

23-7389

NO: _____

IN THE SUPREME COURT OF THE UNITED STATES

ORIGINAL

BRAD EVANS
PETITIONER
VS.

FILED
APR 16 2024
OFFICE OF THE CLERK
SUPREME COURT, U.S.

STATE OF FLORIDA
RESPONDENT

PETITION FOR WRIT OF CERTIORARI
FROM FLORIDA SUPREME COURT
DENYING PETITION FOR WRIT OF MANDAMUS

Brad Evans

PETITIONER PRO SE
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TOMOKA CORRECTIONAL INSTITUTION
3950 TIGER BAY RD.
DAYTONA BEACH, FL. 32124.

FEDERAL QUESTION PRESENTED

WHETHER THE STATE OF FLORIDA HAS CREATED RULES OF CRIMINAL AND APPELLATE PROCEDURE THAT ARBITRARILY AND UNREASONABLY ENCROACHES UPON THE PERSONAL RIGHTS AND LIBERTIES OF PRO SE LITIGANTS AND RUNS AFOUL OF THE CONSTITUTIONAL GUARANTEE TO ACCESS TO THE COURTS; SUBSTANTIVE DUE PROCESS OF LAW; AND EQUAL PROTECTION AS SECURED BY THE FIRST AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION.

LIST OF PARTIES / CORPORATE DISCLOSURE STATEMENT

United States Court **Rule 29.6** requires Petitioner to file a corporate Disclosure Statement listing all interested parties to the proceeding that do not appear in the caption on the cover page of this petition. A list of all parties to the proceeding in the court whose judgment is the subject of this Petition is as follows:

1. Burger, Justice, Fifth District Court of Appeal.
2. Canady, Justice, Florida Supreme Court.
3. Cohen, Justice, Fifth District Court of Appeal.
4. Couriel, Justice, Florida Supreme Court.
5. Edwards, Justice, Fifth District Court of Appeal.
6. Evander, Justice, Fifth District Court of Appeal.
7. Feigenbaum, Bryan, State Attorney.
8. Francis, Justice, Florida Supreme Court.
9. Grosshans, Justice, Florida Supreme Court.
10. Hutcheson, Michael, R. Trial Court Judge.
11. Koller, Pamela, J. Attorney General.
12. Purdy, James, Public Defender.
13. Sasso, Justice, Florida Supreme Court.
14. Sawaya, Justice, Fifth District Court of Appeal.
15. Torpy, Justice, Fifth District Court of Appeal.
16. Wallis, Justice, Fifth District Court of Appeal.

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Moore v. East Cleveland 97 S. Ct 1932 (1977)		(12)
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First Amendment U.S.C.	(3)
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Fla. R. Crim. P., Rule 3.850(n)	(3)
Fla. R. App. P., Rule 9.410(a)	(5)
Fla. Stat. §68.093	(17)
28 U.S.C. §1257(a)	(2)

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 _____; 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 _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

[X] 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,
[X] has been designated for Publication but is not yet reported; or,
[] is unpublished.

The Opinion of the Lower Court appears at Appendix N/A 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**: **N/A**

The date on which the United States Court of Appeals decided my case was.

N/A

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**, 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. **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 **March 19th**
2024.

A Copy of that Decision appears at **Appendix (A)**.

A timely petition for rehearing was thereafter denied on the following date: 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 (date) on (date) in Application No. **N/A**.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

ARTICLE I. UNITED STATES CONSTITUTION

CONGRESS SHALL MAKE NO LAW RESPECTING AN ESTABLISHMENT OF RELIGION, OR PROHIBITING THE FREE EXERCISE THEREOF; OR ABRIDGING THE FREEDOM OF SPEECH, OR OF THE PRESS; OR THE RIGHT OF THE PEOPLE PEACEABLY TO ASSEMBLE, AND TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES.

ARTICLE XIV. UNITED STATES CONSTITUTION

NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAW.

FLORIDA RULE CRIMINAL PROCEDURE 3.850 (n) SANCTIONS

No motion may be filed pursuant to this rule unless it is filed in good faith and with a reasonable belief that it is timely, has potential merit, and does not duplicate previous motions that have been disposed of by the court.

(1) By signing a motion pursuant to this rule, the defendant certifies that: the defendant has read the motion or that it has been read to the defendant and that the defendant understands its content; the motion is filed in good faith and with a reasonable belief that it is timely filed, has potential merit, and does not duplicate previous motions that have been disposed of by the court; and, the facts contained in the motion are true and correct.

(2) The defendant shall either certify that the defendant can understand English or, if the defendant cannot understand English, that the defendant has had the motion translated completely into a language that the defendant understands. The motion shall contain the name and address of the person who translated the motion and that person shall certify that he or she provided an accurate and complete translation to the defendant. Failure to include this information and certification in a motion shall be grounds for the entry of an order dismissing the motion pursuant to subdivision (f)(1), (f)(2), or (f)(3).

