

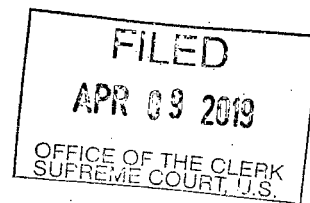
18-8881

ORIGINAL

No. \_\_\_\_\_

IN THE

SUPREME COURT OF THE UNITED STATES



Garry Coleman — PETITIONER  
(Your Name)

VS.

Julie L. Jones — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court Of Appeals For The Eleventh Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Garry Coleman  
(Your Name)

Everglades Correctional Institution  
(Address)

1599 S.W. 187<sup>th</sup> Ave. Miami, FL 33194  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

## QUESTIONS PRESENTED

### I.

CERTIORARI REVIEW SHOULD BE GRANTED WHERE THE DISTRICT COURT FAILED TO PROVIDE ANY FINDINGS OF FACT SPECIALLY AND CONCLUSIONS OF LAW AS IS REQUIRED BY FED. R. CIV. P. 52(a)(1) IN ITS ORDERS OF DENIAL OF PETITIONER'S FED. R. CIV. P. 60(b) MOTION AND COA AND THE ELEVENTH CIRCUIT ERRED BY PROVIDING ITS OWN FINDINGS OF FACT AND CONCLUSIONS OF LAW IN ORDER TO DENY PETITIONER'S MOTION FOR COA IN CONFLICT WITH DECISIONS OF THE 5<sup>TH</sup> CIRCUIT, 9<sup>TH</sup> CIRCUIT, 10<sup>TH</sup> CIRCUIT

### II.

CERTIORARI REVIEW SHOULD BE GRANTED WHERE THE ELEVENTH CIRCUIT AFFIRMED 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 IN COMPLIANCE WITH THE BINDING CIRCUIT PRECEDENTS ESTABLISHED IN *ADAMS V. WAINWRIGHT*, 764 F.2D 1356, 1359 (11<sup>TH</sup> CIR. 1985); *CLISBY V. JONES*, 960 F.2D 925, 938 (11<sup>TH</sup> CIR. 1992) DURING THE PROCEEDING OF PETITIONER'S PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

## LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ 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:

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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**

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 3-1-2019.

[ ☒ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

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

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

[ ] A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

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

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

6<sup>th</sup> Amendment of the United States Constitution

14<sup>th</sup> Amendment of the United States Constitution

28 U.S.C. § 2253(c)

28 U.S.C. § 2254



### STATEMENT OF THE CASE

On 12-15-2008 Petitioner was arrested in Broward County, Florida and charged in the following cases: # 08-4490CF10A burglary of a dwelling and dealing in stolen property; # 08-23408CF10A possession of cocaine and possession of drug paraphernalia; # 08-23775CF10A burglary of a dwelling and dealing in stolen property; #09-3313CF10A burglary of a dwelling and grand theft; # 09-472CF10A burglary of a dwelling and dealing in stolen property; # 09-3314CF10A burglary of a dwelling and dealing in stolen property; 09-3312CF10A burglary of dwelling.

Subsequently, Petitioner was evaluated for competency to stand trial in accordance with Fla. R. Crim. P. 3.211 and found to be incompetent to proceed in all seven (7) cases and consequently on 9-29-2009 the Trial Court adjudicated the Petitioner incompetent to proceed. On 5-5-2010 Petitioner was released from custody on conditional release pursuant to the applicable **provisions** in 916 Florida Statute (2009). On 8-9-2011 Petitioner was arrested in Broward County, Florida and charged in case # 11-13307CF10A burglary of a dwelling and petit theft.

On 5-8-2012 Petitioner was allegedly evaluated for competency to stand trial by Dr. Johanna W. Guerrero and allegedly found to be incompetent to proceed and to meet the statutory criteria for involuntary commitment pursuant to 916.13(1) Florida Statute. On 6-8-2012 Petitioner was involuntarily committed to Treasure Coast Forensic Treatment Center.

