

G. S.

ORIGINAL

Supreme Court, U.S.
FILED

OFFICE OF THE CLERK

V.

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

PETITION FOR WRIT OF CERTIORARI

GEORGE WESLEY SMITH, JR.
Tomoka Correctional Institution
3950 Tiger Bay Road
Daytona Beach, Florida 32124
Petitioner, Pro 'Se

QUESTIONS PRESENTED

1. When State Prosecutor fail to adhere to ethical obligations, and not avoid the appearance of partiality, also not obey discovery obligations merely to secure a conviction, does this negate legal principles of the United States Constitutions 6th Amendment and legitimizes unavailability of a witness due to the deliberate not signing of, and rejecting a subpoena for trial for that particular witness, by the prosecutor over the case? Under the 4th, 5th, 6th and 14th Amendment of the United States Constitution.
2. When an act of bad faith by an official is reprimanded and that official is part of a case, if the defendant makes a substantial showing prior to the outcome of said official, does the defendant have a right to effectively cross examine to any extent that witness during precursory process under the sixth amendment of the United States Constitution.
3. When the State nolle prosqui a charge off of the information, in writing on a plea form and on the same day orally pronounce in open court nolle prosqui of said count does further proceedings have jurisdiction to present or impose a sentence under the 14th Amendment of the United States Constitution?
4. When a Defendant is subjected to willful denial of all of his rights in a criminal proceeding does 18 U.S.C. Section 242 apply to his post-Conviction proceeding?
5. Under the United States Constitution 14th Amendment can the asserted claim of "failed to protect fundamental rights" apply to speedy trial violation?

LIST OF PARTIES

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is provided below. If a party is a corporation with a stock ticker symbol, that symbol is also included.

George W. Smith, petitioner

Mize, JJ, concurring

Wozniak, Smith, concurring

James Uthmeier, Attorney General, Tallahassee

State of Florida, respondent

Whitney Brown Hartless, Assistant Attorney General Daytona Beach for Appellee

RELATED CASES

- 6:25-cv-00071-GAP-NWH, Smith v. Clerk of Orange County Court
- 25-13747-B, Smith v. Clerk of Orange County Court
- FL 6th Dist. COA NO. 6D2024-1086
- George W. Smith, Jr. v. Florida No. 25-5185

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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,

☐ 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 H.N.J to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or
☐ unpublished

The opinion of the NINTH JUDICIAL CIRCUIT COURT
appears at Appendix E 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. _____.

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 April 7, 2026
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: _____
_____, and a copy of this order denying rehearing appears at Appendix:

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

The opinion of the NINTH JUDICIAL CIRCUIT court
appears at Appendix E 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. _____.

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 April 7, 2020.

A copy of that decision appears at Appendix N.

☐ A timely petition for rehearing was thereafter denied on the following date: April
30, 2026, and a copy of the order denying rehearing appears at Appendix J.

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

4th Amendment U.S.C. Due Process

5th Amendment U.S.C. Due Process right to enjoy fast and speedy trial

6th Amendment U.S.C. Confrontation clause; effective assistance of trial counsel
due process compulsory process speedy trial

14th Amendment U.S.C. Procedural Due Process, equal treatment, and protection of
law. No person shall be denied Due Process of Law

18 U.S.C. Section 242

Fla. Const. Art.(1) Section 2, Article (1) Section 4, Art. (1) Sec. 15, Art. (1) Section
16 (b)(10)(6)

Fla. R. Crim. P. 3.140; 3.191(f); 3.220(b)(1)(K)(4); 9.300

STATEMENT OF THE CASE

The petition arises from the trial courts order denying the Petitioners "Amended Pursuant court order May 3, 2022 Motion for Post-Conviction Relief, and per curiam affirmance by the 6th District Court of Appeals, and rehearing requested of said court.

The Petitioner raises his federal claims under the 4th, 5th, 6th, and 14th amendments of the United States Constitution. In his initial motion which was filed within 2 years required to timely file a post-Conviction claim for ineffective assistance of counsel after being arrested in 2019 and submitting his initial motion on mailbox stamped 12/08/2020 which was recorded by the clerk on 12/14/2020; This motion was timely.

As the court struck this motion on 2/17/2022 giving the petitioner by order of the court sixty days to amend. The Petitioner submitted his amended motion within the sixty days order by the court. Which the court struck on 05/03/2022 also provided a stated period within which the petitioner had to amend. See Appendix (O).

Hence forth the petitioner submitted his amended motion within the time allotted by the trial court, which this appeal is timely under Fla. R. App. P. 9.300 "Service of a motion shall toll the time schedule of any proceeding in court".

