

24-6770 ORIGINAL
UNITED STATES SUPREME COURT

Samuel Lee Smith, Jr.,
Petitioner,
v.

Case:

Supreme Court, U.S.
FILED
JAN 17 2025
OFFICE OF THE CLERK

Michael Valdez,
Respondent,

PETITION FOR WRIT OF CERTIORARI

**From October 23, 2024 Order of Florida District Court of Appeal,
Third District, Case Number 3D2024-0052**

C

SAMUEL LEE SMITH, JR.
Petitioner Pro se
16614 SW 99 Court
Miami, Florida 33157
Telephone Number 305-975-1964
Email 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 5th and 14th 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 23, 2024 decision affirming the lower court's dismissal of a petition for injunction based upon stalking.

2. Jurisdiction

This petition seeks review of the Third District Court Of Appeals October 23, 2024 Order dismissing review of *Smith v. Valdez*, No. 3D24-0052, 2024 WL 4547474 (Fla. 3rd DCA Oct. 23, 2024), rehearing denied December 11, 2024 *rev. dismissed*, No. SC2024-1792, 2024 WL 5134892 (Fla. 12/17/2024)

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 5th and 14th 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 December 20, 2023, Petitioner filed a petition for injunction for protection against stalking from Respondent, Michael Valdez. *See Case Number 2023-25061 FC 04.* [ROA. 5-10]. Respondent is a police officer employed by the Miami Dade Police Department. [ROA. 5]. The petition alleges 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 June 29, 2020. [ROA. 7]. The Petitioner continues to be in fear as the result of Respondent's harassment and stalking.

Specifically, on June 29, 2020, Petitioner, while driving, was

pulled over by the Respondent for no reason whatsoever, other than because he is a colored male. [ROA 7.] After finding no reason to hold Petitioner, and because Petitioner did nothing illegal or wrong, Respondent attempted to justify the stop citing Petitioner for now not wearing a seatbelt (which the Petitioner was wearing while he was driving). Petitioner filed a complaint with the Miami Dade County Police Department.

On May 12, 2021, while the Petitioner was driving, he was approaching the left turning lane. As Petitioner approached the middle of the intersection, Respondent recognized Petitioner and made a quick U-turn on his bike and got behind the Petitioner and conducted a traffic stop. Petitioner then exited the vehicle at the direction of the Respondent. Respondent then towed Petitioner's vehicle. Petitioner was then arrested for disobeying a police officer. However, Respondent later alleged that Petitioner crossed the street outside of the crosswalk, and was the basis for the arrest.

On June 25, 2021, Petitioner was jogging when he was passed by a police vehicle driven by law enforcement officer, Federico Lopez. Respondent was a passenger in the vehicle. The driver made a U-turn and drove up to and cut off the Petitioner, nearly striking

him with his car. Respondent exited his car, and Respondent immediately recognized Petitioner from the prior encounters with him. [ROA. 7]. Petitioner was then arrested without any reason, no less probable cause.

There was another incident, which Petitioner cannot recall the date, but it was when Petitioner was walking to the store in the South Dade Plaza. Petitioner noticed the Respondent and his partner were sitting on their motorcycle in an alley. As a result, Petitioner exited the store and entered his vehicle. When the Petitioner attempted to leave the parking lot, Respondent stopped him without any reason and issued Petitioner citations without any basis for the same.

Moreover, Petitioner filed a complaint with Miami Dade County's Department of Internal Affairs based upon Respondent's racial profiling, discrimination and harassment by Michael Valdez on November 21, 2021. Sergeant Alejandro Aragon, confirmed via email that the Internal Affairs Department was in review and in receipt of the complaint and he was overseeing the complaint. Petitioner was stopped and arrested by Respondent again after the complaint was filed.

On the same date that the Petitioner filed the petition, the Honorable Javier A. Enriquez, Circuit Court Judge rendered an Order Denying the Petition for a Temporary Injunction. 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 741.30 Florida Statutes or Repeat/Dating /Sexual Violence pursuant to 784.046 Florida Statutes or Stalking pursuant to 784.0485.

There was also a box checked on the form Order which stated:

There is no appearance of an immediate and present danger of domestic violence as required pursuant to 741.30 Florida Statutes, and a hearing will be set on the Petition for Injunction for Protection.

On the same day, the same judge, also entered another Order that dismissing the petition without affording Petitioner a final hearing on his petition.

The next day, on December 21, 2023, Petitioner moved for reconsideration and clarification, which further explained his fear resulting from Respondent's unprovoked acts of

aggression, and excessive use of force, and for improperly using his position as a police officer to harass, arrest and create fear in the petitioner. Shortly after the motion was filed, Judge Javier A Enriquez, denied the motion for reconsideration. Notably, at no time, thereafter, did the lower court ever set a full hearing on the petition. This was in spite Petitioner requesting the same. Petitioner timely filed a notice of appeal on January 5, 2024.

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.

The Florida District Court of Appeal, Third District affirmed the lower Court on October 23, 2024. [A.062] On November 7, 2024 Petitioner moved for rehearing. [A.063] The motion was denied on December 11, 2024. [A.069].Petitioner filed a notice of appeal to the Florida Supreme Court on December 16, 2024. [A.071] The Florida Supreme Court dismissed the appeal on December 16, 2024.[A.077].

5. Reason 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.

Moreover, 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. 4th 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 sought out Petitioner and whenever he saw Petitioner, harassed Petitioner, falsely detained Petitioner and constantly sought to arrest and intimidate Petitioner, when he had no basis to ever stop the 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 §784.046. 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.

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.Stat.784.048(1)(b)*. Thus, by its statutory definition, stalking requires proof of repeated acts. *Stallings v. Bernard*, 334 So. 3d 365 (Fla. 2nd DCA 2022); *Lukacs v. Luton*, 982 So. 2d 1217, 1219 (Fla. 1st DCA 2008).

Here, Respondent met all of the pleadings requirements contained 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.

By way of example, after Petitioner complied with all of the Respondent's commands, Respondent arrested Petitioner for disobeying Respondent. Moreover, Respondent must have verified that Petitioner had a valid license and was lawfully driving the vehicle, otherwise he would have been charged with other crimes. Again, the disobeying a police officer was used as a subterfuge for the fact that Petitioner had done nothing wrong. He needed to create a basis and justification to stop and detain Petitioner him (when in fact no legal or factual reason existed for the stop at the outset.)

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 "there is no appearance of an immediate and present danger of stalking" 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.

Notably in *Pashtencko v. Pashtencko*, 148 So. 3d 545, 545-47 (Fla. 2d 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. Florida Statute § 784.0485(5)(b) states that denial of a temporary ex parte injunction shall be by written order noting the legal grounds for denial. If the only ground for denial is no appearance of an immediate and present danger of stalking, the court shall set a full hearing on the petition with notice at the earliest possible time. *Fla.Stat. § 784.0485(5)(b); Doe v. Days*, 365 So.3d 1274, 1275 (Fla. 1st DCA 2023)(The Legislature has directed trial courts to set a hearing when a petition for injunction for protection against stalking is filed. *See Also* Fla. Fam. L. R. P. 12.610(b)(3)(A)). In this case, the December 20, 2023 Order states that there was no appearance of an immediate and present danger of stalking. While that Order states that a hearing will be set, there was never a hearing set, no less within a short period of time.

As such, the 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

The lower court committed a reversible error order denying a temporary petition for protection against stalking, 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