

NO:

IN THE
SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA - RESPONDENT

VS.

ANTONIO AKEL - PETITIONER

PRO SE

On petition for writ of Certiorari
TO the UNITED STATES COURT OF APPEALS for the
ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

ANTONIO AKEL Reg# 06899-017
INCARCERATED PRO SE PETITIONER
FEDERAL CORRECTIONAL INSTITUTION ESTILL
P.O. BOX 699
ESTILL, SC 29918

QUESTIONS PRESENTED FOR REVIEW

The decision below was sustained against FACTS and THE UNITED STATES CONSTITUTION AMENDMENT VI, "SQUARELY CONFLICTING AND CONTRAVENTING" SUPREME COURT BINDING RULE OF LAW found in JOHNSON V. ZERBST, 304 U.S. 458, 58 S. Ct 1019, 82 L. Ed. 1461 (1938); DOUGLAS V. CALIFORNIA, 372 U.S. 353, 83 S. Ct 814, 9 L. Ed. 2d 811 (1963) AND PENSON V. OHIO, 488 U.S. 75, 109 S. Ct 346, 102 L. Ed. 2d 300 (1988)

The Questions Presented are:

1.) WHETHER THE UNDISPUTED AND CLEAR VIOLATION OF AN APPELLANT'S SIXTH AMENDMENT RIGHT TO THE ASSISTANCE OF COUNSEL ON DIRECT APPEAL IS AN EXCEPTIONAL AND EXTRAORDINARY "INJUSTICE" CONTEMPLATED BY THE ELEVENTH CIRCUIT FEDERAL RULE OF APPELLATE PROCEDURE 41-1(b) (11th Cir. R. 41-1(b)), WHICH NOT ONLY JUSTIFIES BUT ALSO REQUIRES RECALLING THE MANDATE TO PREVENT INJUSTICE?

2.) DO THE ELEVENTH CIRCUIT'S FEDERAL RULE OF APPELLATE PROCEDURES SOMEHOW TRUMP AND THUS SUPERCEDE SUPREME COURT BINDING RULE OF LAW ON U.S. CONST. AMEND. VI VIOLATIONS TO THE ASSISTANCE OF COUNSEL ON DIRECT APPEAL FOUND IN PENSON V. OHIO, 488 U.S. 75 (1988); AND JOHNSON V. ZERBST, 304 U.S. 458, 463 (1938)?

3.) DOES THE DEPARTMENT OF JUSTICE DESTROY PUBLIC CONFIDENCE AND FAITH IN ITS ABILITY TO GOVERN, WHEN AS HERE, THE SOLICITOR GENERAL FOR THE UNITED STATES HAS ADMITTED IN ANTONIO U. AKEL v. U.S., U.S. SUP. CT. CERT. PET # 16-6032 at GB pg 6, TO BEING FULLY AWARE THAT AN AMERICAN CITIZEN DID NOT HAVE, NOR WAIVE THE ASSISTANCE OF COUNSEL IN HIS DIRECT APPEAL, BUT YET REMAINS SILENT TO THE "STRUCTURAL ERROR"/"AUTOMATIC REVERSAL" REQUIRED OF THE JUDICIARY, IN DIRECT CONFLICT WITH ITS MISSION STATEMENT "TO ENSURE FAIR AND IMPARTIAL ADMINISTRATION OF JUSTICE FOR ALL AMERICANS"?

4.) WHEN FACED WITH THE EXPLICIT ALLEGATION THAT THE ELEVENTH CIRCUIT COURT OF APPEALS HAS, ITSELF, VIOLATED AN AMERICAN CITIZENS 6th AMENDMENT RIGHT TO COUNSEL IN U.S. v. AKEL, #08-13771-BB (11th Cir), SHOULDN'T THE PANEL THEREIN BE REQUIRED TO GIVE A CLEAR UNDERSTANDING OF THE ANALYTICAL PROCESS BY WHICH ITS ULTIMATE ONE WORD FINDING OF "DENIED" WAS REACHED SUCH THAT THE PUBLIC AS WELL AS THE SUPREME COURT CAN DETERMINE RATHER THAN SPECULATE THAT THE LAW HAS BEEN CORRECTLY APPLIED AND ITS DECISION WAS NOT BASED UPON WHIMSICAL AND UNLAWFUL PERSONAL PREFERENCE?

