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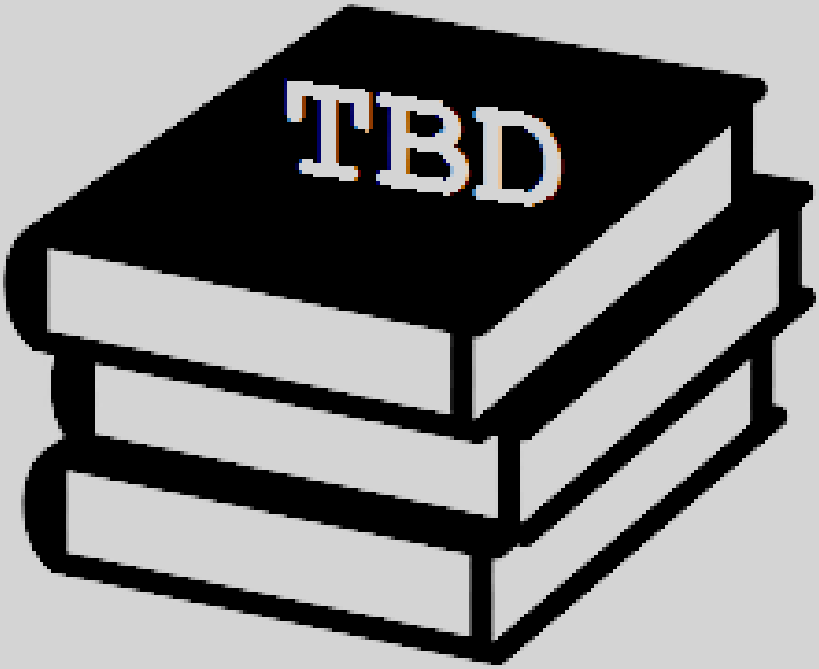

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SC12-2649

IN THE SUPREME COURT OF FLORIDA

APPEAL No:_____
LT No. 2D12-4515

FILED
THOMAS D. HALL
2012 DEC 13 PM 1:41
CLERK, SUPREME COURT
BY

BRIAN M CASEY,
Petitioner/Appellant

v.

STATE OF FLORIDA
Respondent/Appellee

PETITION FOR WRIT OF PROHIBITION

Pro Se, Brian M. Casey 139647
Desoto Annex
13617 Southeast Highway 70
Arcadia, Florida 34266-7800

Counsel for Respondent:
Hon. Pam Bondi.
Attorney General
3507 E. Frontage Road Suite #200
Tampa, FL 33607

TABLE OF CONTENTS

TABLE OF CONTENTS i

MOTION FOR LEAVE TO APPEAL INFORMA PAUPERIS ii

INMATE ACCOUNT SUMMARY iii

TABLE OF AUTHORITIES v

PETITION FOR WRIT OF PROHIBITION 1

JURISDICTION 1

PRO SE PRESENTATION 1

PROCEDURAL STATEMENT OF THE CASE 2

CASE SUMMARY 2

ARGUMENT 3

OATH 4

CERTIFICATE OF SERVICE 5

COURT ORDER DISMISSING PETITION FOR WRIT OF PROHIBITION ENTERED ON SEPTEMBER 20, 2012

COURT ORDER DENYING MOTION FOR REHEARING ENTERED ON NOVEMBER 27, 2012

TABLE OF AUTHORITIES

Cases

Bounds v. Smith 430 U.S. 817 822 97 S.Ct. 1491 52 L.Ed. 2d 72 (1977) 3

Castro v. United States, 540 U.S. 375, 381-383, 124 S.Ct. 786, 157 L.Ed. 2d 728 (2003) 1

Chambers v. Baltimore & O.R.R., 207 U.S. 142, 28 S.Ct 34 52 L.Ed 143 4

Elrod v. Burns, 427 U.S. 347 373 96 S.Ct. 2673 2689 49 L.Ed 2d 547 (1976) 4

Haliburton v. State, 514 So. 2d 1088 (1987) 3

Illinois v. Allen, 397 U.S. 337, 350-351, 90 S.Ct. 1057, 25 L.Ed 353 (1970) 3

Logan v. State 846 So.2d 472 (2003). 2, 3, 4

Tabron v. Grace, 6 F.3d 147, 153 N.2 3d (1993) 1

Other Authorities

91 N.W. U.L. Rev 899 4

U.S. Const Amend. I. 3

SUPREME COURT OF FLORIDA

BRIAN M. CASEY

V.

