

24-7322 ORIGINAL

IN THE UNITED STATES SUPREME COURT

SAMUEL LEE SMITH, JR.
Petitioner,

Case Number:

Supreme Court, U.S.
FILED

APR - 6 2025

OFFICE OF THE CLERK

v.

A. RODRIGUEZ,
Respondent,

/

PETITION FOR WRIT OF CERTIORARI

From Florida Supreme Court January 31,2025 Order
Case Number SC2024-1701

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QUESTIONS PRESENTED

Did the trial court commit reversible error's dismissing the petition for an injunction to prevent Respondent from stalking? Did the court violate the procedural due process clause, enshrined in the Fifth and Fourteenth Amendments of the U.S. Constitution when it denied Petitioner relief without affording him a hearing in violation of the Petitioner's due process right to notice, opportunity to be heard and the right to have a decision from an impartial decision-maker as guaranteed by the 5th and 14th amendments to the United States Constitution? Did the officer violate the Petitioners 4th Amendment rights? Are the trial courts in violation of 18 U.S.C. § Section 242 Deprivation of Rights under Color of Law? Divine law beliefs center on the idea that moral and ethical principles originate from a higher power or God, shaping both individual and societal behavior. These laws are often seen as superior to human-made laws and are believed to be universal, eternal, and unchanging.

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The trial court violated the Petitioner's fundamental right to due process notice, opportunity to be heard and the procedural due process clause 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. Are the trial courts in violation of 18 U.S.C. § Section 242 Deprivation of Rights under Color of Law? The officer is in violation of the Petitioners 4th Amendment rights.

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PETITION FOR WRIT OF CERTIORARI

1. Decision Below

Petitioner petitions to this Honorable Court to review the State of Florida Supreme Court's January 31st, 2025.

2. Jurisdiction

This petition seeks review of *Smith v. A. Rodriguez*, Florida Supreme Court Case Number SC2024-1701 (January 31,2025). 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 4th, 5th, 8th, and 14th Amendments of the United States Constitution when the government law enforcement conducts an unreasonable search or seizure of a person, right to due process, procedural due process clause, cruel punishment and to be free from arbitrary and capricious rulings by the lower court. The Petitioner presents another Federal Question pertaining to the trial courts in violation of 18 U.S.C. § Section 242 Deprivation of Rights under Color of Law.

4. Statement of the Case

On January 9, 2024, Petitioner filed a petition for injunction for protection against stalking from Respondent, A. Rodriguez. *Smith v. Rodriguez, Case Number 2024 000348 FC 04*. Respondent is a police officer employed by the Miami Dade Police Department. The petition alleges that Petitioner is a victim of stalking because Respondent has stalked him, has previously threatened, and harassed him. The Petitioner states that Respondent has been harassing and stalking him since April 24, 2023. The Petitioner continues to fear Appellee's harassment and stalking.

On April 24, 2023, Petitioner was at Dadeland Plaza and Respondent and other accomplices were also there staring down the Petitioner while Petitioner walked inside a store. Petitioner arrived at the Dadeland South Metrorail station. Petitioner was looking for a pay as you park, and at that time Petitioner was ambushed by Respondents and other officers (J Gonzalez #badge 5315, I Delgado badge 4483, R. Camacho badge 7835 and Leamsi Horta badge 6326) that stalked the Petitioner at that time.

Petitioner was detained without cause or any reasonable suspicion. At that time, Respondent demanded Petitioner to provide identification and detained Petitioner unlawfully. The Defendant and accomplices also violated the Petitioners 4th Amendment by illegally searching the Petitioner's vehicle, the Petitioner invoked his right by saying "I do not consent to the search" the officers proceeded. The security guard from the Metrorail Station also participated in the harassment and violation of Petitioner when the Petitioner was looking for the pay as you park sign.

Respondent and J. Gonzalez badge 5315 exited vehicles and cut the Petitioner off on the sidewalk Gonzalez stated "What you want to do" and then followed Petitioner until Petitioner was stopped, without any cause. At that time, the Respondent threatened and intimidated Petitioner. At 7:20 p.m. Petitioner asked if he was detained and was told by other officers that he was not, however Respondent said that he was detained. Respondent then verbally abused Petitioner and was very hostile and aggressive. Respondent kept displaying behavior that was racially motivated, and continued to dangle his handcuffs if to say "you are going to jail". The Respondent also stated he got his handcuffs from Pleasure of Porn.

The officers also abused their authority by banning the Petitioner for four (4) months from the Metrorail, and was told that they would put a poster up with the Petitioner's picture with instructions to arrest him if seen, which is an unlawful act and an act outside the officer's scope of employment and duty.