5.) PROVIDED THAT BINDING PRECEDENTS DOUGLAS v. CALIFORNIA 83 S.Ct 814 (1963); PENSON v. OHIO, 109 S.Ct 346 (1988) and JOHNSON v. ZERBST 58 S.Ct 1019 (1938) ARE STILL GOOD LAW, AND THAT FAIR MINDED AND REASONABLE JURIST KNOW THAT A COURT VIOLATES THE SIXTH AMENDMENT IF IT ALLOWS A DEFENDANT TO REPRESENT HIMSELF WITHOUT FIRST OBTAINING A VALID WAIVER OF COUNSEL, HAS NOT THE COURT BELOW GIVEN THE APPEARANCE OF USURPATION AND "JUDICIAL ANARCHY" AS DEFINED BY THIS COURT IN HUTTO v. DAVIS, 454 U.S. 370, 375; RODRIGUEZ DE QUIJAS v. SHEARSON AMERICAN EXPRESS INC., 490 U.S. 477, 484, AND A "RIGHTLY DIMINISHED VIEW OF OUR COURTS... ONLY BECAUSE [THE ELEVENTH CIRCUIT WAS] UNWILLING TO CORRECT [THEIR] OWN OBVIOUS MISTAKES" AS ELUCIDATED BY THE HONORABLE JUSTICE GORSUCH IN HICKS v. UNITED STATES, U.S. S.Ct NO. 16-7806 (JUNE 26th, 2017) ?

6.) IF THE RIGHT TO "THE ASSISTANCE OF COUNSEL GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENTS IS INDISPENSIBLE TO THE FAIR ADMINISTRATION OF OUR ADVERSARIAL SYSTEM OF CRIMINAL JUSTICE," MAINE v. MOULTON, 474 U.S. 159, 168-169, AND CAN ONLY BE RELINQUISHED BY A VOLUNTARY, KNOWING AND INTELLIGENT WAIVER, IOWA v. TOVAR, 541 U.S. 77, 88; FARETTA v. CALIFORNIA, 422 U.S. 806, 821; BREWER v. WILLIAMS, 430 U.S. 387, 404, WHY HAS THE ELEVENTH CIRCUIT GIVEN THE APPEARANCE TO HAVE WHITEWASHED THE ACTUAL DENIAL OF COUNSEL IN US v. AKEL #08-13771-BB, WHERE THE CRITICAL FACTS AND LEGAL ANALYSIS ARE ON "ALL FOURS" WITH PENSON v. OHIO 109 S.Ct 346 (1988), AND, IN LIGHT OF THIS FACT WILL THIS SUPREME COURT EXERCISE

ITS SUPERVISORY AUTHORITY TO PRESERVE PUBLIC CONFIDENCE IN THE JUDICIARIES ABILITY TO AFFORD FAIR AND HONORABLE ADMINISTRATION OF JUSTICE, BY REINFORCING TO THE COURT BELOW THAT:

"THE SIXTH AMENDMENT WITHHOLDS FROM FEDERAL COURTS IN ALL CRIMINAL PROCEEDINGS, THE POWER AND AUTHORITY TO DEPRIVE AN ACCUSED OF LIFE OR LIBERTY UNLESS HE HAS OR WAIVES THE ASSISTANCE OF COUNSEL" ?

7.) WHERE THE OPINION OF THE HONORABLE JUSTICE ELENA KAGAN IS WELCOMED AND IMPLIED, CAN THE PETITIONER WAIVE ANY POTENTIAL CONFLICT BETWEEN THE APPEAL BELOW AND HER INVOLVEMENT IN AKEL V. UNITED STATES, 558 U.S. 1157, 130 S.Ct 1161, 175 L.Ed. 2d 988 (2010) AS THE SOLICITOR GENERAL, ESPECIALLY WHERE NO LITIGATION OR BRIEFING WAS CONDUCTED ?

INTERESTED PARTIES

ANTONIO AKEL; Incarcerated prose Defendant-Petitioner

LACEY A. COLLIER; U.S. Dist. Court Judge (N.D. FLA)

WILLIAM PRYOR; U.S. Cir. Judge (11th cir)

HULL (First name?) U.S. cir. Judge (11th cir)

FAY (First name?) U.S. cir Judge (11th cir)

ELIZABETH TIMOTHY; U.S. Mag. Judge (N.D. FLA)

LENNARD REGISTER; A.U.S.A (N.D. FLA)

CHRISTOPHER CANOVA; U.S. ATTORNEY (N.D. FLA)

ROBERT DAVIES; A.U.S.A (N.D. FLA)

MARCIA SHEIN; Former Appellate Counsel

RANDALL ETHERIDGE; Former Trial Counsel

BARRY BEROSET; Former Trial Counsel

RANDALL LOCKHART; Assistant F.P.D.

RANDOLPH MURRELL; F.P.D.

