

No. **24-6445**

IN THE SUPREME COURT OF THE UNITED STATES

NEELAM UPPAL,
Petitioner,

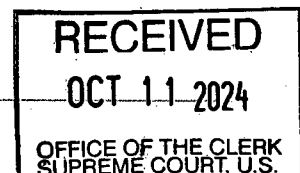
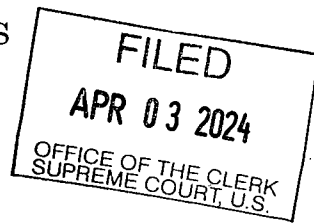
v.

STATE OF FLORIDA, DEPARTMENT OF ADMINISTRATIVE
HEARINGS, STATE OF FLORIDA DEPARTMENT OF HEALTH,
BOARD OF MEDICINE
Respondents.

*On Petition for Writ of
Certiorari to the Supreme
Court of Florida*

PETITION FOR WRIT OF CERTIORARI

NEELAN UPPAL, M.D.
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Pro se Petitioner



1. QUESTION PRESENTED

The Supreme Court of Florida held that it lacked jurisdiction to hear and determine the Petitioner's appeal. The Court stated that it lacked jurisdiction to review an unelaborated decision from a district court of appeal that is issued without opinion or explanation or that merely cites to an authority that is not a case pending review in, or reversed or quashed by, this Court.

The Petitioner avers that there exists grave constitutional violations that were left unaddressed and that the Supreme Court failed to address conclusively.

The question presented is: Did the Florida Supreme Court err in dismissing the appeal and consequently failed to address the constitutional violations raised.

2. PARTIES TO THE PROCEEDING

Petitioner Neelam Uppal was the appellant in the state supreme court. Respondents, State of Florida Department of Administrative Hearings, State of Florida Department of Healthcare, Board of Medicine were the Respondents in the state supreme court.

A corporate disclosure statement is not required because Ms. Neelam Uppal is not a corporation.

3. STATEMENT OF RELATED CASES

The Petitioner is aware of no directly related proceedings arising from the same trial-court case as this case other than those proceedings appealed here.

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5. PETITION FOR WRIT OF CERTIORARI

Neelam T.Uppal petitions the Court for a writ of certiorari to review the judgment of the Supreme Court of Florida.

6. OPINIONS BELOW

The decision by the Supreme Court of Florida dismissing Ms. Uppal's appeal is reported as Ms. Neelam Uppal v State of Florida Department of Administrative Hearings, State of Florida Department of Health, Board of Medicine, SC2023-1644. That order is attached at Appendix ("App.") at 1-3.

7. JURISDICTION

The state supreme court entered judgment on February 5, 2024. App. 1a. Ms. Neelam Uppal timely filed this petition on March 27, 2024. This Court has jurisdiction under 28 U.S.C. § 1257.

8. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

Fifth Amendment:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Clause speaks of being put in jeopardy of life or limb, which as derived from the common law, generally referred to the possibility of capital punishment upon conviction, but it is now settled that the Clause protects with regard to every indictment or information charging a party with a known and defined crime or misdemeanour, whether at the common law or by statute.¹ Despite the Clause's

literal language, it can apply as well to sanctions that are civil in form if they clearly are applied in a manner that constitutes punishment.

9. STATEMENT OF THE CASE

Introduction.

This is a matter where the Petitioner in essence seeks to reassert her constitutional rights which she very strongly avers have been trampled upon.

The crux being that the constitutional violations are as a result of the fact that she was subjected to double jeopardy by the Administrative Law judge who entirely ignored the fact that over the same set of facts, the petitioner had been tried by the board of medicine and consequently completed her punishment.

The Department of Administrative hearings ignored the above assertion by the petitioner and vide an order dated 7th February 2023 dismissed her motion to dismiss.

The Petitioner thereafter appealed to the first district court of appeals primarily seeking stay orders against further proceedings before the Department of Administrative Hearings which motion was denied.

Thereafter the Petitioner further sought redress before the supreme court of Florida which summarily dismissed her appeal thus giving rise to the present petition for writ before this Honourable Court.

It is important to underscore that the Petitioner had over the same set of facts before the board of medicine been tried. That the board punished her by ordering that she undertake two years direct supervision under a duly licensed medic which order was modified to indirect supervision on 18th February 2020. The Petitioner had abided by the orders and is now at a loss as to how the same set of facts have been revived to further abuse her rights before the division of administrative hearings.

This blatant exhibition of mala fides by the division of administrative hearings clearly risks prejudicing the petitioners rights and brisk intervention by this court is necessary to avoid potential injustices from occurring.

A. Legal Background

As a theoretical matter, the double jeopardy right to the issue-preclusive effect of an acquittal cannot be understood as merely a strand of the right against multiple trials. The right against multiple trials—otherwise known as claim preclusion, see *Bravo-Fernandez v. United States*, 137 S. Ct. 352, 357 (2016)—is concerned simply with “the heavy personal strain which a trial represents for the individual defendant.

