

23-6188

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S. FILED OCT 23 2023 OFFICE OF THE CLERK

Otis Blaxton — PETITIONER
(Your Name)

vs.

State of Florida — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

11th Circuit Court of Appeals United States Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Otis Blaxton
(Your Name)

104 Lakeview Ave
(Address)

Seftner, FL 33584
(City, State, Zip Code)

(813) 580-3209
(Phone Number)

RECEIVED DEC - 6 2023 OFFICE OF THE CLERK SUPREME COURT, U.S.
--

QUESTION(S) PRESENTED

- 1) Has the State of Florida waived immunity of suits pursuant to its own statute of law Florida Statute § 768.28; Fla. Constitution s. 13, Art. X (Waiver of sovereign immunity).
- 2) Did the United States District Court Middle District of Florida error by not allowing the Petitioner to file a 42 U.S.C. § 1983 claim of civil rights violation against the State of Florida for malice and false imprisonment a violation of the Petitioner's 4th and 5th Amendment rights to the United States Constitution of Amendments.
- 3) Was the Petitioner's 42 U.S.C. § 1983 claim timely after the Petitioner attempted to file several tort claims in the State courts of Florida addressing civil rights violations. Claims are subject to equitable tolling of the time to file.

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

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A	11 th Circuit Court of Appeals U.S.
APPENDIX B	Middle District Court of Florida U.S. Court
APPENDIX C	Rehearing 11 th Circuit Court of Appeals U.S.
APPENDIX D	
APPENDIX E	
APPENDIX F	

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Blaxton v. State 179 So. 3d 358 (2DCA 2015)	9
Blaxton v. State 187 So. 3d 216 (Fl Supp. 2016)	9
Irwin v. Dept. Vet. Affairs 498 U.S. 89 at, id 96	10
Meeker v. Addison 586 F. Supp. 216 (U.S. Dist. 1983),	7

STATUTES AND RULES

Florida Statute § 111.07(1)(a)	7 + 14
Florida Statute § 768.28(18)	6

OTHER

4th U.S.C. Amend.	3 + 8
5th U.S.C. Amend	3 + 8
6th U.S.C. Amend	3 + 8
11th U.S.C. Amend.	6 + 7
13th U.S.C. Amend.	8
14th U.S.C. Amend.	3 + 8

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 B 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 _____ 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 August 27, 2023.

☐ 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: August 16, 2023, 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 Petitioner's 4th, 5th Amendment rights of the U.S.C.A., were violated. Petitioner was denied due process of the law when he was falsely imprisoned and maliciously prosecuted.

The Petitioner was denied his 6th and 14th Amendment U.S.C. A. rights to come to the United States District Court on a claim that his civil rights had been violated pursuant 42 U.S.C. § 1983 civil rights violation form.

the U.S. Court of Appeals dismissed the Petitioner's appeal. On August 25, 2023, Mandate was issued adopting the opinion entered on the appeal entered July 27, 2023 dismissing the Petitioner's appeal.

The United States District Court refused to hear any Motion for Rehearing or Reconsideration on the issue dismissed on appeal.

REASONS FOR GRANTING THE PETITION

1) The State of Florida has waived right to Sovereign immunity under the 11th Amendment U.S.C. A..
See, Florida Statute § 768.28(18):

(No provision of this section, or of any other section of the Florida Statutes, whether read separately or in conjunction with any other provision, shall be construed to waive the immunity of the state or any of its agencies from suit in federal court, as such immunity is guaranteed by the Eleventh Amendment to the Constitution of the United States, unless such waiver is explicitly and definitely stated to be a waiver of the immunity of the state and its agencies from suit in federal court. This subsection shall not be construed to mean that the state has at any time previously waived, by implication, its immunity, or that of any of its agencies, from suit in federal court through any statute in existence prior to June 24, 1984.)

In part the Fla. Stat. § 768.28; states: "(... unless such waiver is explicitly and definitely stated to be a waiver of the immunity of the state and its agencies from suit in federal court.) The statute gives leeway to allow Plaintiffs to bring suit against the state of Florida in federal courts as stated in part. However, prior to June 24, 1984, the State of Florida had

not waived its right to immunity protected by the 11th Amendment U.S.C.A.

See, Meeker v. Addison 586 F. Supp. 216 (U.S. Dist. 1983) at 222; [Since the State of Florida has waived its sovereign immunity for purposes of federal civil rights actions brought under 42 U.S.C. § 1983 and similar statutes, the state and its agencies can be sued pursuant thereto.] The Plaintiff herein filed a civil rights complaint against the state of Florida in the United States District Court Middle District of Florida, Tampa Division and pursuant to 42 U.S.C. § 1983 and according to Meeker v. Addison, supra the State of Florida has waived its right of sovereign immunity for purpose of 42 U.S.C. § 1983.

