

25-5185

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No. _____

ORIGINAL

Supreme Court, U.S.
FILED

JUN - 3 2025

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

GEORGE WESLEY SMITH – PETITIONER

v.

STATE OF FLORIDA – RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO

FLORIDA SIXTH DISTRICT COURT OF APPEAL
(NAME OF COURT THAT LAST RULED ON THE MERITS OF YOUR CASE)

APPEAL NUMBER: _____

PETITION FOR WRIT OF CERTIORARI

George Wesley Smith Jr.
George Wesley Smith, DC#00293
Tomoka Correctional Institution
3950 Tiger Bay Road
Daytona Beach, Florida 32124
Petitioner, Pro Se

QUESTIONS PRESENTED

1. When the question of subject matter jurisdiction is raised, if the trial court does not answer, is it a violation of 5th and 14th Amendment of the United State Constitution.
2. When the trial court is constituted by authority, and fails to address an asserted claim under associated authority, does this violates due process of the United States Constitutions 5th and 14 Amendments?
3. When the court exercise descretion to ignore lack of jurisdiction, is it a violation of the 1st, 5th, and 14th Amendment of the United States Constitution?
4. Did the 14th Amendment of the Constitution "equal protections of law" give cause under for the petitioner's motion in this case, that provided challenge of state and federal jurisdiction to be proven?
5. If the accusatory pleading is improper and it is raised in motion under supporting authorities, does due process of the 5th and 14th Amendment of the United States Constitution requires proof of jurisdiction to appear on the record of the circuit, and district court and all administrative proceedings?
6. If a judgment is void does the court act in a manner inconsistent with due process of the United States Constitutions 5th and 14th Amendments?
7. When subject matter jurisdiction in a criminal case is invoked by the face of the accusatory pleading filed does a prosecution initiated from the face of an improper accusatory pleading violates due process of the United State Constitution's 5th and 14th Amendments?
8. When a trial court act beyond their authority and in contravention of it, in regards of a lack of subject matter jurisdiction in the present case of the petitioner is it a violation of due process of the United States Constitution's 5th and 14th Amendments?

LIST OF PARTIES

☐ All parties appear in the caption of the case on the cover page.

☒ All parties **do not** appear in the caption of the case on the cover page. A list if all parties to the proceeding in the court whose judgment is the subject of this petition as follows:

1. From the Circuit Court for Orange County Leticia Marques, Judge
2. James Uthmeier, Florida Attorney General, Tallahassee
3. Whitney Brown Hartless, Assistant Attorney General, Daytona Beach
4. Judge Nardella, 6th District Court of Appeal Judge on panel for rehearing
5. Judge Wozniak, 6th District Court of Appeal Judge on panel for rehearing
6. Judge Cannam, JJ. 6th District Court of Appeal Judge on panel for rehearing

RELATED CASES

George W. Smith, Jr. v. State of Florida, 6D2024-1086 Lt. No 2017-CF-010732-A-O

George W. Smith, Jr. v. State of Florida, case no 6D23-4241 Lt. No 17-CF-10732-A-O
(pending in Sixth District)

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ unpublished.

The opinion of the Sixth District court appears at Appendix A to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ unpublished.

JURISDICTION

[] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was _____

[] No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix .

[] An extension of time to file the petition for a writ of certiorari was granted to and including (date) on (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[X] For cases from state courts:

The date on which the highest state court decided my case was April 15, 2025. A copy of that decision appears at Appendix A.

[X] A timely petition for rehearing was thereafter denied on the following date: May 06, 2025, and a copy of the order denying rehearing appears at Appendix B.

[] An extension of time to file the petition for a writ of certiorari was granted to and including (date) on (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1st Amendment rights to access the court and due process of law

5th Amendment right to due process of law

14th Amendment right to equal protection of the laws of the United States Constitution; due process of law

Florida R. Civil P. 1.140(n)(2)

STATEMENT OF THE CASE

This petition arises from the denial of the petitioner pro se initial brief (App. 6) and request for rehearing (App. A) in the Sixth District Court of Appeals.

The Petitioner raises Due Process claims, under the 5th and 14th Amendment of the Constitution of the United States. Neither State or United State Constitution indicate that the district court are to share in the administrative supervision of supporting the lack of subject matter jurisdiction of the trial court.

The Petitioner has filed motions with the trial court asserting that the judge acted in excess of his jurisdiction in wake of the improper accusatory pleading amended on Jan. 30, 2018 (App. D) that initiated the prosecution of the petitioner, and created a subject matter division by an administrative order, that affirm knowledge of the probable cause order which derived from an official removed from office, for the lack of veracity while in her official capacity.