It is entirely indifferent to the outcome of a first trial: Even a defendant who is convicted in the first proceeding has a right not to be subjected to a second one. Issue preclusion, as petitioner asserts, is directed at a separate concern: preserving the inviolacy of acquittals; see *United States v. Scott*, 437 U.S. 82, 91 (1978). “A jury’s verdict of acquittal represents the community’s collective judgment regarding all the evidence and arguments presented to it.”

The issue preclusion doctrine thus ensures that a defendant’s acquittal cannot be contradicted in a subsequent prosecution against him, lest the risk of a wrongful conviction rise to an unacceptably high level and the Constitution’s commitment to the citizenry’s participation in the justice system be fatally undercut.

Secondly and discussing the abandonment of mutuality, the Supreme Court has noted the high cost duplicative litigation placed on defendants. *Blonder-Tongue Laboratories, Inc. v. University of Ill. Found.*, 402 U.S. 313, 334-48 (1971);

It can be argued that conservation of judicial resources one of benefits behind collateral estoppel; See *Montana v. United States*, 440 U.S. 147, 153 (1979) (issue preclusion conserves judicial resources);

Collateral estoppel has dual purpose of relieving litigants of burden of relitigating same issue and promoting judicial economy by preventing needless litigation.

Thirdly, the Petitioner raises the issue of the fact that the board of medicine and the division of administrative hearings are identical proceedings and the determination of one precludes the other. For discussions of the identity of issues requirement in an administrative context, see *Hercules Carriers, Inc. v. Claimant State of Florida*, 768 F.2d 1558, 1578 n.13 (11 th Cir. 1985).

One prerequisite to application of collateral estoppel is that the issue at stake be identical to the one involved in the prior litigation.

For collateral estoppel effect to be given to an order of an administrative agency, the court must find that the same disputed issues of fact were before it as are before the court.

The premise of the petitioners entire suit is that the fifth amendment and other relevant laws protects individuals from being twice put in jeopardy 'for the same offence,' not for the same conduct or actions," Grady v. Corbin, 495 U. S. 508, 529 (1990).

B. Facts and Proceedings Below

In the Board of Medicine, the Petitioner was before it on a disciplinary issue. Therein, she was duly represented by counsel and zealously sought to safeguard her rights.

Ultimately the board rendered its orders and directed the respondent to direct supervision for a period of two years. The petitioner sought a modification of the order from direct to indirect supervision which was denied on 6th December 2019. Further notice of hearing was served upon the petitioner and counsel whereafter the board modified the order to that of indirect supervision on 18th February 2020. That the Petitioner duly complied with the board of medicines order and satisfactorily completed her punishment.

That now, the Department of health, over the same set of facts filed a consolidated complaint to the Department of Administrative Hearings. The Consolidated complaint was filed in 2023, years after the board of medicine hearing.

The Petitioner moved to dismiss the consolidated petition arguing among other things res judicata, collateral estoppel as she had already been tried and punished. The administrative judge denied the motion to dismiss on February 7th 2023 stating that the relevant laws do not allow for dismissal.

The Petitioner appealed the matter to the first district court and later the florida supreme court but is yet to get reprieve whereas he rights are continuously being violated in the manner and form detailed herein.

Summary of Argument

In the realm of legal discourse, the Florida Supreme Court's decision to eschew jurisdiction in this particular case warrants scrutiny and critical examination. This decision, ostensibly grounded in the doctrine of jurisdiction, is beset with shortcomings that belie its purported commitment to the principles of justice and equity.

Upon careful analysis, it becomes patently clear that the court's exercise of discretion in this instance constitutes a regrettable departure from the established norms of jurisprudence, thereby engendering a palpable sense of injustice.

At the heart of this matter lies a flagrant violation of fundamental rights and a distressing abuse of the legal process, elements which cannot be lightly brushed aside. The denial of audience predicated solely on jurisdictional constraints not only fails to redress the grievances of the aggrieved parties but also perpetuates a climate of impunity wherein transgressions against individual liberties remain unchecked and unchallenged. By abdicating its responsibility to adjudicate matters of such profound significance, the court effectively undermines the very fabric of the legal system it is duty-bound to uphold.

Moreover, it is imperative to recognize the inherent ramifications of such a decision beyond the confines of this singular case. The precedent set by the court's refusal to exercise jurisdiction reverberates far and wide, casting a long shadow over the pursuit of justice and the vindication of rights in myriad legal contexts. In failing to confront the substantive issues at hand with the requisite diligence and discernment, the court inadvertently emboldens perpetrators of injustice and perpetuates a culture of impunity that corrodes the foundations of our democratic society.

