No. _____

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IN THE

SUPREME COURT OF THE UNITED STATES

_____

GORDON WAYNE WATTS – PETITIONER

vs.

Florida Unemployment Appeals Commission, Et al., – RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Florida First District Court of Appeal

_____

PETITION FOR WRIT OF CERTIORARI

Gordon Wayne Watts

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(i)

QUESTION(S) PRESENTED

1. **Whether all courts should adopt a uniform standard for accepting "notices of appeal" patterned after This Court's revised rules that recognize that a petitioner may not have control over when a document is received by the clerk –and consistent with Rule 29.2, This Court's provision for filing and service of documents.**
2. **Whether numerous "erroneous" holdings of the various Florida state appeals courts regarding misapplication of its timeliness rules gives rise to "broad ramifications" in the large class of unsuspecting litigants so affected.**
3. **Whether numerous other egregious documentable errors (those not necessarily related to the violation of its time rules) of the Florida state court system rise to the level of "national importance" for review by This Court.**
4. **Whether the "Economic Stimulus" extension signed into law by President George W. Bush to extend Unemployment Comp benefits can be applied *retroactively* to cases in which applicants who were denied were later found to have been qualified for benefits.**

LIST OF PARTIES

[X] 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:

* Unemployment Appeals Commission (UAC), 2740 Centerview Drive, Ste. 101, Rhyne Building, Tallahassee, Florida 32399-4151

* Fox Protective Services, Inc. 4905 West Laurel Street, Suite 301 Tampa, FL 33607-3834

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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

[X] 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The opinion of the highest state court to review the merits appears at Appendix "A" to the petition and is unpublished.

The opinion of Florida Supreme Court appears at Appendix "E" to the petition and is unpublished.

The opinion of the Unemployment Appeals Commission appears at Appendix "D" to the petition and is unpublished.

JURISDICTION

[X] For cases from **state courts:**

The date on which the highest state court decided my case was TUESDAY, MAY 6, 2008. A copy of that decision appears at Appendix "E".

[X] A timely petition for rehearing was thereafter denied on the following date: FRIDAY, JULY 11, 2008, and a copy of the order denying rehearing appears at Appendix "F".

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves, among other things, a conflict between Federal holdings (requiring notice to satisfy Due Process) and State holdings (which are "gotcha!" surprises for litigants).

FEDERAL CONSTITUTIONAL PROVISIONS: Standards re. Notice vis-à-vis Due Process:

***Papachristou v. City of Jacksonville*, 405 U.S. 156, 162, 92 S.Ct. 839, 843, 31 L.Ed.2d 110; *United States v. Harriss*, 347 U.S. 612, 617, 74 S.Ct. 808, 811, 98 L.Ed. 989, which held in pertinent part:**

"U.S. Supreme Court precedents have consistently established that in order to withstand constitutional scrutiny, a statute must give a person of ordinary intelligence fair notice that certain conduct is forbidden."; ***Musser v. Utah*, 333 U.S. 95, 97 (1948), which held in pertinent part:** "Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warnings."

OTHER FEDERAL CONSTITUTIONAL HOLDINGS:

FACTS: "In analyzing the correctness of a JMOL [Judgement as a matter of Law], we must consider the facts before the district court..." *Richardson-Vicks, Inc. v. Upjohn Co.*, 122 F.3d at 1479, 44 USPQ2d at 1183

CROSS-EXAMINATION: "[t]here never was at common law any recognized right to an indispensable thing called confrontation as distinguished from cross-examination. There was a right to cross-examination as indispensable, and that right was involved in and secured by confrontation; it was the same right under different names." *5 John Henry Wigmore, Evidence in Trials at Common Law* § 1397, at 158 (James H. Chadbourn rev. 1974)

STATE STATUTORY PROVISIONS - which give certain notice:

Fla.R.App.P. 9.420(e), which states "Additional Time After Service by Mail. If a party, court reporter, or clerk is required or permitted to do an act within some prescribed time after service of a document, and the document is served by mail, 5 days shall be added to the prescribed period."; **Fla.R.App.P. 9.420(f) states that** "(f) Computation. In computing any period of time prescribed or allowed by these rules, by order of the court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a holiday described below, in which event, the period shall run until the end of the next day that is neither a Saturday, Sunday, nor holiday."; **§ 120.57(1)(c), Fla. Stats., which states:** "Hearsay evidence may be used for the purpose of supplementing or explaining other evidence."

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State "mailbox rule":

***Griffin v. Sistuenck*, 816 So. 2d 600 (Fla. 2002) held in pertinent part:** "Because the trial court's order dismissing Griffin's complaint was rendered on January 24, 2001, and Griffin's certificate of service was dated February 21, 2001, we conclude that Griffin's notice of appeal was timely filed under rule 9.420..."

