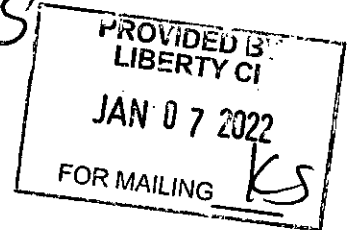


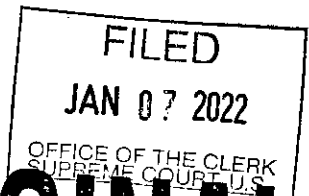
21-6964

CS



IN THE

SUPREME COURT OF THE UNITED STATES



CARLTON SMITH — PETITIONER
(Your Name)

ORIGINAL

vs.

Florida DEPT. OF CORRECTIONS, ET AL. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF FLORIDA

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

PETITION FOR WRIT OF CERTIORARI

CARLTON SMITH - Pro se
(Your Name)

LIBERTY Correctional Institution
11064 NW. DEMASEY BARRON ROAD
(Address)

Bristol Florida 32321-9711
(City, State, Zip Code)

(N/A) Not Applicable
(Phone Number)

QUESTION(S) PRESENTED

Whether the State Supreme Court erroneously departed from the essential requirements of the law and denied Petitioner's Federal Constitutional Claim.

ISSUE

Petitioner asserts the First District Court of Appeal failed to make a timely decision on the Motion to Vacate Void Judgment on the Amended Initial brief Pursuant to Fla. R. Civ. Proc. 1.140(a)(1)(b), for which creates a Manifest Injustice and violates Petitioner's Rights Against the U.S. Const. 5th, 14th Amendment and Fla. Const. Article 1, Section 9, Due Process of Law. See Appendix "A1", at Pg. 4.

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:

1. Hon. John A. Tomasino, Clerk of the Court, At the Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399.
2. Hon. Kristina Samuels, Clerk of the Court, At the First District Court of Appeal, 2000 Dwyer Drive, Tallahassee, Florida 32399.
3. Hon. Daniel Stanley, Clerk of the Court, At the Second Judicial Circuit Court, Liberty County, 10818 NW SR 20, P.O. Box 399, Bristol, Florida 32321
4. Hon. Ashley Moody, Attorney General, State of Florida, At the Capitol Place-01, Tallahassee, Florida 32399
5. Hon. Lance Eric Neff, General Counsel, At Florida Department of Corrections, 501 South Calhoun Street, Tallahassee, Florida 32399-2500.

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- Appendix C : Second Judicial Circuit Court, Case No.: 2019-CA-141. It is hereby Ordered and Adjudged that Petitioner's Petition for writ of habeas Corpus is hereby Dismissed without Prejudice.
- Appendix C1: Petition for Writ of habeas Corpus § 79.09.
- Appendix C2: Order to Show Cause.

TABLE OF AUTHORITIES CITED

CASES

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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 N/A to the petition and is

- ☐ reported at N/A, Not Applicable; 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 N/A to the petition and is

- ☐ reported at N/A, Not Applicable; 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 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 District Court of Appeal court appears at Appendix B to the petition and is

- ☒ reported at 313 So.3d 1199, 2021 Fla. App. Lexis 4633; 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 N/A, Not Applicable.

☐ 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: N/A, Not Applicable, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A A N/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 Dec. 1st 2021.
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: N/A, Not Applicable, and a copy of the order denying rehearing appears at Appendix N/A.

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Page

U.S. Const. 4 th , 5 th , And 14 th Amendment.	II, 4, 5, 7, 9, 13-14
Fla. Const. Article 1, Section And 12.	II, 4, 5, 7, 9, 13-14

STATEMENT OF THE CASE

Thus, on October 29th, 2019, Petitioner Carlton Smith, DC# C07410, Submitted And filed A Petition for Writ of habeas Corpus, With Liberty Correctional Institution Prison mail officials for mailing to the Second Judicial Circuit Court, in and for Liberty County, Florida. See, Appendix "C1", Cover Page OR Record Page 5.

