

No.

IN THE SUPREME COURT OF THE UNITED STATES

Bill Paul Marquardt, Petitioner

v.

State of Florida, Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Bill Marquardt

Sumter County Jail

219 E. Anderson Avenue

Bushnell, Florida 33513

Bill Marquardt August 2, 2018

Questions Presented

① Whether the three collateral-order-doctrine conditions are satisfied and the U.S. Court of Appeals can take the jurisdiction on my Prose claims, where the U.S. District Court had taken away my self-representation, stated conclusive terms on my self-representation, struck my Prose Motion, and directed the Capital Collateral Regional Counsel to Amend my Prose Petition for Writ of Habeas Corpus

Capital Case

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Statement of the Issues

- ① The three collateral-order-doctrine conditions are satisfied and the U.S. Court of Appeals can take the jurisdiction on my Prose claims, where the U.S. District Court had taken away my self-representation, stated conclusive terms on my self-representation, struck my Prose Motion, and directed the Capital Collateral Regional Counsel to Amend my Prose Petition for Writ of Habeas Corpus 4

Jurisdiction/ Statement of Facts

I was found guilty by jury trial of double homicide in Sumter County, Florida and I was sentenced to Death on February 28, 2012. The Florida Supreme Court affirmed my conviction and Death Sentence, *Marquardt v. State* 156 So. 3d 464 (Fla. 2015). On September 27, 2016 I filed in the U.S. District Court a Prose Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus (Docket #1). On December 15, 2016 the U.S. District Court let the Capital Collateral Regional Counsel (CCRC) go onto the record (Docket # 24, 25, 26). On February 22, 2017 the U.S. District Court made Order that striked my Prose Motions and directed the CCRC to Amend my Prose Petition for Writ of Habeas Corpus (Docket # 42). I appealed. On December 28, 2017 the U.S. Court of Appeals for the Eleventh Circuit stated that since the U.S. District Court stated conclusive terms on the denial of my self-representation that the U.S. Court of Appeals can take the jurisdiction on the U.S. District Court's denial of my self-representation. Then the U.S. Court of Appeals affirmed the U.S. District Court's February 22, 2017 Order on the denial of my self representation and the U.S. Court of Appeals dismissed my Prose claims (Attached - Exhibit A). I did Petition for Rehearing. It was denied on March 29, 2018, (Attached - Exhibit B).

Argument

① The three collateral-order-doctrine conditions are satisfied and the U.S. Court of Appeals can take the jurisdiction on my Prose claims, where the U.S. District Court had taken away my self-representation, stated conclusive terms on my self-representation, struck my Prose Motion, and directed the Capital Collateral Regional Counsel to Amend my Prose Petition for Writ of Habeas Corpus.

The U.S. Court of Appeals had stated on page 9 of their December 28, 2017 Order that the 3 collateral-order-doctrine conditions are satisfied on the U.S. District Court taking away my self-representation. And the U.S. Court of Appeals had taken the jurisdiction on the U.S. District Court taking away my self-representation. The U.S. Court of Appeals stated:

"... here, the [U.S. District Court] order is phrased in conclusive terms and agrees with the magistrate judge's determination that 'allowing [Marquardt] to proceed prose will not promote the integrity and efficiency of the federal proceedings'. This conclusion is neither conditional nor limited. Rather, the order relies on circumstances that are highly unlikely to change, namely the complexity of the case and Marquardt's lack of understanding of the proceedings:

'[Marquardt's] lack of understanding of the proceedings both in state and federal court underscore why his request for self-representation was denied. The Magistrate

Judge correctly found that [Marquardt's] counsel are experienced post-conviction attorneys and there is nothing before the court to reflect any deficiencies in their representation. Counsel's efforts to pursue and preserve [Marquardt's] claims, along with the competency issues that are being addressed by them in state court, also underscore why his requests for standby or different counsel are denied.

