No. 22-7721

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

WILLIAM WHITTMAN - *Petitioner*

v.

PRIME AUTOTECH, INC., et all,
LEGUM LAW, PLC *et all*
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of Virginia

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

1. Does the State Court Decision to deny Petitioner's Petition for Appeal on 2/27/23 on grounds that no reversible error occurred in the lower court violate important federal questions of DUE PROCESS and EQUAL JUSTICE UNDER LAW, in a way that conflicts with both the decision of the state court and of United States Court of Appeals.

2. Does the decision to deny the Petition for Appeal adversely affect our legal system, with regard to violations and abuses form the Bench of unrepresented parties' rights to *equal justice* and *Due Process.*

3. Does a decision by this court review of this case serve in the furtherance of justice.

LIST OF PARTIES

Additional parties that do not appear in the caption of the case on the cover page is as follows:

1. PRIME AUTOTECH, INC
2. Eung Chun Lee
3. LEGUM LAW, PLC
4. Terry C Legum
5. The Fitzpatrick Law Office, P.C.
6. Kevin M. Fitzpatrick, Esquire

RELATED CASES

Petition for Extraordinary Writs of Mandamus and Prohibition and Quo Warranto. VSC REC. NO Record No.: 230239 against Against:

1. Richard E. Gardiner, Judge of Fairfax County Circuit Court,
2. John T. Frey, Clerk of the Fairfax County Circuit Court,
3. Elizabeth Banasik, comptroller of the same Court
4. KEVIN M. FITZPATRICK and
5. TERRY C. LEGUM, in the capacity of officers of the court.

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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

Federal Court Cases that show that the States Court's decisions that the trial court did not make a reversible error in determining the facts, conflicts the opinion of the United States Courts:

1. *Mylan Labs., Inc. v. Matkari, 7 F.3d 1130, 1134, 4th Cir. 1993*
2. *Schatz v. Rosenberg, 943 F.2d 485, 489*
3. *De Sole v. United States, 947 F.2d 1169, 1171.*

Federal Court Cases that show that the state court decisions that the trial court did not make a reversible error sanctioning plaintiff with attorneys' fees that are unfounded and excessive in this case;

1. Kreischer, et a!. v. The Kerrison Dry Goods Company, 229 F.3d 1143 (4th Cir., S.C.) (2000), citing Hensley v. Eckerhart, and
2. Hensley v. Eckerhart, 461 U.S. 424, 429, 76 L. Ed. 2d 40, 103 S. Ct. 1933 (1983).

Federal Doctrine that shows that the state court decisions that the trial court did not make a reversible error sanctioning plaintiff with attorneys' fees that are unfounded and excessive in this case;

1. *American Rule Doctrine*

State Court Cases showing that the States Court's decisions that the trial court did not make a reversible error in sanctioning plaintiff with attorneys' fees conflicts State Courts' Own decisions: this case;

1. *Flippo v. CSC Assocs. III, L.L.C., 262 Va. 48, 65-66 (2001)*
2. *Nusbaum v. Berlin 273 Va. 385 (Va. 200)*

State Statutory Provision that the States Court's decisions that the trial court did not make a reversible error in sanctioning plaintiff for taking a nonsuit.

§8.01-380. Dismissal of action by nonsuit

JURISDICTION

The date on which the highest state court decided this case was 2/27/2023.

A copy of that decision appears at *Appendix A.*

A timely petition for rehearing was thereafter denied on 5/11/2023 and a copy of the order denying rehearing appears at *Appendix B.*

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

American Rule
Due Process
Equal Justice Under Law

STATEMENT OF THE CASE

A. Facts Giving Rise to Petition for Appeal

Acting as pro-se litigant, the Petitioner (plaintiff) filed 2 lawsuits in the Fairfax County Circuit Court one against Prime Autotech, INC., et all, Case No: CL-2121 07527, a car repair shop for cheating plaintiff through fraudulent misrepresentation of the material facts into unnecessary services and repairs, and for charging plaintiff for services not performed, with prove from accompanying affidavits that claims are correct and true and the other against Legum Law, PLC et all, Case No. 2021-12956 to stop Legum & Fitzpatrick from threatening and harassing and warning plaintiff to better accept their proposed settlement and dismiss the lawsuit or see what they will do to him as officers of the court.