Furthermore, Petitioner indicates from the "Petition for Writ of habeas Corpus," filed on October 29th, 2019, With the Second Judicial Circuit Court, in and for Liberty County, Florida, on Pages 6-7, OR Record Page 10-11, See The Claim Alleged: Petitioner has been illegally detained where the State did not have the Authority to execute A CAPIAS on Petitioner outside the Statute of limitation F.S. § 895.05(10)(2010). And the trial Court did lack Jurisdiction to entertain the Prosecutor's Case And it Created A Manifest Injustice and Violates Petitioner's Rights Against the United States Constitution, 5th And 14th Amendment And Florida Constitution Article I Section 9, Due Process of Law. See, Appendix "C1", Pgs. 6-7 OR Record Pgs. 10-11.

Nevertheless, on January 9th, 2020, the Hon. David Frank, Circuit Judge for the Second Judicial Circuit, in and for Liberty County, Florida, Stated After Reviewed the Complaint/Petition he finds A PRIMA FACIE CASE for Relief, for which Florida Department of Corrections /Defendant has (45) forty-five days from January 9th, 2020, to "Show Cause" Why the Relief Requested in The Complaint/Petition Should NOT be Granted. See, Appendix "C2", "Order to Show Cause."

However, Florida Department of Corrections, Respond to the Hon. David Frank, Circuit Judge Order to Show Cause, on February 24th, 2020, Whereas, Petitioner Submitted and filed the "Reply", on March 24th, 2020, And on April 1st, 2020, the Hon. David Frank, Circuit Judge, hereby Dismissed without Prejudice on the Petition for Writ of habeas Corpus. See, exhibit "D", AS Appendix "C", Circuit

Judge's Order. See also > Appendix "A1", At Pg. 2, on "Petition for writ of Mandamus."

Hence, on April 16th, 2020, Petitioner Submitted and filed a "Motion for Leave to Appeal the Dismissal without Prejudice on the Petition for writ of habeas Corpus" on Appeal from the Second Judicial Circuit Court, in and for Liberty County, Florida, by Placed the Motion in the hands of Prison officials at Liberty Correctional Institution for mailing with the State District Court of Appeal, exhibit "A", AS Appendix "B1"; exhibit "D", AS Appendix "C", Circuit Judge's order And Appendix "A1", At Pg. 2.

On April 21st, 2020, the Clerk of the Court for the State District Court of Appeal, Assigned Petitioner with an Acknowledgement of a New case NO. ID20-1290. See, exhibit "E", AS Appendix "B2", And See also > Appendix "A1", At Pg. 2.

However, on June 26th, 2020, Petitioner Submitted and filed an "Amended Initial brief", by Placed the Amended Initial brief in the hands of the Prison officials at Liberty Correctional Institution for mailing with the State District Court of Appeal. See, exhibit "B", AS Appendix "B3", And See also > Appendix "A1", Pg. 2.

Moreover, Petitioner Submitted and filed on October 5th, 2020, a Motion for extension time to file "Reply brief", by Placed the "Motion" in the hands of Prison officials at Liberty Correctional Institution for mailing with the State District Court of Appeal, for which the claim alleged AS:

Motion for extension time to file REPLY brief After
A due Process violation A Institutional Officer And
Staff deprived A Appellant Access to Law Library
And to the Court And Confiscating his legal Material.
See, Appendix "B4", Motion for extension time to file REPLY brief.

Thus, Petitioner Asserts based on due Process violation under the U.S. Const. 4th, 5th, And 14th Amendment And Fla. Const. Article 1, Section 9, And 12, Due Process of Law, Against his rights from the Liberty Correctional Institution Staff officer Confiscating Pages from the Amended Initial brief, on Appeal And Staff member deprived Petitioner Access to the Law Library to make Copies of the "Reply brief" to have it mailed on or before October 6th, 2020, with The State District Court of Appeal, for which the Dead-line falls on October 6th, 2020. Nevertheless, there was NO response from the State District Court of Appeal within (10) ten days from the filing on October 5th, 2020, on the Motion for

Extension of time to file Reply brief.