In the petitioners amended motion submitted on 06/27/2022, the petitioner asserted that the lead investigator in his case had disregards for the truth, among other federal claims so that the state courts may have a fair opportunity to apply controlling legal principles to facts bearing upon his constitutional claims, and resolve any constitutional issues that were raised in state appellate review process.

This as such the petitioner made a substantial preliminary showing in his correspondence with the trial court on mail box stamped Oct. 8, 2017, See Appendix (L),

record by the clerk on 10/12,2017. This substantial preliminary showing was enough to entitle him through 4th amendment right of the United States Constitution and 5th and 6th amendment due process with constitutionally effective assistance of counsel to have a hearing under Fla. R. Crim. P. 3.140 into the matters of record affidavit, that was used to the embarrassment of preparing and presenting his defense. In wake of the lead investigator who was fired from the police department for falsifying records. See Appendix (A); 18 U.S.C. Section 242 and also Frank v. Delaware 438 U.S. 154, 57 L.Ed. 2d 667, 98 S. Ct. 2614.; Appendix (K)

This constitutional issue was raised in the state appellate review process also in his Initial Brief to the 6 DCA. See Appendix (M); See O'Sullivan v. Boercher, 526 U.S. 838, 842, 119 S. Ct. 1728, 144 L. Ed. 2D 1 (1999) Neither State or United States Constitution indicate that a district court are to share in the administrative supervision of supporting a state courts conclusion that is contrary to, clearly established federal law, that results in a decision that is also contrary to Fla. Const. Art. (1) section (4) See Peed v. State 748 So. 2d 253, 257 (Fla. 1999), or involved a unreasonable application of clearly established federal law as determined by the Supreme Court of the United States under 18 U.S.C. Section 242, which prohibit the "State Attorney" from willfully subjecting "the Petitioner" to the deprivation of any rights, privileges or immunities secured or protected by the constitution or laws of the United States.

This occurred when the state did not attach that portion of the record refuting the petitioners claims. This also results in a material departure from the essential requirements of the law which also caused irreparable harm to the petitioners appellate review process.

As the language, spirit and purpose of the rule support the Petitioners position,

determination by state courts prove unfair in light of facts of the evidence that exist on the face of the record, and leading court case laws which also provide a question of law. If Florida courts decided the petitioners case differently, on a set of materially indistinguishable facts. See (Frank v. Delaware)

Therefrom the prosecution of the Petitioner was motivated by improper motives that arrive at outright denials of his Sixth Amendment right to confront his accuser and perform precursory process for trial. As the states course of action made a key witness unavailable for trial. See Appendix (A), this purposeful intent to gain an advantage preclude the defense to offer at trial testimony of a witness.

Such record documents and clerks docket reveal countless references of the states action to deprive the petitioner of his right to have effective cross examination of this witness. Specifically the state refused to sign the defense's subpoena for trial, and rejected said subpoena due to it not having the State Attorneys name or signature of approval.

This occurred on multiple occasions (on 10/19/2018) and 11/02/2018) See Appendix (C)(D), See also Delaware v. Fenster 474 U.S. 15, 20, 106 S. Ct. 292, 88 L. Ed 2d (1985) "The confrontation clause guarantees an opportunity for effective cross examination, not cross examination that is effective in whatever way and to whatever extent "the defense might wish." Such is observed by the Sixth DCA under Fla. R. Crim. P. 3.220 (b)(1)(K)(4). The state's action of motion in limine" in regards of the termination of Danielle Saslo from the Apopka Police Department"; "not signing and rejecting the subpoena for trial," of this key witness is a violation of the compulsory process clause of the Sixth Amendment of the United States Constitution.¹ See Appendix (A)(C)(D)

Petitioner did fairly present his federal claim so that state courts would have a fair

1. Ohio v. Roberts 448, U.S. 56, 100 S. Ct. 2531, 65 L. Ed. 2d. 597, 7 Fed. R. Evid. Serv. 1 (1980).

opportunity to apply controlling legal principles to these facts bearing upon this constitutional claim See *O'Sullivan v. Boercker* 526 U.S. 838, 842, 119 S. Ct. 1728, 144 L. Ed. 2D 1 (1999).

As the petitioner's counsel failed to advise the court of this alleged discovery violation, this caused more than one set of harm to the petitioner and is not the exception to provide fairness of the confrontation clause of the Sixth Amendment. But is conducive to demonstrate petitioners Brady violation claim (1) with the prosecutor not signing and rejecting the subpoena for trial of said witness is tactical maneuver to suppress or make unavailable to the defense (2) This witness was terminated for falsifying documents in light of the petitioners Oct. 8, 2017 correspondence with the court" alleging said witness had a disregards for the truth while writing the affidavit. This evidence is favorable or exculpatory. (3) This witness was important in order for the trial to be fair.² See *Napue v. Illinois* 360 U.S. 264, 79 S. Ct. 1173 L. Ed. 2D 1217 (1959) Quoting "The jury's estimate of truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend "360 U.S. At 269.