APPEAL NO:
L.T. NO. 2D12-4515

STATE OF FLORIDA

PETITION FOR WRIT OF PROHIBITION

COMES NOW, Brian M. Casey, Pro Se Petitioner pursuant to Fla. Rules of Appellant Procedure 9.030; 9.100 and hereby files with this Honorable Court a petition for writ of prohibition directed towards the November 27, 2012 denial of motion for rehearing by the Second District Court of Appeal in above case.

JURISDICTION

Florida Rules of Appellate Procedure 9.030; 9.100 and the First, Fifth, Sixth, and Fourteenth Amendments of the United States Constitution confer upon this Honorable Court the jurisdiction to enter a writ of prohibition for the matters herein.

PRO SE PRESENTATION

The petitioner respectfully requests this Honorable Court liberally construe this appeal. Tabron v. Grace, 6 F.3d 147, 153 N.2 3d (1993). To the extent courts have approved departures from the party presentation principle in criminal cases, the justification has usually been to protect Pro Se litigants rights. Castro v. United States, 540 U.S. 375, 381-383, 124 S.Ct. 786, 157 L.Ed. 2d 728 (2003). Petitioner concedes he is not an attorney.

PROCEDURAL STATEMENT OF THE CASE

The petitioner filed with the Second District Court of Appeal a petition for writ of prohibition on September 5, 2012. The petition for writ of prohibition was directed towards Twentieth Judicial Circuit Court denials of motions to discharge filed pro se with hearings held pro se.

The Second District Court of Appeal entered an order on September 20, 2012 dismissing the petition for writ of prohibition under Logan v. State 846 So.2d 472 (2003). (Attached)

Due to Institutional Transfers petitioner did not receive this order dismissing the petition for writ of prohibition until November 5, 2012. A motion for rehearing was filed November 12, 2012 per mailbox Rule. The Second District Court of Appeal entered an Order denying petitioner's motion for rehearing on November 27, 2012. (Attached.)

CASE SUMMARY

On September 20, 2012 the Second District Court of Appeal entered an order dismissing petition for writ of prohibition under Logan v. State, supra.

In a motion for rehearing the petitioner set forth the facts that the petition for writ of prohibition plainly states that an adversarial relationship with counsel did exist and self representation was requested in the Circuit Court and the District Court. The petitioner argued that Logan v. State, supra was misapplied to the petition for writ of prohibition denial. Subsequent to the filing of the petition for writ of prohibition petitioner did appear for sentencing on September 7, 2012 without the assistance of counsel in Circuit Court in proper person two days following the filing of the petition for writ of prohibition.

ARGUMENT

This Court held in Logan v. State, supra that extraordinary writ petitions filed pro se by represented parties will be dismissed, "unless it appears an adversarial relationship exists with counsel and petitioner makes a plain statement he or she wishes to proceed as self represented."

The petition for writ of prohibition met both prongs of the Logan test as it plainly appears in the petition an adversarial relationship with counsel existed and a request for self representation was plainly made in Circuit Court and the District Court of Appeals. Petitioner proceeded to a September 7, 2012 sentencing in Circuit Court in proper person following the filing of the petition for writ of prohibition in District Court.

The motion for rehearing made a plain statement of petitioners request to be self represented. The petition for writ of prohibition should have been determined on its merits and the law of the case fairly applied with an opinion.

A knowing and intelligent waiver of counsel "must be honored out of that respect for the individual which is the lifeblood of the law." Illinois v. Allen, 397 U.S. 337, 350-351, 90 S.Ct. 1057, 25 L.Ed 353 (1970). Prisoners have a Constitutional Right to access the courts and "Judicial Access must be adequate, effective and meaningful." Bounds v. Smith 430 U.S. 817 822 97 S.Ct. 1491 52 L.Ed. 2d 72 (1977).

The due process clause requires fairness, integrity and honor in the operation of the Criminal Justice System and its treatment of the citizens Cardinal Constitutional Protections.' Haliburton v. State, 514 So. 2d 1088 (1987). The First Amendment guarantees the right of the people to petition the government for redress of grievances. U.S. Const Amend. I "it affirms the right of the individual to seek redress from government wrong doing in court." 91 N.W. U.L. Rev 899. The

right of access to the courts also tracks with these privileges and immunities accorded citizens under the Fourth Amendment. Chambers v. Baltimore & O.R.R., 207 U.S. 142, 28 S.Ct 34, 52 L.Ed 143.