However, Petitioner submitted and file the Reply brief on October 19th, 2020, by placed the brief in the hands of Prison officials at Liberty Correctional Institution for mailing with the State District Court of Appeal. See, exhibit "C", AS Appendix "B5". See Also Appendix "A1", at Pg. 2. Thus, the State District Court of Appeal, have responded on October 30th, 2020, by An Order of the Court, States inter Alia:

Appellant's Motion for extension of time docketed on October 8th, 2020, is granted in part. Appellant's Reply brief docketed on October 21st, 2020, is Accepted AS timely filed. ANY other Requests for Relief contained in the Motion for extension of time docketed on October 8th, 2020, ARE denied.

See, Appendix "B6", Where: The State District Court of Appeal have responded, on October 30th, 2020, on the "Motion for extension of time to file Reply brief."

Nevertheless, Petitioner asserts after October 21st, 2020, the State District Court of Appeal lacked Jurisdiction to make a decision or to Rule And Per Curiam Affirmed on the Merits A the Amended Initial brief. See, exhibit "A1", AS Appendix "B", for which the Court did have 180 days to make a decision from the date of the Acknowledgement of New Case # 1D20-1290, Assigned on April 21st, 2020, Pursuant to Fla. R. Gen. Prac. § Jud. Admin. 2.250(a)(2), Plus (3) three calendar given for a document to be timely filed if it is received by the clerk in paper form within the time specified for filing. See, Fed. Rules of Civil Procedure Part VII, Practice and Procedure Rule 29(a)(3). Where the State District Court of Appeal granted in part the filing A Appellant's Reply brief on October 19th, 2020, docketed on October 21st, 2020, is Accepted AS timely filed within a total of 183 days. See, exhibit "C", AS Appendix "B5", Reply brief And Appendix "B6", The Court's Order, on the Motion for extension time to file Reply brief. See Also Appendix "A1", at Pg. 2.

On December 9th, 2020, Petitioner submitted and file A Petition for Writ of Mandamus, by placed the petition in the hands of Prison officials at Liberty Correctional Institution for mailing with the State Supreme Court, for which the Clerk of the Court assigned the Acknowledgement of A New Case # SC 20-1818. See, Appendix "A2". Moreover, the reason for filing a Petition for Writ of Mandamus, due to the State District Court of Appeal failed to make A timely decision within 180 days from the Acknowledgement of New Case # 1D20-1290, Assigned on April 21st, 2020, Pursuant to Fla. R. Gen. Prac. § Jud. Admin. 2.250(a)(2), Plus the State District Court of Appeal granted in part, the filing a Appellant's Reply brief

on October 19th, 2020, docketed on October 21st, 2020, is Accepted as timely filed within a total 183 days, for which it creates a Manifest Injustice, Violating Petitioner Rights Against the U.S. Const. 5th, 14th Amendment and Fla. Const. Article 1, Section 9, Due Process of Law. see, Appendix "A1", at Pg. 2-3, on the "Petition for Writ of Mandamus".

Hence, on January 26th, 2021, Petitioner Submitted and filed a "Motion" to the State Supreme Court to issue an Alternative Writ of Mandamus Compelling the State District Court of Appeal to perform its legal duty and make a decision on pending Amended Initial brief, pursuant to Fla. R. Civ. Proc. 71.630(d)(2)(4)(e). Furthermore, the State Supreme Court treats the Motion filed on January 26th, 2021, as an Amendment to the Petition for Writ of Mandamus, filed on December 9th, 2020, docketed on December 14th, 2020, is hereby Stricken. see, the Court's Order AS Appendix "A3" and Appendix "A1" at Pg. 3.

Thus, the State Supreme Court has given an Order on February 2, 2021, Petitioner MAY file, on or before February 17th, 2021, A Motion to Amend the Petition for Writ of Mandamus Accompanied by an Amended Petition that fully complies with Florida Rule of Appellate Procedure 9.100. see, Appendix "A1", at Pg. 3, and Appendix "A3", the Court's Order.