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#1 copy of 11th Cir OCT 5th, 2017 Decision
 #2 copy of 11th Cir JAN 31, 2018 Decision
 #3 copy of US Response to AUG. 2017 Recall of mandate

TABLE OF AUTHORITIES

CASES:

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RHEUMARK v. SHAW, 628 F.2d 297, 302 (5th Cir 1980)	17
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7,13

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3

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On petition for writ of Certiorari to the
UNITED STATES COURT OF APPEALS FOR THE
ELEVENTH CIRCUIT

Comes now ANTONIO AKEL respectfully petitioning the
Supreme Court of the United States to review the judgement of
the Federal Appeals Court for the ELEVENTH CIRCUIT rendered
and entered in Appeal # 08-13771-BB on OCTOBER 5th, 2017 and
JANUARY 31st, 2018, which denied the petitioner Equality of law, i.e.:

"THERE IS UNDOUBTEDLY AN EQUAL PROTECTION
COMPONENT IN THE DECISIONS EXTENDING THE
SIXTH AMENDMENT RIGHT TO COUNSEL ON APPEAL" see
CHIEF JUSTICE REHNQUIST in PENSON v. OHIO supra

CONSTITUTIONAL PROVISIONS AND SUPREME COURT RULE OF LAW

The petitioner intends to rely upon the following Constitutional provisions and Supreme Court controlling law:

U.S. CONST. AMEND V (five) provides in pertinent part:

NO person shall be deprived of life, liberty or property, without due process of law.

U.S. CONST. AMEND VI (Six) provides in pertinent part:

In all criminal prosecutions, the accused shall enjoy the right to have the assistance of Counsel for his defense.

1. DOUGLAS v. CALIFORNIA, 372 U.S. 353, 83 S.Ct 814, 9 L.Ed.2d 811 (1963)
(Holding that Equal protection guarantees a Sixth amendment right to Counsel on Direct appeal)

2. PENSON v. OHIO, 488 U.S. 75, 109 S.Ct 346, 102 L.Ed.2d 300 (1988) (Holding that the denial of counsel on direct appeal is a structural error which requires automatic reversal)

3. JOHNSON v. ZERAST, 304 U.S. 458, 58 S.Ct 1019, 82 L.Ed. 1461 (1938) (Holding The Sixth amendment withholds from Federal Courts, in all criminal proceedings, the power And authority to deprive an accused of life or liberty unless he has or waives the assistance of Counsel.)

REQUEST FOR LIBERAL CONSTRUCTION

ANTONIO AKEL is an incarcerated prose American citizen whom is the only person in this nation to have been denied the Actual Assistance of Counsel on Direct appeal in violation of the 6th Amendment and where the Court and respondent below have impeded and obstructed him from fair and honorable administration of justice. i.e. Redress. Respectfully he makes the request that this Court review his pleadings in accordance with PRICE v. JOHNSTON, 334 U.S. 266, 292, 68 S.Ct 1063, 92 L.Ed. 1356 (1948) and HAINES v. KERNER 404 U.S. 519, 520-521, 92 S.Ct 594, 30 L.Ed. 2d 652 (1972)

OPINION BELOW

Copies of the decision of the United States Court of Appeals for the Eleventh Circuit which denied the Recall of the mandate to prevent injustice and motion to reconsider is contained in the appendix at (#1) and (#2)

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. 1254.
This appeal is timely pursuant to Sup. Ct. R. 13.3.

STATEMENT OF THE CASE

ANTONIO AKEL is an American citizen whom did not have nor waive the assistance of Counsel in his Direct Appeal to the Eleventh Circuit. see UNITED STATES v. AKEL, Appeal # 08-13771-BB, 337 Fed. Appx. 843 (11th Cir 2009)

Many times and in many contexts the American in accord with his First and Fifth amendment rights to petition the United States for Redress of this grievance, ANTONIO AKEL has brought this to the attention of the UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA and the ELEVENTH CIRCUIT COURT OF APPEALS.

The DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA found that:

"IT IS NOT THE PROVINCE OF THIS COURT TO ASSIGN ERROR TO A SUPERIOR COURT", see

Neither party has cited a case involving a defendant who was represented at trial who changed course after a notice of appeal was filed and elected to proceed pro se. Cf. Anderson v. United States, 948 F.2d 704, 706 n.3 (11th Cir. 1991) (noting that once Defendant had requested counsel on appeal he had waived any right he had to proceed pro se); United States v. Tapia, 205 F.3d 1349 (8th Cir. 2000) (affirming district court's denial of defendant's request to proceed pro se on appeal). To the extent Defendant suggests that the appellate court erred in not remanding the case for consideration of Defendant's request that he be allowed to proceed pro se, it is not the province of this court to assign error to a superior court. 18 See DOCKET #196 pg 25-26.