We therefore disagree with Florida that the order does not speak in terms sufficiently conclusive to meet the collateral-order-doctrine's first requirement. Because all three collateral-order-doctrine conditions are satisfied, we have jurisdiction to review on interlocutory appeal the district court's denial of permission to proceed prose." (Attached - Exhibit A)

These conclusive terms on the denial of my self-representation that are on the U.S. District Court's February 22, 2017 Order are also conclusive terms on my Prose claims. The February 22, 2017 Order had struck my Prose Motion and directed the CCRC to Amend my Prose Petition. I can appeal my Prose claims on the February 22 Order, because this Court has held that I can appeal claims that were dismissed by an Order if that Order:

- (1) "conclusively determine the disputed question"
- (2) "resolve an important issue completely separate from the merits of the action"
- (3) "be effectively unreviewable on appeal from a final judgment,"

Risjord, 449 U.S. at 375. When these circumstances apply the interlocutory Order sought to be appealed is essentially considered a "final judgment," so it is reviewable. See

Midland Asphalt Corp. V. United States 489 U.S. 794, 789 (1989)

The U.S. District Court's February 22, 2017 Order strikes my Prose Motion for Hearing in the U.S. District Court on the merits of my Prose Grounds (Docket #11) and directs the CCRC to Amend my Prose Petition (Docket #1) that had contained the 3 following Grounds:

Prose Ground One - My Constitutional Rights were violated where the Florida Supreme Court affirmed my conviction and Death Sentence, even thoe the Trial Court denied my Motion to Suppress Critical Evidence without Full and Fair Hearing

Prose Ground Two - My Constitutional Rights were violated where the Florida Supreme Court affirmed my conviction and death sentence, even thoe the Trial Court denied my Motion to Suppress Critical Evidence that had been obtained using a search warrant that was so lacking in indicia of probable cause that no officer could have reasonably believed the warrant contained probable cause

Prose Ground Three - My Constitutional Rights were violated where the Florida Supreme Court affirmed my convictions and death sentence, even thoe the Trial Court denied my Motion to Suppress Critical Evidence that had been obtained using a search warrant that the Magistrate was Mised on by Material Misstatement and Omissions

There are seven Good Reasons why my Prose Claims should be

appealable. They are:

- ① Martinez v. Court of Appeals of California says that the U.S. District Court has the discretion on whether to allow a defendant represent himself on Appeals
- ② The U.S. District Court will not let me fire the CCRC
- ③ Prose Appellants need a remedy if their counsel abandons their Prose claims when laws make it hard for defendants to fire their counsel
- ④ Prose claims are a different "class of claims". "The class of claims" of a person's self representation "taken as a whole, can not be adequately vindicated by other means", *Mohawk Indus, Inc. v. Carpenter* 588 U.S. 100, 107 (2009)
- ⑤ The CCRC had abandoned my Prose Claims. The CCRC stated in their Amended Petition in the U.S. District Court that the CCRC wants remand to the Sumter County Court for Franks hearing. The CCRC did not raise in their Amended Petition in the U.S. District Court my strong Prose Ground that the search warrant lacked indicia of probable cause. The CCRC did not ask for Franks hearing to be done in the U.S. District Court. The CCRC in their Amended Petition did not argue the merits of my Prose claims like I argued them.
- ⑥ The CCRC is wrong, where the CCRC asked in the U.S. District

Court in their Amended Petition for remand to the Sumter County Court on the Franks issue. The CCRC is wrong, because the Florida Supreme Court had already ruled on the merits of my Suppression issues. See *Marquardt v. State* 156 So. 3d 464 (Fla. 2015). The remand is moot, because the Sumter County state trial court can not overturn the Florida Supreme Court.

⑦ I am being denied due process, where I can not appeal that my 4th Amendment Rights had been violated.

Devine v. Indian River Cty. Sch. Bd., 121 F.3d 576 578-81 (11th Cir. 1997) says the second prong of the collateral-order-doctrine "resolve an important issue completely separate from the merits of the action" - is met in an appeal that is "separate from the merits of the underlying claim". *Id.* at 579. My Prose Motion for Evidentiary Hearing and Franks Hearing in the U.S. District Court on the merits of my Prose Grounds and the Suppression of the evidence on my Prose claims are separate from the CCRC's Amended Petition's request that the U.S. District Court remand to the Sumter County Court for Franks hearing. The action, the claims, and the classification of my Prose claims is different.

Devine's third circumstance - that the denial be effectively unreviewable from a final judgment is satisfied on my Prose claims, because the February 22, 2017 Order is the Order that strikes my Prose motion and directs the CCRC to Amend my Prose Petition and takes away my self-representation. My Prose claims are effectively lost if not immediately vindicated.

Conclusion

I would like this Honorable Court to Order the U.S. Court of Appeals to address my Prose claims.

Respectfully Submitted,

Bill Marquardt

Sumter County Jail

219 E. Anderson Avenue

Bushnell, Florida 33513

Bill Marquardt, August 2, 2018