Five (5) State holdings which violate the Federal standards on notice:

(i) *Bell v. USB*, 734 So. 2d 403, which held in pertinent part: "the five-day mailing rule will only provide an additional five days when an act is required to be done within some time after service of a document, and not when an act is required to be done after the rendition or filing of an order."

(ii) *Millinger v. Broward Co. MHD*, 672 So. 2d 24 held, in pertinent part: "It is a settled rule of law that mailing, as opposed to filing, a notice within the thirty-day filing period is insufficient to preserve appellate rights."

(iii) *Garrick Hatfield v. Autonation, INC.*, No. SC06-499 (Fla. Sept. 26, 2006), in which the court accepted the arguments of the opposing brief (p.3 note 1), which said, in pertinent part: 'Opposing the Motion to Dismiss, Hatfield claims his motions below were not untimely because Florida Rule of Appellate Procedure 9.420(e) gave him five (5) additional days to file his rehearing petition...But Rule 9.420(e) only extends time periods for "act[s] within some prescribed time after service."'

(iv) *Douglas Gillespie, v. The City of Destin, Fla.*, No. 1D06-2623 (Fla. 1st DCA Dec 28, 2006), which held, in pertinent part: 'In *Hightower,* we explained that the five-day

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enlargement rule applied "only if the time period for doing an act is commenced by the service of a preceding document." Id. Neither in *Hightower* nor here did time for filing the brief depend on "service of a preceding document."'

(v) *The Fla. Bar, v. Clark*, 528 So. 2d 369, in which the court upheld, in pertinent part, the referee findings that: "15. That Respondent had erroneously assumed that all documents served by mail have an additional five days added to the time period whereas such procedure is not applicable to the filing notices of appeal or motions for rehearing."

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STATEMENT OF THE CASE

Petitioner, Gordon W. Watts, began employment at employer, Fox Protective Services, Inc., a security guard company, in Oct 2005 (R:048). In June 2006, the client for whom employer worked, was offended by attire (R:037) worn by Petitioner, which included a wrist guard, which did not interfere with work and which, as the record on appeal shows (R:016-018), was medically approved. At that time, employer made an offer of job reassignment to Petitioner for a very distant location, even though employer had many much closer job sites. After much persuasion by his father (R:141-142), Petitioner finally decided against it, because it was too far away to be feasible. Petitioner continually sought reassignment to a reasonably close location for several months but eventually gave up when it was clear employer did not want him. After it was clear that he was not wanted, he filed for unemployment compensation in a timely manner, (R:001) and was able and available for work, as the law requires, and eventually made approximately three-hundred nineteen (319) job contacts in search of work. Petitioner's unemployment benefits were denied (APX: D), and he filed an appeal with the State Appeal Court. In this appeal, Petitioner cited Federal holdings, which held that the court below had implicated Due Process by repeatedly denying cross-examination. Petitioner also raised state issues: Improperly accepting hearsay evidence alone as the basis for a holding; and, refusal to follow agency rules -either of which could implicitly implicate Federal Due Process; Petitioner also alleged fraud on the part of the employer for documented failure to notify him of a job offer; however, appeals court never reached the merits: The appeals court, in a "show-cause" order,

disputed timeliness (APX: A). Petitioner replied in minute detail, citing the Rules of the Court, state statutory authority, and "counting the days" to show that he acted in good faith and filed within the prescribed 30-day period. He also cited Fla.R.App.P. 9.420(e), which prescribes "Additional Time After Service by Mail," and compared this time-period with the date that the court's docket (APX: G) admitted it had received the notice in order to show that he was timely. Appeals Court, in an opinion dated Oct. 31, 2007 (APX: B), replied by saying that the notice of appeal was not timely filed, citing holdings which seemed, to the Petitioner/Appellant, to contradict the rules of that court; the appeals court denied and dismissed the appeal and claimed lack of jurisdiction. Petitioner then moved that appeals court for, *inter alia,* a rehearing; he based his motion on a state holding that is commonly known as the "mailbox rule" and allows a notice to be considered "filed" by inmates when it is dropped off in the mail. Petitioner also alleged that the holdings cited by the appeals court did not control due to differences in the facts. On the bottom of page 7 of his motion for rehearing, Petitioner brought up Federal Equal Protection based on the fact that non-prisoners (such as Petitioner) should be "Equally Protected" as prisoners (currently protected by state holdings) regarding access to the "mailbox rule." The appeals court passed upon this Federal matter by denying all motions, including Petitioner's motion for rehearing. (APX: C) Petitioner sough discretionary review in the Florida Supreme Court, and, in his brief on the merits, reprised the three state issues and the one federal issue elucidated *supra.* His jurisdictional brief alleged misapplication conflict, case-law conflict, and alleged that the actions of the appeals court, effectively, declared varied statutes