Because as alleged, the District Court could not call out the Eleventh Circuit for this clear 6th Amendment violation, American Citizen ANTONIO AKEL submitted Directly to the ELEVENTH CIRCUIT

his request for relief in Appeal #15-15341. The appellate Court however in the petitioners humble opinion simply rubberstamped a denial to all issues raised in that proceeding.

However the petitioner sought Certiorari to this very Court in ANTONIO U. AKEL v. UNITED STATES, CERT. PETITION #16-6032 (Vacating and Remanding In Light of MATHIS v. UNITED STATES on April 3rd, 2017).

In that proceeding the SOLICITOR GENERAL in its brief for the UNITED STATES put forth and admitted:

3. Petitioner appealed his convictions. At first, he did so with the assistance of his lawyer, but mid-way through the appellate process, petitioner fired the lawyer and elected to proceed pro se. Pet. App. A2, at 26 & n.18. Counsel provided petitioner with a "'final' copy of an appellate brief ra[i]sing the issues that counsel thought had the best chance of success, part of which [petitioner] included in his pro se brief." Id. at 26 n.18. at GB pg 6 n3

Since this was the first time that any officer of the Court or Jurist acknowledged that the petitioner had fired the Direct Appeal attorney¹ ANTONIO AKEL thought it proper and in the interest of

¹The attorney was fired several months prior to the opening Brief being filed and not "mid-way through the appellate process" as mischaracterized.

Justice to submit this new fact revelation in conjunction with the fact that he was forced to conduct the Direct appeal proceeding PRO SE having never given the Eleventh Circuit a clear and unequivocal waiver of counsel in Appeal # 08-13771-BB, on an updated and at issue here, "MOTION TO RECALL THE MANDATE." Filed AUGUST 31st, 2017.

Understanding the seriousness of this violation as admitted to by the US ATTORNEY for the NORTHERN DISTRICT OF FLORIDA the Clerk of the ELEVENTH CIRCUIT contacted them for their position:

On August 31, 2017, the appellant filed a motion to recall the mandate. This morning, Deputy Clerk of the Court Carol R. Lewis left a message for the undersigned regarding the government's position as to the appellant's motion to recall the mandate. See APPENDIX #3 at pg3 of Govts response

In Response to the petitioners claim for relief in that his direct appeal suffers from the same constitutional infirmities as this Court found in PENSON v. OHIO supra, the U.S. Attorney for the Northern District of Florida put forth:

C. Law and argument.

The appellant claims that this Court should recall the mandate because he was denied counsel on direct appeal in the present case. (Appellant's motion, pgs. 1-5). The appellant's claim appears to be based on the fact that in a filing with the Supreme Court the Office of the Solicitor General stated, "petitioner appealed his convictions."

At first he did so with the assistance of his lawyer, but mid-way through the appellate process petitioner fired the lawyer and elected to proceed pro se.” (Id., pg. 2). The appellant claims he was unaware he had a right to counsel on direct appeal, and the Court should recall the mandate so that the Court can remedy that alleged injustice. (Id., pgs. 2-5).

Because more than one year has passed since the mandate issued in the present case, this Court is not to grant the appellant’s motion to recall the mandate unless the appellant has established good cause for the delay in filing his motion to recall the mandate. 11th Cir. R. 41-1(c). Where an appellant establishes good cause for a delayed motion to recall the mandate, this Court will not recall the mandate except to prevent injustice. 11th Cir. R. 41-1(b).

The appellant has not alleged, let alone established, good cause for his delay in filing his motion to recall the mandate. Furthermore, the appellant has not established that it proper for this Court to recall the mandate to prevent injustice. To the contrary, at the appellant’s sentencing hearing the district court told the appellant of his right to appeal and right to a lawyer on appeal. (Doc. 126 - Pg. 29).

