

24-6786 **ORIGINAL**
IN THE UNITED STATES SUPREME COURT

SAMUEL LEE SMITH, JR.

Case Number:

Petitioner,

v.

LEAMSI HORTA,
Respondent,

Supreme Court, U.S.
FILED
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PETITION FOR WRIT OF CERTIORARI

From Florida Supreme Court January 16, 2025 Order
Case Number SC2024-1705

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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?

TABLE OF CONTENTS

Questions Presented	2
Table of Contents.....	3
Table of Authorities.....	4
Petition for Writ of Certiorari.....	5
Decision Below.....	5
Jurisdiction.....	5
Federal Issue Involved.....	6
Statement of the Case	6
Reason for Granting the Writ.....	11

The trial court violated the Petitioner's fundamental right to due process notice and opportunity to be heard, as guaranteed by the 5th and 14th Amendment when the trial court denied the Petitioner's petition for an injunction to prevent stalking and dismissed the case without ever affording him notice and opportunity to be heard.

Conclusion.....	17
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TABLE OF AUTHORITIES

<u>Case Law</u>	<u>Page No.</u>
<i>Roach v. Brower</i> , 180 So. 3d 1142, 1144 (Fla. 2d DCA 2015)	12
<i>Touhey v. Seda</i> , 133 So. 3d 1203, 1204 (Fla. 2d DCA 2014)	12
<i>David v. Schack</i> , 192 So. 3d 625, 627-628 (Fla. 4 th DCA 2016).	12
<i>Doe v. Days</i> , 365 So. 3d 1274, 1275 (Fla. 1 st DCA 2023)	11
<i>Caterino v. Torello</i> , 276 So. 3d 88, 92 (Fla. 2d DCA 2019)	14
<i>Stallings v. Bernard</i> , 334 So. 3d 365 (Fla. 2 nd DCA 2022)	14
<i>Lukacs v. Luton</i> , 982 So. 2d 1217, 1219 (Fla. 1st DCA 2008)	14
<i>Pashtencko v. Pashtencko</i> , 148 So. 3d 545, 545-47 (Fla. 2d DCA 2014)	15
<i>Hawthorne v. Butler</i> , 151 So. 3d 23, 24 (Fla. 4th DCA 2014)	16
<i>Curtis v. Curtis</i> , 113 So. 3d 993 (Fla. 5th DCA 2013)	15
<i>Flynt v. Ohio</i> , 451 U.S. 619 (1981)	5
<i>Florida v. Thomas</i> , 532 U.S. 774 (2001).	6
<i>Duquesne Light Co. v. Barasch</i> , 488 U.S. 299, 304 (1989)	6
<u>Statutes and Rules</u>	<u>Page No.</u>
Florida Statute 784.046	9, 13
<i>Fla. Fam. L. R. P. 12.610(b)(3)(A)</i>	11,12
Florida Statute 784.485	12

PETITION FOR WRIT OF CERTIORARI

1. Decision Below

Petitioner petitions to this Honorable Court to review the State of Florida Supreme Court's January 16, 2025 Order.

2. Jurisdiction

This petition seeks review of *Smith v. Horta, Florida Supreme Court Case Number 2024-1705* (January 16, 2025).

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 January 16, 2024, Petitioner filed a petition for injunction for protection against stalking from Respondent, Leamsi Horta. *See Smith v. Horta, Case Number 2024-FC-000754.* [A.003-008]. Respondent is a police officer employed by the Miami Dade Police Department. [A.009]. The petition alleges that Petitioner is a victim of stalking because Respondent has stalked him, has previously threatened, and harassed him. [A.003-008]. The Petitioner states the Respondent has been harassing-and stalking him since April 24, 2023. [A.003-006] The Petitioner continues to fears the respondent's harassment and stalking.

Specifically, the petition alleged that since April 24, 2023, Respondent has been following and harassing the Petitioner. On April 24, 2023. Respondent stalked Petitioner from Dadeland Plaza

without any reason or cause, and then ambushed him with several other law enforcement officers (J Gonzalez #badge 5315, I Delgado badge 4483, R. Camacho badge 7835 and A. Rodriguez badge 5845). The security guard from the Dadeland South Metrorail station also participated in this harassment and violation of Petitioner, while walking on the sidewalk on the south bound side at the Dadeland South Metrorail station.