(3) **Conduct prohibited under this rule includes, but is not limited to, the following: the filing of frivolous or malicious claims; the filing of any motion in bad faith or with reckless disregard for the truth; the filing of an application for habeas corpus subject to dismissal pursuant to subdivision (m); the willful violation of any provision of this rule; and the abuse of the legal process or procedures governed by this rule.**

The court, upon its own motion or on the motion of a party, may determine whether a motion has been filed in violation of this rule.

The court shall issue an order setting forth the facts indicating that the defendant has or may have engaged in prohibited conduct.

The order shall direct the defendant to show cause, within a reasonable time limit set by the court, why the court should not find that the defendant has engaged in prohibited conduct under this rule and impose an appropriate sanction.

Following the issuance of the order to show cause and the filing of any response by the defendant, and after such further hearing as the court may deem appropriate, the court shall make a final determination of whether the defendant engaged in prohibited conduct under this subdivision.

(4) If the court finds by the greater weight of the evidence that the defendant has engaged in prohibited conduct under this rule, the court may impose one or more sanctions, including:

- (A) contempt as otherwise provided by law;**
- (B) assessing the costs of the proceeding against the defendant;**
- (C) dismissal with prejudice of the defendant's motion;**
- (D) prohibiting the filing of further pro se motions under this rule and directing the clerk of court to summarily reject any further pro se motion under this rule;**
- (E) requiring that any further motions under this rule be signed by a member in good standing of The Florida Bar, who shall certify that there is a good faith basis for each claim asserted in the motion; and/or**
- (F) if the defendant is a prisoner, a certified copy of the order be forwarded to the appropriate institution or facility for consideration of disciplinary action against the defendant, including forfeiture of gain time pursuant to Chapter 944, Florida Statutes.**

(5) If the court determines there is probable cause to believe that a sworn motion contains a false statement of fact constituting perjury, the court may refer the matter to the state attorney.

FLORIDA RULE APPELLATE PROCEDURE 9.410 SANCTIONS

(a) Courts Motion: After 10 days notice, on its own motion, the court may impose sanctions for any violation of these rules, or for the filings of any proceeding, motion, brief, or other document that is frivolous or in bad faith, —such sanctions may include reprimand, contempt, striking of briefs, or pleadings, dismissal of proceedings, cost, attorneys fee's.

PROCEDURAL HISTORY

- 1). This Writ of Certiorari is premised upon the denial of Petitioners Writ of Mandamus by the Florida Supreme Court, which Order was rendered on March 19th 2024. **See Exhibit (A) of Appendix. (Order)**
- 2). Petitioners Writ of Mandamus sought relief from what is known as a **(Spencer Order)** in the State of Florida, that was issued by the Trial Court and Fifth District Court of Appeal prohibiting Petitioner from filing any further pro se Motion's; Petition's or Appeal(s) in those Court's Challenging his Convictions and Sentence(s). **See Exhibit (B) of Appendix. (Spencer Orders)**
- 3). The purpose of seeking relief from the **(Spencer Order's)** was founded upon the basis that: (1). Petitioner's Criminal Convictions are fundamentally erroneous, where he was Convicted of Crime(s) not Charged by the State, Contrary to his Fourteenth Amendment Right to Due Process of Law. **See *Jaimes v. State* 51 so. 3d 445 (Fla. 2010)** ("*It is a fundamental principle of due process that a defendant may not be convicted of a crime that has not been charged by the state*") and (2). Petitioners Criminal Convictions were Enhanced as a result of Judicial Fact Finding, Contrary to his Sixth Amendment Right to a Jury finding as enunciated by this Court in ***Apprendi v. New Jersey* 120 S. Ct 2348 (2000)**.
- 4). Thus, while Petitioner would be entitled to Post Conviction Relief under these facts, and relief granted in his case from a Natural Life Sentence, because Florida's Rule's of Court do not contain any **Procedural Safe-Guards once Spencer Order(s) are issued**, to protect against the Arbitrary Deprivation of a pro se Litigants Right to Access the Courts in these and other similar instance(s), Petitioner will subsequently die in prison under a Rule of Law found to be in violation of the Federal Constitution and this Courts controlling precedent Warranting Certiorari review in the instant case.

