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CLERK, SUPREME COURT

By JC
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

LUTHER T. BASSE,
Petitioner,

Vs.

CASE NUMBER: 93,760

2nd DCA CASE NO: 98-02517

STATE OF FLORIDA,
Respondents.

PETITION FOR WRIT OF PROHIBITION/MANDAMUS

Luther T. Basse, DC#140306
Petitioner, Pro se
Hardee Correctional Institution
6901 State Road 62 (MB# 515)
Bowling Green, Florida 33834

ORIGINAL

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NEW RULES OF COURT TO STRIKE PETITIONER'S PETITION,
OR THE LEGAL AUTHORITY TO DISMISS
AN ORIGINAL PETITION FOR WRIT OF HABEAS CORPUS
FOR ANY REASON OTHER THAN LACK OF JURISDICTION.**

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PROCEDURAL NOTE

Both Prohibition and Mandamus are necessary for review of the Order in question as said Order struck Petitioner's Petition for Writ of Habeas Corpus and also threatens future dismissal of Petitioner's entire cause. See, Gallego v. Purdy, 415 So.2d 12 (Fla. 4 DCA 1995).

Petitioner filed contemporaneously with this Petition for Writ of Prohibition/Mandamus, a Motion to Stay Proceedings in the Second District Court of Appeal. (Exhibit E). In the event the Second District Court of Appeal denies the Motion to Stay Proceedings, or this Court does not timely enter an Order to Show Cause, automatically staying the proceedings in the lower court, Petitioner requests this Honorable Court proceed with this Petition as a Petition for Writ of Mandamus.

JURISDICTION

This Honorable Court has original jurisdiction pursuant to the Florida Constitution, Article V, Section 3(b)(7) and (8), and Florida Rule of Appellate Procedure 9.030(a)(3). This Honorable Court has appellate jurisdiction of case number 98-02517, filed in the Second District Court of Appeal, therefore, this Court has competent jurisdiction to entertain petition for writ of prohibition/mandamus in this cause¹.

1/ State ex rel. Bettendorf v. Martin County Environmental Control Hearing Board, 564 So.2d 1227 (Fla. 4 DCA 1990).

CERTIFICATE OF INTERESTED PARTIES

Pursuant to Fla.R.App.P. 9.100(e)(2), the following are interested parties to this Petition:

RESPONDENTS:

The Honorable Jerry R. Parker
Chief Judge & Judicial Administrator
Second District Court of Appeal
801 East Twiggs Street, Suite 600
Tampa, Florida 33602-3547

The Honorable William A. Haddad,
Clerk of Court
Second District Court of Appeal
Post Office Box 327
Lakeland, Florida 33802-0327

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PETITIONER:

Luther T. Basse, DC# 140306
Hardee Correctional Institution
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Bowling Green, Florida 33834

STATEMENT OF CASE AND FACTS

1. Petitioner filed an original proceeding in the Second District Court of Appeal on July 2, 1998, raising ineffective assistance of appellate counsel, pursuant to Florida Rule of Appellate Procedure 9.140(j) (1998), by petition for writ of habeas corpus, claiming Petitioner is illegally imprisoned in violation of the Florida and United States Constitutions.

2. The Second District Court of Appeal entered an Order on July 15, 1998 striking Petitioner's Petition for Writ of Habeas Corpus for exceeding page limitation, citing Florida Rule of Appellate Procedure 9.210(a)(5). (Exhibit A).

3. Petitioner timely filed a Motion for Rehearing on July 24, 1998. (Exhibit B).

4. Respondent, The Honorable Jerry R. Parker, Chief Judge & Judicial Administrator, Second District Court of Appeal, was formally notified of the alleged error of the July 15, 1998 Order, by Petitioner forwarding a copy of the Motion for Rehearing with cover letter, on July 28, 1998, by certified return receipt mail, number Z 177 833 881. (Exhibit C)².

5. The Second District Court of Appeal denied Petitioner's Motion for Rehearing by Order dated August 6, 1998. (Exhibit D).