Moreover, on February 11th, 2021, Petitioner Submitted and filed and Amended the Petition for Writ of Mandamus filed on December 9th, 2020, Whereas, on March 2nd, 2021, the State Supreme Court hereby denied without Prejudice, on the "Amended Petition for Writ of Mandamus" see, Appendix "A4", AS the Court's Order and the Amended Petition for Writ of Mandamus. see, also Appendix "A1", at Pg. 3.

Therefore, on March 31st, 2021, the State District Court of Appeal, made the decision and rule on the Amended Initial brief, filed on June 26th, 2020, and Per Curiam Affirmed for which is erroneous and contrary to law; unconstitutional the decision or rulings is Null and void, Where the Court lacked Jurisdiction the decision was outside 180 days time-period pursuant to Fla. R. Gen. Prac. & Jud. Admin. 2.250(a)(2). Plus the State District Court of Appeal granted in part the filing a Appellant's "Reply brief" on October 19th, 2020, docketed on October 21st, 2020, is Accepted as timely filed, within a total 183 days from the date

of the Acknowledgement of New case # 1D20-1290. Assigned on April 21st 2020. See Exhibit "A1" AS Appendix "B", the State District Court of Appeal decision "Per Curiam Affirmed" on the "Amended Initial brief". See also > Appendix "A1", at Pg. 3.

Furthermore, on April 20th, 2021, Petitioner Submitted And filed the "Notice to invoke the Discretionary Jurisdiction of the State Supreme Court" by Placed the Notice in the hands of the Prison Officials At Liberty Correctional Institution for mailing with the State Supreme Court. However, on June 29th, 2021, the Court decided that it appeared the Notice was not timely filed, the Court on it own motion hereby dismissed the Cause And Allowed Petitioner to filed A Proper Motion within fifteen days from the date of its Order on June 29th, 2021, in Case # SC 21-973, see Appendix "A5", AS the Court's Order and the Notice to Invoke the Discretionary Jurisdiction of the State Supreme Court. See, Also Appendix "A1", at Pg. 3.

Nevertheless, on July 08th, 2021, Petitioner Submitted And filed the Re-APPLY Notice to invoke the Discretionary Jurisdiction on the Order given by the State Supreme Court on June 29th, 2021, in Case # SC 21-973, Whereas, on July 13th, 2021, Petitioner Submitted And file the "Jurisdiction brief" by Placed the brief in hands of Prison Officials At Liberty Correctional Institution for mailing with the State Supreme Court. However, on August 26th, 2021, the State Supreme Court declined to Accept Jurisdiction based on Portions of the Record deemed Necessary to Reflect Jurisdiction Under Article V, Section 3(b), Florida Constitution. see, Appendix "A6", Consist of Re-APPLY Notice to Invoke the Discretionary Jurisdiction in Case # SC 21-973, Include the Jurisdiction brief And the Order denied the Petition for Reviewed. See, Also > Appendix "A1", at Pgs. 3-4.

Hence, Petitioner Asserts to Re-opened Case # 1D20-1290, in the State District Court of Appeal by Submitted And filed on September 17th, 2021, A "Motion to Vacate Void Judgment on The Amended Initial brief", Where the Statute of Limitation had ran for the Court to make a decision on Amended Initial brief, Pursuant to F.R. Rules of Civil Procedure > 1.140(a)(1)(b), by Placed the Motion in hands of Prison Officials At Liberty Correctional Institution for mailing to the State District Court of Appeal. See, exhibit "F", AS Appendix "B7". See also > Appendix "A1", at Pg. 4.

Moreover, on October 8th, 2021, Petitioner Submitted And filed A Motion

for Judgment on the Pleading" with the State District Court of Appeal, on the Motion to Vacate Void Judgment on Amended Initial brief, filed on September 17th, 2021, Re-opened Case #1D20-1290. However, the Respondent's Attorney for Florida Department of Corrections, failed to file an Answer to Petitioner's Claim within (20) twenty days, on or before October 7th, 2021, from the filing date on September 17th, 2021, on the Motion to Vacate Void Judgment on the Amended Initial brief, pursuant to Fla. R. Civ. Proc. 1.140(a)(1)(b), for which it leaves the Respondent's Attorney to be in default for failing to file an Answer to Petitioner's Claim on the Motion listed. See, exhibit "G", AS Appendix "B8", "Motion for Judgment on the Pleading." see, also > Appendix "A1", at Pg. 4, and exhibit "F", AS Appendix "B7".