The vexations acts by the state in not adhering to ethical obligation or obeying obligations of Fla. R. Crim. P. 3.220(b)(1)(K)(4), caused irreparable harm, See, *United States v. Shaygan* 661 F. supp. 2D 1289 (2009) also Appendix (C)(D); as Petitioner suffered prejudice, a conviction was induced through the state's intent to gain advantage by the unavailability of this witness.

Hence forth the decision by the 6th DCA was based on an unreasonable determination of the facts, in of which the state did not attach that portion of the record

2. *Brady v. Maryland* 373 U.S. 83, 10 L. Ed. 2d 215, 83 S. Ct 1194 (Holding).

refuting the allegations in the petitioners Motion for Post-Conviction Relief. See Appendix (E). This is also digressive of a state procedural rule as observed under Fla. Const. Art. (1) section (4); the authority of *Peede v. State* 748 So. 2d 253, 257 (Fla. 1999) also violates the Petitioners 14th Amendment right to equal treatment and protection of the law of the United State Constitution.

Further more this conflicts with other Florida appellate decisions and involves a question of great public interest, where this "Mode of discrimination" towards the Petitioner, See *Gominion v. Lightfoot*, 364 U.S. 339 S. L. Ed 2d 110, 87 S. Ct. 125 (1960) "caused irreparable harm throughout the remainder of his post-Conviction proceedings. See Appendix (H)

These events surrounding the Petitioner's conviction are demonstrative of the state prosecutor acting vexatiously and in bad faith in prosecuting the Petitioner, that the Petitioner raised this issue in his Amended 3.850 ground (1) as his counsel failed to protect his fundamental rights, See *U.S. v. Williams* 793 F. 3d 957 (8th Cir. 2015); Appendix (E).

This course of actions by the State Attorney "willfully subjected" the Petitioner to denial of due process by (avert applying standard for criminal justice from a constitutionally valid basis" in this case. This is observed on the face of the record. The legal substance of this claim was not refuted by the state with an attachment of that portion of the record.

The Petitioner's argument demonstrates the states deviation from the Fla. R. Crim. P. 3.191 (when it amended the information with the same exact information to grant themselves a continuance. Thus not complying with speedy trial rule on Jan. 30, 2018. In light of states witness being placed on administrative leave. See Appendix B

Accordingly Fla. R. Crim. P. 3.191 (F) explains the state may either postpone

arresting a suspect until it has an adequate case of if charges have already been filed, seek an extension for good cause. Requiring the state to petition the court for an extension on Jan. 30, 2018 achieves the intended result of ensuring judicial control over deviations from the rule.

This also caused irreparable harm, as the prosecution proceed with the improper motive to deprive the petitioner of all of his constitutional rights under the United States Constitution 4th, 5th, 6th, and 14th Amendments.

Subsequently, Petitioner requested review by a full panel of this setting through a rehearing en banc to review under the rule and extend legal principles in the observance of rule 3.191 to this new context of his Post-Conviction filing, See (9)(10) as the rehearing was denied. See Appendix (I)(J). The 6th DCA submitted an extended ruling on May 21, 2026 stating why it was unable to comply with Article 1, section 16 (b)(10)(b) of the Florida Constitution See Appendix (H).

This violated the Petitioners state rights under Article 1 section (2) that observe no person shall be deprived of any rights: also Article 5 section (2) recognizing "all person are equal before the law and have inalienable rights among which are the right to enjoy and " defend life and liberty".

Further violating the Petitioners 14th Amendment rights to equal treatment and protections of law under the United States Constitution.

The irreparable harm done here is that the state courts render a decision based on an unreasonable determination of the facts in light of the evidence presented in a court proceeding. See Appendix (A),(B),(C),(D),(E),(F), and (h) which denied the Petitioner to appellate review, where his claims were raised on a set of materially recognizable facts,

See Appendix E and (Thaler v. Haynes) that given appellate review "a fair minded jurist could disagree that those argument or theories in the courts order that denied the Petitioners motion See Appendix (F) are inconsistent with holding in Supreme Court decisions.

This observation is explained by the Supreme Court of the United States in Martinez v. Ryan 132 S. Ct. 1309 at 1310 (US(Ariz.)2012) holding that "when a state court requires a prisoner to raise an ineffective assistance of trial counsel claim in a collateral proceeding, if a state court did not appoint counsel in the initial review collateral proceeding "cause" for his procedural default is established.

Thus the petitioner was not appointed counsel to assist him in his 3.850 proceeding, the petitioner was left with no choice but to file his 3.850 motion pro se, and without the assistance of counsel. Such, legal principles from the supreme court case law is warranted and should have been reasonably extended to the petitioners case by the post-Conviction courts See (Martinez v. Ryan); Amendment 14 United States Constitution equal treatment and protections of law.