On 4-19-2013 while at T.C.F.T.C. Petitioner was allegedly evaluated for competency to stand trial by Dr. Elizabeth Hooper and found to be competent to stand trial. On 5-17-2013 Petitioner was returned to Broward County jail. On 5-26-2013 Petitioner was allegedly evaluated for competency to stand trial by Dr. Trudy Block Garfield and found to be competent to stand trial in all eight (8) cases.

On 6-18-2013 defense counselor(s) Erin M. Veit and Jonah Dickstein stipulated to the alleged competency evaluation reports by Dr. Elizabeth Hooper, Dr. Trudy Block Garfield and consequently the Trial Court adjudicated the Petitioner restored to competence, **accepted** Petitioner's guilty plea in all **eight (8)** cases and sentenced him to **multiple** concurrent 15 year prison terms, as a H.F.O., P.R.R.

On 2-18-2014 Petitioner **filed** a Post Conviction Motion pursuant to Fla. R. Crim. P. 3.850 raising two claims; Ground One: Denied Right To A Fair Trial; Ground Two - Ineffective Assistance of Counsel. The State responded. Petitioner's 3.850 Motion was summarily denied by the Trial Court on 6-1-2015. The Fourth DCA per curiam **affirmed** without opinion in *Coleman v. State*, 189 So. 3d 784 (Fla. 4<sup>th</sup> DCA 2016). Mandate was issued on 2-26-2016.

On 2-12-2016 Petitioner **filed** the instant 28 U.S.C. §2254 Petition for Habeas Corpus raising two claims. **Ground** One: Denied right to a fair trial (substantive incompetency claim) Ground Two: Ineffective Assistance of Counsel.

On 5-25-2016 the State filed its response to the Court's show cause order. On 6-15-2016 Petitioner filed his Reply Brief.

On 5-1-2017 Magistrate Judge P.A. White issued his Report and Recommendation. On 5-15-2017 Petitioner filed his timely objections to Judge P.A. White's Report and Recommendations. On 8-25-2017 the District Court entered an order adopting Magistrate Judge P.A. White's Report and Recommendation that the Petition for Habeas Corpus be denied, that no Certificate of Appealability be issued and that the case be closed. On 8-31-2017 Appellant filed his timely Notice of Appeal.

On 12-21-2017 Appellant filed his Motion for Certificate of Appealability (COA) to the United States Court of Appeals for the 11<sup>th</sup> Circuit raising five issues. (1) the Magistrate Judge failed to address claim in Ground One of habeas petition (substantive incompetency claim). (2) The Magistrate Judge failed to acknowledge material facts as to Petitioner's prior adjudication of incompetence. (3) The Magistrate Judge failed to address Giglio claims in the habeas petition. (4) State Court's decision on ineffective assistance of counsel was contrary to Federal law, decision on the ineffective assistance claim involved an unreasonable application of the *Strickland v. Washington* standard. (5) The District Court abused its discretion by failing to grant Petitioner an evidentiary hearing. On 1-4-2018 the U.S.C.A. 11<sup>th</sup> Circuit entered an order denying Certificate of Appealability. On 1-18-2018 Appellant filed his Motion for Reconsideration. On 2-22-2018 the U.S.C.A. 11<sup>th</sup> Circuit entered an order denying Motion for Reconsideration.

On 4-16-2018 the Petitioner filed a Petition For A Writ of Certiorari in the United States Supreme Court case no. 17-8498. On 5-14-2018 the United States Supreme Court entered an order denying The Petition For A Writ of Certiorari.

On 6-25-2018 the Petitioner filed an Amended Motion For Relief From Judgment Or Order case 16-60321-CIV-Zloch. On 8-6-2018 the District Court entered an order denying Amended Motion For Relief From Judgment Or Order. On 8-17-2018 Petitioner filed a Notice of Appeal, Motion For Leave To Appeal Informa Pauperis. On 10-10-2018 Petitioner filed Amended Motion For Court To Render Valid Orders.

