

IN THE SUPREME COURT
OF THE UNITED STATES
on petition for certiorari to
Florida Fifth District Court of Appeal

GLENN ALBRIGHT
Petitioner

v.

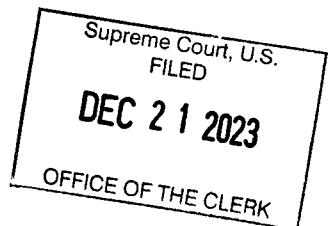
WILL ROBERTS, as VOLUSIA
COUNTY TAX COLLECTOR
ROBERT R. KYNOCHE, as
DIRECTOR of FLORIDA
DEPARTMENT of HIGHWAY
SAFETY AND MOTOR
VEHICLES, DIVISION of
MOTORIST SERVICES
Respondents

PETITIONER GLENN ALBRIGHT
INITIAL PETITION FOR CERTIORARI

Glenn Albright
% Tanner Andrews, PA
112 W. New York Ave., #203
P.O. Box 1208
DeLand, FLA 32721
pho +1 386 734 2111
fax +1 386 734 2116
tanner+7355@sunshine-lawyer.com
pro se

case # 2023-
Appeal 5D22-1909
2022-10472-CODL

ORIGINAL



Question Presented

Whether the trial court erred by finding that a statutory requirement that former offenders must pay \$31.25 did not constitute an *ex post facto* violation, where the offense took place prior to the enactment of the statute requiring payment.

The question is shown in the trial court judgment, R-10, with the trial court determination shown at R-11.

List of Parties

All parties appear in the caption of this case.

Related Cases

There are no related Federal cases.

There were several state court cases involving various aspects of the sex offender statute, all of which arose prior to the imposition of the \$31.25 charge at issue in this case:

1988-006724-CFAES	original conviction, still in place
2015-302250-CFDB	post conviction relief, not granted
2020-31394-CICI	habeas, not granted

Additionally, there is a fail-to-register case, where the state sent a new license plate for the wife's car and I forgot to tell the state that they had done so:

2022 301906 CFDB	failure to register
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The cases for this petition are as follows:

2022-10472-CODL	original statement of claim
5D22-1909	appeal

Table of Contents

Question Presented.....	i
List of Parties	ii
Related Cases	ii
Table of Contents	iii
Table of Cases.....	iv
1 - Opinions Below	1
2 - Jurisdiction	2
3 - Constitutional Provisions	3
4 - Statement of the Case	4
5 - Reasons to Grant the Writ	6
Conclusion	8
Certificate of Service.....	9
Certificate of Type.....	10

Table of Appendices

All of the appendices are in the *Notice of Filing* which accompanies this petition.

app.	R-	date	desc
A	4	12-Sep-2023	Final State Court Decision
B	7	27-Sep-2023	Order Denying Written Opinion
C	9	03-Jun-2022	Order Dismissing
D	15	04-Oct-2022	Order Granting Final Judgment
E	19	08-Aug-2022	Order of Indigency
F	22	08-Aug-2022	Acknowledgment of Appeal

Table of Cases

L.A. v. David: <u>City of Los Angeles v. Edwin David</u> , 538 U.S. 715 (2003)	538 U.S.
Referenced:.....	7
Smith: <u>Smith v. Doe</u> , 538 U.S. 84 (2003)	538 U.S. 84 (2003)
Referenced:.....	3, 6
St. Paul Title: <u>St. Paul Title Insurance Corp. v. Davis</u> , 392 So.2d 1304 (Fla. 1980)	392 So.2d
Referenced:.....	2

Constitutional Provision

Article 1 § 9, U.S. Constitution, provides that No Bill of Attainder or ex post facto Law shall be passed.

Article 1 § 10, U.S. Constitution, provides that No State shall ... pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

Challenged Statute

Fla. Stat. § 943.0435, the sex offender registration act.