The dismissal of petition for writ of prohibition under Logan v. State, supra is a loss of access to the courts and the First Amendment freedoms. The loss of the First Amendment freedoms unquestionably constitutes irreparable injury. Elrod v. Burns, 427 U.S. 347 373 96 S.Ct. 2673 2689 49 L.Ed 2d 547 (1976). The denial of petitioners motion for rehearing and plain statement of a request for self representation in both Circuit Court and District COurt was a departure from the essential requirements of law.

Wherefore, Petitioner prays this Court enter an extraordinary writ of prohibition directed towards the Second District Court of Appeal denial of motion for rehearing and the law of the case be applied with an opinion as Petitioner has no other appeal rights.

OATH

I, Brian Casey hereby swear under penalty of perjury the above is true to the best of my ability and knowledge.

/s/ _____

Pro Se Brian Casey 139647
Desoto Correctional Institution
13617 Southeast Highway 70
Arcadia, Florida 34266-7800

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing has been mailed to Hon. Pam Bondi, 3507 E. Frontage Road, Suite #200, Tampa, Florida 33607; Hon. James Birkhold, Second District Court of Appeal; P.O. Box 327 Lakeland Florida 33803 on this 8 day of December 2012

/s/ _____

Brian Casey 139647
Desoto Correctional Institution
13617 Southeast Highway 70
Arcadia, Florida 34266-7800

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

FILED
THOMAS D. HALL
2012 DEC 13 PM 1:41
CLERK, SUPREME COURT
BY

September 20, 2012

CASE NO.: 2D12-4515
L.T. No. : 10CF019945

Brian M. Casey v. State Of Florida

Appellant / Petitioner(s), Appellee / Respondent(s).

BY ORDER OF THE COURT:

As it appears that the petitioner is represented by counsel in the proceeding in the trial court, the petition for prohibition is dismissed. See Logan v. State, 846 So. 2d 472 (Fla. 2003).

SILBERMAN, C.J., and WHATLEY and NORTHCUTT, JJ., Concur.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Brian M. Casey Attorney General Charlie Green, Clerk

aw

James Birkhold
Clerk

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

November 27, 2012

FILED
THOMAS D. HALL
2012 DEC 13 PM 1:41
CLERK, SUPREME COURT
BY

CASE NO.: 2D12-4515
L.T. No. : 10CF019945

Brian M. Casey v. State Of Florida

Appellant / Petitioner(s), Appellee / Respondent(s).

BY ORDER OF THE COURT:

The petitioner's motion for rehearing of the dismissal of the petition for writ of prohibition is denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Brian M. Casey Attorney General Charlie Green, Clerk

td

James Birkhold
Clerk

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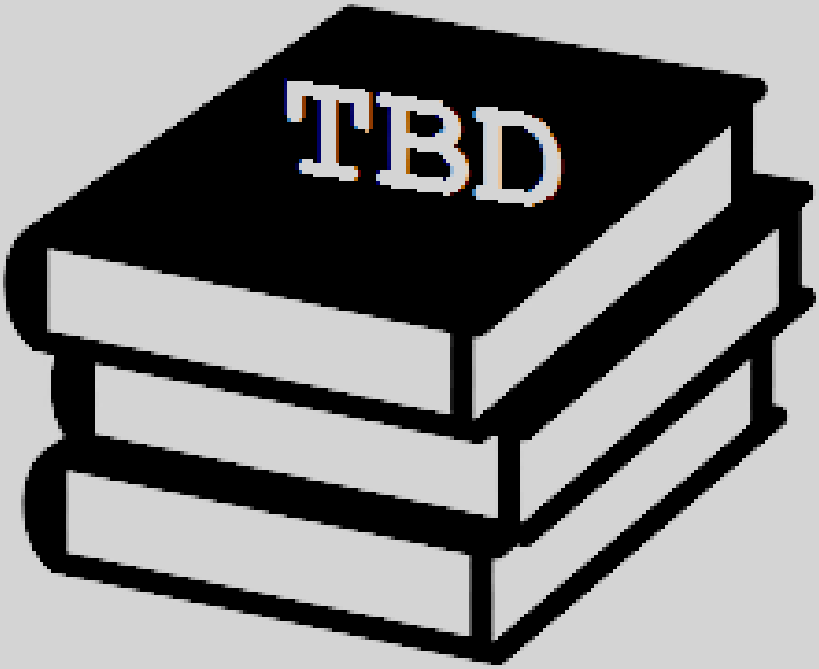

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