On August 29, 2023, at 3:22 pm, Petitioner spotted Respondent again at the Metrorail station in the same train car as Petitioner. Again, Petitioner felt intimidated and threatened by Respondent and the other officers.

On December 5, 2023, between 3:02 and 3:48 p.m., the Petitioner was harassed again by the Respondent, this time it was at the Miami Busway between 160th and 152nd Street, Miami Dade County. Respondent made threatening gestures toward the Petitioner which caused the Petitioner to feel vulnerable, intimidated, threatened and unsafe.

On December 6, 2023, while the Petitioner was jogging along the same busway between 160th and 152nd Street, Miami Dade County at 2:21pm, Petitioner noticed that the same MDPD officers were in the same location as Petitioner again.

On December 7, 2023, now the third day in a row, while Petitioner was jogging at 1:58 pm along the Metro Dade Busway between 160th and 152nd Street in Miami Dade County, there were several officers on the side of the road that had harassed Petitioner in the past. The Petitioner states that the officers made him feel unsafe, and he felt threatened and was in fear for life based upon the Respondent and other MDPD officer's actions, conduct and language that were used against Petitioner in the past. The 18 U.S.C. § 241, also known as the "Conspiracy against rights" statute, makes it a federal crime for two or more people to conspire to injure, oppress,

threaten, or intimidate any person in the free exercise or enjoyment of a right or privilege secured by the U.S. Constitution or laws.

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.

The actions, conduct and language used by the MDPD were racially motivated based upon the reoccurring incidents, all of which was the result of the Petitioner being of color.

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 day that Petitioner filed the petition, the Honorable Alicia Garcia Priovolos, Circuit Court Judge rendered an Order Denying the Petition for a Temporary Injunction. The January 9, 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.

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

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

On January 16, 2024, the motion for reconsideration was denied by the Honorable Yara Lorenzo Klukas, Circuit Court Judge 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.

At no time, thereafter, did the lower court ever set a full hearing on the petition. The lower court is in violation of procedural due process clause of the Fourteenth amendment that ensures fairness and accuracy in government actions that may

deprive individuals of life, liberty, or property. It states certain procedures must be followed when taking such actions, guaranteeing a fair process before the deprivation can occur. The judicial officials presiding over this proceeding in the lower court and Third District Court of Appeal was noncompliant to procedural rules of the Court.

Petitioner timely filed a notice of appeal on January 18, 2024.

On October 16, 2024, the Florida District Court of Appeal, Third District per curiam affirmed the lower court with an opinion.

This petition now follows.

5. REASONS FOR GRATING THE PETITION

Stalking injunctions are governed by Florida Statute §784.485. 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. Florida Stat. §784.485(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. Federal Law (18

U.S.C. § 242) focuses on individuals acting under color of any law, statute, ordinance, regulation, or custom, who willfully subject someone to the deprivation of rights secured by the U.S. Constitution. This statute applies even if the individual is not acting under their official capacity but is pretending to act in that capacity, like a police officer or judge acting beyond their authority. The Fourth Amendment protects people from unreasonable searches and seizures by the government.

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 established 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. Consecutive racially profiling discriminating encounters that the Petitioner experienced the Florida Statute §760.51 respectfully addresses the interference with rights secured by the state constitution or laws. It states if someone interferes with the exercise or enjoyment of such rights through threats, intimidation, or coercion, the Attorney General may bring a civil or administrative action for damages, injunctive relief, or other appropriate remedies.

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 stated 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.

Significantly, 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 reason provided for denying the petition other than the conclusory statement that the allegations are not sufficient. The fact Respondent engaged in such conduct while operating as a police should not entitle him to any special privileges. Surely, had A. Rodriguez not been a law enforcement officer, he would not be permitted to engage in the same harassing and intimidating conduct, and would be subject to a temporary (and eventually a permanent injunction). The Eighth Amendment to the United States Constitution states that cruel and unusual punishments shall not be inflicted the function of these principles after all is simply to provide means by which a court can determine whether challenged punishment comports with human dignity.

The denial of Petitioner's motion for reconsideration simply

states denied, and again, provides no explanation as to the basis for the denial.

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. The lower court should have 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.

As such, Supreme Court of Florida made an error denying the Petitioner to proceed in IFP, Third District Court of Appeals and the lower court committed procedural due process errors.

CONCLUSION

This Court should reverse the lower court's order denying a temporary petition for protection against stalking due to the court performing as a kangaroo court and failure to uphold the righteousness of law and grant and for such other further relief as this Honorable Court deems just and proper. The Petitioner respectfully request the Supreme Court Justices to adhere to 28 U.S. Code § 455.

Respectfully submitted,

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