

No. **22-5658**

ORIGINAL

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

IN RE: WILLIAM L. WHIPPLE
PETITIONER

VS.

RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS FOR ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

WILLIAM L. WHIPPLE
OKEECHOBEE CORRECTIONAL INSTITUTION
3420 N.E. 168th STREET
OKEECHOBEE, FLORIDA 34972

QUESTION(S) PRESENTED

1. CAN MANDAMUS BE DEEMED AS A SUBSTITUTE FOR APPEAL WHEN LITIGANT WAS DENIED EQUAL ACCESS TO COURT AND DEPRIVED OF HIS DUE PROCESS RIGHT TO RESERVE ISSUES FOR APPEAL
2. SHOULD THE DISTRICT COURT JUDGE'S ORDERS BE VACATED WHEREIN HE FAILED TO PERFORM HIS MINISTERIAL DUTY TO CONSIDER PETITIONER'S WRITTEN OBJECTIONS AND RULE 7 MOTION TO THE MAGISTRATE'S REPORT AND RECOMMENDATIONS WHICH DEPRIVED PETITIONER OF HIS RIGHT TO APPEAL THE ORDERS AND DE NOVO DETERMINATION

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:

11 TH Circuit Judge	Julie Carnes
U.S. District Judge	Federico Moreno
Sec. Fla. Dept. Corr.	Ricky Dixon
Att. Gen. Florida	Ashley Moody
Direct App. Attorney	Russell K. Rosenthal
Judges, State Habeas	
Corpus	1. Hentz McClellan
	2. Salter
	3. Sharp
	4. Fernandez

RELATED CASES

Fed. 11th Cir. Ct. Appeal

Case No.: 21-1346F; *In re: William L. Whipple*; 5-23-22

Case No.: 16-16581-E; *Whipple v. Fla. Dept. of Corr.*, 10-25-17

Case No.: 15-12132-C;

Fed. Southern Dist. Fla.

Case No.: 14:21536; *Whipple v. Julie Jones*, 6-19-2015

U.S. Supreme Court

Case No.: 15-8994

Case No.: 18-6419

Fla. Supreme Court

Case No.: SC13-1389; *Whipple v. State*, 11-21-13

Fla. Dist. Ct. Appeal

Case No.: 1D04-3496; *Whipple v. Crosby*, 5-11-05

Case No.: 3D13-45; *Whipple v. State*, 1-6-13, 3-20-13, & 4-16-13

Fla. 11th Cir. Ct.

Case No.: 93-40906; *State v. Whipple*, 4-22-99

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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 *In re William L. Whipple* Case No.: 21-13846-F; 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 C 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 D to the petition and is

- ☒ reported at *Whipple v. State*, 130 So.3d 1278 (Fla. 3rd DCA 2013) ; or,
- ☐ has been designated for publication but is not yet reported; or,
- ☐ is unpublished.

The opinion of the First District Court of Appeal to review the merits appears at Appendix E to the petition and is

- ☒ reported at *Whipple v. Crosby*, 905 So.2d 895 (Fla. 1st DCA 2005); 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 May 23, 2022.

☒ 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 September (date) on 20, 2022 (date) in Application No. 22 A 155.

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 5-11-05, and 11-21-13. A copy of that decision appears at Appendix D, E.

☐ 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 _____ in Application No. ___ A _____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATUTORY PROVISIONS

Title 28 U.S.C. § 636 (b)(1)(c)

The magistrate judge shall file his proposed findings and recommendations under subparagraph (B) with the Court and a copy shall forthwith be mailed to all parties.

Within fourteen days after being served with a copy any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of court shall make de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.

F.R.A.P. 3 Appeals as of Right. A party failing to object to a magistrate judge's findings or recommendation in accordance with the provisions of 28 U.S.C. § 636(b) waives the right to challenge on appeal the district court's order based on un-objected to factual and legal conclusions if the party was informed of the time period for objecting and the consequence on appeal for failing to object.

CONSTITUTIONAL PROVISIONS

1ST Amendment. Equal Access to Court. Right to redress grievance.

14th Amendment. Nor shall any person be deprived of life, liberty or property, without due process of law.

STATEMENT OF THE CASE

Florida prisoner, William Whipple was in a drastic situation and had no other adequate remedy left available, when he sought mandamus relief in the Eleventh Circuit Court of Appeals, under original jurisdiction, in effort of having his timely filed objections to Magistrate Patrick White's Report and Recommendation (R & R) reviewed and a de novo determination of his § 2254 habeas corpus made.

On October 25, 2017 during COA proceeding of the Rule 60(b) Motion for Relief from Judgment, that derived from Whipple's § 2254 habeas corpus; 11th Circuit Court Judge Julie Carnes found that, "it appears debatable whether Whipple's objections were timely filed"; COA was then denied (App "B" Order Denying COA of Rule 60(b) Motion, pg. 7). Writ of Certiorari was denied in the U.S. Supreme Court.