Thus, the State District Court of Appeal refused to make a timely decision on the "Motion to Vacate Void Judgment on the Amended Initial brief", filed on September 17th, 2021, with the State District Court of Appeal. Therefore, the Statute of Limitation ran for the State District Court of Appeal to make its decision on the merits. A Motion to Vacate Void Judgment on the Amended Initial brief, for which the State District Court of Appeal, has forfeited the time-period of (20) twenty days to make its decision, pursuant to Fla. R. Civ. Proc. 1.140(a)(1)(b), Defenses, and it creates a Manifest Injustice, violating Petitioner's rights against the U.S. Const. 5th, 14th Amendment and Fla. Const. Article 1, Section 9, Due Process of Law. See, exhibit "F", AS Appendix "B7", see, also > Appendix A1, at Pg. 4.

Nevertheless, on November 2nd, 2021, Petitioner submitted and filed a Petition for Writ of Mandamus by placed the Petition in the hands of Prison Officials at Liberty Correctional Institution for mailing with State Supreme Court, where Petitioner alleged the Claims as stated inter alia:

Petitioner asserts the First District Court of Appeal failed to make a timely decision on the Motion to Vacate Void Judgment on the Amended Initial brief pursuant to Fla. R. Civ. Proc. 1.140(a)(1)(b), for which it creates a Manifest Injustice and violates Petitioner's rights against the U.S. Const. 5th, 14th Amendment and Fla. Const. Article 1, Section 9, Due Process of Law.

Pg. # 9

See, Appendix "A1" at Pg. 4.

Moreover, on December 1st, 2021, the State Supreme Court, in Case #

SC21-1554, in an Order states: "Because Petitioner has failed to show a clear legal right to the relief requested, he is not entitled to Mandamus relief. Accordingly, the Petition for Writ of Mandamus is hereby denied." See, Appendix "A", The State Supreme Court Order denying Petitioner's Petition for Writ of Mandamus.

Argument

Jurisdiction under 28 U.S.C. § 1257(a), do exist:

This Court has Jurisdiction as to the erroneous; unconstitutional and contrary decision of the State Supreme Court on Petitioner's Federal Constitutional claim.

Thus, Petitioner asserts the State District Court of Appeal failed to take any action in reaching a final disposition on the Motion Re-opened Case # 1D20-1290, filed on September 17, 2021, Whereas, Petitioner alleged the claim "Motion to vacate void judgment on the Amended Initial brief," for which is pending in a untimely manner contrary to Fla. R. Civ. Proc. 1.140(a)(1), Defenses, therefore Judges failure to rule on the "Motion to vacate void judgment on the Amended Initial brief." See, exhibit "F," as Appendix "B7," See also Appendix "A1," at Pgs. 4-5, for which constitutes an unreasonable delay and contrary to the prompt determination doctrine; See, Florida Rules of Civil Procedure > 1.140(a)(1), Defenses, for which stated inter alia:

(a) When Presented

(1) Unless a different time is prescribed in a statute of Florida, a defendant must serve an answer within (20) twenty days after service of original process and the initial pleading on defendant, or not later than the date fixed in a notice by publication. A

party served with a pleading stating a cross-claim against that party must serve an answer to it within

(20) twenty days after service on that party. The plaintiff must serve an answer to a counter claim within (20) twenty days after service of the counter claim. If a reply is

Required, The Reply must be served within (20) twenty days after service of the answer.

See, Appendix "A1", at Pgs. 4-5.