6. This Petition for Writ of Prohibition/Mandamus follows.

2/ Petitioner has fulfilled the requirements of Powell v. Watson, 565 So.2d 845 (Fla. 5 DCA 1990) in responsibly notifying said Respondent of the alleged error prior to petitioning for writ of prohibition/mandamus.

ISSUE

**RESPONDENTS DO NOT HAVE AUTHORITY TO PROMULGATE
NEW RULES OF COURT TO STRIKE PETITIONER'S PETITION,
OR THE LEGAL AUTHORITY TO DISMISS
AN ORIGINAL PETITION FOR WRIT OF HABEAS CORPUS
FOR ANY REASON OTHER THAN LACK OF JURISDICTION.**

SUMMARY OF ARGUMENT

Respondents have promulgated a new Rule of Court, without legal authority, by instituting a page limitation on original proceedings under Florida Rule of Appellate Procedure 9.100, by implication of Fla.R.App.P. 9.210(a)(5). Respondents have stricken Petitioner's Petition for Writ of Habeas Corpus and threatened enforcement of their "implied" rule with dismissal of Petitioner's entire cause due to a supposed technical violation of their imaginary page limitation. Petitions for writ of habeas corpus, filed pursuant to Fla.R.App.P. 9.140(j), proceed under the guidelines of Fla.R.App.P. 9.100, which govern original proceedings. Rule 9.100 imposes no page limitation. Respondents have no authority to promulgate a new Rule of Court to strike Petitioner's Petition, as the promulgating of the Rules of Court is a function of the Legislature and the Florida Supreme Court.

Further, an original petition for writ of habeas corpus can only be dismissed for filing of that petition in a court lacking jurisdiction. A petition for writ of habeas corpus is immune to dismissal for any technical irregularities.

Since Petitioner's original proceeding, by way of petition

for writ of habeas corpus, case number 98-02517, proceeds under Fla.R.App.P. 9.100, there is no page limitation, contrary to Respondent's Order dated July 15, 1998. As said Petition is a petition for writ of habeas corpus and the Second District Court of Appeal is the court of competent jurisdiction, said Petition cannot be stricken or dismissed for any technical irregularity. Said Petition must be delivered to the assigned judges for determination of the sufficiency of the Petition to state a prima facia case of illegal restraint.

Therefore, the writ of prohibition/mandamus must issue³ to PROHIBIT Respondents from promulgating and enforcing new Rules of Court; PROHIBIT Respondents from dismissing Petitioner's cause; MANDATE Respondents reinstate Petitioner's Original Petition for Writ of Habeas Corpus as tendered; MANDATE Respondent Clerks deliver said Petition to the assigned judges; and MANDATE Respondents proceed to determine the sufficiency of the Petition to state a prima facia case of illegal restraint.

3/ Comcoa Inc. v. Coe, 587 So.2d 474 (Fla. 3 DCA 1991), rev denied, 599 So.2d 654 (Fla.).

ARGUMENT

The writs of prohibition and mandamus are extraordinary writs, to be issued only in extreme circumstances to prohibit the enforcement of an order of irreparable and unappealable harm or to enforce an indisputable legal right of a petitioner which respondent has a clear and undiscretionary duty to perform, and which petitioner has no other adequate legal remedy.

Petitioner avers this Petition raises a serious question of law, concerning a matter of great public importance, adversely affecting not only the instant Petitioner, but the orderly function of the administration of the Court.

Petitioner avers he has the constitutionally indisputable right to access the court⁴; the constitutionally indisputable right to timely file a petition for writ of habeas corpus in a court of competent jurisdiction⁵; and the constitutionally indisputable right to equal protection of the law in the application of the Rules of Court⁶.

Petitioner avers Respondents have the undiscretionary, ministerial duty to file and process without delay Petitioner's Petition for Writ of Habeas Corpus as originally tendered as they are the court of competent jurisdiction.

Petitioner avers there is no other adequate legal remedy to

4/ Florida Constitution, Article I, Section 21; U.S. Constitution, First, Fifth and Fourteenth Amendments.

5/ Florida Constitution, Article I, Section 13.

