

23-7428

UNITED STATES SUPREME COURT

Robert Pann 254048-Petitioner

V.

Ulmer-Respondent

Supreme Court, U.S.
FILED

MAY 01 2024

OFFICE OF THE CLERK

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ON PETITION FOR A WRIT OF CERTIORARI TO
LEON COUNTY CIRCUIT COURT FOR THE STATE FLORIDA
PETITION FOR WRIT OF CERTIORARI

PETITION FOR WRIT OF CERTIORARI

ROBERT PANN 254048
Carson City Correctional Facility
10274 Boyer Rd.
Carson City, MI 48811

May 1, 2024

QUESTIONS PRESENTED

IS NONRESIDENT, PETITIONER'S CONSTITUTIONAL AMENDMENT XIV
PROCEDURAL DUE PROCESS VIOLATED:

A: WHEN RESPONDENT'S GAVE SIXTEEN HOURS NOTICE FOR FINAL JUDICIAL HEARING (TRIAL), RESULTING IN DEFAULT JUDGMENT, AN UNREASONABLE NOTICE, WHERE STATE LAW REQUIRES 30-DAYS NOTICE & FEDERAL LAW REQUIRES 7-DAYS NOTICE;

B: AND CONSTITUTIONAL AMENDMENT IV Sec 1, AWARDING INTEREST ON A FLORIDA WRIT OF GARNISHMENT IN CONFLICT WITH MICHIGAN'S CRIMINAL SENTENCING ORDER, NO INTEREST IS AWARDED OR APPLIED:

C: WHEN FLORIDA'S SECOND JUDICIAL CIRCUIT COURT LACKS SUBJECT MATTER JURISDICTION IN VIOLATION OF STATE LAWS AND STATUTES, DUE TO TIME;

D: WHEN FAILURE TO PROVIDE A WRITTEN OPINION FOR APPLATE REVIEW?

PETITIONER ANSWERS **YES**

RESPONDENT ANSWERS NO

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APPENDIX F: February 26, 2023 NOTICE OF HEARING mailed out of state, Time: 3/7/23 at 2:00 PM

APPENDIX G: March 6, 2023 proof of receipt for NOTICE OF HEARING on 3/7/23

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APPENDIX I: Prison accounting statement proving \$101,335.78 remaining unpaid.

IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully pray that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is unpublished.

Pann v Ulmer 2024 Fla. LEXIS 338; 2024 WL 938717 March 4, 2024
(Appendix A)

Pann v. Ulmer, Court of Appeal, First District 2024 Fla. App.
LEXIS 1714 February 15, 2024 (Appendix B)

Pan v. Ulmer, 2023 Fla. App. LEXIS 8568; WL 8725100 December 19,
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Pann v. Ulmer, Circuit Court for Leon County 1D2023-0896
Rehearing Denied April 12, 2023 APPENDIX F

Pann v. Ulmer, Circuit Court for Leon County 1D2023-0896 March 9,
2023 ORDER APPENDIX D

JURISDICTION

The date on which the highest state court decided my case was March 4, 2024. A copy of that decision appears at Appendix A.

The jurisdiction of this Court is invoked under 28 U.S.C § 1257(a), and is timely under 28 U.S.C. § 2201(c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

ARTICLE XIV Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state in which they reside. 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 any person within its jurisdiction the equal protection of the laws.

ARTICLE IV Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, records and Proceedings shall be proved, and the Effect thereof.

STATEMENT OF THE CASE

This is a non-resident writ of garnishment proceeding \$226,661.65 held in Florida. Florida Courts violated Petitioner's U.S. Const.Amds. IV and XIV protections in failure to give reasonable notice for final hearing. Petitioner was given 16-hours notice for final hearing and Florida's court amended Michigan's criminal sentencing order.

A: Due Process Clause of the Fourteenth amendment operates as a limitation on the jurisdiction of state courts to enter judgments affecting rights of nonresident defendants see Shafer v Heitner, 433 U.S. 186, 198 (1977). It has long been the rule that a valid judgment imposing a personal obligation or duty in favor of the plaintiff may be entered by a court having jurisdiction over the person of the defendant Pennoyer v Neff, 95 U.S. 714, 732 (1878). The existence of personal jurisdiction, in turn, depends upon the presence of reasonable notice to the defendant that an action has been brought, Mullane v Central Hanover Trust Co., 339 U.S. 303, 323 (1950), and sufficient connection between the defendant and

the forum State to make it fair to require defense of the action on the forum. Milliken v Meyer, 311 U.S. 457, 463 (1940). While a court may have subject matter jurisdiction, it is clear that without adequate notice to the defendant and opportunity to be heard, jurisdiction does not exist for the proceeding. Kulko v. Supreme Court of California in and for City and County of San Francisco, 436 U.S. 84, 91 (1978).

