

IN THE UNITED STATES SUPREME COURT

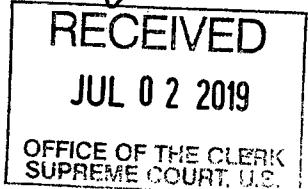
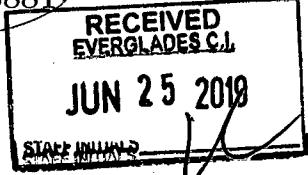
GARRY COLEMAN,
Petitioner,

v.

MARK S. INCH et. al.,
Secretary of Florida
Dept of Corrections
Respondent

FILED
JUN 25 2019
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Case No. 18-8881



PETITION FOR REHEARING

COMES NOW, Petitioner Garry Coleman, *pro se* hereby and pursuant to Rule 44.2 moves this Honorable Court to enter an order granting this petition, in support thereof states the following:

A. Petitioner upon a review of the Petition for Writ of Certiorari that was submitted in this Court became aware of the fact that he inadvertently failed to present the two Question that he intended to ask the Court in this case, in error he has plead "Reasons For Granting The Petition" as Questions Presented. It is the belief of the Petitioner that this unintended error has contributed to the petition being denied. Petitioner requests that this Court consider its holding enunciated in *Haines v. Kerner*, 404 U.S. 519 (1972) as to this error on the behalf the *pro se* Petitioner.

See the following two Questions that the Petitioner intended on asking this Court. Petitioner does not wish to modify the argument previously presented in support of the two questions.

I.

WHETHER FED.R.CIV.P. RULE 52(a)(1) GRANTS THE ELEVENTH CIRCUIT POWER TO MAKE ITS OWN FINDING OF FACT, CONCLUSION OF LAW THAT THE DISTRICT COURT FAILED TO PROVIDE IN ORDER TO DENY COA

II.

WHETHER THE ELEVENTH CIRCUIT ERRED IN ITS AFFIRMANCE OF THE DENIAL OF PETITIONER'S FED.R.CIV.P. RULE 60(b) MOTION WHERE THE DISTRICT COURT FAILED TO ADDRESS PETITIONER'S SUBSTANTIVE COMPETENCY CLAIM CONTRARY TO TWO BINDING CIRCUIT PRECEDENTS.

B. Substantial Grounds Not Previously Presented

Petitioner would also like to present as substantial grounds that were not previously presented. The Eleventh Circuit's decision to make its own finding of fact and conclusion of law that the District Court failed to provide is in conflict with decisions of the District of Columbia Circuit in the following cases: *Schilling v. Schwitzercummings Co.* 142 F.2d 82 District of Columbia (1944) if adequate findings had not been made, the proper procedure would be to remand the case to the trial court and direct that new finding be made. "It is not the function of an appellate court to assume the powers of the trial court." (emphasis added); *Bellevue Inc. v. Hill* 297 F.2d 185 (D.C. Cir. (1961) It is not function of appellate court to weigh evidence; very integrity of judicial system rests on no principle more firmly

than that which precludes retrial of fact issues under form or guise of appellate review.

C. The Eleventh Circuit's Findings Are Clearly Erroneous And Should Not Stand As A Matter of Law

This Court should vacate the judgment below in accordance with its holding enunciated in *Zenith Radio Corp. v. Hazeltine Research Inc.*, 395 U.S. 100, 123, 23 L.Ed.2d 129, 89 S.Ct. 1562 (1969) appellate court must constantly have in mind that their function is not to decide factual issues *de novo*; *United States v. Yellow Cab Co.*, 94 LED 150, 338 U.S. 338 (1949) *Id.* at 338 U.S. 342 While of course it would be our duty to correct clear error, even in finding of fact. Here the Eleventh Circuit's decision to make its own findings of fact and conclusion of law to deny COA, *one if* is beyond the function of the court, two the findings of fact are incorrect factually. This Court should vacate the decision below despite the minor deficiencies that the Petitioner may have had in his failing to present Questions initially, otherwise the petition presented sufficient, compelling reasons to grant certiorari review.

D. Importance of the Questions Presented

The questions presented is of great public importance because the Eleventh Circuit's decision in this case is in conflict with decisions of the 9th, 10th, 11th and District of Columbia federal circuits and granting review will ensure that all federal district, circuit courts will function uniformly within the limits of Fed. R. Civ. P. Rule 52(a)(1)

CONCLUSION

In conclusion it is the prayer of Petitioner that this Honorable Court in the interest of fairness and justice grant this Petition, vacate its order denying certiorari review. Being that the Eleventh Circuit's findings of fact are clearly erroneous and improper as well as the decision to make its own findings of fact, conclusion of law clearly conflicts with decisions of the 9th, 10th, 11th Circuits and District of Columbia Circuit. Therefore it offends the applicable principles of law, the United States Constitution as such it would ^{be} a manifest of injustice to allow such a decision to stand.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 25th, 2019 I provided a true, correct copy of the foregoing to the Clerk of the United States Supreme Court One First N.E. Washington D.C. 20543; Asst. Attorney General Mitchell A. Egber 1515 N. Flagler Dr. Suite # 900 West Palm Beach, FL 33401 via U.S. Mail.

Garry Coleman
Garry Coleman 082995
Everglades Correctional Institution
1599 S.W. 187th Avenue
Miami, FL 33194

QUESTIONS PRESENTED

I.

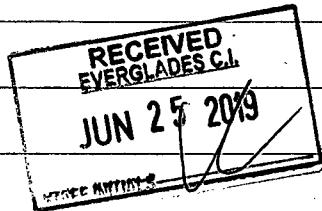
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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing Petition for Rehearing is in compliance with the requirements Rule 44.2.



Garry Coleman #082995
Everglades Corr. Inst
1599 S.W. 187th Ave
Miami, FL 33194

Certificate of Service

I hereby certify that on 6-25-2019 I provided a copy of the foregoing Certificate of Compliance to Asst. Attorney General Mitchell A. Egber 1515 N. Flagler Drive Suite 900 West Palm Beach, FL 33401 via U.S. mail.

Garry Coleman 082995
Everglades Corr. Inst.
1599 S.W. 187th Ave
Miami, FL 33194