Litigating claims against Prime, (the case against the attorneys was not served and plaintiff moved for voluntary nonsuit before any pleading in response was filed) plaintiff was looked down on, ridiculed, scorned and threatened by the presiding judge, as it appeared to plaintiff, for the interest, of Legum & Fitzpatrick, appearing to be judge's friends with the judge making it clear form his conduct and behavior, demeanor and tone of voice that the attorneys were welcomed and respected in his court while he was not.

Plaintiff was forced for this reason to move for voluntary nonsuit.

When plaintiff moved to nonsuit, pursuant to *§8.01-380* that provides no penalty for taking a nonsuit in Va., unless this was not the first nonsuit or unless there were counterclaims or cross claim or third-party claims pending, there were no responses, or counterclaims or cross claims, or third-party claims pending and no prior orders of nonsuit were sought or entered before in this matter that could prevent the nonsuit or provide panelizing plaintiff with for taking the nonsuit.

Plaintiff explained to the judge that he was forced to suffer these nonsuits because of judge's acts, asking the judge to enter the October 15, as the final order for him to be able to proceed on appeal and to proceed with the Judicial Inquiry & Review Commission against the judge.

The order of October 15th directed plaintiff to amend the complaint for a second time, while insulting plaintiff that his

claims were frivolous and that if he was to lose for a third time in the demurrer he would be sanctioned with attorneys' fees, which plaintiff took as an attempt to entrap plaintiff and increase the fees for sanctions against plaintiff and for the interest of attorneys otherwise why order a complaint that the court calls frivolous to be amended for a second time or why insult, mock and threatened plaintiff if the claim is valid and deserves a second amendment.

Therefore, Plaintiff moved to nonsuit asking the judge to enter the October 15th as the final Order for him to proceed on appeal and to proceed with a complaint to the Judicial Inquiry & Review Commission against the judge.

The Judge, retaliated against plaintiff denying the nonsuits that are not for the judge to deny or grant, stating that there were motions for sanctions pending which was a lie, and the docket proves this to be a lie, delaying the nonsuit to allow Legum & Fitzpatrick to file motions for sanction, and signing Order only to reverse them again with other entered Orders. ***(See Appendix C & D)***

demurrer on the actions against them, after the move to nonsuit and that was not even served yet to Legum & Fitzpatrick.

The judge and the attorneys combined fabricated jurisdiction they did not have, to bring plaintiff back to court and panelize plaintiff under false pretenses with extremely excessive attorney's fees and legal costs, in violation of both the Va. Law as held by this State Supreme Court's in *Nusbaum v. Berlin 273 Va. 385* and the doctrine of the *"American Rule"* and in defiance *§8.01-380* that provides no penalty for voluntary nonsuit the judge sanctioned plaintiff with $26,737.00 legal fees and cost.

Plaintiff did not believe then and does not believe now, that the trial court judge was right to sanction plaintiff with these extremely excessive attorneys' fees and cost and filed the NOTICE OF APPEAL on 11/19/22.

The Judge set no appeal bond and when plaintiff filed his notice of appeal the court clerks receiving the notice of appeal did not demand any appeal bond for the right to appeal.

Furthermore, the councils in this case who are defendants themselves have never asked plaintiff or the court for an appeal bond or a security for appeal, under state law *§ 8.01-676.1* nor have they attacked the validity of the appeal because plaintiff has not paid such a security to set aside the money judgment being appealed to the sates highest court except illegally trying to extort the money judgment of $26,737.00 from the pro-se litigant, under the threat of further legal entanglement before this same judge, as ***Exh 2*** to petition for appeal shows.

Terrified by these attorneys and the judge acting as one against the pro se plaintiff and having reasonable grounds to fear them after they lied to entitle themselves to jurisdiction they did not have and after the judge panelized him with these extremely excessive attorney's fees and cost, in a gestapo like proceeding, as the recode speak for itself (transcript of the hearing has been attached to petition for appeal - *VSC Rec. No: 220088)* threatening to take plaintiff behind bars even if dared make respectful and proper objections to objectionable irrelevant and impermissible evidence and testimony offered against him, plaintiff tried countless of time to deposit the money he was sanctioned with to both the clerk(s) of the supreme court and the clerks of the circuit court but the clerks of either court refused this payment every single time because no appeal bond was required or ordered by the trial court.