Petitioner was denied "Procedural Due Process" by the court's failure to ensure reasonable notice for final hearing. Both federal and state law protections are violated. U.S. Const.Amd. XIV and Florida Constitutional Art 1. sec 9 and Florida Court Rule 1.440 requires 30-days notice. Florida trial court made palpable error in ordering Petitioner was timely notified. Violating Petitioner's "Procedural Due Process." Petitioner received 16-hours notice for final hearing, i.e., bench trial. Notice received March 6, 2023, final hearing held March 7, 2023 @ 2:00 p.m. (Attachments G, F).

Florida's Circuit Court entered FINAL JUDGMENT on March 9, 2023 (Attachment D) ordering Petitioner was timely served notice of final hearing. Respondent and the Court did not comply with Florida Court Rule Civil Procedure 1.440 requires 30-days notice for hearing. Federal Courts give meaning to "every word, phrase, sentence, to State Court rules and statutes. Petitioner's procedural due process U.S. Constitution Amendment XIV was violated. Respondent's failure to provide reasonable notice of final hearing caused forfeiture of Petitioner's \$226,661.65. The judgment must be set aside.

B: Florida's Circuit Court erred in awarding interest on the non-resident writ of garnishment. Violating Petitioner's, U.S. Constitution Amendment IV Section 1. applying Florida statutes to Michigan's penal order MCL 780.766. Michigan restitution orders are not subject to interest, unless the sentencing court order contains interest is to be applied. No award for interest is in Petitioner's sentencing order APPENDIX F. Florida Circuit Court applied interest to a Michigan criminal restitution order violating Petitioner's U.S. Const.Amd. IV protection, U.S. Const.Amd.XIV due process and Art 1, Sec 9 of the Constitution of Florida.

C: Garnishment is a proceeding in derogation of common law, the relevant statutes must be strictly construed. Florida court's incorrectly ordered domestication of a foreign judgment starts the limitations period anew. Florida's statutes are clear and concise, no judgment for money damages can exceed 20-years. Domestication of foreign judgments does not start the limitation period anew. Florida judgments have a strict life-span of twenty years from the date of entry. The Michigan foreign judgment exceeds 20-years. The Florida judgment is void for lack of jurisdiction.

D: No court provided a written opinion for appellate review. Simpilly ordering denied. All issues are on the record in the lower and appellate courts are preserved for review.

REASONS FOR GRANTING WRIT

I. A: Non-resident, Petitioner received notice for final hearing March 6, 2023 at 7:00 p.m. (Attachment G), verified by

prison legal-mail log. The final hearing (ex parte trial) was held March 7, 2023 at 2:00 p.m. via video conference (Attachment F). March 9, 2023 Florida Circuit Court entered order denying all petitioner's claims. (Appendix D)

Sixteen hours notice is not reasonable notice and is a Procedural Due Process violation under the U.S. Constitution Amendment XIV and Art I, sec. 9. of the Constitution of Florida and state law F.R.Civ.P 1.440.

If a party's due process rights are violated the underlying final order is void. U.S Bank Nat'l Ass'n v. Proensa 157 So.3d 1075, 1076 (Fla. 3d DCA 2015). "When due process is denied, fundamental error occurs." Dep't of Children and Families v. T.S., 154 So.3d 1223, 1226 (Fla. 4th DCA 2015).

This issue is preserved, being raised on appeal in all Florida's courts.

The 'Due Process Clause of the Fourteenth amendment operates as a limitation on the jurisdiction of state courts to enter judgments affecting rights of nonresident defendants see Shafer v Heitner," 433 U.S 186, 198 (1977). It has long been the rule that a valid judgment imposing a personal obligation or duty in favor of the plaintiff may be entered by a court having jurisdiction over the person of the defendant Pennoyer v Neff, 95 U.S. 714, 732 (1878). The existence of personal jurisdiction, in turn, depends upon the presence of reasonable notice to the defendant that an action has been brought, Mullane, 339 U.S. at 323, and sufficient connection between the defendant and the forum State to make it fair to require defense of the action on

the forum. Milliken v Meyer, 311 U.S. 457, 463 (1940). While a court may have subject matter jurisdiction, it is clear that without adequate notice to the defendant and opportunity to be heard, jurisdiction does not exist for the proceeding. Kulko v Supreme Court of California in and for City and County of San Francisco, 436 U.S. 84, 91 (1978).