On 10-17-2018 Petitioner filed a Writ of Mandamus in the U.S.C.A. 11<sup>th</sup> Circuit case no. 18-14550-G. On 11-028-2018 the U.S.C.A. 11<sup>th</sup> denied Motion To Proceed Informa Pauperis. On 1-3-2019 the U.S.C.A. 11<sup>th</sup> Circuit enters an order dismissing the Petition For Writ of Mandamus pursuant to 11<sup>th</sup> Cir. R. 42-1(b). On 3-1-2019 the U.S.C.A. 11<sup>th</sup> Circuit entered an order denying Petitioner's Motion for COA.

## REASONS FOR GRANTING THE PETITION

### I.

CERTIORARI SHOULD BE GRANTED WHERE THE DISTRICT COURT FAILED TO PROVIDE ANY FINDINGS OF FACT SPECIALLY AND CONCLUSIONS OF LAW AS IS REQUIRED BY FED. R. CIV. P. 52(a)(1) IN ITS ORDERS OF DENIAL OF PETITIONER'S FED. R. CIV. P. 60 (b) MOTION AND COA AND THE ELEVENTH CIRCUIT ERRED BY PROVIDING ITS OWN FINDINGS OF FACT AND CONCLUSIONS OF LAW IN ORDER TO DENY PETITIONER'S MOTION FOR COA IN CONFLICT WITH DECISIONS OF THE 5<sup>TH</sup> CIRCUIT, 9<sup>TH</sup> CIRCUIT, 10<sup>TH</sup> CIRCUIT

The District Court's order denying Petitioner's Fed. R. Civ. P. Rule 60(b) Motion failed to provide any findings of fact specially and conclusions of law as is required by Fed. R. Civ. P. Rule 52(a)(1). Habeas Corpus proceeding is civil action and is governed by Federal Rules of Civil Procedure and Rule 52(a) requires court to find fact specially and state separately its conclusions of law thereon. <sup>1</sup>*Welch v. Beto*, 400 F.2d. 582 (5<sup>th</sup> Cir. Tex. 1968); Rule 52(a) requires a district court to make findings of fact and conclusions of law, and implicit in the rule is the necessity of a hearing on the factual issues. *United States v. Gramer*, 418 F.2d. 692 (5<sup>th</sup> Cir. Tex. 1969) (See Appendix B)

Upon receiving the District Court's orders of denial that did not comply with requirements of Fed. R. Civ. P. 52(a)(1) the Eleventh Circuit should have remanded

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<sup>1</sup> In *Bonner v. city of Prichard*, 661 F.2d. 1206, 1209 (11<sup>th</sup> Cir. 1981) (en banc) this court adopted as binding precedent all decisions of the former fifth circuit handed prior to close of business on September 30, 1981.

case back to the District Court with directions to comply with the requirements of Fed. R. Civ. P. 52(a)(1). Where trial court fails to make findings or to find on material issues and appeal is taken appellate court will normally vacate judgment and remand action for appropriate findings to be made. *Davis v. Unites States*, 422 F.2d. 1139 (5<sup>th</sup> Cir. Ala.); Where no finding of fact and conclusions of law were filed in support of judgment, appellate court was left to speculation as to basis for judgment, necessitating vacation and remand for compliance with Rule 52(a).<sup>1</sup> *Sellers v. Wollman*, 510 F.2d. 119 (5<sup>th</sup> Cir. La. 1975); Also see *Water v. Beto*, 392 F.2d. 74 (5<sup>th</sup> Cir. 1968) we are unable to affirm the district court because the order denying habeas relief was unaccompanied by findings of and conclusions of law.