6/ Florida Constitution, Article I, Section 2; U.S. Constitution, Fourteenth Amendment.

correct Respondent's illegal striking of his Petition for Writ of Habeas Corpus, and prohibit dismissal of Petitioner's entire cause; and that compliance with Respondent's Order dated July 15, 1998 would result in irreparable and unappealable harm.

Petitioner timely filed a petition for writ of habeas corpus in the Second District Court of Appeal on July 2, 1998. Said Petition was filed pursuant to Fla.R.App.P. 9.140(j)(1998), claiming Petitioner is illegally imprisoned in violation of the Florida and U.S. Constitutions. Said Petition raised per se ineffective assistance of appellate counsel for failing to obtain the Record on Appeal, and four issues of constitutional magnitude, each, in and of itself, dispositive of a reversal on direct appeal, with three of the issues dispositive of the entire case, barring retrial.

Respondent, "C.S."/Office of the Clerk of Court, entered an Order of the Court on July 15, 1998 (Exhibit A), striking Petitioner's Petition for Writ of Habeas Corpus for exceeding page limitation, citing Fla.R.App.P. 9.210(a)(5), stating, "[t]he same conciseness is required of petitions in original proceedings." Said Order further threatened dismissal of Petitioner's entire cause if Petitioner did not file an amended petition of less than 50 pages within 30 days of that Order.

Petitioner timely filed Motion for Rehearing on July 24, 1998 (Exhibit B), with Service upon Respondent, The Honorable Jerry R. Parker, Chief Judge and Judicial Administrator of the Second

District Court of Appeal.

Respondent, William A. Haddad, Clerk of Court, denied said Motion by Order of the Court on August 6, 1998. (Exhibit D).

Respondents, William A. Haddad and "C.S.", as officers of the Office of the Clerk of Court, perform a ministerial duty in the Second District Court of Appeal. As such, "[t]he Constitution of the State of Florida requires [said officers] to receive, docket and deliver to the assigned judge all petitions for writs of habeas corpus without **any** delay. . ." Bradley v. Sturgis, 541 So.2d 767 (Fla. 1 DCA 1989)(emphasis in original)⁷. It is therefore their undiscretionary duty and a violation of the Florida Constitution, Article I, Section 13, to do otherwise. The Office of the Clerk of Court is without judicial authority to determine the legal significance of documents tendered for filing⁸. Respondent clerks have usurped not only judicial authority in entering orders striking Petitioner's Petition for Writ of Habeas Corpus, threatening dismissal of the entire cause, and denying Motion for Rehearing, but also have usurped the

^{7/} Bradley, supra, is an on point case involving a petition for writ of habeas corpus where the clerk of court failed to know the law applicable to its office and/or failed to abide by it. Bradley and the instant case are prime examples of the unnecessary and illegal delay pro se litigants are frustrated with, by the manufacturing of stumbling blocks creating legally unfounded procedural battles, instead of, as the law requires, the issue being determined on its merit. Respondents would not insult a professional attorney with the frivolous Order of July 15, 1998.

^{8/} Collins v. Taylor, 579 So.2d 332 (Fla. 1 DCA 1991); State v. Sutton, 231 So.2d 874 (Fla. 3 DCA 1970).

authority of the Legislature and Florida Supreme Court in promulgating and enforcing their self-fabricated Rules of Court.

As the Petition for Writ of Habeas Corpus was filed pursuant to Fla.R.App.P. 9.140(j), "[t]he petition shall be in the form prescribed by Fla.R.App.P. 9.100." Id. The Petition filed by Petitioner meets each and every requirement of Rule 9.100(g), which governs original proceedings. Rule 9.100 does not impose a page limitation. The Rule of Court cited by Respondent Clerks, Rule 9.210(a)(5), does not apply to original proceedings, but rather, initial briefs on direct appeal. Respondent Clerks' Order that the same conciseness is required in original proceedings⁹, now promulgates a new Rule of Court—a page

^{9/} Contrary to the implication of Respondents' Order, conciseness cannot be determined by merely counting the number of pages. The very Rule of Court cited in Respondents' Order acknowledges and makes allowance for this very fact. Fla.R.App.P. 9.210(a)(5) states in pertinent part: "Longer briefs may be permitted by the Court." Each case, depending upon the severity of the charged crime, the elements that must be proven, and the issues and evidence to be presented warrant the discretion of the Court to extend the page limitation even on an appeal where the case facts have already been sufficiently established in the record. See Heath v. Jones, 941 F.2d 1126, 1131 (11th Cir. 1991)(Average capital appeal raises 34 issues and average 194 pages.)