See, Florida Statute § 111.071 (If the action is a civil rights action arising under 42 U.S.C. s. 1983, or similar federal statutes, payments for the full amount of the judgment may be made . . .) Fla. Stat. § 111.071(1)(a) acknowledges that the state of Florida has waived its right of sovereign immunity in civil rights actions brought under 42 U.S.C. § 1983.

2) The Petitioner's 42 U.S.C. §1983; civil rights complaint was wrongfully dismissed by the U.S. District Court Middle District of Florida Tampa Division and that erroneous ruling wrongfully upheld by the U.S. Court of Appeals 11th Circuit Court.

And a person filing a civil rights complaint under 42 U.S.C. §1983 has to do is allege that his or her constitutional rights have been violated by government officials. The Petitioner of the foregoing alleged that his protected constitutional rights had been violated by officials of the State of Florida on his complaint when he was maliciously prosecuted and falsely imprisoned against his 4th, 5th, and 13th and 14th Amendment rights of the U.S.C.A., and also denied the right to represent himself a violation of his 6th Amendment right of the U.S.C.A. of rights

The lower courts refused to hear the Petitioner on his claims of constitutional mistreatment. Both state and ~~U.S.~~ Courts refused to allow the Petitioner to be heard on the grounds that his constitutional rights were indeed violated when he was sentenced to 30 years in Florida State Prison and that sentence later being overturned as a manifest injustice in the courts of the State of Florida. See *Blaxton v. State* 179 So 3d. 358 (2DCA 2015); *Blaxton v. State* 187 So 3d 216 (Fla Sup. 2016)

3) The lower courts allege that the Petitioner's civil rights complaint is untimely filed to the court. However, the timing is subjective to be equitably tolled. The Petitioner has been filing on his civil rights violations since 2016, the year he was released from custody. The state courts dismissed his claims in several different cases over the years for various reasons, such as cases allege to have been filed against wrong parties, and so on and so forth.

See, *Irwin v. Dept. of Vet. Affairs*, 498 U.S. 89 at id 96; (We have allowed equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass.) The Petitioner, herein has been filing and claiming a violation of his civil rights since 2016, and in most all of the rulings the judgments have been that

the claim was raised against the wrong agency. The state of Florida and its legal staff have been abusing its legal powers and deviating from justice. There has already been a ruling of manifest injustice on behalf of the state of Florida and the conduct continues to exist in the case of the Petitioner. Prior rulings on rather or not the Petitioner's civil rights have been violated have been bias and prejudice towards the Petitioner.

The Petitioner filed case number 16-CA-2510 in the 13th Judicial Circuit Court of Florida in the year 2016 the court dismissed the Petitioner's Tort Claim that his civil rights had been violated by the manifest injustice he was subjective too. That case was dismissed in 2016.

The Petitioner filed another Tort to the 13th Judicial Circuit court of Florida in 2018 case number 18-CA-6044. This case also was dismissed on March 23, 2020. The Petitioner appealed to the 2 District Court of Appeals State of Florida case number 2020-1133.

Appeal was denied April 2020.

The Petitioner filed a Writ of Certiorari in the 2 District court of Appeals State of Florida. Case number 2020-1411. That case was ~~denied~~ June 24, 2020.

The Petitioner sought review by the Florida Supreme Court in case number SC20-924 of the Florida Supreme court and the Florida Supreme Court dismissed the case.

The Petitioner then filed case number 8:21-cv-01809 of the U.S. District court middle district of Florida. the case was dismissed, the court gave leave to allow the petitioner to file another Complaint.

The Petitioner filed another complaint with the U.S. District Court Middle District of Florida case number 8:21-cv-2550-CEH-MRM. The District Court dismissed the complaint November 14, 2022. The Petitioner filed a Motion for New Trial and the Motion was denied May 7, 2023.

The Petitioner Appealed to the 11th Circuit Court of Appeals U.S. Court. case number 23-11952.

The appeal of the Petitioner's complaint was dismissed. The Petitioner's motion for reconsideration was not considered by the Appeals court.

The Petitioner herein the foregoing continues to proove the fact that his civil rights have been violated, after the dismissal of the Petitioner's appeal to the 11th Circuit of the U.S. Court. July 27, 2023.

The Petitioner's continuous filing alleging a violation of his civil rights equitably tolls the time to file a civil rights complaint under 42 U.S.C. 1983.

Wherefore, herein the foregoing petition the Petitioner set forth good cause that the United States District Court Middle District of Florida should not had dismissed the Petitioner's complaint that his civil rights have been violated.

The court erred when it held that the State of Florida had not waived the 11th Amendment of the U.S.C.A. and allowed suits to be brought against the State under 42 U.S.C. §1983. Where in fact since 1984 the State of Florida has allowed civil rights complaints to be brought against it under

CONCLUSION

Wherefore, the petitioner prays this Court grant the foregoing petition for writ of certiorari, because he has in fact been denied his right to go to the court.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Otis Clayton - Otis Clayton

Date: Oct. 23, 2023 Nov. 26, 2023