In addition, the District Court's untimely 10-22-2018 order denying a COA did not provide any reason(s) for the denial as is required by 28 U.S.C. § 2253(c); *Miller-El v. Cockrell*, 537 U.S. 322, 123 S.Ct. 1029 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). (See Appendix B) *Initially both Courts denied COA because petitioner failed to make a substantial showing of the denial of a constitutional right.*

Here, the Eleventh Circuit in its order denying COA, made the following findings of fact and conclusions of law. "Nevertheless, no COA is warranted because Coleman failed to state a valid substantive competency claim," "as is required under the second prong of Slack." (See Appendix A) (emphasis added)

First, it is not the function of the Eleventh Circuit to sit as a fact finder or provide conclusions of law that the District Court failed to provide. This Court does not sit as a fact finder. Our function is to review fact determinations and legal

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<sup>1</sup> In *Bonner v. city of Prichard*, 661 F.2d. 1206, 1209 (11<sup>th</sup> Cir. 1981) (en banc) this court adopted as binding precedent all decisions of the former fifth circuit handed prior to close of business on September 30, 1981.

conclusions of law made by lower tribunals. <sup>1</sup> *Welch v. Beto*, 400 F.2d. 582 (5<sup>th</sup> Cir. 1968); Also see <sup>1</sup>*Brown v. Dade Christian Schools Inc.*, 556 F.2d. 310 (5<sup>th</sup> Cir. 1977) Role of appellate court under Fed. Rule of Civil Procedure 52 is to determine whether or not there is sufficient evidence before district court upon which to base finding of that court.

The Eleventh Circuit's decision to make its own findings of fact and conclusions of law, in order to deny Petitioner's Motion for COA is in conflict with decisions of the Eleventh Circuit in the aforementioned cases, conflicts with decisions of the 9<sup>th</sup> Circuit and the 10<sup>th</sup> Circuit. See *Panaview Door & Window Co. v. Reynolds Metals Co.*, 255 F.2d. 920, 116 UAPQ (BNA) 493 (9<sup>TH</sup> Cir. 1958) *Id.* at 926 Federal Rules of Procedure give Court of Appeals no power to make new independent findings upon evidence which Court of Appeals did not hear. Also see *Woods Constr. Co. v. Pool Constr. Co.*, 314 F.2d. 405, 6 Fed. R. Serv. 2d. (Callaghan) 956 (10<sup>th</sup> Cir. 1963) *Id.* at 405. Appellate courts, under Rule 52(a) do not have power to review evidence in record and supply findings of fact necessary to determine issues.

The Eleventh Circuit's finding that no COA is warranted because Coleman failed to state a valid substantive competency claim, as is required under the second prong of *Slack* is clearly erroneous because first, as the record (Appendix C, D) demonstrates Petitioner had clearly stated a valid substantive competency claim. Second, the two prongs of *Slack* are only to be considered in instances where a

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<sup>1</sup> In *Bonner v. city of Prichard*, 661 F.2d. 1206, 1209 (11<sup>th</sup> Cir. 1981) (en banc) this court adopted as binding precedent all decisions of the former fifth circuit handed prior to close of business on September 30, 1981.

habeas corpus petition has been dismissed on procedural grounds, here ~~the~~ petition was never dismissed on procedural grounds or otherwise. Therefore the two prongs of Slack ~~are~~ inapplicable in this case. See *Slack v. McDaniel*, *supra*, 529 U.S. 473, the Supreme Court explained "that determining whether a COA should issue where a habeas corpus has been dismissed on procedural grounds" has "two" components, one directed at the underlying constitutional claims and one directed at the district court's procedural holding *Id.* at 485. (emphasis added) The correct inquiry in this case should have limited to whether reasonable jurist could debate whether the District Court abused its discretion in denying Petitioner's Rule 60(b) Motion. Here as the Eleventh Circuit stated because the District Court never addressed Coleman's substantive competency claim, reasonable jurist could debate whether Coleman raised a meritorious Clisby claim in his Rule 60(b) Motion. (See Appendix A) Being that the Eleventh Circuit admits that the District Court had abused its discretion it should have reversed the District Court's order denying Petitioner's Rule 60(b) Motion in accordance with the holding established in <sup>1</sup>*Seven Elves Inc. v. Eskenazi* 635 F.2d. 396, 402 (5<sup>th</sup> Cir. 1981). We have also held "where denial of relief (under Rule 60(b)) precludes examination of full merits of the cause, even a slight abuse may justify reversal."

