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ORIGINAL

UNITED STATES SUPREME COURT

Supreme Court, U.S.  
FILED

JAN 17 2025

OFFICE OF THE CLERK

SAMUEL LEE SMITH, JR.  
Petitioner,

Case Number:

v.

J. GONZALEZ,  
Respondent,

\_\_\_\_\_ /

**PETITION FOR WRIT OF CERTIORARI**  
**From Florida District Court of Appeal, Third District**  
**Case Number: 3D2024-0126**

SAMUEL LEE SMITH, JR.  
Petitioner Pro se  
16614 SW 99 Court  
Miami, Florida 33157  
Telephone Number 305-975-1964  
Email [gymsam7@gmail.com](mailto:gymsam7@gmail.com)

## **QUESTIONS PRESENTED**

Did the trial court commit reversible error dismissing the petition for an injunction to prevent Respondent from stalking when it denied Petitioner relief without affording him a hearing in violation of the Petitioner's due process right to notice and opportunity to be heard as guaranteed by the 5<sup>th</sup> and 14<sup>th</sup> amendments to the United States Constitution?

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## **PETITION FOR WRIT OF CERTIORARI**

### **1. Decision Below**

Petitioner petitions to this Honorable Court to review the State of Florida District Court Appeals, Third District's October 30, 2024 decision affirming the lower court's dismissal of a petition for injunction based upon stalking.

### **2. Jurisdiction**

This petition seeks review of *Smith v. Gonzalez*, Third District Case No. 3D2024-0126. The Supreme Court's appellate jurisdiction includes the authority to review decisions of state courts. 28 U.S.C. § 1257(a). The current statute authorizing Supreme Court review of state court decisions allows the Court to review the judgments of "the highest court of a State in which a decision could be had." *Koon v. Aiken*, 480 U.S. 943 (1987). Here, the judgment for which review is sought, is not to further any further review in the State of Florida and is an effective determination of the litigation. *Flynt v. Ohio*, 451 U.S. 619 (1981); *Florida v. Thomas*, 532 U.S. 774 (2001). *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 304 (1989).

### **3. Federal Rule/Question Involved**

The Federal Rule or Federal Question involved concerns the 5<sup>th</sup> and

14<sup>th</sup> Amendments of the United States Constitution and the right to due process and to be free from arbitrary and capricious rulings by the lower court.

#### **4. Statement of the Case**

On January 10, 2024, Petitioner filed a petition for injunction for protection against stalking from Respondent. [A.8-14]. Respondent is a police officer employed by the Miami Dade Police Department. [A.11]. The petition states that Petitioner is a victim of stalking because Respondent has stalked him, has previously threatened, and harassed him. The Petitioner states the Respondent has been harassing-and stalking him since April 24, 2023.

Specifically, the petition alleged that Respondent is a police officer, and on April 24, 2023, at 7:27 p.m. the undersigned was ambushed while he was walking on the sidewalk in the Dadeland South parking lot in Miami Dade County, Florida. The undersigned was racially profiled at Dadeland Plaza and then ambushed at Dadeland South parking station in Miami Dade County, Florida. [A.11].

Respondent, (J Gonzalez #badge 5315) together with I Delgado

badge 4483, R. Camacho badge 7835, A. Rodriguez badge 5845, Leamsi Horta badge 6236, along with the officers was the security guard for the Metrorail Station that stalked Petitioner, as well verbally threatening the Petitioner and cursing at him and used profane language.[A.11] Petitioner submitted photos and videos of the incidents to the clerks of court for the domestic violence unit and the District Court of Appeal for the Third District that was never included in the docket [the Petitioner was not able to present it because he never received a hearing]. Respondent called Petitioner a clown which is a racist term for a “Nigger.” [A. 11]. The undersigned was also issued a 4 month trespass from the officers. Petitioner was told by I Delgado badge 4483, that they will do a flyer with the Petitioner’s information advising that for the next 4 months that Petitioner is trespassed from Metrorail and if Petitioner enters he will be arrested for trespass.

August 29, 2023 at 3:22 p.m., the same officers, including the Respondent, were spotted when the Petitioner was inside the train heading north, he spotted the Respondent accompanied with the same detectives and in doing so psychologically tormented



Petitioner. [A.11]. On December 5, 2023 between 3:02pm-3:48pm the Petitioner, while doing his afternoon run, noticed the Respondent staring him down. On the next day December 6, 2023 2:22 pm Petitioner again, while jogging, noticed the Respondent staring at him from across the street.[A. 11]. The next day, on December 7, 2023 at 1:58pm as the Petitioner was doing his daily afternoon jog, he noticed the Respondent along with other officers parked along the sidewalk of the busway between 152nd and 160th Street, in Miami Dade County, Florida outside there vehicles. Respondent again starred at the Petitioner in an intimidating manner wearing a grey jacket with a baseball cap and then yelled at Petitioner while he was jogging "Stay out of the way." The Petitioner submitted photos to the clerk of court for the Domestic Violence Division and the District Court of Appeal, Third District, court that was filed with the claim that are not included on the docket. J Gonzalez has along with I Delgado badge 4483 has cell phone footage of the April 24, 2023 incident. Petitioner asked why was he being trespassed. No reason was given. Delgado stated that the Petitioner came to antagonize, which is false, but