STATEMENT OF THE CASE

- 5). On January 8th 1997, Petitioner was Arrested in Brevard County Florida and Charged by Indictment with: [Ct. I. First Degree Felony Murder]; [Ct. II. Armed Burglary]; [Ct. III. Armed Robbery]; and [Ct. IV. Armed Robbery]. See Exhibit (C) of Appendix. (Indictment)
- 6). On January 16th 1998, Petitioner proceeded to trial and was found guilty on (All) Count(s) as charged. See Exhibit (D) of Appendix. (Verdict Form's)
- 7). On March 16th 1998 and March 25th 1998 Respectively, Petitioner was Sentenced as a Habitual Felony Offender to Consecutive Life Sentence(s) on each Count charged. See Exhibit (E) of Appendix. (Judgment & Sentence)
- 8). Petitioners Direct Appeal was Affirmed by the Fifth District Court of Appeal. See Evans v. State 736 So. 2d 1203 (Fla. 5th DCA 1999)
- 9). Petitioner filed a timely Rule 3.850 post conviction motion, to which was likewise denied and affirmed by the Fifth DCA. See Evans v. State 847 So. 2d 547 (Fla. 5th DCA 2003)
- 10). On June 8th 2009, Petitioner was Re-Sentenced on (All) Count(s) pursuant to the filing of a Rule 3.800(a) Motion, wherein all Sentences were run concurrent. See Exhibit (F) of Appendix. (Amended Re-Sentencing Order)
- 11). Since the denial and summary affirmance of his Original Post Conviction Motion, Petitioner has initiated Eight-8 separate pro se post conviction proceedings in the Trial Court, to which these collateral criminal proceedings were likewise Appealed to the Fifth DCA in Case No's: 5D05-1335: 5D05-4280: 5D07-709: 5D08-1266: 5D08-1470: 5D09-2090: 5D11-3834: and 5D12-1602:
- 12). As a result of these separate post conviction proceeding(s), the Trial Court issued a **Spencer Order** on November 28th 2012, precluding Petitioner from filing any further pro se filings. See Exhibit (B) of Appendix (Spencer Order)

13). On May 28th 2015, the Fifth DCA likewise issued an Order to Show Cause as to why Petitioner should not be prohibited from filing any further pro se Appeals. **See Exhibit (B) of Appendix. (Show Cause Order)**

14). On June 15th 2015, Petitioner filed a Response to the Courts Show Cause Order. **See Exhibit (B) of Appendix. (Response)**

15). Consequently, On June 22th 2015, The Fifth DCA entered an Order pursuant to State v. Spencer 751 So.2d 47 (Fla. 1999) prohibiting Petitioner from filing any further pro se Petitions or Appeals in that Court. **See Exhibit (B) of Appendix. (Order Prohibiting further pro se Appeals)**

16). On February 12th, 2024, Petitioner submitted a Petition For Writ of Mandamus to the Florida Supreme Court challenging the Constitutional Validity of Florida's Spencer Bar Rule's promulgated under the provisions of **Fla. R. Crim. P., Rule 3.850(n) and Fla. R. App. P., Rule 9.410**, arguing that said Rule(s) Arbitrarily and Unreasonably Encroach upon the Personal Rights and Liberties of Pro se Litigants and Run afoul of the Constitutional Guarantee of Access to the Courts under both the United States and Florida Constitution. **See Exhibit (G) of Appendix (Petition For Writ of Mandamus)**

17). On March 19th 2024, the Florida Supreme Court denied Petitioners request for Mandamus Relief, thus, this Petition for Writ of Certiorari ensues upon the following facts, argument and citation of authorities. **See Exhibit (A) of Appendix. (Order)**

REASONS FOR GRANTING A WRIT OF CERTIORARI

The State Court of Florida has promulgated Rules of Criminal and Appellate Procedure that are found to be Repugnant to the Constitution, Treaties, or Laws of the United States, and has decided an Important Question of Federal Law in a way that conflicts with relevant decisions of this Court.

FACTS IN SUPPORT

In the case at bar, Petitioner is a pro se litigant, unskilled in the law and in the past **(28) years**, since his Arrest and Conviction in 1996, he has filed **(8)** Collateral Criminal proceedings in the Trial Court, and a total of **(10)** proceedings in the Appellate Court.

Conversely, based on these facts, the Trial Court and the Appellate Court found that Petitioners filings constituted an abuse of the Post Conviction and Appellate process, and subsequently entered Order(s) prohibiting Petitioner from filing any further pro se filings in his case. See Exhibit (B) of Appendix. **(Spencer Order's)**

The Procedural Bar(s) in question are directly premised upon Florida Rules of Criminal and Appellate Procedure, Rule(s) 3.850(n) and 9.410(a) and the Florida Supreme Courts holding in State v. Spencer 751 So.2d 47 (Fla. 1999) where the Court stated:

We have recognized the importance of the constitutional guarantee of citizen access to the courts under Art. I. Sect. 21, Fla. Const., Thus, denying a pro se litigant the opportunity to file future petitions is a serious sanction, especially where the litigant is a criminal defendant who has been prevented from attacking his conviction, sentence, or conditions of confinement,..... However, any citizen, including a citizen attacking his or her conviction, abuses the right to pro se access *by filing repetitious and frivolous pleadings, thereby diminishing the ability of the courts to devote their finite resources to the consideration of legitimate claims.*

STANDARD OF REVIEW

Petitioners Constitutional Claim rest entirely on the Due Process Clause of the Fourteenth Amendment, the most familiar office of that Clause is to provide a guarantee of fair procedure in connection with any deprivation of life, liberty, or property by a State. *i.e. (Procedural Due Process)*

Petitioners Claim also rest on the ***Substantive Component of the Clause*** that protects individuals liberty against “*Certain government actions regardless of the fairness of the procedures used to implement them.*” *i.e. (Substantive Due Process)* See Daniels v. Williams 106 S. Ct 662 (1983)

The Due process Clause guarantees more than fair process, and the “Liberty” it protects includes more than the absence of physical restraint. Collins v. Harker Heights 112 S. Ct 1061 (1992)(quoting Daniels v. Williams, *supra*), The Clause provides ***heightened protection*** against government interference with certain fundamental rights and liberty interest. Reno v. Flores 113 S. Ct 1439 (1993).