See APPENDIX #3 pgs 5-6 OF GOVT’S RESPONSE

Because the United States position was indisputably flawed evinced by its failure to cite and total disregard for the Rule of law the petitioner replied, informing the Court that "Of all the rights that an accused person has, the right to be represented by Counsel is by far the most pervasive, for it affects his ability to assert any other rights he may have" and that:

"THE SIXTH AMENDMENT WITHHOLDS FROM FEDERAL COURTS
IN ALL CRIMINAL PROCEEDINGS, THE POWER AND AUTHORITY
TO DEPRIVE AN ACCUSED OF LIFE OR LIBERTY UNLESS HE HAS
OR WAIVES THE ASSISTANCE OF COUNSEL"

In addition the petitioner pointed out that the UNITED STATES position appeared to be one where it urged the Eleventh circuit to deny AKEL relief "JUST BECAUSE", having no rhyme or reason, and squarely avoiding the most simplistic issue ever on whether AKEL'S SIXTH AMENDMENT RIGHT TO COUNSEL was violated in the # 08-13771-BB appeal proceeding, as if the Eleventh Circuit Court of Appeals was located NORTH OF THE 38th PARALLEL ON THE KOREAN PENINSULA and not in ATLANTA, GEORGIA OF THE UNITED STATES. see SEPTEMBER 22nd, 2017 REPLY TO RESPONSE

However on OCTOBER 5th, 2017 the ELEVENTH CIRCUIT denied the appellant relief with a "ONE WORD OPINION OF DENIED" providing no discussion of facts or legal analysis with this serious matter. see Appendix #1

SO, on OCTOBER 23rd and 30th of 2017 American citizen ANTONIO AKEL requested reconsideration of its denial issued on OCTOBER

5th, 2017 and asked the ELEVENTH CIRCUIT TO Certify Questions #1 and #2 of this very petition because it is clear the appellate Court needs instruction and guidance from the Honorable Justices of the Supreme Court since the panel has no justification to have denied AKEL relief in Light of JOHNSON V. ZERBST; DOUGLAS V. CALIFORNIA; and PENSON V. OHIO and to the Contrary has given the appearance to have ruled based upon personal preference and not rule of law conflicting with MARTIN V. FRANKLIN CAPITAL CORP, 546 U.S. 132 139, 126 S.Ct 704, 163 L.Ed. 2d 547 (2005);

"DISCRETION IS NOT WHIM, AND LIMITING
DISCRETION ACCORDING TO LEGAL STANDARDS
HELPS PROMOTE THE BASIC PRINCIPLE OF JUSTICE
THAT LIKE CASES SHOULD BE DECIDED ALIKE"

Once again however, on JANUARY 31ST 2018 the ELEVENTH CIRCUIT denied relief with no indication how it has come up with its decision. See Appendix #2

In Sum, both the UNITED STATES DEPARTMENT OF JUSTICE as well as ELEVENTH CIRCUIT JUDGES WILLIAM PRYOR, HULL and FAY know as a certainty that American citizen ANTONIO AKEL Discharged/Fired his retained appellate counsel well before the opening brief was filed, and was allowed to do so for any reason or no reason without regard to whether he would later request counsel pursuant to the Sixth amendment right to counsel of choice, see UNITED STATES V. JIMENEZ-ANTUNEZ, 820 F.3d 1267 (11th Cir 2016) and that it was at this point where Judges William Pryor, Hull and Fay were

Required to either appoint counsel to represent the defendant on Appeal or ensure that the appellant wished to relinquish representation entirely with Voluntary, Knowing and intelligent waiver, see IOWA v. TOVAR, 541 U.S. 77, 88.

Because the appeal court failed to perform its function effectively, the appellant was entirely without Counsel from the opening Brief up through the decisional process of Appeal # 08-13771-BB at issue in this petition for Certiorari.

Having never given any form of a waiver of counsel in Appeal # 08-13771-BB, Coupled with the fact that the appellants failure to request appointed Counsel can not be deemed a waiver, e.g. BREWER v. WILLIAMS 430 U.S. 387, 404; CARNLEY v. COCHRAN, 369 U.S. 506, 513 Reasonable Jurist know that "A COURT [ELEVENTH CIRCUIT] VIOLATES THE SIXTH AMENDMENT IF IT ALLOWS A DEFENDANT TO REPRESENT HIMSELF WITHOUT FIRST OBTAINING A VALID WAIVER OF COUNSEL", UNITED STATES v. FIELDS, 483 F.3d 313, 350 (5th Cir 2007) and that there was a "STRUCTURAL ERROR" in this appeal which requires "AUTOMATIC REVERSAL" and "NULLIFICATION" of the 08-13771-BB UNITED STATES v. AKEL 337 Fed. Appx. 843 (11th Cir 2009) proceeding.