Florida's Circuit Court erred in ordering Petitioner was timely notified (Appendix D).

The Fourteenth Amendment protects an individual from deprivation of life, liberty, or property without due process of law. Respondent's giving 16-hours notice for final hearing to nonresident, Petitioner is not reasonable and violates procedural due process. The Fourteenth Amendment ensures all persons are afforded "Due Process" protections.

An elementary and fundamental requirement of due process in any proceeding which is to accorded finality is notice reasonably calculated under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections Miller v. Meyer, 311 U.S. 457; Grannis v. Ordean, 243 U.S. 385; Priest v. Las Vegas, 232 U.S. 604; Roller v Holly, 176 U.S. 398. The notice must be of such nature as reasonably to convey the required information, Grannis v. Ordean, supra and cf. Goodrich v. Ferris, 214 U.S. 71, But if with due regard for the practicalities and peculiarities of the case these conditions are reasonably met, the constitutional requirement are satisfied. "The criterion is not the possibility of conceivable injury but just and reasonable character of the

requirements, having reference to the subject with which the statute deals." Millane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306 (1950).

Giving Petitioner sixteen-hours notice prior to final hearing is not reasonable time for notice of final hearing. Respondents violated Petitioner's procedural due process right for reasonable notice to final hearing. The Court erred in ordering notice was timely served and lacked jurisdiction.

The Due Process Clause of the Fourteenth Amendment prohibits States, from depriving any person of property without "due process of law," from these "cryptic and abstract words," this Court has determined that individuals whose property interests are at stake are entitled to "notice and opportunity to be heard." United States v. James Daniel Good Real Property, 510 U.S. 43 48 (1993); Dusenberry v. United States, 534 U.S. 161 167 (2002).

Reasonable notice must afford a reasonable time for those interested to make their appearance. This Court held in Holly supra, A notice served upon the Petitioner in Virginia to appear in Texas to answer a foreclosure suit within 5-days was not due process of law within the meaning of the Fourteenth Amendment.

Fla.R.Civ.P. 1.440 Setting for Trial

(c) Setting for trial. If the Court finds the action ready to be set for trial, it shall enter an order fixing a date for trial. Trial shall be set not less than 30 days from the service of the notice for trial. By giving the same notice the court may set an action for trial, In actions in which the damages are not liquidated the order setting an action for trial should be served on parties who are in default

shall be served in accordance with Fla.R. of General Practice & Judicial Procedure 2.516.

Rule 1.440(c) is meant to safeguard a party's procedural due process rights and the failure to follow the requirements set forth in the rule is reversible error. Ciprain-Escopa v. City of Orlando, 172 So.3d 485, 488 (Fla. 5th DCA 2015); Grossman v Fla. Power & Light Co., 570 So.2d 992, 993 (Fla.2d DCA 1990). A judgment that is entered in violation of Rule 1.440(c) is void and "may be collaterally attacked at anytime. Ciprain-Escapa, 172 So.3d at 488.

This Court has jurisdiction to review Florida Court Rules and Statutes for violations of due process. This Court has jurisdiction to disregard the state court's judgment, simply because the State court made an error of law Brown v Allen, 344 U.S. 443, 463 (1953).

Fla.R.Civ.P. 1090 Time (d)

A copy of any written motion which may not be heard ex parte and a copy of the notice of the hearing thereof shall be served a reasonable time before the time specified for the hearing.

Florida Appellate Courts hold: Failure to serve written notice of hearing regarding a motion reasonable time before the motion is heard constitutes an essential departure from the Florida Rules of Civil Procedure and requirements of due process See Nationstar Mortg. LLC v. Weiler, 227 So.3d 181, 183 (Fla. 2nd DCA 2017) ("A trial court may violate a party's due process rights by hearing and determining matters that were not the subject of appropriate notice.") quoting Levitt v. Levitt, 454 So.2d 1070,

1071 (Fla. 2nd DCA 1984); Trendowski v Robson Forensics Inc., 304 So.3d 835, 836-7 (Fla. 5th DCA 2020).