Instantly, Petitioner's pro se original proceeding is concise when reviewed with consideration of the enormous burden placed on the original Petition to establish the true facts of this case that were maliciously and intentionally falsified by the gross misconduct of the State's knowing use of perjury, and state-appointed appellate counsel's per se ineffectiveness in failing to obtain the Record on Appeal. If any stigma is to be placed for the abuse of judicial resources or procedural violations, it should be shouldered by the State, as without their manufacture and introduction of false testimony, there would have been no trial, direct appeal, 3.850 motion, 3.850 appeal, or this instant

limitation on original proceedings under Rule 9.100, which is an illegal usurpation of authority. Respondent Clerks' Order is unfounded in the Rules of Court or case law and Respondent Clerks are without authority to enforce their "implied" Rule of Court.

Furthermore, the Petition, being a petition for writ of habeas corpus, has but two requirements. First, the petition be filed in a court of competent jurisdiction, and second, the petition state a prima facie case of illegal restraint. Seccia v. Wainwright, 478 So.2d 1156 (Fla. 1 DCA 1986), summarizes the State of Florida's procedural requirements concerning petitions for writ of habeas corpus:

Historically, habeas corpus is a high prerogative writ. It is as old as the common law itself and is an integral part of our own democratic process. The procedure for the granting of a writ of habeas corpus should not be circumscribed by hard and fast rules or technicalities which often accompany the consideration by the court of other processes. If it appears to a court of competent jurisdiction that a person is being illegally restrained of his liberty, it is the responsibility of the court to brush

Petition. In addition, had state-appointed appellate counsel obtained the Record on Appeal, this cause would have been reversed on direct appeal. The length of the original Petition for Writ of Habeas Corpus is directly proportionate to the State's misconduct. It is impossible to correct the false testimony which has permeated and tainted the entire proceedings with sufficient specificity to demand an Order to Show Cause be entered in less than 50 pages. See Fla.R.App.P. 9.100 (1977 committee notes). Heath v. Jones, 941 F.2d 1126 (11th Cir. 1991); Cross v. U.S., 893 F.2d 1287 (11th Cir. 1990); Davis v. Singletary, 853 F.Supp. 1492 (M.D.Fla. 1994)(Alleged omitted issues must be briefed for court to review issues on their merit).

aside formal technicalities and issue such orders as will do justice. In habeas corpus the niceties of the procedure are not anywhere nearly as important as the determination of the ultimate question as to the legality of the restraint. Anglin v. Mayo, 88 So.2d 918 (Fla. 1956). Florida courts should extend considerable latitude in pleading to a prisoner seeking the issuance of the writ of habeas corpus, give the petitioner the benefit of the doubt, and overlook technical inadequacies in his petition. Wood v. Cochran, 188 So.2d 193 (Fla. 1960).

See also, Sneed v. Mayo, 66 So.2d 865, 870 (Fla. 1953); Crane v. Hayes, 253 So.2d 435, 442 (Fla. 1971); Glinton v. Wille, 457 So.2d 563, 566 (Fla. 4 DCA 1984); Jamison v. State, 447 So.2d 892 (Fla. 4 DCA 1983); Matera v. Buchanan, 192 So.2d 18, 20 (Fla. 3 DCA 1966); and 28 Fla.Jur.2d, Habeas Corpus, sections 93 and 95. Fla.R.App.P. 9.140(j) settles the jurisdictional issue as the Second District Court of Appeal was the court that entertained Petitioner's direct appeal, Basse v. State, 651 So.2d 1201 (Fla. 2 DCA 1995). As a petition for writ of habeas corpus is immune to dismissal for technical irregularities¹⁰, Respondent Clerks