Petitioner was never able to present it to the Court because the Court dismissed the petition). [A. 11]. Subsequent to filing the notice of appeal, Judge Carol Kelly, through Officer A. Vinas, impermissibly served Petitioner with an Order prohibiting Petitioner from filing any further petitions or other filings on June 4, 2024.

On the same date that the Petitioner filed the petition, the Honorable Alicia Priovolos, Circuit Court Judge rendered an Order Denying the Petition for a Temporary Injunction. [A. 30]. The Order denying the petition for temporary injunction that the petition was heard ex parte on a petition for repeat violence, sexual violence, or dating violence pursuant to Florida Statute §784.046 and contained a box, that was checked, and which stated:

The allegations in the Petition for injunction for Protection do not meet the statutory criteria set forth in 74.30 Florida Statutes or Repeat/Dating /Sexual Violence pursuant to 784.046 Florida Statutes or Stalking pursuant to 784.0485. [A.30].

The Order also stated that the allegations set forth appear to be a complaint that should be filed with the police department and are not sufficient to sustain a claim for stalking. [A. 30]. The judge also

entered an Order of dismissal on the same date without a hearing. [A.21-22]. This was despite the fact that Petitioner requested a hearing. [A.19].

Petitioner moved for reconsideration and clarification on January 12, 2024. [A. 24-25]. The motion for reconsideration was denied without any explanation by Judge Yara Lorenzo Klukas, Circuit Court Judge (and who was not the judge who decided the initial petition) on January 12, 2024. [A. 32]. Notably, at no time, thereafter, did the lower court ever set a full hearing on the petition. Petitioner timely filed a notice of appeal on January 18, 2024. [A.25-27].

On October 30, 2024, the Florida District Court of Appeal for the Third District rendered an opinion affirming the lower court's opinion. [A.31]. Petitioner filed a notice of appeal to the Florida Supreme Court on November 26, 2024. [A. 32]. On December 26, 2024, the Florida Supreme Court dismissed the appeal. [A. 40].

### **1. Reasons for Granting the Writ**

Stalking injunctions are governed by Florida Statute §784.0485. Relevant to the issues here, subsections (1) through (5) set forth the pleading requirements, hearing requirements, and what a trial court must do when it denies a request for an ex parte petition. The Legislature has directed trial courts to set a hearing when a petition for injunction for protection against stalking is filed. *Fla.Stat. §784.0485(4); Fla. Fam. L. R. P. 12.610(b)(3)(A)*. That did not happen here. The trial court simply denied the petition without any reason and without setting the petition for final hearing.

Stalking is the willful, malicious, and repeated following, harassing, or cyberstalking another person. At least two incidents are required. *Fla.Stat. §784.048(2) and §784.485*. In order to be entitled to an injunction for stalking, the Petitioner must allege and prove two separate instances of stalking. *See Roach v. Brower*, 180 So. 3d 1142, 1144 (Fla. 2d DCA 2015). "Each incident of stalking must be proven by competent, substantial evidence to support an injunction against stalking." *Touhey v. Seda*, 133 So. 3d 1203, 1204 (Fla. 2d DCA 2014); *David v. Schack*, 192 So. 3d 625, 627-628 (Fla. 4<sup>th</sup> DCA 2016).

Here, the petition was sworn and included the existence of stalking, and included the specific facts and circumstances for which the injunction was sought as required by Florida Statute §784.0485(3)(a). The petition alleged a pattern that described how Respondent was wherever the Petitioner was present, and followed Petitioner, harassed Petitioner, and constantly sought to intimidate Petitioner.

Despite setting forth allegations which constitute stalking, the Court issued an Order that that the petition was heard ex parte on a petition for repeat violence, sexual violence, or dating violence pursuant to Florida Statute §784.046. However, the Petitioner never filed a petition based upon §78406. On both occasions that petition was filed pursuant to Florida Statute §784.0485, and sought protection from stalking. As such, the order has to be erroneous since it is based upon the wrong statute, the wrong type of petition, and therefore relied upon the incorrect criteria in determining whether to grant the petition. As such, the petition was denied in an arbitrary and capricious manner in violation of the Petitioner's right to due process as guaranteed by the 5<sup>th</sup> and 14<sup>th</sup> Amendment of the United State Constitution.