Florida has numerous published cases where failure to give reasonable notice, violates due process.

Giving short notice violates due process: see Torres v. One Stop Maint. & Magmt. Inc., 192 So.3d 86, 90 (Fla 4th DCA 2015)(3-days notice); J.B v. Fla. Dep't of Children & Family Servs. 768 So. 2d 1060 1067 (Fla 2000)(24 hours notice); Wolf v. Wolf, 901 So.2d 905, 911 (Fla. 5th DCA 2005)(2-days notice); P&L Fla. Inv. Inc., v. Ferro, 545 So.2d 445, 448 (Fla.3d 1989)(6-days notice); Montgomery v. Cribb, 484 So.2d 73, 75 (Fla.2d 1986)(2-days notice of hearing on motion to strike unreasonable).

"It is well settled that a defaulting party is entitled to notice and an opportunity to be heard when the damages are unliquidated. A judgment entered without such notice and opportunity to be heard is void." Verosca v. Fields, 174 So.3d 550,; Fla. Weekly D1980 (Fla. 4th DCA 2015). That is precisely what happened to Petitioner in this case. Petitioner's due process is clearly violated requiring the judgment entered void.

Florida Court Rule 1.440 requires 30-day notice. Nonresident Petitioner received 16-HOURS notice for final hearing. Not even one full day's notice. Florida Circuit Court would not accept Petitioner's pre-paid phone call. Petitioner's prison could not contact Florida Circuit Court by phone due to no-one answering the Court's phone. Due to Petitioner's prison authorities unable to verify, Petitioner was unable to present his defense, and

opportunity to present his objections.

It takes little imagination to see that seizures based entirely on ex parte proceedings create a heightened risk of error. Common sense tells us that secret decisions based only on one side of the story will prove inaccurate more often than those made after hearing from both sides. We have consistently recognized that the "fundamental instrument for final judgment" is "an adversary proceeding in which both parties may participate." Carroll v President and Comm'rs of Princess Anne, 393 U.S. 175, 189 (1968).

"Only wiping the slate clean ... would have restored the petitioner to the position he would have occupied had due process of law been accorded to him in the first place." Armstrong v Manzo, 380 U.S. 545, 52 (1965). The judgment should be reversed.

Petitioner suffered a significant injury of \$226,661.65.

B: Florida Court's violated Petitioner's United States Constitution Amendment IV Section 1. protections. No state can amend another state's criminal sentence order.

Florida's Circuit Court amended Petitioner's criminal restitution order (Attachment G) to include an award of interest.

Michigan's Supreme Court in People v Law, 459 Mich 419 428 (1989) holds: interest is only allowed by order of the sentencing court Petitioner's sentencing order does not contain any provision for an award of interest (Attachment G).

Garnishment is a proceeding of common law, the relevant statutes must be strictly construed.

There is no express provision in the garnishment statute for an award of interest and there is specific direction in sec 77.083

Fla.Stat., that no judgment can be entered against a garnishee in excess of the amount of its liability to the judgment debtor. Awarding interest in excess of that amount would be contrary to that statute and an unconstitutional deprivation of the garnishee's property without due process of law. See Carpenter v Benson, 478 So.2d 353, 354 (Fla 5th DCA 1985).

Petitioner currently owes \$101,335 78, see (Appendix I).

Awarding interest to Petitioner's criminal sentence order violates: Florida's statute sec 77.083, Michigan's statutes, 780.766, 780.767 and U.S. Const.Amends. IV sec 1. and XIV. In Taso Group v Gould, 338 So.3d 450 (Fla.3rd DCA 2023), 77.083 (2022) states:

... no judgment in excess of the amount remaining unpaid on the final judgment against the defendant or in excess of the amount of liability of the garnishee to the defendant, whichever is less shall be entered against the garnishee.

Unlike sec 77.081 Fla.Stat. which permits interest, sec 77.083 contains no provision for an interest award. Michigan's Criminal Restitution order contains no provision for awarding interest on its judgment. Garnishment is governed by Chapter 77.083 Florida Statute and contains no provision for awarding interest. Respondent's cannot cite any Michigan case allowing interest on a criminal restitution order after sentencing.