This went on from 11/19/2021 when plaintiff filed the notice of appeal till 2/9/2022, two days after plaintiff filed the petition for appeal which plaintiff filed on 2/7/22.

When the petitioner filed the appeal on 2/7/22 the supreme court notified plaintiff that he owed nothing extra for the appeal.

And still terrified by this judge and by these 2-attorneys acting as one against him, not to give the judge any pretext to jail him, under false pretenses for his own revenge, having to care for his son who has mental problems and no one else to care for him, plaintiff went back to the circuit court on 2/9/2022 with a cashier's check in his hands paid to the VA Supreme Court instead of the trial court, hoping that if the funds were paid to the Supreme Court the Trial Court could take and hold them not to give the judge any pretext to jail him on improper bases, that plaintiff believes will be the case if the judge, in violation of *CANON 3. (E) (1)(a)* for judges in the state will remain in this case.

The clerk handling the appeal in the circuit court again, on 2/9/2021 refused to take plaintiff's money, telling plaintiff they cannot take that money since no order directing them to do so exists and they told plaintiff to check with the Accounting Department of the court if the accounting department perhaps could accept and hold his money but the accounting department refused to accept it as well.

After plaintiff's continues demands and persistence for them to take his money the comptroller of the court, Elizabeth Banasik came to the window and she agreed to take plaintiff's money instructing plaintiff to go back to the bank and get another check paid to them and not to the VA Supreme Court which plaintiff did as instruct by Ms. Banasik.

While awaiting the appeal plaintiff's life has not gone well and he has become homeless and lives on food stamps.

On 2,27,2023 the Supreme Court refused plaintiff's petition for appeal **(App A)** and plaintiff was left with only 14 days to file a petition for rehearing, which plaintiff did within the time prescribed by the rules of this VA Supreme Court.

B. Facts why this Court should grand this petition for certiorari

On 2/27/23 the VA Supreme Court denied plaintiff's petition for appeal stating that in the courts opinion no reversible error has occurred.

Taking advantage of the fact that the Supreme Court refused the appeal and with complete disregard for the fact that the supreme court had not disposed the appeal pending at least 14 more days to provide for a petition for rearing, Legum & Fitzpatrick resorted to even bolder threats to extort this money, the very same day the refusal was entered, threatening plaintiff that if he did not pay them the full amount by March 3, 2023 they would seek to hold him in contempt of court, before the same judge.

Plaintiff was left with only one option; file the petition for rehearing and demand that the trial court return his money.

Plaintiff timely filed the petition for rehearing on 4/3/2023 stating that the refusal of the Petition for Appeal; (1) conflicts both state and federal law, (2) has an adverse effect in our legal system, (condones and justifies violations of DUE PROCESS and EQUAL JUSTICE UNDER LAW, (3) encourages greater abuses

against unrepresented litigants from the Bench in our Courts & (4) has already resulted in bolder unlawful and impermissible acts bellow, making it imperative for the higher Court to grant this petition and rule on merits with a published opinion.

The petitioner made two arguments in support of petition for rehearing as incorporated bellow:

Argument One.

"Why the refusal conflicts the law as to the determination of facts?

The decision that in the opinion of this court the lower court made no irreversible errors granting the demurrer that is the equivalent of a 12(b)(6) MTD in Fed. Courts on clearly erroneous determination of the facts contradicts the established federal law, binding to all our courts, state and federal, as held in Mylan Labs., Inc. v. Matkari, 7 F.3d 1130, 1134, 4th Cir. 1993) instructing that: "when considering a 12(b)(6) MTD; "courts must accept, [not simply say it has accepted the allegations, as true]". The lower court in this case accepted defendants' version of facts that are neither true nor alleged warning plaintiff not to mentioned the facts and accept facts as presented by defendants making this a reversible error.