This Courts established method of ***Substantive-Due Process Analysis*** has two primary features: **First**, this Court has regularly observed that the Due Process Clause specifically protects those fundamental rights and liberties which are, objectively, “Deeply Rooted” in this Nations History and Traditions. e.g. Moore v. East Cleveland 97 S. Ct 1932 (1977): Snyder v. Massachusetts 54 S. Ct 330 (1934)(“So rooted in the traditions and conscience of our people as to be ranked as fundamental”) and “***implicit in the concept of ordered liberty.***” such that “***neither liberty nor justice would exist if they were sacrificed.***” Palko v. Connecticut 58 S. Ct 149 (1937)

Second, this Court has required in ***Substantive Due Process Cases*** a “***Careful Description***” of the asserted fundamental liberty interest. Flores *supra*. 113 S. Ct at 1447.

This Nations History, legal traditions, and practices, thus, provide the crucial “**guidepost for responsible decision making.**” *Collins, supra*, 112 S. Ct at 1068, that direct and restrain this Courts exposition of the **Due Process Clause**.

There are two sources of the Right to Access the Courts, Florida's Constitution specifically guarantee's a Citizen's Access to Courts. See Article I, Section 21 Fla. Const. which provides;

THE COURTS SHALL BE OPEN TO EVERY PERSON FOR REDRESS OF ANY INJURY AND JUSTICE SHALL BE ADMINISTERED WITHOUT SALE, DENIAL OR DELAY.

The Constitution of the United States does not, however, contain a specific Clause providing for this Right, this Court nevertheless has held that there is such a Right arising from several Constitutional Provisions, including the First Amendment, The Due Process Clause, and The Equal Protection Clause, and have upheld these universal tradition(s) and Right(s). See *Bounds v. Smith* 97 S. Ct 1491 (1977)(Prisoners have fundamental Constitutional Right to adequate, effective, and meaningful Access to Courts to challenge violation of constitutional rights): and *Johnson v. Avery* 89 S. Ct 747 (1969)(Prisoners Right of Access to Courts may not be denied or obstructed): *Wolff v. McDonnell* 94 S. Ct 2963 (1974) (Due Process Clause's prohibit government from infringing on prisoners liberty interest without due process of law): and *Dobbert v. Florida* 97 S. Ct 2290 (1977) (Equal Protection Clause prohibits government from treating similarly situated individuals differently from one another when there is no rational relation between the dissimilar treatment and any legitimate penological interest)

In the Substantive Due Process and Equal Protection Analysis, this Court utilizes the “**Goal-Method Test**” for cases in which a fundamental right is taken. See e.g. *Romer v. Evans* 116 S. Ct 1620 (1996)(**Equal Protection**): and *Hodgson v. Minnesota* 110 S. Ct 2926 (1990)(**Substantive Due Process**)

In the **Goal-Method Analysis**, if the interest which is being taken is a fundamental interest, then the means or method employed by the Court Rule or Statute to remedy the asserted problem must meet not only the **Rational Basis Test**, but also the **Strict Scrutiny Test**.

Under Substantive Due Process Goal-Method Analysis, if a State enacts Court Rules or Legislation that infringes fundamental rights, Courts will review the law under a **Strict Scrutiny Test** and uphold it only when it is "Narrowly Tailored to serve a compelling State interest." Reno v. Flores 113 S. Ct 1439 (1993), "**Narrowly Tailored**" means that "**the method for remedying the asserted malady must be strictly tailored to remedy the problem in the most effective way [and] ... "must not restrict a persons rights more than absolutely necessary.**" See also Washington v. Glucksberg 117 S. Ct 2258 (1997)

ARGUMENT IN SUPPORT

POINT I.

WHETHER FLORIDA RULES OF CRIMINAL AND APPELLATE PROCEDURE ARE NARROWLY TAILORED TO SERVE A COMPELLING STATE INTEREST

Petitioner does not dispute the fact that **Florida Rule(s) of Criminal and Appellate Procedure 3.850(n) and 9.410(a)** meet the **Rational Basis Test** under this Courts precedent. See In Re McDonald 109 S. Ct 993 (1989)(Pro Se Litigant barred from further filings without payment of docket fee based upon 73 separate frivolous filings); In Re Sindram 111 S. Ct 546 (1991)(Same—Based upon 43 separate frivolous filings); Zatko v. California 112 S. Ct 355 (1991)(Same—Based upon 73 separate frivolous filings); and Martin v. District of Columbia Court of Appeals 113 S. Ct 397 (1992)(Same—Based upon 45 separate frivolous filings)

POINT II.

