

20-7999 ORIGINAL
No. _____

20-14268

FILED
APR 20 2021

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

In re: DAVID JAMES LOLA

DAVID JAMES LOLA — PETITIONER
(Your Name)

vs.

MIAMI HERALD, et al., — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS, ELEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DAVID JAMES LOLA
(Your Name)

Inmate #14268
(Address)

MONROE COUNTY DETENTION CENTER
5501 College Rd., Key West, FL 33040
(City, State, Zip Code)

(305) 851-6209
(Phone Number)

RECEIVED

APR 30 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

Does due process dictate that in a Pro Se appeal to a final action should a clerk's entry of dismissal for failure to prosecute be set aside and an appeal be permitted to proceed to rule on the In Forma Pauperis motion when the petitioner files a motion for reconsideration and motion to proceed In Forma Pauperis with the United States Court of Appeals for the relevant circuit within fourteen (14) days of the date of the order of dismissal during the time of a national emergency (COVID Pandemic), and the petitioner has no access to a law library, internet, or telephone?

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:

MIAMI HERALD, INC., MONROE COUNTY SHERIFF'S OFFICE
RICK RAMSAY, MONROE COUNTY, MONROE COUNTY BOARD
OF COMMISSIONERS, KEY WEST POLICE DEPARTMENT,
DANIEL BLANCO, ROBERT PHILLIPS, CATHERINE
SCHEFF, JACOB OTTEN and DOES 1 through 10,
Defendants.

RELATED CASES

UNITED STATES DISTRICT COURT FOR SOUTHERN DISTRICT
OF FLORIDA, 4:20-CV-10091-JLK, 4:18-10218-KMM, 4:20-10011-KMM;

SIXTEENTH JUDICIAL CIRCUIT OF FLORIDA (Key West),

4:20-CF-633, 4:18-CF-575, 4:18-MM-642, 4:18-CA-1473;

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH
CIRCUIT, 20-12524-J, 20-11779-J, 21-10756-E;

THIRD DISTRICT COURT OF APPEAL FOR FLORIDA,

3018-2203, 3021-0312, 3021-248, 3021-0517,
3020-1812;

SUPREME COURT OF FLORIDA, SC21-428;

ELEVENTH JUDICIAL CIRCUIT OF FLORIDA (MIAMI DADE),
2021-4793-FC04.

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APPENDIX D	Motion for Reconsideration and Motion to Proceed In Forma Pauperis	01/06/21
APPENDIX E	Order Dismissing Defamation Complaint Publishing "NO BOND"	10/16/20
APPENDIX F	Arrest Warrant for Failure to Appear with "NO BOND" while in Jail	12/02/20

TABLE OF AUTHORITIES CITED

CASES

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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 A 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 E to the petition and is

☒ reported at No access to internet; 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 _____ 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 _____ 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 federal courts:

The date on which the United States Court of Appeals decided my case was December 30, 2020.

☐ 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: January 19, 2021, and a copy of the order denying rehearing appears at Appendix C.

☐ 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 _____.
A copy of that decision appears at Appendix _____.

☐ 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

The First Amendment provides citizens may seek redress from the government. (Amend I to U.S. Constitution). The Fifth and Sixth Amendments address due process and are extended to the citizens of the United States through the Fourteenth Amendment.

The underlying action in district court is an action for the violation of the civil rights of the Petitioner pursuant to the Fourth, Eighth and Fourteenth Amendments to the United States Constitution and defamation issues under the First Amendment.

The Eleventh Circuit has applied a local rule (11th Cir. R. 42-1(b)) in coordination with 28 U.S.C. § 1915 to deny Petitioner a reasonable opportunity to cure defects in his application to the Eleventh Circuit to seek redress of the government under the First and other above-enumerated Amendments.

STATEMENT OF THE CASE

This petition arises from the dismissal of an appeal of a final decision to the Eleventh Circuit Court of Appeals by a pre trial detainee; which was dismissed for failure to prosecute despite Petitioner's diligent attempt to do so. Petitioner avers the Eleventh Circuit did not reasonably consider the disposition of the Petitioner as a Pro Se pretrial detainee during a national emergency.

