

24-6842

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

SAMUEL LEE SMITH, JR.

Case Number:

Petitioner,

v.

MARK H. SLIMAK,

Respondent,

_____ /

Supreme Court, U.S.
FILED

MAR 24 2025

OFFICE OF THE CLERK

PETITION FOR WRIT OF CERTIORARI

**From January 8, 2025 Florida District Court of Appeal,
Third District, Case Number: 3D2024-0051**

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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?

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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 of Appeals Third District's January 8, 2025 decision affirming the lower court's dismissal of a petition for injunction based upon stalking.

2. JURISDICTION

This petition seeks review of *Smith v. Slimak*, No. 3D24-0051, 2025 WL 44375 (Fla. 3rd DCA Jan. 8, 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.

STATEMENT OF THE CASE

On December 20, 2023, Petitioner filed a petition for injunction for protection against stalking from Respondent, Mark Slimak. *See Case Number 2023-FC-25060.*[A.38-44] Respondent is a police officer employed by the Palmetto Bay Police Department. *Id.* The petition alleges that Petitioner is a victim of stalking because Respondent has stalked him and has previously threatened and harassed him. *Id.* Specifically, the petition alleged that on December 14, 2023, while the Petitioner was jogging, Respondent almost hit him with his vehicle. *Id.* The Respondent then became aggressive and yelled at the Petitioner. Respondent exited his vehicle and, without cause, instructed the Petitioner to stand on the sidewalk.

Respondent threatened to arrest the Petitioner without any reason to do so. *Id.* Respondent then left the area. This was nothing more than an purposeful act to harass and intimidate the Petitioner. *Id.*

The petition then described a second incident in detail involving the Respondent. *Id.* The petition alleged that on December 31, 2021, while the Petitioner was exiting a store, Respondent approached Petitioner for no reason, and demanded the Petitioner to identify himself. *Id.* There was no reason to ask for identification, and again, this was another form of harassment. Petitioner refused to provide his name and as a result, Respondent detained Petitioner in handcuffs and threatened to place him in jail. *Id.* Out of fear, Petitioner gave the Respondent his name. Respondent then prevented Petitioner from leaving despite having done nothing wrong. Petitioner then requested that a sergeant come to the scene. Petitioner spoke with the supervisor and asked to provide a case number. The supervisor stated they do not write case numbers for Petitioner's incident, that they only write case numbers for crimes and here there was no crime committed.

The petition also alleged a third incident, specifically, Petitioner was in a car in shopping plaza and the Respondent was nearby. As Petitioner was exiting his car, the Respondent kept staring at him in an intimidating fashion as he entered a store. The petition also stated that “petitioner states he is in fear for his safety and is constantly being harassed by the Respondent. *Id.* The Petitioner states he has been racially profiled and a victim of retaliation from Palmetto Bay Police department since December 13, 2017. The Petitioner filed a complaint against the department and a civil suit in 2018 Case Number: 18-cv-20363.

Petitioner provided photographs to the clerk of court for the Domestic Violence Division and the clerk of court for the Florida Third District Court of Appeal. However, those photographs do not appear on the docket for either of those clerks.

On the same date, Petitioner requested a hearing on the petition. [A.004].

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 Javier Enrique, Circuit Court Judge rendered an Order Denying the Petition for a Temporary Injunction on December 20, 2023. [A.035=036]. The December 20, 2023 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.035].

The Order did not state specifically what was lacking from the petition such that it did not meet the statutory requirements for a temporary injunction. [A.035].

On December 21, 2023, Petitioner moved for reconsideration and clarification and further explained his fear resulting from Respondent's unprovoked threats. [A.010]. The motion for reconsideration was denied without any explanation on December 21, 2023.[A.046]. Moreover, the

Court entered an Order of dismissal on the same day, December 21, 2023. [A.011-012].¹

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 5, 2024. [A.014]. On January 8, 2025, the District Court of Appeal for the Third District, State of Florida affirmed the lower court's order of dismissal.[A.044].

REASON FOR GRANTING THE PETITION

Stalking injunctions are governed by Florida Statute §784.0485. Relevant to the issues here, subsections (1) through (5)

¹ Subsequently, on January 16, 2024, Petitioner filed another petition for protection against stalking violence against Respondent. *See Case 2024-000757-FC-04*. This petition, like the previous petition, alleged that he is a victim of stalking because Respondent has stalked him in the past and has previously threatened, harassed and has abused the Petitioner. The petition then went on to articulate the basis for his fear, and alleged on January 6, 2024, Respondent saw the Petitioner crossing the street, at which time Respondent exited his police car and began to taunt the Petitioner in public while he followed him by car to a busway. Respondent, without any cause or provocation, started yelling at the Petitioner and threatened to put him in jail. This too was summarily denied and dismissed and is presently on appeal before this Honorable Court.

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. 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 §78406. The 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 he wrong statute, the wrong type of petition, and therefore relied upon the incorrect criteria in determining whether to grant the petition. The Court's arbitrary and capricious application of the (wrong) law violated the undersigned's 5th amendment right to due process.

The lower court also committed reversible error by not granting 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. 2nd DCA 2022); *Lukacs v. Luton*, 982 So. 2d 1217, 1219 (Fla. 1st DCA 2008).

Here, the undersigned 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. Respondent's conduct was without any legitimate reason, cause or justification. Respondent's conduct has caused the Petitioner

emotional distress and fear. Moreover, the Court should have considered the supplemental information provided in the motion for reconsideration.

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.

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.

Lastly, the Court committed reversible 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 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.**

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

Respectfully submitted,

/s/ Samuel L. Smith, Jr.

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