WHETHER FLORIDA RULE(S) OF CRIMINAL AND APPELLATE PROCEDURE ARE NARROWLY TAILED IN A MANNER THAT DOES NOT RESTRICT A PERSONS RIGHTS MORE THAN ABSOLUTELY NECESSARY

Petitioner would aver however, that Florida Rule(s) of Criminal and Appellate Procedure 3.850(n) and 9.410(a) fail to meet the Strict Scrutiny Test under this Courts precedent, where the Rule(s) do not contain any Procedural Safe-Guards to ensure that the Right of Access to the Courts is not abrogated unreasonably or imposed in a discriminatory fashion in violation of the Equal Protection and Due Process Clause of the U.S. Constitution.

In support of this factual proposition, Petitioner would show that the compelling State interest behind Florida Rules of Criminal and Appellate procedure, Rule(s) 3.850(n) and 9.410(a), was to prevent Vexatious litigation from interfering with the business of the Court System, focusing on meritless litigation, the Florida Supreme Court adopted Recommendations made by the (Steering Committee) on Post Conviction Relief to include Sanctions against pro se litigants prohibiting the Clerk of Court from accepting further pro se filings unless such filings are signed by an Attorney in good standing with the Florida Bar. See In Re: Amendments To The Florida Rules of Criminal and Appellate Procedure 132 So. 3d 734 (Fla. 2013)(Effective July 1st 2013) which provide's:

(3) Conduct prohibited under this rule includes, but is not limited to, the following: the filing of frivolous or malicious claims; the filing of any motion in bad faith or with reckless disregard for the truth; the filing of an application for habeas corpus subject to dismissal pursuant to subdivision (m); the willful violation of any provision of this rule; and the abuse of the legal process or procedures governed by this rule.

The court, upon its own motion or on the motion of a party, may determine whether a motion has been filed in violation of this rule.

The court shall issue an order setting forth the facts indicating that the defendant has or may have engaged in prohibited conduct.

The order shall direct the defendant to show cause, within a reasonable time limit set by the court, why the court should not find that the defendant has engaged in prohibited conduct under this rule and impose an appropriate sanction.

Following the issuance of the order to show cause and the filing of any response by the defendant, and after such further hearing as the court may deem appropriate, **the court shall make a final determination of whether the defendant engaged in prohibited conduct under this subdivision.**

(4) If the court finds by the greater weight of the evidence that the defendant has engaged in prohibited conduct under this rule, the court may impose one or more sanctions, including:

- (A) contempt as otherwise provided by law;**
- (B) assessing the costs of the proceeding against the defendant;**
- (C) dismissal with prejudice of the defendant's motion;**
- (D) prohibiting the filing of further pro se motions under this rule and directing the clerk of court to summarily reject any further pro se motion under this rule;**
- (E) requiring that any further motions under this rule be signed by a member in good standing of The Florida Bar, who shall certify that there is a good faith basis for each claim asserted in the motion; and / or**
- (F) if the defendant is a prisoner, a certified copy of the order be forwarded to the appropriate institution or facility for consideration of disciplinary action against the defendant, including forfeiture of gain time pursuant to Chapter 944, Florida Statutes.**

FLORIDA RULE APPELLATE PROCEDURE 9.410 SANCTIONS

(a) Courts Motion: After 10 days notice, on its own motion, the court may impose sanctions for any violation of these rules, or for the filings of any proceeding, motion, brief, or other document that is frivolous or in bad faith, —such sanctions may include reprimand, contempt, striking of briefs, or pleadings, dismissal of proceedings, cost, attorneys fee's.

Consequently however, these Rule(s) are Unreasonably Broad, where they fail to contain Procedural Safe Guards to prevent the State Courts from abusing their power and employing the Rule(s) as an instrument of oppression, specifically in light of the fact that these Rule(s) fail to include:

- (a). Any specific amount of pro se pleadings that can be filed in an individual case prior to sanctions being imposed.
- (b). The right to appeal from a sanction order.
- (c). Any exception to the Rule that would allow further review should the law change or new evidence be discovered.
- (d). Any other means to obtain relief when justice so requires.

Petitioner would demonstrate the short coming(s) of these Rule(s) by comparison with Florida law itself, where the Legislature, when promulgating the **Florida Vexatious Litigant Law under Fla. Stat. §68.093** included several procedural safe guards to ensure that the Right to Access the Court for a pro se litigant is not restricted more than absolutely necessary, where the Statute provides in relevant part:

(1) This section may be cited as the Florida Vexatious Litigant Law.