Petitioner reasonably believed that his application to proceed In Forma Pauperis (hereinafter "IFP") in the district court would also pertain to his appeal to the Circuit court. When Petitioner was first informed the IFP motion for the underlying district court case would not be considered on December 30, 2020 (See Appendix A & B) Petitioner filed a motion to reconsider and a motion to proceed IFP. (Appendix D). (28 U.S.C. § 1915(e)).

The underlying civil action arises from defamatory statements published by the Monroe County Sheriff's Office, stating Petitioner had "NO BOND". Thus, falsely

STATEMENT OF THE CASE

exaggerating the seriousness of the allegations against him, as he did have a bond of \$115,000.

The Miami Herald is then alleged to have re-published the defamatory statement of "NO BOND", and also falsely wrote the Petitioner was dating a woman, when, in fact, he was not. Petitioner is married, but is now currently engaged in divorce proceedings. (Eleventh Jud. Cir. Fla. 2021-4793-FC04)

In an effort to obfuscate the truth of the Sheriff's Office's false publication on the Internet they then arrested Petitioner on a Bench Warrant for Failure to Appear in Court on December 2nd, 2020. (See Appendix F). Petitioner has been continuously incarcerated since August 1, 2018 as a pre trial detainee. The warrant provided Petitioner to be held on "NO BOND". Petitioner cannot decide to appear in court or not as his entire existence - including movement - is controlled by the Sheriff.

STATEMENT OF THE CASE

To wit, Petitioner now sits in solitary confinement in a sensory deprivation torture cell without reason except he has filed a complaint, in district court. The warrant issued in Key West even says, "Defendant is currently in custody at Monroe County Detention Facility, Key West, Florida." (Appendix F).

Petitioner has in the recent past, or even concurrently, proceeded IFP in the Eleventh Circuit. The Clerk, David J. Smith appears to administer the IFP program for the Eleventh Circuit. Deputy Clerks are empowered to make decisions regarding a petitioner's IFP status. For example, Davina Burney Smith sends the petitioner forms to fill out to proceed IFP. So does Gloria Powell, Deputy Clerk. However, Deputy Clerk Walter Pollard (404) 335-6186 does not send IFP forms.

For a putative petitioner there is no way to know exactly how each deputy

STATEMENT OF THE CASE

clerk administers their respective IFP programs.

Typically, Pro se litigants are provided with more leeway to correct technical deficiencies, as in the case with regard to perfecting IFP status.

In the case at bar, the Petitioner acted diligently when informed of the deficiency in the payment status on December 30, 2020, and by January 6th, 2021 (Just one week later, including time for the mail to be delivered) had filed a motion to proceed IFP.

There are a multiplicity of approaches adopted across the circuits that facilitate access by citizens to the courts to seek redress of their grievances. A ruling by this esteemed tribunal would harmonize the procedures further and aid the positive view of the people of the integrity of the judicial system.

STATEMENT OF THE CASE

Petitioner writes this with no access to a law library, internet, or reasonable legal research resources like Westlaw. The law library was closed at the MCDC administered by Keena Allen, Program Services Director, in September 2020 purportedly due to the COVID-19 pandemic that began in March 2020. Petitioner avers the closure was ordered by the Sheriff to frustrate inmate's ability to access the courts, and with a particular emphasis to deprive Petitioner of potential access to this Court.

REASONS FOR GRANTING THE PETITION

The Court should grant the Petition to allow indigent citizens the opportunity to access the courts to have redress of their grievances against the government. Currently, there is no consistent administration of the litigants proceeding IFP. The Eleventh Circuit has overly confusing sets of procedures that include filing the IFP paperwork with the district court rather than the circuit court.

Pro se litigants attempting to proceed IFP should be entitled to a reasonable amount of leeway when diligently and in good faith are attempting to comply with legal requirements at the outset of an action.

Pre trial detainees are some of the most vulnerable to facile manipulation as jails are not equipped with legal resources of a prison and fall under more relaxed oversight.

As innocent citizens, pre trial detainees, deserve even greater access to the courts than convicted inmates.

REASONS FOR GRANTING THE PETITION

The IFP provisions should be employed to disenfranchise Constitutionally-protected inmates at a time when they are most vulnerable.

A ruling by this Court would harmonize the requirements for indigent litigants to proceed IFP, as confusion currently exists, increase the integrity of the courts in the eyes of the innocent citizens of the United States of America that vote, and reaffirm that the power of the government rests with those who make and interpret the laws.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Dal G. Lalo

Date: April 15th, 2021