1 - Opinions Below

The opinion of the highest state court to review the merits appears at app. 'A' and is unpublished.

The opinions below are included in the appendix.

app.	date	description
A	12-Sep-2023	final state court decision
B	27-Jun-2023	order denying written opinion
C	03-Jun-2022	order dismissing claim
D	04-Oct-2022	order granting final judgment (appealable)

The trial court granted defendants' motion to dismiss in an order, app. 'C', which was not appealable. It followed with an order, app. 'D', containing language of finality.

On review, the District Court of Appeal issued a decision reading simply "Per Curiam. Affirmed.", app. 'A', meaning that there is no written opinion. It also denied a timely motion for rehearing, which motion asked for a written opinion. App. 'B'.

2 - Jurisdiction

The decision of the District Court of Appeal, the highest state court which decided my case, was issued on 12-Sep-2023. A copy of that order is furnished as app. 'A'. It was what is called a "PCA", meaning that there is no written opinion.

A timely petition for written opinion, which is a motion for rehearing under Fla.R.App.P. 9.330(a), was thereafter denied on 27-Sep-2023. A copy of that order is furnished as app. 'B'.

The Florida Supreme Court lacks jurisdiction to review decisions which read in their entirety "Per Curiam. Affirmed." St. Paul Title at 1304. As a result, I have had the review at the highest level available in the state court system.

The jurisdiction of this court is proper under 28 U.S.C. § 1257(a) because the controversy presents the question of whether Fla. Stat. § 943.0435 is repugnant to Article 1 § 10, *U.S. Constitution*, which prohibits states from enacting ex post facto laws.

3 - Constitutional Provisions

Article 1 § 10, *U.S. Constitution*, prohibits states from enacting *ex post facto* laws. That is, a state cannot impose an additional punishment for a crime committed prior to the legislation.

The U.S. Supreme Court held that a registration requirement imposed on former sex offenders did not constitute *ex post facto* punishment. Smith at 98. There, the Court considered only a bare registration requirement. Id. at 102.

This case presents the issue not decided there. Specifically, Fla. Stat. § 943.0435(3)(b) requires a former offender who does not have a driver's license to purchase a state ID card. In my case, it cost \$31.25. The requirement to pay \$31.25 for not having a driver's license while being a former offender did not exist at the time of the offense.

4 - Statement of the Case

In 1988, I settled a sex offense case with the State of Florida. At that time, there was no sex offender registration statute. I was released from prison in 1990.

In 1997, the state enacted a registration statute imposing several disabilities and requirements. A former offender must register in person during limited hours. The statute limits travel by former offenders and allows intrusive searches of former offenders' homes. It also requires former offenders who do not drive to purchase a state ID card from the tax collector. He remits a portion of the price to the director of the department of motor vehicles. Failure to purchase the ID card is treated as a felony. I have previously challenged some of the registration requirements through habeas, without notable success.

On 20-Dec-2021, Mr. Kynoch issued an order to suspend my driver's license, which order offered the possibility of a hearing but also the caution:

Please note, a request for a hearing does not stop the suspension from going into effect on January 10, 2022, and does not stop the thirty-day timeframe to appeal from the effective date of the Final Order per section 322.31, Florida Statutes.

On 11-Jan-2022, due to the suspension of the driver's license, I purchased a state ID card at cost of \$31.25.

Thereafter, I brought the instant action, challenging the requirement that I be amerced \$31.25 for being a former offender. Non-offenders are not required to purchase state ID cards, and the requirement for offenders did not exist prior to 1997.

In the trial court, I also challenged the basis for the suspension. The clerk of court had asserted failure to pay court costs, which my wife had paid years ago. However, circumstances outside of this case have required me to pay the costs a second time.

The only issue remaining is whether the state can require me, as a former offender, to pay \$31.25 for walking about and not driving.