Furthermore, the inherent injustice of the court's decision is exacerbated by its failure to engage with the merits of the case in a meaningful manner. By reducing the complexities of the legal dispute to a mere question of jurisdiction, the court overlooks the substantive issues that lie at the heart of the matter, thereby depriving the parties involved of their right to a fair and impartial hearing. This disregard for the principles of due process and procedural fairness strikes at the very core of our legal system, eroding public trust and confidence in the judiciary.

In conclusion, the Florida Supreme Court's denial of jurisdiction in this case represents a lamentable miscarriage of justice that warrants urgent rectification. It is imperative that the court revisits its decision and affords the parties involved the opportunity to have their grievances heard in a forum that is both fair and impartial. Only by upholding the principles of justice and equity can the court discharge its solemn duty to safeguard the rights and liberties of all individuals within its jurisdiction.

10. ARGUMENT

How the Questions Presented were Raised and Decided Below

Did the Florida Supreme Court err in dismissing the appeal and consequently failed to address the constitutional violations raised.

Petitioner, Neelam Uppal, filed an appeal to the Florida Supreme Court to invoke the Court's discretionary jurisdiction, pursuant to article V, section 3(b)(3), of the Florida Constitution.

She sought an unelaborated per curiam decision of the First District Court of Appeal, dismissing her motions and appeals to invoke the First District's all writs jurisdiction on the authority .

The Petitioner asserts and alleges that the First District's decision expressly and directly conflicts with numerous other district court decisions on the same issue. The Florida Supreme Court dismissed the petition for review for lack of jurisdiction.

The dismissal was based on the fact that it was unelaborated dismissals from the district courts of appeal that, like the First District's decision in this case, merely cite to a case not pending review in, or not quashed or reversed by, this Court, or to a statute or rule of procedure, and do not contain any discussion of the facts in the case “such that it could be said that the district court ‘expressly addresse[d] a question of law within the four corners of the opinion itself.’ ” Id. at 1144 (quoting Fla. Star v. B.J.F., 530 So.2d 286, 288 (Fla.1988)).

The Florida Supreme Court has often times held that the Court lacks discretionary review jurisdiction over unelaborated per curiam affirmances and denials.

In the petitioners appeal, it concluded that the analysis in those cases is equally valid as to unelaborated per curiam dismissals, such as the First District's decision in this case. Having on numerous times established that the Court lacks discretionary review jurisdiction under the Florida Constitution to review this type of case, it authorized the Office of the Clerk to administratively dismiss future petitions for review in similar cases.

As in all petitions seeking this Court's discretionary jurisdiction pursuant to article V, section 3(b)(3), the court was confined to consider only those facts contained within the four corners of the district court's majority opinion. See *Reaves v. State*, 485 So.2d 829, 830 (Fla.1986

Article V, section 3(b), of the Florida Constitution governs the jurisdiction of the Florida Supreme Court. As we have explained, this jurisdiction "extends only to the narrow class of cases enumerated" in that constitutional provision. *Gandy*, 846 So.2d at 1143 (quoting *Mystan Marine, Inc. v. Harrington*, 339 So.2d 200, 201 (Fla.1976)).

In a line of cases beginning with *Jenkins v. State*, 385 So.2d 1356 (Fla.1980), the Court addressed the limits of its jurisdiction under article V, section 3(b), to review unelaborated per curiam decisions of the district courts of appeal. In *Jenkins*, 385 So.2d at 1359, the Court held that it lacked jurisdiction to review per curiam decisions of the district courts of appeal "rendered without opinion, regardless of whether they are accompanied by a dissenting or concurring opinion, when the basis for such review is an alleged conflict of that decision with a decision of another district court of appeal or of the Supreme Court."

The Court reasoned that the single word "affirmed" in a decision stating in its entirety, "Per Curiam Affirmed," cannot satisfy the constitutional requirement that a decision must "expressly" conflict with a decision of another district court of appeal or of this Court in order to vest this Court with jurisdiction.

Subsequently, in *Dodi Publishing Co. v. Editorial America, S.A.*, 385 So.2d 1369 (Fla.1980), and *Jollie v. State*, 405 So.2d 418 (Fla.1981), the Court extended the reasoning of *Jenkins*. When read together, *Dodi Publishing* and *Jollie* “stand for the proposition that the Court does not have jurisdiction to review per curiam decisions of the district courts of appeal that merely affirm with citations to cases not pending review in this Court.” *Persaud v. State*, 838 So.2d 529, 531–32 (Fla.2003). The Court has since explained that, “while the holding in *Dodi Publishing* expressly applied only to per curiam decisions from the district courts citing to cases not pending on review in this Court, we had historically applied the decision in *Dodi Publishing* to district court decisions merely citing to a statute, a rule, or a decision of the United States Supreme Court or this Court.

