.

On plenary review, Butler raised as reversible error, that the trial court erred in relying on the State's video evidence because (1) it was not authenticated, hence inadmissible; (2) it was based on inadmissible hearsay in violation of his Sixth Amendment right to confrontation of witnesses in violation of the trial court's in limine order; and (3) it was admitted during the defense's case-in-chief, and therefore, could not be used by the State in meeting its evidentiary burden.¹

FN1. Butler raised other meritorious issues which Florida did not reach the merits of because of the failure of the trial court to have entered formal written orders.

Florida per curiam affirmed the appeal without an opinion.

REASONS FOR GRANTING THE PETITION

The Florida appellate court would have been constrained to order that Butler be discharged. But because the trial court did not enter a written order of denial, it did not have jurisdiction to review the error. Petitioner asserts that the rule in question is arbitrary, unfair and violative of the Federal Due Process Clause.

In Evitts v. Lucey, 469 U.S. 387, 391 (1985), this Court stated:

"Respondent has for the past seven years unsuccessfully pursued every avenue open to him in effort to obtain a ruling on the merits of his appeal and to prove that his conviction was unlawful..."

"If a state has created appellate courts as an integral part of the... system for finally adjudicating the guilt or innocence of a defendant... the procedures used in deciding appeals must comport with the demands of the Due Process... Clauses of the Constitution."

The inclusion of written orders memorializing the oral orders rendered, advances no state interest. The rule in question only creates an unwary procedural trap whereby a trial court can insulate his rulings from plenary review. See Rich v. State, 2020 Fla. App. LEXIS 8128 (Fla. 2d DCA 2020) (Judge Atkinson concurring opinion), 2

It also elevates the State's authority to deny a merit-based direct appeal above the substantive rights of its citizens. Here, Butler asserted his right, and showed his entitlement, to statutory immunity, in a hearing at the expense of the public. Then took an appeal as a matter of right, but has been denied a ruling on the merits of the issue, because under Florida's procedures, the written filed transcript of the trial court's oral denial order, somehow does not present a sufficient appellate record upon which to do JUSTICE.

Then to the extent, the trial judge did not perform its ministerial duty in entering a written order of denial, the question of due process begs answering why and how his dereliction of duty should prejudice Petitioner's direct appeal rights? Especially, given that Petitioner has diligently attempted to assert his state and federal rights.

Mindful that this Court exercises its certiorari jurisdiction sparingly, and has upheld countless and untold cases based on procedural defaults, this Court should grant this writ because Florida's denial of a merit-based direct appeal - on a meritorious issue is arbitrary.

FN2. Same judge involved here.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

DL Ballen

Date: April 2, 2021