10/ Although a petition for writ of habeas corpus is immune from dismissal due to technical irregularities, Petitioner has attempted, in good faith, to follow the applicable procedural rules and write concisely in this original proceeding. The Petition is legibly typed, artfully written, properly documented with appendix, adequately supported with controlling case law, and the Record cited and quoted in detail, going so far as to provide an accurate, sworn transcript of the audio tape recording of the March 6, 1992 interrogation, in order for the issues to be presented in an intelligent and orderly manner, preventing any confusion or uncertainty by the Court or Respondent as to the issues raised.

have an undiscretionary, ministerial duty to deliver the Petition as originally tendered to the assigned judges for determination of the sufficiency of said Petition to state a prima facie case of illegal restraint. Respondent Clerks do not have any legal authority to strike Petitioner's Petition for Writ of Habeas Corpus for any technical irregularity or threaten dismissal of the entire cause for non-compliance with their Order of July 15, 1998.

CONCLUSION

Respondents have no legal, judicial, or legislative authority to promulgate a new Rule of Court by implying Fla.R.App.P. 9.210(a)(5) governs petitions filed under Fla.R.App.P. 9.100; or enforce said "implied" rule to strike a petition for writ of habeas corpus, or order the dismissal of an original proceeding for exceeding their imaginary page limitation, as there is no page limitation imposed by Rule 9.100. Petitioner has the indisputable right to access the court, to timely file a petition for writ of habeas corpus in a court of competent jurisdiction, and to the equal protection of law in application of the Rule of Court. Respondents have the undiscretional duty to file and process without delay Petitioner's Petition for Writ of Habeas Corpus as originally tendered, it having fulfilled the requirement of being filed in a court of competent jurisdiction, and Respondents have no authority to dismiss Petitioner's entire cause due to any technical violations.

Therefore, the writ of prohibition/mandamus must issue.

REQUESTED RELIEF

Petitioner prays this Honorable Court issue a Writ of Prohibition/ Mandamus to:

PROHIBIT Respondents from promulgating new Rules of Court;

PROHIBIT Respondents from dismissing Petitioner's cause;

MANDATE the reversal of Respondent's Orders dated July 15, 1998 and August 6, 1998;


MANDATE reinstatement of Petitioner's original Petition as filed;

MANDATE Respondent Clerks deliver the Petition for Writ of Habeas Corpus as originally tendered to the assigned judges;

MANDATE Respondents proceed to determine the sufficiency of the petition for writ of habeas corpus to state a prima facie case of illegal restraint;

and any and all further injunctions, orders or relief this Honorable Court deems just and proper for the orderly administration of the Court and as the law and justice requires.

Respectfully submitted,


Luther T. Basse, DC# 140306
Hardee Correctional Institution
6901 State Road 62 (MB# 515)
Bowling Green, Florida 33834

CERTIFICATE OF OATH

STATE OF FLORIDA)
)
COUNTY OF HARDEE)

I Swear under penalty of perjury that the facts stated herein
are true and correct.


Executed this 19th day of August, 1998.



Luther T. Basse, DC# 140306
Hardee Correctional Institution
6901 State Road 62 (MB# 515)
Bowling Green, Florida 33834

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Petition for Writ of Prohibition/Mandamus has been furnished to the Honorable Jerry R. Parker, Chief Judge and Judicial Administrator, Second District Court of Appeal, 801 E. Twiggs Street, Suite 600, Tampa, Florida 33602-3547; The Honorable William A. Haddad, Clerk of Court, Second District Court of Appeal, Post Office Box 327, Lakeland, Florida 33802-0327; John Doe (known only as "C.S.") Office of the Clerk of Court, Second District Court of Appeal, Post Office Box 327, Lakeland, Florida 33802-0327; Robert A. Butterworth, Attorney General, Office of the Attorney General, The Capitol, Tallahassee, Florida 32399-1050; Assistant Attorney General, Office of the Attorney General, Criminal Division, 2002 N. Lois Avenue, 7th Floor, Tampa, Florida 33607, by U.S. Mail, this 19th day of August, 1998.


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