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invalid, thus invoking the Florida Supreme Court's "mandatory" jurisdiction. The Florida Supreme Court treated the Petitioner's briefs on Jurisdiction and Merits, collectively, as a Proper Petition for Writ of Mandamus. In a May 06, 2008 opinion, that court found that "petitioner has failed to show a clear legal right to the reinstatement of his appeal" and denied mandamus relief. (APX: E) Petitioner, Gordon W. Watts, moved the Florida Supreme Court for rehearing on the basis that the rules of the court did not give him proper notice that his contemplated conduct (additional 5 days after service by mail) was a forbidden act; in support thereof, Petitioner cited numerous Federal holdings which held that The Due Process Clause requires that a law "give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden." *United States v. Harriss,* 347 U. S. 612, 617 (74 SC 808, 98 LE 989) (1954); *Hubbard v. State,* 256 Ga. 637 (352 SE2d 383) (1987). The manner in which the Florida Supreme Court passed upon these holdings and facts was to issue an opinion, on Friday, July 11, 2008, denying rehearing without comment. (APX: F) At some point after Petitioner was initially denied benefits, President George W. Bush signed into law an extension on Unemployment Comp benefits to counteract the failing economy, but these benefits did not benefit unemployed Petitioner, Gordon W. Watts, because he was denied his claim. Petitioner, still unemployed, was unable, after repeated attempts, to retain an attorney to work on a contingency fee and has finally filed a petition with this court on the last day to file. Petitioner, Gordon W. Watts, having exhausted all other avenues of appeal, is now appearing *pro se* in This Court to petition for Certiorari.

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REASONS FOR GRANTING THE WRIT

1. Whether all courts should adopt a uniform standard for accepting "notices of appeal" patterned after This Court's revised rules that recognize that a petitioner may not have control over when a document is received by the clerk –and consistent with Rule 29.2, This Court's provision for filing and service of documents.

Here, we assume that the state courts all followed the rules and did not break any laws or offend any constitutional provisions, such as Due Process, Equal Protection, or Redress rights (even though that very well may be the case). First, even assuming good faith on the part of the courts below, Your Court has correctly assumed that lowly petitioner -already beleaguered by many injustices -does not have any earthly control over anything but what he/she does, and, for this reason, alone, the Writ should be granted: To compel the courts below to get a uniform standard.

The only question remaining is whether a certified receipt would be necessary to demonstrate filing -or, rather, whether a "Certificate of Service" alone suffices.

(By corollary, This Court might clarify whether its *own* Rule 29.2 mandates that Your Court receive the notice of appeal within 3 calendar days -or, rather, whether that is merely the intent of the *carrier*: "for delivery to the Clerk within 3 calendar days," the latter of which is implied by the language merely requiring a 28 U. S. C. § 1746 declaration if the postmark is not visible.)

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2. Whether numerous "erroneous" holdings of the various Florida state appeals courts regarding misapplication of its timeliness rules gives rise to "broad ramifications" in the large class of unsuspecting litigants so affected.

First, it is necessary to show that the "notice of appeal" was indeed timely: The UAC rendered a final order on AUG 16, 2007, and, per Fla.R.App.P., 9.110(b), the time to file is "within 30 days of rendition of the order to be reviewed." Fla.R.App.P. 9.420(f) prescribes "the day of the act, event, or default from which the designated period of time begins to run shall not be included." So, Aug 17 was the 1st day, AUG 27 was the 11th day, AUG 31st was the 15th day, SEPT 01 was the 16th day, SEPT 11 was the 26th day, and SEPT 15 was the 30th and last day. However, September the 30th fell on a Saturday. Since the Courts wisely understood that the post offices may not be fully open on weekends, it enacted language in this same rule, which states that "The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a holiday described below, in which event, the period shall run until the end of the next day that is neither a Saturday, Sunday, nor holiday," in other words, the last day to file fell on Monday, 17 September 2007, and the "Certificate of Service" reflected this date. Fla.R.App.P. 9.420(e) gives a person 5 extra days "Additional Time After Service by Mail" for any filing –it does not exclude "notices of appeal," so the notice need only arrive at the courthouse by Saturday, 22 September 2008 –or, even the following business day, which was Monday 24 September 2008. We know, however, the appeals court's own docket (APX: G) shows arrival on "09/19/2007," and this clearly falls within the time proscribed by the rules.

This Court can clearly see in "CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED" five (5) holdings in the Florida State Court system in which Rule 9.420(e) of the Florida Rules of Appellate Procedure left litigants bewildered -and did not apply to notices of appeal: (i) *Bell v. USB*, 734 So. 2d 403; (ii) *Millinger v. Broward Co. MHD*, 672 So. 2d 24; (iii) *Garrick Hatfield v. Autonation, INC.*, No. SC06-499 (Fla. Sept. 26, 2006); (iv) *Douglas Gillespie, v. The City of Destin, Fla.*, No. 1D06-2623 (Fla. 1st DCA Dec 28, 2006); (v) *The Fla. Bar, v. Clark*, 528 So. 2d 369.