(2) As used in section, the term:

(a) Action means a civil action governed by the Florida Rules of Civil Procedure and proceedings governed by the Florida Probate Rules, but does not include actions concerning family law matters governed by the Florida Family Law Rules of Procedure or any action in which the Florida Small Claims Rules apply.

(b) Defendant means any person or entity, including a corporation, association, partnership, firm, or governmental entity, against whom an action is or was commenced or is sought to be commenced.

(c) Security means an undertaking by a vexatious litigant to ensure payment to a defendant in an amount reasonably sufficient to cover the defendants anticipated, reasonable expenses of litigation, including attorney's fees and taxable costs.

(d) Vexatious litigant means:

1. A person as defined in s. 1.01(3) who, in the immediately preceding 5-year period, has commenced, prosecuted, or maintained, pro se, five or more civil actions in any court in this state, except an action governed by the Florida Small Claims Rules, which actions have been finally and adversely determined against such person or entity; or
2. Any person or entity previously found to be a vexatious litigant pursuant to this section.

An action is not deemed to be finally and adversely determined if an appeal in that action is pending. If an action has been commenced on behalf of a party by an attorney licensed to practice law in this state, that action is not deemed to be pro se even if the attorney later withdraws from the representation and the party does not retain new counsel.

(3)(a) In any action pending in any court of this state, including actions governed by the Florida Small Claims Rules, any defendant may move the court, upon notice and hearing, for an order requiring the plaintiff to furnish security. The motion shall be based on the grounds, and supported by a showing, that the plaintiff is a vexatious litigant and is not reasonably likely to prevail on the merits of the action against the moving defendant.

(b) At the hearing upon any defendants motion for an order to post security, the court shall consider any evidence, written or oral, by witness or affidavit, which may be relevant to the consideration of the motion. No determination made by the court in such a hearing shall be admissible on the merits of the action or deemed to be a determination of any issue in the action. If, after hearing the evidence, the court determines that the plaintiff is a vexatious litigant and is not reasonably likely to prevail on the merits of the action against the moving defendant, the court shall order the plaintiff to furnish security to the moving defendant in an amount and within such time as the court deems appropriate.

(c) If the plaintiff fails to post security required by an order of the court under this section, the court shall immediately issue an order dismissing the action with prejudice as to the defendant for whose benefit the security was ordered.

(d) If a motion for an order to post security is filed prior to the trial in an action, the action shall be automatically stayed and the moving defendant need not plead or otherwise respond to the complaint until 10 days after the motion is denied. If the motion is granted, the moving defendant shall respond or plead no later than 10 days after the required security has been furnished.

(4) In addition to any other relief provided in this section, the court in any judicial circuit may, on its own motion or on the motion of any party, **enter a prefiling order prohibiting a vexatious litigant from commencing, pro se, any new action in the courts of that circuit without first obtaining leave of the Administrative Judge of that Circuit.** Disobedience of such an order may be punished as contempt of court by the Administrative Judge of that Circuit. **Leave of Court shall be granted by the Administrative Judge only upon a showing that the proposed action is Meritorious** and is not being filed for the purpose of delay or harassment. The Administrative Judge may condition the filing of the proposed action upon the furnishing of security as provided in this section.

(5) The Clerk of the Court shall not file any new action by a vexatious litigant pro se unless the vexatious litigant has obtained an order from the Administrative Judge permitting such filing. If the Clerk of the Court mistakenly permits a vexatious litigant to file an action pro se in contravention of a prefiling order, any party to that action may file with the clerk and serve on the plaintiff and all other defendants a notice stating that the plaintiff is a pro se vexatious litigant subject to a prefiling order. The filing of such a notice shall automatically stay the litigation against all defendants to the action. The **Administrative Judge shall automatically dismiss the action with prejudice within 10 days after the filing of such notice unless the plaintiff files a Motion for Leave to file the action.** If the Administrative Judge issues an order permitting the action to be filed, the defendants need not plead or otherwise respond to the complaint until 10 days after the date of service by the plaintiff, by United States mail, of a copy of the order granting leave to file the action.

(6) The Clerk of a Court shall provide copies of all prefiling orders to the Clerk of the Florida Supreme Court, who “shall maintain a registry” of all vexatious litigants.

(7) The relief provided under this section shall be cumulative to any other relief or remedy available to a defendant under the laws of this state and the Florida Rules of Civil Procedure, including, but not limited to, the relief provided under s. 57.105.

Based upon the provisions of Florida's Vexatious Law, the Legislature itself included:

- (a). A specific amount of pleadings that can be filed, in a specified time period.
- (b). A means to still obtain review by posting security if an opposing party so moves the court for an order.
- (c). Allowing a pro se litigant to seek leave from an (Administrative Judge) of the Circuit to file additional pleadings, and;
- (d). Upon a showing that the pleading has merit, to allow such pleading to be filed with the Court for review.