Criminal restitution is not a substitute for civil damages. People v Tyler 188 Mich.App. 83, 89 (1991).

The judgment entered against Petitioner is void because under Fla.Stat. § 77.083 the trial court had no authority to assess post-judgment interest to be paid by the garnishee, and in doing so, the trial court unconstitutionally deprived the garnishee of

its property without due process of law. See Suntrust Bank v Arrow Energy Inc., 199 So.3d 1026, 1028 HN4 (Fla. 4th DCA 2016).

To allow interest in light of the garnishment statute is a deprivation of the garnishee's property without due process of law, in violation of the 14th Amd. to the U.S. Const. and Art 1, sec 9. of the Constitution of Florida.

The judgment entered against Petitioner / garnishee is void because under Fla. Stat. § 77.083 and MCL 780.766 the trial court had no authority to assess interest to be paid by garnishee, and in doing so, the trial court unconstitutionally deprived the garnishee of its property without due process of law. The judgment is void and should be reversed.

C: "Once a foreign judgment is domesticated in Florida, it is to be treated as though it was always a Florida decree, subject to the limitations by the full faith and order clause." Barr v. Barr, 724 So.2d 1200, 1202 (Fla.1st DCA 1998). Petitioner argues Florida Court's lack jurisdiction applying their statutes of limitations. Florida's criminal and civil money damage judgments have a strict life-span of twenty-years (20-years). No judgment can exceed 20-years, regardless of when the judgment is domesticated. Petitioner's foreign judgment exceeds 20-years. The judgment was entered in July 2001. Respondent's domesticated the judgment in December of 2022.

The trial court erred in siding with Respondent's, that domestication of a foreign judgment starts the limitations period anew ordering the foreign judgment is valid until 2042.

Florida Statutes 95.11 and 55.081 both contain mandatory

language, "SHALL" i.e., no judgment, order, or decree of any court shall be a lien upon personal property within the state after the expiration of 20 years from the date of the entry of such judgment... This means, "once domesticated, a foreign judgment will be effective for a period no longer than the original forum's statute of limitations or 20 years; whichever comes first." New York Comm'r of Taxation & Finance v Friona, 902 So.2d 864 866 (Fla.4th DCA 2005); New York State Dep't of Taxation v Patafio, 829 So.2d 314 (Fla.5th DCA 2002)

Respondents can only have a lien for 20 years after the judgment was entered, regardless of when it was actually recorded. See Micheal v Valley Trucking 832 So.2d 213, 217 (Fla.4th DCA 2002) directly supports Petitioner's argument and reasoning.

On appeal, Florida Second District held "by domesticating the Arizona judgment under FEFJA, Florida's twenty year statute of limitations [contained in sec 95.11(1))] applied and began to run from the date of the Arizona judgment. Micheal 832 at 216; Hess v Partick, 104 So.3d 19, 22 (Fla. 2d DCA 2015).

Florida Statute 55.081 STATUE OF LIMITATIONS, LIEN ON JUDGMENT

Subject to provisions of s 55.10, no judgment, order or decree of any court shall be a lien upon real or personal property within the state after expiration of 20 years from the date of the entry of such judgment, order, or decree.

Fla.Stat. s 55.10(2)

No judgment can be a lien beyond 20 years after the date of the original judgment.

Respondent's judgment is entered in July 2001, Respondent's domesticated their foreign judgment in 2022 over 20 years have

elapsed. Florida courts have no jurisdiction.

When a court lacks jurisdiction the judgment is void.

D: No Florida court provided a thorough written opinion forfeiting Petitioner's opportunity for appellate review.

RELIEF

Petitioner, Robert Pann prays this Honorable Court grant this petition. Order Florida court's violated Petitioner's due process and order the judgment voidable and remand for new trial.

CERTIFICATE OF SERVICE

I, Robert Pann by U.S. mail sent a copy of this writ to Michael Farrar P.A., 3508 NW 114th Ave. Ste 201, Doral, FL 33178 and Leon County Prosecutor on May 1, 2024

VERIFICATION

Petitioner, Robert Pann states this writ is true and accurate to the best of his knowledge, belief and information under the penalty of perjury. Executed at Carson Correctional Facility, 10274 Boyer Rd. Carson City, Michigan, May 1, 2024



Robert Pann 254048
Carson City Correctional Facility
10274 Boyer Rd
Carson City, MI 48811

Dated: May 1, 2024