As the prosecution of the petitioner arrived at its conclusion. The due process violations by the state presented jurisdictional challenges with its entering in handwritten on the plea form nolle prosqui of count three on Dec. 03, 2018. This did not accommodate effective assistance of trial counsel by the Sixth Amendment standards.

The petitioner raised in his 3.850 motion that his "ability to predict with certainty the legality of the courts contract required his counsels skills and knowledge during a critical stage in the proceeding to accord fair and prompt consideration". See Appendix (E) (R.pp. 95-96) Ground (1)(C)(A).

This submission to a plea by the petitioner exist on questionable jurisdictional grounds. Accordingly when the state attorney entered in writing its nolle prosqui of count three on Dec. 03, 2018 it effectively ended the proceeding and any action taken subsequent to the filing of Nolle prosqui with this the state on the same day pronounced nolle prosqui in open court. The ineffectiveness of the defendants counsel extends to his counsel failing to withdraw the plea timely on 3.22/2019. See Appendix (B). With Petitioner's counsel misrepresentation of the facts she allowed the court to impose the court to impose punishment after the state entered in writing nolle prosqui of count 3 on Dec. 3, 2018.

Accordingly under article 1 section 15 of the Florida Constitution jurisdiction to try to Petitioner did not exist when the state entered in writing nolle prosqui of count 3 and orally pronounced nolle prosqui on Dec. 03, 2018. See *Winters v. State* 781 So. 2d 1111, 11114 (Fla. DCA 2001); United States Constitution Amendment 5, 6, 14, "no person shall be deprived of life , liberty or property without due process of law".

It is important to observe the court order denying the Petitioners "Amended Pursuant court order May 03, 2022 Motion for Post-Conviction relief"

As the PROCEDURAL HISTORY does not include the state hand written nolle prosqui, and oral pronounciation of nolle prosqui of count 3 Appendix (G) on Dec. 03, 2018 See Appendix (B); This order is a nullity See *Braden* 375 So. 2d at 50; *State of Florida v. Riley a child* Fla. App. Lexis 1958 (Fla. 5th DCA 2007) Everything which occurs in a proceeding subsequent to the filing of a nolle prosqui by the state is a nullity.; and Also under Fla. Const. Art. 1 section 15 jurisdiction to try the Petitioner did not exist on Dec. 21, 2018 when the state orally pronounced nolle prosqui on count 3 and imposed its sentence.

See *Seller v. State* 949 So. 2d 303.

As the outcome of the Petitioner resulted in him being detained against his will without due process irreparable harm resides in this setting. Because the record Appendix (B) demonstrates without contradiction that all of the Petitioner's allegations contained in his Amended Pursuant court order May 03, 2022 Motion for Post-Conviction" were not refuted by those parts of the record by the state the 6 DCA resulted in a decision that was based on an unreasonable determination of the facts.

Henceforth, it is important to observe that but for "the Petitioner's" counsel unprofessional errors the results of the proceeding would have been different *Strickland v. Washington* 466 U.S. At 694, 104 S. Ct. 2052.

Thus, his counsels constitutionally ineffective performance affected the outcome of the plea process.

To prevent a manifest injustice and a denial at due process, review is necessary to correct a fundamental miscarriage of justice that has occurred multiple constitutional violation that resulted in the conviction of the Petitioner.

REASONS FOR GRANTING A WRIT OF CERTIORARI

Based on the following facts, the decision by the state courts are contrary to clearly established federal law and resulted in a decision that is contrary to or involved an unreasonable application of clearly established federal law as determined by the supreme court of the United States and because there is no adequate remedy by appeal from the District Courts decision of the Petitioners Post-Conviction motion the 6th DCA error in not extending legal principle to the new context of Petitioners case has caused irreparable harm in more than one way throughout his 3.850 proceeding. As the violation of the Petitioners 4th, 5th, 6th, and 14th Amendment rights of the United States Constitution cannot be fixed in the prior appeal. The Petitioner seek the most high court of the United States, as this review is warranted for the violations brought forth will result in a real miscarriage of justice and a denial of due process. Petitioner pray that the United States Court grants this Petition.

CONCLUSION

Based upon the foregoing cases and authorities and policies should this Most High Court of the United States, grant this petition and in its independent view find that the State Court decisions is unreasonable declining to extend legal principles from authorities exercised in the United States from leading Supreme Court cases grant this petition and overturn reverse and remand the District Courts affirmance as the equal protections of laws and treatment under the Constitution 14th Amendment entitles a person in its jurisdiction. The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

George W. Smith Jr. Petitioner pro se

GEORGE W. SMITH J.R., DC# X00293

Date: JUNE FIFTEENTH 2026