Notwithstanding, and unlike **Rule(s) 3.850(n) and 9.410(a)**; **Fla. Stat. §68.093** specifically directs the Clerk of Court to forward a pro se pleading to an **(Administrative Judge)** for review on the merits, rather than refusing to file it altogether and sending it directly back to a pro se litigant without any action taken on it at all, in other words, **Fla. Stat §68.093** contains procedural safe guards to ensure the Right of Access to the Courts is not abrogated entirely, but only to the extent necessary to protect the interest it was created to protect.

Conversely, the same cannot be said for the State Courts promulgation of **Rule(s) 3.850(n) and 9.410(a)**, where these Rule(s) not only interfer with a pro se litigants protected liberty interest, *i.e.* (*Access to the Courts*), but because these Rule(s) lack Procedural Safe Guards to protect against unjustified deprivations, it cannot be said that these Rule(s) do not violate Substantive Due Process of Law. See Sandin v. Conner 115 S. Ct 2293 (1995) ("Protected liberty interest can be created by State law, Statute or Regulation," "A Violation of Procedural and Substantive Due Process requires (1) that the State has interfered with the inmates protected liberty or property interest and (2) that procedural safe guards were constitutionally insufficient to protect against unjustified deprivations). *I.d.* at 2300-2301.

As this Court stated in *Flores* *supra*, the Fourteenth Amendment “**forbids the government to infringe....'fundamental' liberty interest at all**, no matter what process is provided, **unless the infringement is narrowly tailored to serve a compelling state interest,**” and “**must not restrict a persons right any more than absolutely necessary.**” See *Washington v. Glucksberg* 117 S. Ct 2258 (1997)

The text and history of the Due Process Clause supports Petitioners Claim that the State of Florida's duty to provide Access to the Courts is a Substantive Component of the Due Process Clause.” See *Collins v. City of Harker Heights*, Tex. 112 S. Ct 1061 (1992) citing *DeShaney v. Winnebago County Dep't of Social Services* 109 S. Ct 998 (1989)(“The Due Process Clause of the Fourteenth Amendment was intended to prevent government 'from abusing [its] power, or employing it as an instrument of Oppression'”).

Petitioner would contend that the Due Process Clause of its own force requires that Rules of Court satisfy certain minimal standards for Convicted Felons challenging their conviction and sentences, The “**Process**” that the Constitution guarantees in connection with any deprivation of liberty, thus includes a continuing obligation to satisfy certain minimal standards to ensure that the Right to Access to the Court for a pro se litigant is not entirely abrogated. *Collins* *I.d.* at 112 S. Ct 1061.

Furthermore, by requiring the government to follow appropriate procedures when its agents decide to “deprive any person of life, liberty, or property,” the Due Process Clause promotes fairness in such decisions, and by barring certain government actions regardless of the fairness of the procedures used to implement them, it serves to prevent government power from being “**Used for Purposes of Oppression.**” See *Daniels v. Williams* 106 S. Ct 662 (1986) citing *DeShaney* *supra* 109 S. Ct at 998.

In addition to the violation of Due Process, Petitioner would further show that **Rule(s) 3.850(n) and 9.410(a)** contrive the ***Equal Protection Clause*** of the Fourteenth Amendment as well, where, while the **Fifth DCA** premised its Order prohibiting any other pro se filings in Petitioners case, based upon the aforementioned ***Rule of law***, there is no **Bright Line Rule** expressly stated in the **Rule(s) provisions** as to the **maximum number of filings** a pro se litigant can make before he should be barred in the Courts, and as a result thereof, not only are similarly situated individuals treated differently from one another, but there is no rational relationship between the dissimilar treatment and the interest the Rule(s) were promulgated to protect, in that the Rule(s) are applied at will by the Courts of Florida in an Uneven and Discriminatory fashion to Florida pro se litigants. See **Gaston v. State** 141 So.2d 627 (Fla. 4th DCA 2014) where the Court there held:

We find that the trial court **abused its discretion** in barring defendant from further pro se filings after his **Third** post conviction motion,..... Florida Courts have long recognized the need for judicial economy and importance of curtailing the egregious abuse of the judicial process. See e.g. **Bivins v. State** 35 So.3d 67 (Fla. 1st DCA 2010),..... Nevertheless, barring a criminal pro se litigant from filing future petitions has been described as an **[“Extreme Remedy”]** which should be reserved for those who have repeatedly filed successive, frivolous and meritless claims **which were not advanced in good faith**. Therefore, We reverse the trial courts order prohibiting defendant from filing any future pro se pleadings.

See also **Garcia v. State** 212 So.3d 479 (Fla. 3rd DCA 2017) where the Court there followed the holding in **Gaston supra**, and specifically stated:

While there is no bright line rule on the maximum number of filings a pro se litigant can make before he is barred,....[W]e do not think the Three (3) filings in this case justify such a serious sanction,..... The filing of Three (3) post conviction motions in a **Sixteen year period** does not rise to the level of being an ***egregious abuse of the judicial process which would warrant such an order***, thus, [W]e reverse the order prohibiting Garcia from filing future pro se filings.

