

RECEIVED 12/21/2022 FLORIDA SUPREME COURT

SUPREME COURT OF FLORIDA

PROVIDED FOR MAILING
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DEC 14 2022

LaDon M. GREEN,
Petitioner,

STAFF INITIALS LD
INMATE INITIALS _____

v.

CASE No.: SC22-1388

Ricky D. Dixon, Etc.,
Respondent, /

RESPONSE TO COURT'S SHOW CAUSE ORDER

This Honorable Court in its order alleges that Petitioner has abused the judicial process by filing either meritless or not appropriate for this Courts review numerous motions. The Court failed to stipulate which so Petitioner will address both. Pertaining to the issue of meritless, issues in motion Petitioner states the following that his claims and issues are supported by the United States Supreme Court in Gideon v. Wainwright, 372 U.S. 395 (1963), and Argersinger v. Hamlin, 407 U.S. 25 (1972). Where he alleges that he is being unlawfully incarcerated in violation of his Sixth and Fourteenth Amendments of the U.S. Constitution. These decisions are the law of the land thereby requiring the State of Florida to comply with those decisions. Thus, Petitioner's claim is not meritless.

As to if claim is appropriate for this Court

Petitioner avers that pursuant to Rule 9.030(a)(3) Fla. R.App.Proc., that specifically states, "The Supreme Court or any justice may issue writs of habeas corpus returnable before the Supreme Court or any justice, a district court of appeal or any judge thereof, or any circuit judge." Pursuant to this rule Petitioner's petition is appropriate for this Court's review.

The United States Supreme Court has stated that "[a] complaint, containing as it does both factual allegations and legal conclusions, is frivolous where it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 109 S.Ct. 1827, 1831 (1989). The Court further stated that a legal argument must have an "arguable basis in law." *Id.* at 1833. An "arguable basis in law" is a very low standard to meet. See Denton v. Hernandez, 118 L.Ed. 2d 340, 112 S.Ct. 1728, 1733 (1992), quoting Neitzke, 109 S.Ct. at 1833. The Supreme Court has held that "a court may dismiss a claim as factual frivolous only if the facts alleged are clearly baseless, a category encompassing allegations that are fanciful, fantastic, and delusional. As those words suggest, a finding of factual frivolousness is appropriate when the facts alleged [are] irrational or ... wholly incredible" Denton, 112 S.Ct. 1733, quoting Neitzke, 109 S.Ct. at 1831, 1833.

The facts of Petitioner's complaint is clearly not of this character. The record contains transcripts of his arraignment a critical stage that clearly proves the trial court failed to advise Petitioner of his right to counsel or make any attempt to offer the assistance of counsel, and that there were no statements from Petitioner that could be construed as a waiver of counsel. Petitioner provided his court order declaring him indigent. Petitioner asserts that his exhibits and argument supports a colorable claim. Therefore, Petitioner claim is not frivolous.

Petitioner further asserts that this court failed to address the motion to appoint counsel mailed on October 25, 2022. See Ex. A. In accordance with Graham v. State, 372 So2d 1363 (Fla. 1979), the Court was required to resolve any doubts in favor of the appointment of counsel. But as this Court's order suggest Petitioner requires the assistance of counsel in the interest of justice. The United State Supreme Court made it clear when they said, "[w]e hold, therefore, that absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial." Argersinger, 407 U.S. at 37.

This court must address petitioner's motion to appoint counsel. This motion is also appropriate for this Court's consideration. This very Court in Traylor v. State, 596 So2d 957 (Fla. 1992) addressed this Petitioner's claim in his favor.

Petitioner only repeatedly brought claim involving his right to counsel to this court. is to show that the earlier decisions of this claim were decided in error with misleading facts from the State. The December 3, 2012 arraignment transcripts had never been considered or properly reviewed during Petitioner's direct appeal. They had been requested but never submitted. These newly obtained transcripts refutes the State's position and supports Petitioner's claim that he was denied the assistance of counsel during a critical stage. The State has never been required to address these transcripts.

Petitioner's claim has not been shown to be neither frivolous, malicious or found to be with disregard for the truth or brought false information or evidence before the court. Petitioner's actions can only be considered as diligent in seeking his freedom.

WHEREFORE, for the following reasons stated this Court should review and grant Petitioner's motion to appoint counsel to assist Petitioner on his claim of a manifest injustice involving a structural error. Therefore, this Court should not bar Petitioner from filing pro se in the future in this case nor should this court seek sanctions because Petitioner has neither intentionally filed anything in bad faith nor has any court ever shown that Petitioner's claims were filed in bad faith.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been placed in the hands of a Calhoun Correctional official for mailing by U.S. Mail to the Office of the Attorney General, The Capitol, PL-01, Tallahassee, FL. 32399; Florida Department of Corrections, Department of Legal Affairs, 501 S. Calhoun St., Tallahassee, FL. 32399 - 2500 on this 14 day of December, 2022.

Respectfully Submitted,



LaDon M. Green # 299316

OCT 25 2022

LaDon M. GREEN,
Petitioner,

STAFF INITIALS DD
INMATE INITIALS _____

v.

Case No SC22-1388

Ricky D. Dixon, Etc.,
Respondent.

Motion to Appoint Counsel

Comes Now Petitioner, LaDon M. GREEN, pro se request that this Honorable Court appoint counsel to properly assist the Petitioner in protecting his claim so that this Court will issue a ~~show cause order~~ on

Respondent to address Petitioner unlawful detention and require Respondent to immediately release Petitioner from its custody. "Although there is no absolute right to counsel in post conviction relief proceedings, the court before which the proceedings are pending must determine the need for counsel and resolve any doubts in favor of the appointment

Ex. A.

of counsel for the defendant." Graham v. State, 372 So2d 1363, 1365 (Fla. 1979).

The question in each proceeding of this nature should be whether, under the circumstances, the assistance of counsel is essential to accomplish a fair and thorough presentation of the Petitioner's claim. The adversary nature of the proceedings, its complexity are important elements that require the appointment of counsel. It is clear that Petitioner has repeatedly attempted to bring a miscarriage of justice claim to this Court's attention and for what reason this Court has failed to acknowledge that Petitioner's claim calls for an immediate release pursuant to Argersinger v. Hamlin, 407 U.S. 25, 37 (1972); Gideon v. Wainwright 372 U.S. 335 (1963),

Petitioner believes that he has properly presented this Court with the necessary transcripts that supports the fact that he was not offered the appointment of

of counsel at the critical stage of arraignment. SEE Hamilton v. Alabama, 368 U.S. 52 (1961). Petitioner claim involves a fundamental error that must be addressed which has caused a manifest injustice that must be corrected.

WHEREFORE, Petitioner prays that this Honorable Court acknowledge the significance of the Petitioner's claim and appoint counsel to help clear up any deficiency in Petitioner's petition which is causing this court from issuing a show cause order to Respondent.

Respectfully Submitted,

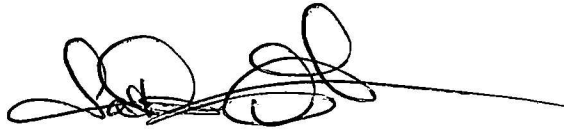
LaDon M. GREEN # 299316

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Department of Corrections, Department of Legal Affairs; 501
South Calhoun St., Tallahassee, FL. 32399-2500 on this 25
day of October, 2022,

Respectfully Submitted,



LaDon M. Green # 299316
Calhoun Correctional Institution
19562 S.E. Institution Dr.
Blountstown, FL. 32424