Petitioner was looking for-the pay-as-you-park sign. Respondent and accomplices ambushed the Petitioner until the Petitioner was aggressively stopped, without any cause, the Petitioner was detained and not free to go against his will. Petitioner was told that he was not detained by R. Camacho 7835 who asked to see ID then A. Rodriguez aggressively approached Petitioner and demanded ID however Petitioner surely was detained because Respondent would not let him leave. Respondent required Petitioner to remain so that he could search Petitioner's bag after he searched Petitioner. Respondent then grabbed his bag and through it on the floor. He then picked it up and the Petitioner did not consent to a search of his bag. Petitioner stated to badge #5315 and 4483 that the Petitioner did not consent to the officer to the search of his

vehicle, the officers proceeded anyway. Respondent then told the Petitioner that "the Heat game is about to start, and why are you doing this?" Respondent, without reason, issued several citation for this incident to the Petitioner. Respondent contested the citations and during the hearing the Respondent lied, by telling the hearing officer that there is no parking allowed at Dadeland South Metrorail parking station. Respondent also abused his authority by trespassing the Petitioner from the Metrorail for several months, which is an unlawful act and the officers acted out of their scope of duty. This was absolutely untrue and Respondent clearly abused his power and authority as a law enforcement officer. [A.005].

On August 29, 2023, at 3:22 pm, Petitioner spotted Respondent again at the same Metrorail station. Again, Respondent harassed the Petitioner and placed him in fear based upon the previous incident between them. [A.005].

On December 5, 2023, at 3:02-3:48pm the Petitioner was harassed again by the Respondent, this time it was at the Miami Busway between 168th and 152nd Street, Miami Dade County, Florida. Respondent made threatening gestures at the Petitioner with his right hand which caused

Petitioner to feel threatened, and unsafe. [A.005].

On December 6, 2023, while the Petitioner was jogging along the same busway between 160th and 152nd Street at 2:21pm, Petitioner noticed that the Respondent was in the same area as the Petitioner again. [A.005].

On December 7, 2023, now the third day in a row, Respondent drove past the Petitioner while he was jogging at 1:58 pm along the Metro Dade Busway between 160th and 152nd Street in Miami Dade County. There were several law enforcement on the opposite side of the road, most of who have previously harassed Petitioner in the past. The Petitioner states the officers made him feel unsafe. [A.005]. Petitioner also provided the clerk of court for the Domestic Violence Division, and to the clerk for the Florida District Court of Appeal, Third District, with pictures of the officers, which included the Respondent. Notably, despite filing the photographs, they never appear on the clerks' dockets.

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. The January 16, 2024 Order stated 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.025].

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. [A.025].

On the same day, the same judge, entered another Order that dismissed the petition without affording Petitioner a final hearing on his petition. [A.018-019].

Petitioner moved for reconsideration and clarification on January 18, 2024 and further explained his fear resulting from Respondent's unprovoked threats.[A.020-021] The motion specifically complained that Petitioner was being denied a hearing.

On January 18, 2024, the motion for reconsideration was denied, again without any explanation. Notably, at no time,

thereafter, did the lower court ever set a full hearing on the petition. This was in spite of what Petitioner requested in the Motion for Reconsideration. [a.027]

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 19, 2024. [A.021].

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 October 2, 2024, the Florida District Court of Appeal, Third District, affirmed the trial court with an opinion. *Smith v. Horta*, No. 3D24-139, 2024 WL 4364221 (Fla. 3rd DCA Oct. 2, 2024). [A.028]. The Florida Supreme Court then ruled in favor of Mr. Horta on January 16, 2025 in case number SC2024-1705.

This Petition now follows.

5. Reasons for Granting the Writ

The lower court also committed error by failing to set a final hearing on the petition and dismissed the case without offering Petitioner an opportunity to be heard on his petition prior to dismissal. 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 January 16, 2024 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.

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. Sat. §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 was wherever the Petitioner was present, and followed Petitioner, harassed Petitioner, falsely detained 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 §784.06. 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, the petition contained sufficient allegations and met all of the pleadings requirements a 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.

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.

At the very least, the Petitioner should have been afforded a hearing, an opportunity to be heard on his petition. The right to procedural due process includes the right to "a full hearing before a court having jurisdiction of the matter, the right to introduce evidence at a meaningful time and in a meaningful manner, and judicial findings based upon that evidence. *Brinkley v. County of Flagler*, 769 So.2d 468, 472 (Fla. 5th DCA 2000). See also *State Dep't of Fin. Servs. v. Branch Banking & Trust Co.*, 40 So.3d 829, 833 (Fla. 1st DCA 2010) (quoting *Vollmer v. Key Dev. Props., Inc.*, 966 So.2d

1022, 1027 (Fla. 2d DCA 2007)) [T]he constitutional guarantee of due process requires that each litigant be given a full and fair opportunity to be heard. The right to be heard at an evidentiary hearing includes more than simply being allowed to be present and to speak. Instead, the right to be heard includes the right to introduce evidence at a meaningful time and in a meaningful manner. It also includes the opportunity to cross-examine witnesses and to be heard on questions of law. The violation of a litigant's due process right to be heard requires reversal. *Glary v. Israel*, 53 So. 3d 1095, 1098-99 (Fla. 1st DCA 2011)

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

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 and remove Judge Kelly's ABUSE OF POWER order restricting Petitioners filing since there is no legal basis and for

such other further relief as this Honorable Court deems just and proper.

Respectfully submitted,

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