The lower court also committed reversible error by not granting a temporary injunction. There was sufficient evidence for the entry of a temporary injunction. Florida Statute §784.0485 provides for injunctive relief from stalking." *Caterino v. Torello*, 276 So. 3d 88, 92 (Fla. 2d DCA 2019). Under Florida Statute §784.048(2), "[a] person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking." "Harass" is defined as "engag[ing] in a *course of conduct directed at a specific person* which causes substantial emotional distress to that person and serves no legitimate purpose." *Fla.Stat.784.048(1)(a)*. "Course of conduct" is defined as "*a pattern of conduct composed of a series of acts over a period of time, however short, which evidences a continuity of purpose.*" *Fla.Satt.784.048(1)(b)*. Thus, by its statutory definition, stalking requires proof of repeated acts. *Stallings v. Bernard*, 334 So. 3d 365 (Fla. 2<sup>nd</sup> DCA 2022); *Lukacs v. Luton*, 982 So. 2d 1217, 1219 (Fla. 1st DCA 2008).

Here, the petition contained sufficient allegations and met all of the pleadings requirements set forth in Florida Statute §784.0485(1)-(5). The petition specifically alleged that Respondent engaged in

several acts which was articulated with specificity, and that those acts were specifically directed to the Petitioner for the sole purpose to harass the Petitioner. Respondent's conduct, which included causing the Petitioner to be stopped against his will, and grabbing his bag without his permission or consent and throwing it on the ground without any legal, moral or other legitimate reason, cause or justification. Respondent's conduct has caused the Petitioner emotional distress and fear.

The lower court's checking off of a box on what appears to be a boilerplate and/or form order does not explain why the petition was denied temporary relief and why a hearing was not set to determine permanent relief. Simply checking a box that states the allegations were insufficient without any explanation whatsoever as to why they were insufficient or what they were lacking is a conclusory statement that does not address the allegations in the petition, and does not explain why the lower court simply dismissed the verified allegations in the petition.

In *Pashtencko v. Pashtencko*, 148 So. 3d 545, 545-47 (Fla. 2nd DCA 2014) the court held that that trial court failed to state a legal

ground when it denied a petition for an ex parte temporary injunction against stalking because law enforcement did not find probable cause for arrest for the same allegations made in the petition and the standard of proof for an ex parte injunction was higher, and in *Hawthorne v. Butler*, 151 So. 3d 23, 24 (Fla. 4th DCA 2014) (holding that the denial of a petition for injunction for protection against sexual violence was reversible error when the trial court denied it because the respondent would be on probation and a no-contact order between the parties should be a provision of probation); and in *Curtis v. Curtis*, 113 So. 3d 993 (Fla. 5th DCA 2013) (holding that the trial court erred when it denied the Petitioner's petition for injunction for protection against domestic violence because the Petitioner could not be in fear since the respondent's bond conditions contained a no-contact provision). In each of those cases the court reversed the denial of a petition despite the courts giving some reason for the denial. Here there is no denial whatsoever, and the denial of the motion for reconsideration simply states denied, again without any explanation.

Lastly, the Court also committed error by failing to set a final hearing on the petition and dismissed the case without offering



*Pasco v. Riehl*, 635 So.2d 17, 18 (Fla.1994); *E.I. DuPont De Nemours & Co. v. Lambert*, 654 So.2d 226, 228 (Fla. 2d DCA 1995); *Edelman v. Breed*, 836 So.2d 1092, 1094 (Fla. 5th DCA 2003). The right to be heard includes the right to “introduce evidence at a meaningful time and in a meaningful manner.” *Baron v. Baron*, 941 So.2d 1233, 1236 (Fla. 2d DCA 2006); *Brinkley v. County of Flagler*, 769 So.2d 468, 472 (Fla. 5th DCA 2000). It also includes the opportunity to cross-examine witnesses and to be heard on questions of law. *Baron*, 941 So.2d at 1236. The violation of a litigant's due process right to be heard requires reversal. *Riehl*, 635 So.2d at 18; *E.I. DuPont De Nemours & Co.*, 654 So.2d at 228. Here, the lower court’s failure to afford Petitioner a hearing was a violation of his due process right to having a full and fair opportunity to be heard and as such, lower court committed reversible error, and this matter should be sent back to the lower court with a mandate to set the Petitioner’s petition for hearing, and for such other further relief as this Honorable Court deems just and proper.

### **CONCLUSION**

This Court should grant the petition and reverse the lower court’s order denying a temporary petition for protection against stalking, and

mandate that the lower court set the Petitioner's petition for hearing remove Judge Kelly's order restricting Petitioners filing since there is no legal basis for same and for such other further relief as this Honorable Court deems just and proper.

Respectfully submitted,

/s/ Samuel L. Smith, Jr.

SAMUEL LEE SMITH, JR.

Petitioner Pro se

16614 SW 99 Court

Miami, Florida 33157

Telephone Number 305-975-1964

Email [gymsam7@gmail.com](mailto:gymsam7@gmail.com)