5 - Reasons to Grant the Writ

Article 1 § 10, *U.S. Constitution*, provides that No State shall ... pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

This Court noted that other objections might be raised to sex offender registration statutes, but reserved decision beyond approving a bare requirement to register. Smith at 102. I now present the invited challenge. Florida requires a former offender to pay \$31.25 for the privilege of being a former offender.

At the time of the settlement with the State, there was no requirement to pay \$31.25 for being a former offender without a driver license. This is an amercement imposed by virtue of an offense prior to the enactment of the statute. If I do not pay, then I can be imprisoned as a felon for that failure.

The requirement to pay \$31.25 for an ID card not required of other citizens is a punishment. The State takes money from my pocket, based on the conviction for an act prior to the enactment of the statute. Article 1 § 10 prohibits imposition of punishments, which would include monetary penalties, which could not be contemplated at the time of the offense.

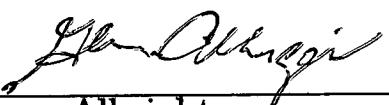
The requirement to pay \$31.25 for an ID card not required of other citizens is an impairment of contract. In 1988, I reached an agreement with the state as to the penalty to be paid. At no time was this money on the table; the statute requiring that if I did not drive I must purchase an ID card was nearly a decade in the future.

A post-deprivation remedy could be effective. L.A. v. David at 716. However, the state offers no remedy for the payment at issue here. Neither the tax collector nor the DMV have any provision to issue a refund. Once the money is paid, it is gone.

Conclusion

But for being a former offender, I should not have been required to pay the amercement. Florida imposes a \$31.25 penalty on former offenders. For those offenders pre-dating the 1997 enactment of what is now Fla. Stat. § 943.0435(3)(b), this penalty did not exist. This court ought to accept certiorari and ultimately hold that Florida's registration statute, which includes this requirement to pay, is contrary to the *ex post facto* clause of the U.S. Constitution.

Respectfully submitted,



Glenn Albright
pro se
% Tanner Andrews, PA
112 W. New York Ave., #203
P.O. Box 1208
DeLand, FLA 32721
pho +1 386 734 2111
e-mail tanner+7355@sunshine-lawyer.com

Certificate of Service

I certify that a copy hereof has been furnished to all parties listed below by the method indicated for each party.

Will Roberts (by e-mail)
J. Griffin Chumley, Esq., [V156-25722]
Fishback Dominick,
1947 Lee Rd.,
Winter Park, FLA 32789.
e-mail jgc@fishbacklaw.com [...]

Robert Kynoch (by e-mail)
Miguel A. Olivella, Jr., Esq.,
Office of the Attorney General,
The Capitol - PL 01,
Tallahassee, FLA 32399.
e-mail miguel.olivella@myfloridalegal.com

Done this 21 day of December 2023



Glenn Albright

pro se
% Tanner Andrews, PA
112 W. New York Ave., #203
P.O. Box 1208
DeLand, FLA 32721

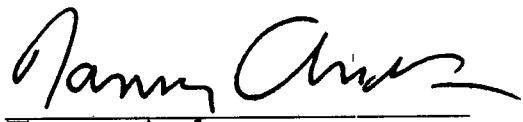
This paper was prepared with the assistance of Tanner Andrews, #21426, who has the advantage of printer, scanner, and postage meter. Mr. Andrews has assured me that he will scan the signature pages, assemble the documents, and forward copies to the parties as indicated above.

Certificate of Type

This document was prepared using C059-New-Century (troff: fam N), a proportionally spaced font. The body text is set in 14-point type, with 32 (2×16) points between baselines.

Certain references and headers are printed in the italic and bold variants from the same font family. Citation locators are printed in Courier, a mono-spaced font.

The word counter reports 1163 words, spread over 135 lines consisting of 6925 characters. The counts exclude page headers and footers, the certificates, the table of contents, and the table of cases. The character count includes punctuation.



Tanner Andrews
Tanner Andrews, PA
112 W. New York Ave., #203
P.O. Box 1208
DeLand, FLA 32721