Petitioner would aver that because he has only filed a total of (8) Collateral Criminal proceedings in the Trial Court, and a total of (10) proceedings in the Appellate Court in the past **(28) years**, since his Arrest and Conviction in 1996, the facts clearly failed to prove an ***egregious abuse of the judicial process that warranted an order prohibiting him from filing any other pro se filings***, specifically where there was no showing: **"that his Previous Appellate Proceedings were not advanced in Good Faith."**

Compare Sapp v. State 238 So.3d 875 (Fla. 5th DCA 2018)(**Thirty Six (36)** pro se filings prior to Spencer Order being issued): Myles v. Crews 116 So.3d 1256 (Fla. 2013)(**Twenty Three (23)** pro se filings prior to Spencer Order being issued): Carter v. State 173 So.3d 1052 (Fla. 3rd DCA 2015)(**Seventeen (17)** pro se filings prior to Spencer Order being entered): and Espinosa v. State 262 So.3d 114 (Fla. 3rd DCA 2018)(**Twenty One (21)** pro se filings prior to Spencer Order being entered)

Therefore, utilizing the analysis traditionally used in **Strict Scrutiny Review**, this Court should conclude that the Sanction Clause of Rule 3.850(n) and 9.410(a) restricts and impedes the filing of many more types of Inmate Petitions which were identified by the Court to be the malady being targeted, in other words,

even assuming the Court Rules satisfy the “*compelling interest*” *prong*, the Court Rules are not *Strictly Tailored*. *i.e.*, *(their over-broad)*, Therefore, it does not meet the *Strict Scrutiny Test* set forth in *Washington v. Glucksberg* 117 S. Ct 2258 (1997)

Furthermore, in order to find that a Right has been violated it is not necessary for the Rule to produce a procedural hurdle which is absolutely impossible to surmount,... only one which is significantly difficult.

Since the procedural hurdles caused by these Court Rules can and in some cases do rise to the level of a denial of Access to the Courts, this Court should come to the conclusion they are Unconstitutionally Broad under the Due Process and Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.

Based upon the foregoing, Petitioner would aver that he has clearly demonstrated that these particular Rule(s) also violate the Equal Protection Clause of the Fourteenth Amendment warranting Certiorari Review in the case at bar. *See Dobbert supra* (Equal Protection claim stated when Party demonstrated (1) that similarly situated individuals intentionally have been treated differently from one another by the government, and (2) that there is no rational relation between the dissimilar treatment and any legitimate penological interest)

Notwithstanding, although One Appellate Court in Florida has utilized the process of **Appointing an Attorney** to a pro se litigant who had been barred in the Lower Court under Spencer, after finding Merit with his Post Conviction Claim. *See Huffman v. State* 192 So. 3d 687 (Fla. 2nd DCA 2016), (Reversed and Remanded for the Trial Court to Appoint *Huffman* an Attorney to represent him in a post conviction motion due to the Trial Courts entree of a *Spencer Order*, to which is authorized by Florida Statute and Court Rule.

Consequently however, because “**No Rights Exist**” under Spencer Bar Rule(s) 3.850(n) or 9.410, for an Administrative Judge to Review such Pleading to determine whether a Motion, Petition or Appeal has Merit, nor Provisions for the Appointment of an Attorney to such case should Merit be found, nor other provisions to ensure that said Rule(s) do not Arbitrarily and Unreasonably Encroach upon the Personal Rights and Liberties of Pro se Litigants, it cannot be said that these Rule(s) do not Run afoul of the Constitutional Guarantee of Access to the Courts under both the United States and Florida Constitution, thus, warranting the Spencer Bar’s imposed against Petitioner to be vacated.

REQUEST FOR CERTIFICATION OF QUESTION

FLORIDA APPELLATE RULE 9.150(a) — DISCRETIONARY PROCEEDINGS TO REVIEW CERTIFIED QUESTIONS FROM FEDERAL COURTS

Pursuant to Florida Appellate Procedure, Rule 9.150(a) —Applicability, The Florida Supreme Court is obligated to entertain Certified Questions from the United States Supreme Court when no controlling precedent exist to resolve the issue at bar, this Rule provides:

On either its own motion or that of a party, the Supreme Court of the United States or a United States Court of Appeals may Certify One-1 or more questions of law to the Supreme Court of Florida if the answer is determinative of the cause and there is no controlling precedent of the Supreme Court of Florida.

CONCLUSION

Wherefore, based upon the foregoing facts, argument, and citation of authorities, Petitioner respectfully moves this Honorable Court to grant review under its Certiorari Jurisdiction and Reverse and Remand to the Florida Supreme Court a Certified Question as to whether its Rule(s) of Criminal and Appellate Procedure are Unreasonably Over-Broad and Violative of the Substantive Due Process Clause of the Fourteenth Amendment that Operate to Arbitrarily Deprive Florida Prisoners of their Rights to Access to the Courts.

Respectfully Submitted

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