SEE: NEXT PAGE

**UNITED STATES OF AMERICA, Plaintiff-Appellee, versus ANTONIO U. AKEL, a.k.a. Tony Akel,
Defendant-Appellant.
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
337 Fed. Appx. 843; 2009 U.S. App. LEXIS 16952
No. 08-13771 Non-Argument Calendar
July 24, 2009, Decided
July 24, 2009, Filed**

Notice:

**PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING
THE CITATION TO UNPUBLISHED OPINIONS.**

Editorial Information: Subsequent History

Rehearing, en banc, denied by United States v. Akel, 373 Fed. Appx. 42, 2009 U.S. App. LEXIS 29208
(11th Cir. Fla., 2009)US Supreme Court certiorari denied by Akel v. United States, 558 U.S. 1157, 130 S.
Ct. 1161, 175 L. Ed. 2d 988, 2010 U.S. LEXIS 728 (2010)Post-conviction proceeding at, Magistrate's
recommendation at United States v. Akel, 2013 U.S. Dist. LEXIS 185645 (N.D. Fla., Dec. 13, 2013)

Editorial Information: Prior History

Appeal from the United States District Court for the Northern District of Florida. D.C. Docket No.
07-00136-CR-3-LAC.

Disposition:

AFFIRMED:

Counsel

Antonio U. Akel (06899-017), Appellant, Pro se, WAYMART, PA.

For United States of America, Appellee: Lennard B. Register, III,
U.S. Attorney's Office, PENSACOLA, FL; Thomas P. Swaim, PENSACOLA, FL; E. Bryan
Wilson, TALLAHASSEE, FL.

Judges: Before HULL, PRYOR and FAY, Circuit Judges.

2. Adding insult to the injury of this sixth amendment violation is that the panel
did not even afford American citizen ANTONIO AKEL "LIBERAL REVIEW" as afforded
to all pro se litigants in all Federal courts.

REASONS FOR GRANTING THIS WRIT

"THE RISK OF UNDERMINING THE PUBLICS CONFIDENCE IN THE JUDICIAL PROCESS". LILJEBERG V. HEALTH SERVICES ACQUISITION CORP. 486 U.S. 847, 863-864, 108 S.Ct. 2194 100 L.Ed. 2d 855 (1988)

Herein is an American citizen whom did not have, nor waive the assistance of counsel in this direct appeal proceeding. The only difference between the facts and circumstances for the petitioner in this courts 1988 opinion in PENSON V. OHIO, 488 U.S. 75 and the current pleading for Certiorari, is that, in PENSON supra, the appellate counsel was allowed to withdraw during appeal, and here in US V. AKEL, the PRIVATELY RETAINED APPELLATE COUNSEL was "FIRED/DISCHARGED" just prior to the filing of the opening brief during the appeal and did not file a motion to withdraw.

Neither PENSON, nor AKEL were represented in any capacity on appeal, no filings of advocacy "involving unique skills...to ensure that rights are not forgone and that substantial legal and factual arguments are not inadvertently passed over", thus unable to adequately test the Governments case, and where it obviously must be observed that:

"FINALLY, IT IS IMPORTANT TO EMPHASIZE THAT THE DENIAL OF COUNSEL IN THIS CASE LEFT [PETITIONER ANTONIO AKEL] COMPLETELY WITHOUT REPRESENTATION DURING THE APPELLATE COURTS ACTUAL DECISIONAL PROCESS." PENSON, 488 U.S. at 88

Being that PENSON v. OHIO is "ON ALL FOURS" with, and Equates to a "WHITEHORSE CASE" to this petition for CERTIORARI in light of the facts and legal premises of UNITED STATES v. AKEL, combined with the fact that "A BASIC PRINCIPLE OF JUSTICE IS THAT LIKE CASES SHOULD BE DECIDED ALIKE", MARTIN v. FRANKLIN CAPITAL CORP., 546 U.S. 132, 139, 126 S.Ct 704, 163 L.ed. 2d 547 (2005), the issue then becomes one of FIRST IMPRESSION on whether the ELEVENTH CIRCUITS FEDERAL RULES OF APPELLATE PROCEDURE 41-1 "TRUMP/SUPERCEDES" the UNITED STATES CONSTITUTION and SUPREME COURT PRECEDENT IN REGARDS TO THE SIXTH AMENDMENT, thus impeding the appellants rights to redress and Due process of law. Or does the Eleventh Circuits Federal Rules of Appellate Procedure 41-1(b):

"A MANDATE ONCE ISSUED SHALL NOT BE RECALLED
EXCEPT TO PREVENT INJUSTICE"

actually justifies and Requires the panel in 08-13771-BB (11th Cir) to recall the mandate, because this Court has held:

"OF ALL THE RIGHTS THAT AN ACCUSED PERSON HAS,
THE RIGHT TO BE REPRESENTED IS BY FAR THE MOST
PERVASIVE, FOR IT AFFECTS HIS ABILITY TO ASSERT
ANY OTHER RIGHTS HE MAY HAVE" PENSON *supra*

and has also held:

"THE ASSISTANCE OF COUNSEL GUARANTEED BY
THE SIXTH AND FOURTEENTH AMENDMENTS, IS
INDISPENSIBLE TO THE FAIR ADMINISTRATION OF
OUR ADVERSARIAL SYSTEM OF CRIMINAL JUSTICE"

MAINE v. MOULTON, 474 U.S. 159, 168-169

"AND CAN ONLY BE RELINQUISHED BY A VOLUNTARY,
KNOWING AND INTELLIGENT WAIVER" IOWA v. TOWA

541 U.S. 77, 88.; FARETTA v. CALIFORNIA, 422 U.S. 806, 821; BREWER v. WILLIAMS
430 U.S. 387, 404.

"BY FAR THE MOST PERVASIVE," "INDISPENSIBLE"?, "CAN ONLY BE RELINQUISHED
BY A VOLUNTARY, KNOWING AND INTELLIGENT WAIVER"?...

With Respect, there can be no greater "injustice" which would
require Recalling the mandate, than a violation to the Assistance of
Counsel on direct appeal which is not only "Clear Constitutional Error"
but "Structural ERROR" which requires "AUTOMATIC REVERSAL".

For the Eleventh Circuit to hold otherwise Could Destroy
Public confidence in the fair and honorable administration of justice
and beg the question:

"IS THE AMERICAN JUDICIAL SYSTEM AND FORM OF
GOVERNMENT WITHIN THE PURVIEW OF THE ELEVENTH
CIRCUIT, TRULLY BASED UPON OBJECTIVE, COMMON AND
DISCERNABLE LEGAL PRINCIPLES, WHEREBY AN AMERICAN

... "CITIZEN, MALE OR FEMALE, BLACK OR WHITE
GOOD OR BAD, SAINTLY OR WICKED, GAY OR STRAIGHT,
RICH OR POOR, ARE ENTITLED TO LAY HIS OR HER
COURSE OF BRICKS ON THE SECURE FOUNDATION
OF OTHERS WHOM HAVE GONE BEFORE THEM, I.E.

THE RULE OF LAW. SEE AKEL V. US, Appeal # 17-14707

pg 19 of 137 in pleading filed on 12-05-2017 and pg 33 of 150 in pleading filed
on 1-26-2018 (11th Cir)

As it stands, the panel therein Appeal number 08-13771-BB
has given the appearance to have ruled on this matter using only
WHIM and PERSONAL PREFERENCE, providing a HIGH "RISK OF UNDERMINING
THE PUBLICS CONFIDENCE IN THE JUDICIAL PROCESS" as the HONORABLE
JUSTICE GORSUCH STATED IN HICKS V. UNITED STATES

"FOR WHO WOULDN'T HOLD A RIGHTLY DIMINISHED
VIEW OF OUR COURTS... ONLY BECAUSE WE WERE
UNWILLING TO CORRECT OUR OWN OBVIOUS MISTAKES"

The Eleventh Circuit violated AKELS SIXTH AMENDMENT RIGHT
TO THE ASSISTANCE OF COUNSEL, It was the panels "Own obvious mistake",
therefore this Honorable Court is implored to exercise its Supervisory power
and correct the lower Courts straying from the holding:

"DISCRETION IS NOT WHIM, AND LIMITING DISCRETION
ACCORDING TO LEGAL STANDARDS HELPS PROMOTE THE BASIC
PRINCIPLES OF JUSTICE THAT LIKE CASES SHOULD BE DECIDED
ALIKE"

and therefore the Eleventh Circuit must nullify and afford "AUTOMATIC REVERSAL" on appeal # 08-13771-BB because:

"THE SIXTH AMENDMENT VIOLATION HAS WITHHELD
THE ELEVENTH CIRCUIT IN THIS DIRECT APPEAL
PROCEEDING, THE POWER AND AUTHORITY TO DEPRIVE
PETITIONER AKEL OF LIFE OR LIBERTY UNLESS HE
HAS OR WAIVES THE ASSISTANCE OF COUNSEL" CF

JOHNSON v. ZERBST supra; PENSON v. OHIO supra; DOUGLAS v. CALIFORNIA supra

The petitioner request the Honorable Justices to Consider and compare the Summary Reversal in a similar but less egregious petition in FRANKEL v. UNITED STATES, 130 S. Ct 72, 175 L. Ed. 2d 4 (2009),

Therein FRANKEL, the UNITED STATES CONFESSED ERROR, see BRIEF FOR UNITED STATES AUG. 4th, 2009, and the petitioner believes the UNITED STATES will do the same here if this Court asks for the SOLICITOR GENERAL'S RESPONSE. see "MOTION FOR U.S. CONFESSION OF ERROR" FILED HERE.