In his Motion for Relief from Judgment, Whipple argued void judgment: Wherein the District Court acted in a manner inconsistent with due process, i.e. (1) Did not consider Whipple's timely filed objections to the magistrate's R & R, and (2) Ruled on Whipple's Motion to Expand the Record after final judgment was entered. The Rule 60(b) Motion was denied.

Subsequently, mandamus was filed in the Eleventh Circuit Court of Appeals. While excluding Whipple's timely filed objections to the magistrates R & R from consideration in the mandamus proceeding, Circuit Judge Barbara Lagoa denied

Whipple's mandamus reasoning that: Whipple exercised the adequate alternative remedies of challenging the district court's order dismissing his § 2254 petition and motion to expand the record through a motion to reconsider in the district court and an appeal to this court (App. "A" Order Denying Mandamus Petition).

Originally, Whipple had filed a federal habeas corpus in the Southern District Court of Florida wherein he argued "Actual Innocence/Giglio Violation" and Appellate Counsel was ineffective failing to raise (1) Petitioner Was Denied His Right To Counsel, and (2) Denied His Right to Represent Himself. Both Rights Were Violated Without A Competency Hearing being Held. On march 19, 2015 Magistrate White issued his R & R and gave Whipple 14 days from the date of receipt to file Objections (Report and Recommendation, pg. 23, App. "C").

In accordance with the magistrate's R & R; on April 10, 2015 eleven (11) days from the date of receiving the R & R, Whipple filed his Objections, accompanied with his Motion to Expand the Record. On April 13, 2015, twenty one (21) days from the date Magistrate White issued his R & R, District Judge Federico A. Moreno dismissed Whipple's habeas corpus; Whipple's objections had not been reviewed, although they were timely filed. Seven (7) days after issuing dismissal, District Judge Moreno denied Whipple's Motion to Expand the Record.

Whipple filed a Motion for Reconsideration asking the District Court to reconsider its dismissal of his habeas corpus because it had not reviewed his timely filed objections to the magistrate's R & R. The District Court denied the motion for

reconsideration. Whipple then sought COA concerning the matter in the 11th Circuit Court of Appeals and Writ of Certiorari in the U.S. Supreme Court: all were denied.

REASON FOR GRANTING THE WRIT

In the interest of protecting prisoners 1st, 6th, and 14th Amendment rights to equal access to the courts, and due process of law, this Honorable Court should grant Certiorari. Habeas petitioners have a clear indisputable right to have a de novo determination of their habeas corpus, i.e. have their timely filed Objections and motions reviewed under 28 U.S.C. § 636 (b)(1)(c).

Whipple's habeas petition was reviewed without essential and pertinent records i.e. his Objections to the magistrates R & R and Motion to Expand the Record. § 636(b)(1) also provides that a habeas petitioner has a clear legal right to reserve the issues for appellate review by filing objections.

An appeal should not be voided or deemed waived when the habeas petitioner is deprived of his due process right to reserve issues for appeal. Where Whipple's mandamus acted in aid of the appellate court's jurisdiction, and was in a drastic situation, the Eleventh Circuit Court of Appeals should have granted the writ of mandamus, instead of treating COA as an appeal and treating mandamus as a substitute for an appeal.

The Eleventh Circuit Court of Appeal's has decided the important federal question:

"SHOULD THE DISTRICT COURT JUDGE'S ORDERS BE VACATED WHEREIN HE FAILED TO PERFORM HIS MINISTERIAL DUTY TO CONSIDER PETITIONER'S WRITTEN OBJECTIONS AND RULE 7 MOTION TO THE MAGISTRATES REPORT AND RECOMMENDATIONS WHICH DEPRIVED

PETITIONER OF HIS RIGHT TO APPEAL THE ORDERS" AND
DE NOVO DETERMINATION",

in a way that conflicts with relevant decisions of this Court in: *Houston v. Lack*, 487 U.S. 266, 108 S. Ct. 2379 (1988) Equal Access to Court: Establishing a bright-line rule that states "an equitable, standardized method for measuring time restriction so that requisite time limitations for filing do not preclude the incarcerated petitioner's equal access to the Courts". *Thomas v. Arn*, 474 U.S.155, 106 S. Ct. 466 (1985). "Failure to file written objections to the proposed findings and recommendations of the magistrate judge's report shall bar the party from a de novo determination by the district court of issues covered in the report and shall bar the party from attacking an appeal factual findings in the report accepted or adopted by the District Court"., and

Labuy v. Howes Leather Co., 352 U.S. 249, 77 S. Ct. 309 (1957) holding: "the Court of Appeals has the power to issue a writ of mandamus to compel the district judge to vacate his orders, and that the circumstances surrounding the references by the district judge made exercise of its powers appropriate".

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully Submitted,

W L Whipple
William L. Whipple

Date: September 1, 2022