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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Alan B. Yermal — PETITIONER
(Your Name)

vs.

State of Florida — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Supreme Court of Florida
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Alan B. Yermal

(Your Name)

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(City, State, Zip Code)

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1) When a state circuit court dismisses a motion to disqualify a judge citing a lack of jurisdiction when it is clear that the court is with jurisdiction, are the movant's due process rights to access to the courts and a fair and impartial proceeding violated?

2) When a state district court dismisses an action for failure to pay a filing fee after the very same district court previously issued an order for the matter to proceed without payment of the filing fee, are the movant's due process rights to access to the courts and a fair and impartial proceeding violated?

3) When a state supreme court denies a petition for writ of mandamus on a claim of improper dismissal(s) of the lower tribunal courts opining that there is no entitlement to relief because the state district court rendered its dismissal without an opinion, are the due process rights of the movant petitioner to access to the courts and a fair and impartial proceeding violated when, because the lower courts had no hearing on the merits of the case, and therefore, no opinion could be rendered?

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 of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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OTHER

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,
☐ is unpublished.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,
☐ is 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,
☐ is unpublished.

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

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

☒ For cases from state courts:

The date on which the highest state court decided my case was December 13th, 2017.
A copy of that decision appears at Appendix A.

☒ Rehearing was thereafter denied on the following date:
December 13th, 2017, and a copy of the order denying rehearing appears at Appendix A.

☐ 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

UNITED STATES CONSTITUTION - AMENDMENT V

UNITED STATES CONSTITUTION - AMENDMENT XIV

FLORIDA CONSTITUTION - EQUAL PROTECTION CLAUSE

STATEMENT OF THE CASE

On March 23rd, 2017 the Petitioner filed a motion to disqualify a judge in the Trial Court of his conviction and sentence, the Fifth Circuit Court in and for Citrus County, State of Florida. Petitioner had simultaneously filed a motion to preserve evidence. A previous motion to recuse the same judge had been denied in the Trial Court, and a petition for writ of prohibition in that case number 5D16-4435 had been denied by the Fifth District Court of Appeal on February 24th, 2017. Though a motion for rehearing was pending in case number 5D16-4435, the Petitioner believed this matter would be settled prior to the Trial Court receiving and ruling on the disqualification motion. On March 31st, 2017, the District Court denied the rehearing motion. On April 5th, 2017 the Trial Court dismissed the Petitioner's motion to disqualify a judge citing a lack of jurisdiction.

On April 19th, 2017 the Petitioner filed for rehearing in the Trial Court citing the Trial Court's oversight and that on April 5th, 2017 the Trial Court did indeed have jurisdiction such that the disqualification motion should be heard and ruled on. The rehearing motion was denied by the Trial Court on May 2nd, 2017.

Petitioner proceeded to file a second Petition for a Writ of prohibition to the Fifth District Court of Appeal in the State of Florida. On May 24th, 2017 the Appellate Court accepted the filing assigning case number 5D17-1577. The Appellate Court also on that day issued an order that the Petitioner pay a filing fee of three hundred dollars (\$300.00) within twenty (20) days or the matter would be summarily dismissed. On or about May, 2017 the Petitioner filed for indigency status and on June 6th, 2017 the Appellate Court issued an order granting the Petitioner indigency and issued an order that subsequently withdrew its earlier order to pay the filing fee, and the cause was to "proceed without payment of the filing fee...". However, on June 12th, 2017, exactly twenty (20) days after filing the petition for writ of prohibition, the Appellate Court summarily dismissed the cause.

Again, the Petitioner filed for rehearing in the Appellate Court citing oversight of the indigency order of June 6th, 2017. Yet again, the rehearing motion was denied on July 12th, 2017. To this point, the merits in this cause had not been heard, addressed or ruled on.

Petitioner filed a petition for writ of mandamus in the Supreme Court of Florida on August 2nd, 2017. Case number SC17-1421 was assigned. After some confusion on an order of the Supreme Court filing fee and a subsequent filing of an affidavit of indigency, the Supreme Court of Florida issued an order stating the "Petitioner's motion for leave to proceed in forma pauperis is hereby granted. Said order was issued on August 16th, 2017

~~Some time~~ later in October the Petitioner submitted a motion to submit an amended petition for writ of mandamus. On December 13th, 2017 the Florida Supreme Court granted the Petitioner's motion; however, in the same order, the Supreme Court ruled the Petitioner was not entitled to relief and denied the Petition for writ of mandamus citing HUFFMAN v. STATE, 813 So. 2d 10, 11 (Fla 2000). They also ordered that "no rehearing would be entertained by the Court." To wit, this Petition for Writ of Certiorari follows.