Moreover, the Respondent's (Attorney) for Florida Department of Corrections, has failed to file an answer to Petitioner's claim on the Motion to Vacate Void Judgment on the Amended Initial brief, filed on September 17th, 2021. However, Petitioner asserts that the Respondent's (Attorney) for Florida Department of Corrections have been defaulted for failing to file an answer against Petitioner's claim on the "Motion to Vacate Void Judgment on the Amended Initial brief, Pursuant to Fla. R. Civ. Proc. 1.140(a)(1)(b)", on or before October 7th, 2021. See, exhibit "F", as Appendix "B7", and see also Appendix "A1", at Pg. 5.

Hence, Petitioner asserts that there is a "Scrivener Error" occurred on Appendix "A1", at Pg. 5, when stated: Its has been 24 days, since the Petitioner filed the Motion for Judgment on the Pleading on October 8th, 2021, Pursuant to Fla. R. Civ. Proc. 1.140(a)(1)(c), with the State District Court of Appeal. See, exhibit "G", as Appendix "B8".

Furthermore, the 24 days should count as 25 days, based on the filing date October 8th, 2021, is on the Motion for Judgment on the Pleading, Pursuant to Fla. R. Civ. Proc. 1.140(a)(1)(c), Whereas, Petitioner submitted and filed the Petition for Writ of Mandamus on November 2nd, 2021, with the State Supreme Court, for which the Certificate of Service have been signed and date on November 1st, 2021. See, Appendix "A1", at Pgs. 1, and 8.

Therefore, the State District Court of Appeal has not properly exercise its Judicial discretion, Authority, and Responsibility to make a decision and issue an Order in the cause. However, the State District Court of Appeal has Prejudicially refused to make a decision on the Merits in the Cause without a valid reason and contrary to the laws that govern both state and Federal Constitutions to deprive Petitioner's of due process and a reasonable amount of time has elapsed and long since past for the Appropriate Action to be taken. See, Appendix "A1", at Pgs. 4-5.

However, the Honorable Court has previously addressed the issue of a lower court's refusal to make a timely rulings or decision in such matter, as determined: The Peremptory Writ of Mandamus has traditionally been used

in Federal Courts to confine an inferior Court to lawful exercise of its prescribed Jurisdiction or to compel it to exercise its Authority When it is its duty to do so." See, Will v. United States, 389 U.S. 90, 95, 19 L. Ed. 2d 305, 88 S. ct. 269 (1967), Quoting > Roche v. Evaporated Milk Ass'n, 319 U.S. 21, 26, 87 L. Ed. 1185, 63 S. ct. 938 (1943) (SIMILARLY).

FURTHERMORE, A REPEATED decisions of the Honorable Court have established Rules that Mandamus "will lie in a proper case to direct a Subordinate Federal Court to decide a pending Cause." Insurance Company v. Comstock, 83 U.S. (16 Wall) 258, 270, 21 L. Ed. 493 (1872); Thermtron Prods., Inc. v. Hermansdorfer, 423 U.S. 336, 352, 46 L. Ed. 2d 542, 96 S. ct. 584 (1976) (SIMILARLY) and see also > Will v. Calvert Fire Ins. Co., 437 U.S. 655, 662, 57 L. Ed. 2d 504, 98 S. ct. 2552 (1978) (SIMILARLY).

However, Petitioner asserts that the Application of Presumption may falter when a trial Court takes an unusually long-time to hear a case. Likewise, timely rulings are critical to the orderly and speedy dispensing of Justice to preserve the integrity of the Judicial Process and to avoid the harm from prejudice inherent in failure to rule in a reasonable amount of time. See, Appendix "A1", at Pg. 6.

Nevertheless, this is particular true in Criminal Cases and disciplinary proceedings because the delay increases the loss of liberties and raises the risk of deteriorating recall of critical issues or actions with passage of time, eroding the chances of a fair proceedings. Hence, Court Convenience, Judicial economy and crowded dockets are insufficient reasons to fail to rule in a reasonable time. Where Judge's failure results in harm to a litigant that cannot be remedied on appeal, the failure is a departure from the essential requirement of the law, notwithstanding the amount of time taken to rule. See, Appendix "A1", at Pgs. 6-7.