The United States Supreme Court has remanded habeas corpus cases back to the District <sup>Court</sup> to provide specific findings of fact. See *Von Moltke v. Gillies*, 332 U.S. 708, 68 S.Ct. 316, 92 L.Ed. 309 (1948); *Holiday v. Johnston*, 313 U.S. 342, 61 S.Ct.

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<sup>1</sup> In *Bonner v. City of Prichard*, 661 F.2d. 1206, 1209 (11<sup>th</sup> Cir. 1981) (en banc) this court adopted as binding precedent all decisions of the former fifth circuit handed prior to close of business on September 30, 1981.



1015, 85 L.Ed. 1392 (1941); *Kelley v. Everglades Drainage Dist.*, 87 L.Ed. 1485, 319 U.S. 415 (1943) *Id.* at 1489. On that we do not pass for it is not the function of this Court to search the record and analyze the evidence in order to supply findings which the trial court failed to make. As the United States Supreme Court has explained, the principle of stare decisis “promotes that evenhanded, predictable, and consistent development of legal principles foster reliance on judicial process.” *Payne v. Tennessee*, 501 U.S. 808, 827 (1991).

## II.

CERTIORARI REVIEW SHOULD BE GRANTED WHERE THE ELEVENTH CIRCUIT AFFIRMED 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 IN COMPLIANCE WITH THE BINDING CIRCUIT PRECEDENTS ESTABLISHED IN *ADAMS V. WAINWRIGHT*, 764 F.2D. 1354, 1359 (11<sup>TH</sup> CIR. 1985); *CLISBY V. JONES*, 960 F.2D. 925, 938 (11<sup>TH</sup> CIR. 1992) DURING THE PROCEEDING OF PETITIONER'S PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Petitioner had raised a valid substantive competency claim w/subclaim of *Giglio v. United States* (violation) 405 U.S. 153 (1972) in ground one Denied Right To A Fair Trial, wherein he clearly, specifically alleged that he “remained incompetent” when he entered his guilty plea on 6-18-2013. *Medina v. Singletary*, 59 F.3d. 1095, 1107 (11<sup>th</sup> Cir. 1995) *Id.* at 1106 (holding that a petitioner makes a substantive competency claim by alleging that he was in fact, tried and convicted

while incompetent.) Petitioner's case is indistinguishable from *Horace v. Wainwright*, 781 F.2d. 1558 (11<sup>th</sup> Cir. 1986) *Id.* at 781 F.2d, 1566 Hill, Circuit Judge specially concurring: I agree with the opinion insofar as it discusses the fact that Petitioner had been adjudicated mentally incompetent and never formally restored to competency. For that reason, the writ must be granted. Resolution of the competence issue alone requires reversal.

Here, Petitioner's substantive competency claim in ground one Denied A Right To A Fair Trial was supported by numerous, various material facts. (including prior adjudications of incompetence) substantial evidence and numerous exhibits. (including competency evaluation reports) (See Appendix C, D). Nevertheless, by the Eleventh Circuit's own admission "the district court never addressed Coleman's substantive competency claim." (See Appendix A)

Initially in Petitioner's Fla. R. Crim. P. Rule 3.850 proceeding in State Court wherein the State relied on the procedural default rule to decline to address the Denied A Right To A Fair Trial (substantive competency claim w/subclaim of *Giglio v. United States* (violation).) Subsequently the State again relied on the procedural default rule to decline to address the substantive competency claim in its response to the show cause order in the present 28 U.S.C. § 2254 habeas proceeding.