1. Petitioner brings notice that the decision was not unanimous in that Justice Pariente "would request responses."

REASONS FOR GRANTING THE PETITION

A judgement based not on the facts or merits of a valid claim and rendered in deference to the law cannot be allowed to stand. The Petitioner in the instant cause herein would aver that the courts of the State of Florida, in a discriminatory fashion, have violated his due process rights depriving him of being heard before the courts in a fair and impartial proceeding via a series of improper dismissals in trial and appellate courts, and a ruling in the Florida Supreme Court that is in deference and contrary to law as cited in its decision. This injustice, the Petitioner would allege, is based somewhat, if not primarily, on his status of being a *pro se*, incarcerated litigant, and, in the eyes of the court, unworthy of due process.

Pursuant to the federal constitution, all litigants have a long standing due process right to access to a fair and impartial proceeding, and, in matters where a party's rights are to be affected, they are entitled to be heard, UNITED STATES CONSTITUTION

AMENDMENTS 5 and 14, and BALDWIN v. HASSE, 62 U.S. 223; 1 Wall. 223, 233; 172 L. Ed. 531 (1869). Due process of law is a summarized constitutional guarantee of respect for personal rights which are so rooted in the traditions and conscience of our people as to be ranked as fundamental, SNYDER v. MASSACHUSETTS, 291 U.S. 97, 105; 54 S. Ct. 330; 78 L. Ed. 674 (1934). A pro se incarcerated litigant is no less afforded this right than any other litigant. In fact of law on both a state and federal level, allegations of a pro se complaint are to be held to less stringent standards than those to which formal pleadings drafted by lawyers are, PRINCE v. STATE, 40 So. 3d 11, 12 (Fla 4th DCA 2010); HAINES v. KERNER, 404 U.S. 519, 520; 36 L. Ed. 2d 652; 92 S. Ct. 594 (1972); Federal Rules of Court §130 (11a)(11b). Due process of law imposes upon the courts the responsibility to conduct an exercise of judgement upon the whole course of proceedings in order to ascertain whether they offend those canons of decency and fairness which express the notions of justice, MALINSKI v. NEW YORK, 324 U.S. 401, 416-17; 65 S. Ct. 78; 89 L. Ed 1029 (1945). The Petitioner

would allege that the courts of the State of Florida have, through a discriminatory series of proceedings, indeed so offended his due process rights to access the courts, and receive a fair and impartial proceeding of equal consideration under the law.

The Petitioner's cause involves a matter that originated in the circuit court, proceeded through the appellate courts, culminating in the Florida Supreme Court. At each stage, decisions rendered were so egregious that the very core of justice was snubbed at so as to deny this prose incarcerated litigant his day in court.

In the matter of the first question, one has only to answer the following question: Did the Fifth Circuit Court in and for Citrus County, Florida have jurisdiction to hear and rule on a disqualification motion before it on April 5th, 2017? The record of the matter conclusively shows it did have jurisdiction. The presiding jurist, the Honorable Judge Richard A. Howard concluded he did not. In a order

of dismissal dated April 5th, 2017 Judge Howard ruled that a pending writ of prohibition in case number SD16-4435 divested the Trial Court from jurisdiction, APPENDIX "B". However, the matter in case SD16-4435 had been ruled on February 24th, 2017, and Judge Howard was a party to service in the matter, APPENDIX "C". Even a rehearing in the matter was ruled on March 31st, 2017. In essence, the record proves conclusively that jurisdiction in the matter was with the Trial Court nearly a week prior to dismissal.

Thus, through a system of judicial oversight and/or manipulation, the Trial Court shirked its duty in the matter of disqualification presently before it. Even after the Petitioner filed a valid rehearing motion, the Trial Court ignored the obvious oversight by denying the rehearing. It is difficult to believe the Trial Court acted justly. Its actions, intentional or not, are a due process rights violation that deprived both access to the courts and a fair proceeding.

In reference to the second question, the matter is similar. After failing to succeed on rehearing, the Petitioner appealed to the Fifth District Court of Appeal in the State of Florida in the form of a petition for writ of prohibition, APPENDIX "D". The Appellate Court commenced two (2) actions on May 24TH, 2017. First, it accepted the Petitioner's filing assigning case number 5017-1577, and second, it issued an order for the Petitioner to pay a filing fee before the cause could proceed, APPENDIX "E". A twenty (20) day deadline was imposed. To wit, the Petitioner had until June 12TH, 2017 to pay said filing fee or face a summary dismissal of the cause. On or around May 29TH, 2017 the Petitioner filed an indigency motion. On June 6TH, 2017, the Appellate Court issued an order, APPENDIX "F" rescinding the previous order of May 24TH, granting the Petitioner indigency status, and ordering the cause to proceed without cause. However, on the June 12TH, 2017 deadline, the Appellate Court summarily dismissed the petition, APPENDIX "G".