The orders denying the petitioner asserted claims of a denial of due process for the lack of subject matter jurisdiction, (and) can be raised at any time, conflicts with other Florida appellate decisions and involves a question of great public interest to be certified by the Sixth District Court of Appeals reverse the judgment and remand with written opinion. The events surrounding the asserted claim of a lack of subject matter jurisdiction occurred prior on the following dates of petitioners formal filings where he timely filed pro se 3.850 motion for postconviction relief asserting ineffective assistance along with *Giglio* and *Brady* and ex post facto claims of counsel on Dec. 14, 2020. This, the circuit court struck and granted leave to amend. This response became a pattern from the court in the following amended 3.850 motions for postconviction relief to the petitioner's submissions of April 11, 2022 and May 03, 2022 filings. The latter being denied on Oct 29, 2023, this was

REASONS FOR GRANTING A WRIT OF CERTIORARI

- i. It is the responsibility of the appellate court to guide the trial court as to questionable procedures or rulings. As it is asserted by the petitioner that the lower court acted beyond its authority and in contravention to it, causing denial of constitutional dimension through its lack of subject matter jurisdiction. The petitioner respectfully requests that the Supreme Court to determine whether the Sixth District Court of Appeals afforded procedural due process and applied the correct law when it did not reverse the court order, and remand to the Ninth Judicial Circuit Court, to prove on the record all subject matter jurisdiction facts related to the jurisdiction asserted. See *Latana v. Hopper* 102 F.2d 188 see also *Hagan v. Levine* 415 U.S. 533.
- ii. The appellate court failed or misapprehended its responsibility to guide the lower court when it ignored the petitioners claim that it lack subject matter jurisdiction over the case violating the 5th and 14th Amen. See *Joyce v. U.S.* 474, 2 D.215 this court observed that there is no discretion to ignore lack of jurisdiction.
- iii. The appellate court failed or misapprehended its responsibility, to guide the Ninth Judicial Circuit Court to questionable procedures and rulings, as in this instance of the petitioners claim of the lack of subject matter jurisdiction. The lower court did not afford procedural due process and departed from the essential requirement of law violating the petitioner's 5th and 14th Amendment rights of the United States Constitution see *Melo v. U.S.* 505 F.2d 1026, the courts have addressed the issue "holding" that once jurisdiction is challenged courts cannot proceed when it clearly lacks subject matter jurisdiction the court has no authority to reach merits, and rather should dismiss the case.
- iv. The appellate court failed or misapprehended its responsibility, to guide the lower

court in the presence of clearly established principles of law under Fla. R. Civ. P. 1.140(n)(2). As observed in courts that exercise authorities in the United States, these courts acknowledge that jurisdiction can be raised at any time, see *Hilltop Developer v. Holiday Pines Service Corp.* 478 So. 2d 368 (Fla. 2nd DCA 1985); also *Basso v. Utah Power and Light Co.* 495 F.2d 906, 910. See also Fla. R. Civ. P. 1.140(n)(2).

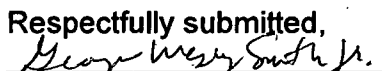
- v. The petitioner respectfully request that this certiorari be granted where there has been a violation of clearly established principles of law that violated the petitioners 5th and 14th Amendment rights of the United States Constitution. See *Wesley v. State of Florida* So. 2d 1093 (1979). Here it is observed by a Florida court that the improper pleading resulted in the judgment and sentence of a defendant being null and void. This demonstrates and shows how the appellate court failed or misapprehended its responsibility to guide the trial court by constituted authorities further allowing ti to go beyond the power delegated to it on Jan 30, 2018 by amended information, and abandon procedural due process violating the petiitoners 5th and 14th Amendment rights of the United States Constitution. See *Williamson v. Berry* 8 How, 945, 540, 12 L.Ed. 1170, 1189 (1850) this Court observed that "if the court act beyond that authority and certainly in contravention of it, their judgment and order are regarded as nullities; they are not voidable, but simply void and this even prior to reversal."
- vi. Lastly, the petitioner points to those controlling decisions or data that the show how appellate court overlooked or misapprehended it responsibility to guide the lower court by denying the petitioners rehearing and not giving written opinion or reversing the judgment and remanding to the Ninth Judicial Circuit Court to correct a clear

error or prevent a manifest injustice, through such a substantial abuse of "win at any cost prosecution," see *United States v. Shaygan* 661 F.Supp.2d 1289 (April 9, 2009) this Court observed that these types of prosecution are not permitted and; *United States v. Shaygan* *afra* "that courts of the United States must let it be known when substantial abuses occur, sanctions will be imposed." Under 1257(a) the procedure set forth in this rule Congress has vested federal review of state court decisions exclusively in the Supreme Court which has discretion to grant this writ of certiorari, see *Natusch v. Nibert*, no 1:16, cv 81, 2017 U.S. Dist. Lexis 45533, 2017 WL 1155375, at 4 (N.D.W. Va. Mar. 28, 2017, citing 28 U.S.C. § 1257.).

CONCLUSION

Based upon the foregoing cases and authorities and policies of the United States Constitutions 5th and 14th Amendments. Should this most high court of the United States in its independent review of this petition for writ of certiorari, find any issues sought by the petitioner or other than, to be reviewed as the merits would dictate constitutional violations, due to the lack of subject matter jurisdiction. Grant this petition by the authority vested in the Supreme Court by Congress, for guardians of the United States Constitution's due process clause's, and reverse and remand to the state court for the proper resolution to correct clear error or prevent manifest injustice. See *Natusch v. Nibert*, no 1:16, cv 81, 2017 U.S. Dist. Lexis 45533, 2017 WL 1155375, at 4 (N.D.W. Va. Mar. 28, 2017, citing 28 U.S.C. § 1257.).

The petition for writ of certiorari should be granted.

Respectfully submitted,
 Petitioner *pro se*
George Wesley Smith Jr, DC# X00293

Date: _____