Even if the State Supreme Courts might not accept Fed Circuit Courts Holdings even as persuasive, the fact that Mylan Labs., Inc. v. Matkari decision is based on Schatz v. Rosenberg, 943 F.2d 485, 489, and on De Sole v. United States, 947 F.2d 1169, 1171 and are cited throughout federal courts, it has gained binding presidential value all over courts as if a US Supreme Court Case".

Argument Two

"How the refusal conflicts holdings of this court as to sanctions?

The refusal because in the opinion of this court no reversible error occurred, in sanctioning plaintiff with attorney's fees conflicts this court's own holding in Flippo v. CSC Assocs. III, L.L.C., 262 Va. 48, 65-66 (2001) and violates the doctrine of the "American Rule" because the trial court judge failing to comply with the instructions of this court, directing judges addressing motions for sanctions for alleged violation of §8.01-271.1, to apply "objective standards of reasonableness in determining whether a litigant, after reasonable inquiry, could have formed a reasonable belief that the pleading was well grounded in fact, warranted by existing law

or a good faith". Given the fact that the petition is full of facts that support the initiation of these 2 lawsuits for any impartial court and, given the fact that when plaintiff moved to nonsuit no motions was pending, and the court untruthfully fabricated jurisdiction it did not have, out of judge's stated deep seated contempt for the pro-se litigant, to penalize plaintiff with attorneys' fees on improper bases because of judge's own feeling of harassment provide a hearing forum over which the judge had no jurisdiction and hold a very hostile hearing where plaintiff was threatened, scorned and intimidated not to even dare make a respectful and proper objection to objectionable testimony and evidence introduced against him in order for the court to make an arbitrary and clearly erroneous determination of facts, misusing §8.01-271.1 to penalize plaintiff with attorneys' fees that are unreasonable and excessive nonetheless and violate both the doctrine of the "American Rule" and this courts holding in Nusbaum v. Berlin 273 Va. 385.

Based on the "American Rule Doctrine" that the trial judge violated, each party to a lawsuit bears its own attorneys' fees 'unless there is express statutory authorization to the contrary which here is not. "Kreischer, et a!. v. The Kerrison Dry Goods Company, 229 F.3d 1143 (4th Cir., S.C.) (2000), citing Hensley v. Eckerhart, 461 U.S. 424, 429, 76 L. Ed. 2d 40, 103 S. Ct. 1933 (1983).

Comport "AMERICAN RULE" that governs the award of attorney's fees, defendants in this case would not have been entitled to attorney's fees even if they prevailed on merits of the case which they have not because of the nonsuit.

Furthermore, sanctioning plaintiff after the nonsuit, defies the law passed by Va., legislatures §8.01-380. Dismissal of action by nonsuit).

Furthermore, sanctioning plaintiff with attorneys' fees is a reversible error and for this court to deem it irreversible conflicts this court's holding in Ferris v. Kiritsis (VLW 010-6-059) where this court reversed similar sanctions imposed by a trial court judge because the trail court judge took the third consecutive motion to set aside a default judgment, as on the harassment side and misused §8.01-271.1, due to judge's own feelings of harassment.

Furthermore, refusing the appeal because in the opinion of this court no reversible error occurred conflicts the holding of this court in Nusbaum v. Berlin 273 Va. 385 (Va. 200) where this Hon Court held that, the trial courts cannot punish litigants by assessing a

monetary sanction consisting of an award of attorneys' fees and costs, as the trial court did here".

On that same day, February 28, 2023 plaintiff went to the trial court and met with the comptroller, Ms. Banasik and asked her for his money that he had paid by mistake explaining that he needed that money urgently because he had become homeless and was surviving on food stamps having 2 needy childfree to care for.

Plaintiff had prepared a note to provide the accounting department explaining why they should return his money to him that plaintiff handed to the Accounting Department, as well as e-mailing that note to Ms. Banasik via e-mail provided to the state court as **Exh 27.**

The comptroller refused to give plaintiff his money he had deposited by mistake and that she had taken from him by the same mistake, stating that even though he did not have to pay that money to them but he did they will have now the right to deprive him of this money and hold that money for Legum and Fitzpatrick because, according to her he should have paid that money to them.