Therefore, a district court decision rendered without opinion or citation constitutes a decision from the highest state court empowered to hear the cause, and appeal may be **taken directly to the United States Supreme Court**.

Moreover, there can be no actual conflict discernible in an opinion containing only a citation to other case law unless one of the cases cited as controlling authority is pending before this Court, or has been reversed on appeal or review, or receded from by this Court, or unless the citation explicitly notes a contrary holding of another district court or of this Court. See *Jollie v. State*, 405 So.2d 418, 420 (Fla.1981).

The Florida Supreme Court has further extended the reasoning of *Jenkins* and subsequent cases relating to per curiam affirmances without written opinion to unelaborated per curiam denials of relief, holding that “this Court does not have discretionary review jurisdiction ... to review per curiam denials of relief, issued without opinion or explanation, whether they be in opinion form or by way of unpublished order.”

Accordingly, based on Florida Precedents, , it is clear that the Court has never hesitated to hold that it lacked discretionary review jurisdiction over the following four types of cases: (1) a per curiam affirmance rendered without written opinion—see *Jenkins*, 385 So.2d at 1359; (2) a per curiam affirmance with a citation to (i) a

case not pending review or a case that has not been quashed or reversed by this Court, (ii) a rule of procedure, or (iii) a statute— see *Dodi Publishing*, 385 So.2d at 1369, and *Jollie*, 405 So.2d at 421; (3) a per curiam or other unelaborated denial of relief rendered without written opinion— see *Stallworth*, 827 So.2d at 978; and (4) a per curiam or other unelaborated denial of relief with a citation to (i) a case not pending review or a case that has not been quashed or reversed by this Court, (ii) a rule of procedure, or (iii) a statute— see *Gandy*, 846 So.2d at 1144.

In light of the foregoing legal precepts, precedents, and authoritative principles, it is incumbent upon us to assert that the Florida Supreme Court's exercise of discretion in the present case deviates markedly from the hallowed tenets of constitutional values and principles, particularly those pertaining to the sacrosanct right to a fair and impartial hearing. Within the esteemed corridors of jurisprudence, the right to a fair hearing stands as an immutable pillar upon which the edifice of justice rests; any infringement upon this fundamental right strikes at the very heart of our legal system's integrity and efficacy.

While we concur with the court insofar as it affirms the jurisdictional authority vested in the Supreme Court to adjudicate matters akin to the instant appeal, we find ourselves compelled to diverge from its ultimate conclusion. The court's determination fails to accord due deference to the imperatives of justice and fairness, as it neglects to rectify the manifest injustice that has been visited upon the petitioner. Indeed, the court's reluctance to confront the substantive issues at hand jeopardizes the integrity of our legal system and imperils the foundational principles upon which it is predicated.

It is our fervent contention that the Florida Supreme Court's holding constitutes a grave miscarriage of justice, one that cannot be countenanced within a society that purports to uphold the rule of law. By foreclosing the petitioner's access to a fair and impartial hearing, the court effectively abdicates its solemn duty to safeguard the constitutional rights of all citizens, thereby perpetuating a climate of impunity wherein transgressions against individual liberties remain unchecked and unchallenged. Such a dereliction of duty cannot be countenanced within a democratic society founded upon the bedrock principles of justice, equality, and due process.

In light of the compelling exigencies of the present case, it is imperative that this Honourable Court intervenes to rectify the egregious miscarriage of justice that has occurred. The petitioner seeks nothing less than the vindication of her constitutionally guaranteed rights, rights that have been callously disregarded by the Florida Supreme Court's unwarranted exercise of discretion. It is our earnest prayer that this Court, in its wisdom and sagacity, shall see fit to overturn the erroneous holding of the lower court and afford the petitioner the fair and impartial hearing to which she is indisputably entitled.

In conclusion, the petitioner beseeches this Court to heed the clarion call of justice and equity and to render a decision that upholds the lofty ideals enshrined within our Constitution. The integrity of our legal system hinges upon the faithful adherence to the principles of fairness, impartiality, and due process, principles that have regrettably been subverted in the present instance. May this Court, in its august wisdom, serve as the vanguard of justice and ensure that the petitioner's rights are zealously safeguarded from the encroachments of tyranny and injustice.

11. REASONS FOR GRANTING THE WRIT

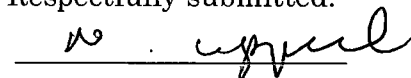
Review is warranted because the decision below is wrong in multiple, significant ways.

This Court's intervention is necessary to resolve a conflict regarding the threshold and applicability of the discretion to dismiss vis a vis the right to a fair hearing and right to be heard.

12. CONCLUSION AND PRAYER FOR RELIEF

The petition for writ of certiorari should be granted and the decision of the Florida Supreme Court summarily reversed.

Respectfully submitted.



Neelam Uppal,

Pro se Petitioner