NO OTHER ADEQUATE MEANS TO OBTAIN THE RELIEF

This claim is not addressable to any other court because the facts and circumstances for this petition for certiorari deals specifically with the Standard of Direct appeal review employed by the ELEVENTH CIRCUIT, and does not meet the requirements of EQUAL PROTECTION nor meet the demands

of the DUE PROCESS CLAUSE of the U.S. CONSTITUTION, therefore inadequacy is a foregone conclusion. OF GRIFFIN v. ILLINOIS, 351 U.S. 12, 76 S.Ct 585, 100 L.Ed. 891 (1956); DOUGLAS v. CALIFORNIA supra; and EVITTS v. LUCEY, 469 U.S. 387, 393 S.Ct. 831, 105 S.Ct 830 (1985)

As the FORMER 5th circuit has stated in RHEUARK v. SHAW, 628 F.2d 297, 302 (5th Cir 1980):

"DUE PROCESS CAN BE DENIED BY ANY
SUBSTANTIAL RETARDATION OF THE APPELLATE
PROCESS"

PETITIONERS RIGHT TO THE WRIT IS CLEAR AND INDISPUTABLE

PETITIONER ANTONIO AKEL is a Loyal American Citizen born and raised in the UNITED STATES whom has pledged allegiance to the flag and Constitution of the UNITED STATES since he was old enough to do so, and therefore should be afforded EQUAL PROTECTION of the laws, i.e. the very essence of civil liberty.

The Sixth amendment right to Counsel is grounded in the Bill of rights and extended to the Direct appeal process by this Court in DOUGLAS v. CALIFORNIA supra.

THE ELEVENTH CIRCUIT violated ANTONIO AKELS 6th amendment by allowing him to represent himself without a valid waiver of counsel during the entirety of the proceeding.

Due to carelessness or possibly an egregious instance of whitewashing, the Court below refuses to acknowledge or at the very least refute the petitioner's contention of a "STRUCTURAL ERROR WHICH REQUIRES AUTOMATIC REVERSAL" in that:

"THE SIXTH AMENDMENT WITHHOLDS FROM FEDERAL COURTS IN ALL CRIMINAL PROCEEDINGS, THE POWER AND AUTHORITY TO DEPRIVE AN ACCUSED OF LIFE OR LIBERTY UNLESS HE HAS OR WAIVES THE ASSISTANCE OF COUNSEL"

See JOHNSON v. ZERAST, PENSON v. OHIO and FRANKEL v. UNITED STATES, 130 S.Ct. 72 (2009)

THE WRIT IS APPROPRIATE UNDER THE CIRCUMSTANCES

The Ethical Standards of truthfulness and Honesty form the basis of public confidence. There is not only a legal duty but also a moral duty for both the UNITED STATES DEPARTMENT OF JUSTICE and the JUDICIARY as a whole to speak, where this inquiry left unspoken would be intentionally misleading.

It is one thing for the UNITED STATES to prosecute with earnest and vigor, but an entirely different animal indeed, to know unequivocally that an American citizen was denied the "MOST FUNDAMENTAL OF RIGHTS" and "THE MOST PERVASIVE FOR IT AFFECTS HIS ABILITY TO ASSERT ANY OTHER RIGHTS HE MAY HAVE" and yet remain silent, because the UNITED STATES

HAS the obligation to Comport with the MISSION STATEMENT:

"TO ENSURE FAIR AND IMPARTIAL ADMINISTRATION
OF JUSTICE FOR ALL AMERICANS"

As this Court stated in UNITED STATES v. CRONIC, 466 U.S. at
658-661:

"THE COMPLETE DENIAL OF COUNSEL IS SO LIKELY
TO PREJUDICE THE ACCUSED THAT THE COST OF
LITIGATING ITS EFFECT IN A PARTICULAR CASE
IS UNJUSTIFIED"

CONCLUSION

Wherefore with Respect, this Court is implored to Grant
CERTIORARI to Apply the Rule of law with an evenhand and Restore
Public confidence in the Judiciary to provide fair and honorable
administration of Justice.

Diligently Seeking Justice

ANTONIO AKEL Reg# 06899-017

Incarcerated prose litigant

APRIL 30th, 2018

DECLARATION

I, ANTONIO AKEL, hereby declare under the penalty of perjury pursuant to 28 U.S.C §1746 that all of the foregoing facts and legal premises are true and correct.

Date: APRIL 30th, 2018

By: 

ANTONIO AKEL Reg# 06894-017

Incarcerated PROSE petitioner