When plaintiff told her that he paid that money by mistake and that there is no court order for him to place that money with them, the comptroller stated that the judge should have issued an order for his appeal and that he should have paid that money to Legum and Fitzpatrick.

When plaintiff asked her what was there anything he should do to get his money back, the comptroller told plaintiff she was going to talk to the judge and let him know.

The next day, March 1, 2023 plaintiff called the comptroller to find out if a decision was made and if he could go and pick up his money but did not reach her.

The comptroller called plaintiff back that day, telling plaintiff that the court cannot return his money because the supreme court had jurisdiction over that money and that the supreme court was having a hearing that week to decide the disbursement of his money.

That day, March 1, 2023 plaintiff send an urgent e-mail to the clerk of the supreme court, including the comptroller in that e-mail to find from the supreme court if this was true or yet another lie from this trial court. Provided to petition for writs and/or petition for rehearing as **Exh 10.**

The next day, Thursday March 2, 2023, the clerk of the Supreme Court replied to plaintiff including the comptroller in that e-mail stating that the supreme court had nothing to do with that money or any hearing about his money provided t VSC as **Exh 11.**

On March 3, 2023, despite the fact that this matter was under complete and sole jurisdiction of the Supreme Court Legum & Fitzpatrick made good on their threats and filed 2 motions for orders to show cause against plaintiff scheduled for March 17th 2023 hearing. **(Provided to VSC as Exh 12 & 13).**

On March 7, 2023 a week after the comptroller stated that the supreme court was to hold a hearing to decide the fate of his money, thinking that the comptroller meant the trial court that still would be a impermissible and an ex parte communication, plaintiff send the comptroller his third email about his funds to know what decision had the court made made after the hearing or to tell him who was stopping her not to give him back his money based on what grounds. **(Provided to VSC as Exh 14).**

On March 10,2023, plaintiff filed his opposition to defendants' motion for rule to show cause and asked for sanctions against the defendants for filing these frivolous motions to show case, when the trial court had no jurisdiction over matters on appeal and that the trial court could not hear even after the supreme disposed the appeal since they were filed when jurisdiction did not exist and with no probable cause unless these attorneys have a crystal ball to know what the future brings entitling them to sue now for causes of actions that do not exist now but that might arise sometime to come. **(Provided to VSC as Exh 15).**

On March 16, 2023 the presiding judge requested to know from Legum & Fitzpatrick which code section or rule were they referring that requires a bond on a petition for rehearing for theme to file those motions, **(Provided to VSC as Exh 24)** to which Legum & Fitzpatrick responded with § 8.01-676.1 that has nothing to do with the petition for reharling or any bond as prerequisite for rehiring. (**Provided to VSC as Exh 25**) with the attorney state to the judge (judge's clerk) that they did not know what authority could apply, which is their mandatory duty to know, or be sanctioned under state law for failure to do their due diligence and filing pleading noncompliant with, the law § 8.01-271.1, and yet the judge, entered on 3/16/2023 an Order, (**Provided to VSC Exh 16)** continuing these frivolous motions that had no standing and

no probable cause instead of dismissing them with prejudice, blaming plaintiff, for filing the petition for appeal, for this while in denying plaintiff access to the court not even noticing or mentioning his motions for sanctions in response to their frivolous filings.

On March 16, 2023 plaintiff demanded again from the comptroller of the court to know the fate of his money after motions for rule to show cause were removed believing that the hearing day for motions were what the comptroller had implied all along that the court had scheduled hearing for the fate of his money that involves ex parte between them the judge and the attorney any way. **(Provided to VSC Exh 17).**

On March 17, 2023 plaintiff filed and hand-delivered to the judge's clerk a courtesy copy of his objections to ORDER of March 16th, condoning impermissible acts of Legum & Fitzpatrick to file motions that have no standing, no probable cause and no jurisdiction and that are frivolous, and that cannot be heard even if by that day the petition for rehearing would be denied, as filed when jurisdiction or probable cause did not exist. (**Provided to VSC** as Exh 18).

On March 17, 2023 plaintiff went to the comptroller's office to see if the they would return his money to him now that even the motions for rule to show cause were removed.

The comptroller told plaintiff that the money is for Legum & Fitzpatrick and that they cannot give it back to him without their agreement.