A timely rehearing motion was denied on July , 2017.

It is inconceivable to think the Appellate Court's action in dismissal is correct. Due process requires notice and opportunity to be heard prior to dismissal, CAESENZO v. STATE, 199 So. 3d 353 (2nd Dec 2016). In this matter, that notice was the order of May 24th, 2017 which prompted the Petitioner to file for indigency resulting in the June 6th, 2017 order of the Appellate Court allowing the cause to proceed without cost of the filing fee. The summary dismissal of June 12th, 2017 is improper as it is contrary to and in deference to the Appellate Court's order of June 6th, 2017. Rehearing on the matter should have remedied the egregious action of the Appellate Court, but it did not, APPENDIX "B".

Hence, question two should be answered in the affirmative. On all counts, the record shows that even with jurisdiction in the matter, the Appellate Court, defying its own order granting indigency, denied the Petitioner's constitutional

due process rights to access to the courts and a fair and impartial proceeding. Petitioner would allege the Appellate Court's action to be discriminatory and illegal.

As to the third question before the Court, the Petitioner offers the following facts. After denial for rehearing in the Appellate Court, the Petitioner sought relief via a petition for writ of mandamus in the Florida Supreme Court to invoke the duty of the lower courts in jurisdiction, APPENDIX "1". As the Petitioner had a clear legal right to the lower courts ministerial duty, would suffer harm absent the writ, and had no other legal method for redressing the wrongs of the lower court's improper dismissals, mandamus would be the appropriate forum for relief. The Florida Supreme Court has used mandamus to reinstate improperly dismissed causes, CALDWELL v. ESTATE OF MCDOWELL, 507 So 2d 607 (Fla. 1987)²

2. Petitioner would bring notice that the matter in CALDWELL is remarkably similar to the instant cause herein in that both matters involve improper dismissals in the lower court for lack of payment of a filing fee.

The Florida Supreme Court, in denying the mandamus petition, cites HUFFMAN v. STATE, 813 So. 2d 10, 11 (Fla 2000). Petitioner would aver this is an egregious interpretation of the law, is discriminatory, and robs the Petitioner of his constitutional due process rights to a fair and impartial proceeding and equal consideration under the law. HUFFMAN represents a decision to deny mandamus relief for a *per curiam* affirmation by an appellate court of an appeal, and as such, no opinion was rendered. In a matter of not one, but two, improper dismissals in the lower courts, it is not possible for an opinion to be rendered. A dismissal is not a hearing on the merits of a cause; therefore, no opinion would be, or could be given by the Appellate Court. HUFFMAN, having had a fair hearing on the merits, was denied by *per curiam* affirmation. The Petitioner never had the performance of the lower court's duty. He could not expect to be denied mandamus for lack of a written opinion.

This very Supreme Court, in BLACKLEDGE v.

ALLISON, 436 U.S. 63; 97 S. Ct. 1621; 52 L. Ed 2d 196 (1973) granted certiorari after improper dismissal of a habeas petition. The ~~pro se~~ incarcerated Petitioner in the instant cause herein is no less entitled to meaningful consideration and plenary processing of his claim, and having relevant facts and allegations that are not vague, clearly meritable, and wholly supported by the record, he, like BLACKLEDGE, is entitled to certiorari relief.

CONCLUSION

Discriminatory treatment at the hands of the government is an injury long recognized as judicially cognizable, TIME WARNER CABLE v. HUDSON, 667 F. 3d 620 (5th Cir. 2012). The Petitioner avers that he has met the burden in proving the decision makers in his cause acted with discriminatory purpose and have violated his due process rights to access to the courts, a fair and impartial proceeding, and fair and equal consideration under the law, FREEMAN v. STATE, 761 So. 2d 1055 (Fla 2000). The Equal Protection Clause of the Florida Constitution guarantees each and every citizen, regardless of financial means or status, stands on equal footing with all others in every court of the state of Florida.

To wit, the Petitioner prays that the Honorable Justices of the Supreme Court of the United States grant the writ of

certiorari and provide remand to the courts
of the State of Florida for appropriate remedy.

Respectfully submitted on this 7th day of
March, 2018.

A handwritten signature in black ink, appearing to read "Alan B. Yermal", with a large, sweeping flourish extending to the right.

Alan B. Yermal D# U45919
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