Moreover, Petitioner asserts a Writ of habeas Corpus is intended to afford a "swift and imperative remedy in all cases of illegal restraint or confinement." See Fay v. Noia, 372 U.S. 391, 400, 9 L. Ed. 2d 837, 83 S. ct. 882 (1963), Quoting > Secretary of State for Home Affairs v. O'Brien, [1923] A.C. 603, 609 (H.L.). See, also >

Johnson v. Avery, 393 U.S. 483, 485, 21 L. Ed. 2d 718, 89 S. Ct. 747 (1969). "Court has constantly emphasized fundamental importance of writ. If a fourteen-month delay (absent good reason) were routinely permissible, the function of the great writ would be eviscerated." (Similarly). See, exhibit "F," as Appendix "B7," Motion to Vacate Void Judgment on the Amended Initial brief, and see also, exhibit "G," as Appendix "B8," Motion for Judgment on Pleading, both motions are pending with the State District Court of Appeal for which Petitioner received no response on both motions and its contrary to Fla. R. Civ. Proc. 1.140(a)(1), Defenses, where it violates Petitioner's rights against U.S. Const. 5th, 14th, Amendment and Fla. Const. Article 1, Section 9, Due Process of Law.

Thus, Petitioner here with respectfully requests the Honorable Court to consider the instant petition to recognize the length of time that the "Motion to Vacate Void Judgment on the Amended Initial brief," pursuant to Fla. R. Civ. Proc. 1.140(a)(1)(b), have been pending and Petitioner has substantive rights to receive a timely disposition of his pending motion on record of the State District Court of Appeal below under the authority of due process to Court clauses and as well as the corresponding clauses of the U.S. Const. 5th, 14th Amendment and Fla. Const. Article 1, Section 9, Due Process of Law. See, exhibit "F," as Appendix "B7," see also Appendix "A1," at Pgs. 4, and 7.

Reason for granting the petition

Wherefore, based on the foregoing facts, arguments, and authorities presented herein: Petitioner asserts the important in considerations for the Honorable Court accepting this case for review include the existence of a conflict between the decision of which review is sought and decision of the Honorable Court on the same issue for which the State Supreme Court's decision are in conflict and another consideration is the importance to the public of the issue in which the State Supreme Court decision is erroneous; contrary to law; unconstitutional; for which is a miscarriage of justice; include a manifest injustice, it violates Petitioner's rights against U.S. Const. 5th, 14th, Amendment and Fla. Const.

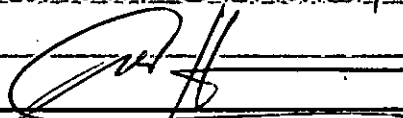
Article 1, section 9, Due Process of Law.

Therefore, its in the interest of Justice for the Honorable Court to Correct the Manifest in Justice, which is a Miscarriage of Justice from the State Supreme Court, for which Petitioner Respectfully moves the Honorable Court on a hearing to "VACATED" the Judgment Order "denied" Petition for Writ of Mandamus by An Order of the Court, on December 1st, 2021, for which the decision is Proving to be in conflict with the following Citations Authorities Cited in the instant Cause from the Honorable Court, And Remand the State Supreme Court with further instructions to issue an Alternative Writ of Mandamus on to the State District Court of Appeal to make a timely decision on the Pending Motion to VACATE void Judgment on the Amended Initial brief, Pursuant to Fla. R. Civ. Proc. 1.140(a)(1)(b), in CASE# 1D20-1290, in State District Court of Appeal.

Conclusion

The Petition for a Writ of Certiorari should be granted.

Respectfully Submitted,



CARLTON SMITH, Doc# C07410

Petitioner, Pro-se.

Date: January 7th 2022

Unsworn Oath of Affirmation

Under Penalty of Perjury, I declare that I have read the foregoing And that the facts stated in it are true and correct in accordance with Florida Statute § 92.525 (1999), and title 28 U.S.C., 1746, UNSWORN declaration under Penalty of Perjury, executed on this 7th day of JANUARY, 2022.

Respectfully Submitted,



CARLTON SMITH, Doc# C07410

Petitioner, Pro-se.