Plaintiff asked the comptroller based on what warrant or authority, was she converting his money that he placed by mistake with them, as money to protect the interest of Legum & Fitzpatrick so he knew based on what they were doing what they were doing with his money.

The comptroller told plaintiff go and find it yourself in our website and that she considered his request as a threat.

Plaintiff went, at that point at the first floor to the office of the commonwealth or attorney general to ask if they had any power to help him in this case.

A young gentleman told plaintiff that they cannot help him in this matter because they work for the court but, the young gentleman said it could be a good idea for him to go back upstairs and ask to speak to the clerk of the court.

Plaintiff went back upstairs to meet with the clerk of the court, but the clerk refused to meet with him, telling a young woman that he knew what plaintiff was asking for and that he had the same answer as the comptroller of the court.

Plaintiff told her that the only thing he needed to know from them was based on what warrant or authority were they refusing to give him back his money so he could address this with the supreme court.

The comptroller came back and said you have to get a court order or Legum & Fitzpatrick have to sign a consent form because that money, she said, belongs to Legum & Fitzpatrick.

At around 4 PM that same day the clerk of Jude Gardiner e-mailed plaintiff the Order denying plaintiff's request to modify the order of 3.16.23 that does not even consider plaintiff's motions for sanctions that are proper and just while providing a forum for defendants' motions for rule to show cause, filed with no probable cause in such unbelievable denial of due process and equal justice under law to the pro se litigant, manifesting once more that plaintiff has no chance of equal justice under law before this judge, **(Provided to VSC as Exh 19).**

At around 4:50 PM that same day, a day after Judge Gardiner ruled that the court cannot hear any motions while this matter is still on appeal, IN CONTEMPT OF THE ORDER of March 16th, and in defiance of the Supreme Court's Sole Jurisdiction Legum & Fitzpatrick e mailed the clerk of the judge 2 new motions that they had just filed asking the court to hand plaintiff's money to them and make them the custodians of the plaintiff's money till the appeal is disposed. **(Provided to VSC as Exh 20 & 21).**

The text of the e-mail makes it clear that these public officials of the court had urged and rushed and directed and instructed them to file these impermissible motions in contempt of court and in defiance of the supreme court and without conferring with plaintiff if he is avail to addend the hearing scheduled in a few days before this same judge evidencing corruption and criminal intent of these trial court public officials, on unprecedented. **(Provided to VSC as Exh 26).**

¶4 of these 2 frivolous motions (**Provided to VSC as Exh 20 & 21)** makes it clear for this Court, who has directed and instructed and rushed and urged these attorneys to defy the US Supreme Court's Sole Jurisdiction and to Act in Contempt of the

Trial Court Own Order of 3/16/2023 **(Provided to VSC as Exh 20 & 21).**

Plaintiff was forced to ask the judge's clerk directly after reading these e-mails if the judge was going to remove these motions from the Friday Docket since they violated even judge's own order (**Provided to VSC as Exh 26.**

The attorneys replied to the judge's clerk, stating that Whittman suggestion that they were acting in contempt of court is completely without merit, because the clerk of the court told them to do so. (**Provided to VSC as Exh 23).**

Plaintiff was forced, for this reason, to file in response his Request for the Hon. Judge to correct the Docket and remove defendants' motions from April 14th hearing docket (**Provided to VSC as Exh 32**).

Plaintiff filed that same day, Motion for Rule to Show Cause for defendants' acts in contempt of court (**Provided to VSC** as Exh 33) and Motion to Recues the Judge (**Provided to VSC as Exh 34)** as well as serving upon all the respondents, including the Judge the **Notice of Petition for Extraordinary Writs (Provided to VSC as Exh 35)** that has not been resolved yet in the state court.

REASONS FOR GRANTING THE PETITION

Granting this petition became imperative the day the state court refused the appeal not simply for the interest of the pro-se litigant, harmed here, but in the furtherance of justice, in the light of the fact that the denial of this petition in the state court appears to have given rise to further and bolder impermissible acts against principles of equal justice and due process for all our citizens.

CONCLUSION

The petition for a writ of certiorari should be granted.

William Whitmore 3/25/23