While the "mind of the court" is clear to the judges, litigants can't read minds: If a litigant relies upon the Rules of Appellate Procedure, this above becomes nothing more than obscure case law, and it affects a broad class of litigants -unsuspecting litigants in a "gotcha!" case: The Due Process Clause requires that a law or holding "give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden." *United States v. Harriss*, 347 U. S. 612, 617 (74 SC 808, 98 LE 989) (1954); *Hubbard v. State*, 256 Ga. 637 (352 SE2d 383) (1987). Clearly, Due Process is offended because litigants of ordinary intelligence will assume that the court will follow its own rules: Indeed, Rule 9.420(e), Fla.R.App.P. does not clearly exclude notices of appeal, thus the court's "gotcha!" holdings offend Federal holdings in which Due Process requires sufficient notice. This willful repeated violation by state courts is reason to further investigate -and grant the writ.

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3. Whether numerous other egregious documentable errors (those not necessarily related to the violation of its time rules) of the Florida state court system rise to the level of "national importance" for review by This Court.

Rule 10 states that: "A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law," however "rarely" does not mean "never granted." There is not merely a misapplication of its rule. As stated earlier, this misapplication offended: (#1) Federal holdings about "sufficient notice," and, if this were not enough, there were other mishaps; (#2) Federal Due Process was also implicated by the repeated refusal to grant cross-examination; (#3) Furthermore, state laws were violated when the state agencies made holdings that were solely based on hearsay; this is not permitted; and, (#4) Various other agency rules and standards were violated -such as accepting newly discovered testimony *and* evidence that was genuinely unavailable at the time of submission: (a) The petitioner's father, who subsequently had a heart attack and stroke and was genuinely too busy working to testify (R:141-142) -as his affidavit shows; and, (b) a receipt for return of uniforms that was not given until after the hearing, and which shows the petitioner kept his uniforms for the duration as he tried to get transferred within the company that alleged it had offered him a job. (R:143) The numerous number of errors by the courts constitute an offense of numerous Federal standards, sufficient to make an exception to Rule 10 above: "A petition for a writ of certiorari is rarely granted when the asserted error consists of...the misapplication of a properly stated rule of law..." "Rarely" does not mean "never," as this petition shows. Yet even more reason exists to grant the writ. **12**

4. Whether the extension signed into law by President George W. Bush to extend Unemployment Comp benefits can be applied retroactively to cases in which applicants who were denied were later found to have been qualified for benefits.

This question presented is straightforward, so there is no need to repeat or elucidate.

We merely want to know whether retroactivity applies.

Possibly, also, this question can be used as a "hook" to procure jurisdiction, review, and relief for petitioner -*and others similarly situated: How many* other *people will have to be subject to these offenses?*

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

__Gordon Wayne Watts__
Gordon Wayne Watts, PRO SE

Date: ___Thr 09 October 2008___

No. _____

_____

IN THE
SUPREME COURT OF THE UNITED STATES

_____

GORDON WAYNE WATTS – PETITIONER

VS.

Florida Unemployment Appeals Commission, Et al., -- RESPONDENT(S)

PROOF OF SERVICE

I, Gordon Wayne Watts, do swear or declare that on this date, ____Thr, 09 October____, 2008, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* with affidavit in support thereof -and PETITION FOR A WRIT OF CERTIORARI with Appendix -on each party to the above proceeding or to that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days -and by email, as required by Supreme Court Rule 25.8:

MeritsBriefs@SupremeCourt.gov - Geralyn.Atkinson-Hazelton@awi.state.fl.us & webmaster@awi.state.fl.us & Kelly.McDowell@awi.state.fl.us - ATTN Atty Geralyn Atkinson-Hazleton, Esq
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JKNebel@FoxProtectiveSvcs.com - ATTN Brian K Fox, Owner Fox Protective Services, Inc.

The names and addresses of those served are as follows:
* Unemployment Appeals Commission (UAC), ATTN Atty Geralyn Atkinson-Hazleton, Esq ,2740 Centerview Drive, Ste. 101, Rhyne Building, Tallahassee, Florida 32399-4151
* Fox Protective Services, Inc. 4905 West Laurel Street, Suite 301 Tampa, FL 33607-3834

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____Thr, October 09_____, 2008 __*Gordon Wayne Watts*__
(Signature)

WORD COUNT CERTIFICATION

As required by Supreme Court Rule 33.1(h), I certify that the document contains _3122_ words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d). **I declare under penalty of perjury that the foregoing is true and correct.**

Executed on ___Thursday, October 09__, 2008 __*Gordon Wayne Watts*__
(Signature)