The District Court's failure to address Petitioner's substantive competency claim w/subclaim of *Giglio v. United States* (violation), material facts and exhibits in ground one constitutes a violation of both of the long standing binding circuit

precedents established in *Adams v. Wainwright*, 764 F.2d. 1356, 1359 (11<sup>th</sup> Cir. 1985) *Id.* at 764 F.2d. 1359:

Binding circuit precedent fully support the Petitioner's contention that the procedural default rule of *Wainwright v. Sykes*, 433 U.S. 72, 97 S.Ct. 2497, 53 L.Ed. 594 (1977) does not operate to preclude a defendant who failed to request a competency hearing at trial or pursue a claim of competency on direct appeal from contesting his competency to stand trial and be sentenced.

*Clisby v. Jones*, 960 F.2d. 925, 938 (11<sup>th</sup> Cir. 1992) *Id.* at 960 F.2d. 936 accordingly we now exercise our supervisory power over the District Courts. See *United States v. Jones*, 899 F.2d. 1097, 1102 (11<sup>th</sup> Cir.) and instruct the District Courts to resolve all claims for relief raised in a petition for writ of habeas corpus pursuant to 28 U.S.C. 2254 (1988) regardless whether relief is granted or denied.

Despite the fact that the Petitioner's substantive competency claim being properly before the Court both the District Court, Eleventh Circuit has ignored it, refusing to even acknowledge its existence and has consistently entered rulings that are clearly erroneous and contrary to binding circuit precedents all in order to not simply address the claims and material facts in Ground One: Denied Right To A Fair Trial. (substantive competency claim w/subclaim of *Giglio v. United States* (violation)).

The District Court, the Eleventh Circuit can not ignore binding circuit precedents as a matter of clearly established law. See *Thomas v. McDonough*, 452 F. Supp 2d. 1203 (11<sup>th</sup> Cir. 2006). A District Court can not ignore currently binding circuit precedents; Also see *Payne v. Tennessee*, 501 U.S. 808, 827 (1991) as the

United States Supreme Court has explained, the principle of stare decisis "Promotes, that evenhanded, predictable and consistent development of legal principles, foster reliance on judicial process."

The Eleventh Circuit's order denying COA misstated the Petitioner's argument in his Rule 60(b) Motion, initially states that the Petitioner raised a substantive competency claim, then ~~goes~~ goes on to admit that the District Court never addressed Coleman's substantive competency claim and finally goes on to contradict itself by stating nevertheless, no COA is warranted because Coleman failed to state a valid substantive claim, as required by the second prong of *Slack*.

Petitioner has never ~~receded~~ receded from his substantive competency claim in State Court or Federal Court. And ~~the~~ the argument in the Rule 60(b) Motion is that the District Court's failure to address the substantive competency claim in ground one is a violation of binding circuit precedents established in both *Adams v. Wainwright*, 764 F.2d. 1356, 1359 (11<sup>th</sup> Cir. 1985); *Clisby v. Jones*, 960 F.2d 925, 938 (11<sup>th</sup> Cir. 1982) and that the failure to comply with binding circuit precedents constitutes a manifest error of law.

In conclusion the Eleventh Circuit's decision to make its own findings of fact and conclusions of law in order to deny Petitioner's Motion For COA is a manifest error of law that demonstrates the extreme measures that both the District Court, Eleventh Circuit has taken in order to not address claims that were properly before the court~~(s)~~.

## CONCLUSION

This Honorable Court should explicitly adopt Petitioner's position based upon law and equity. The upholding of the denial by the Eleventh Circuit of Petitioner's Motion For COA seriously affects the fairness, integrity and public reputation of the judicial proceedings. See generally *United States v. Rodriguez*, 389 F.3d 1291 (11<sup>th</sup> Cir. 2005); *United States v. Olano* 507 U.S. 725, 113 S.Ct. 1770 (1993). For all of these reasons and in the interest of justice, the Petitioner Garry Coleman prays that this Court will issue a Writ of Certiorari and ~~review~~ the decision below.

*Respectfully Submitted,*  
*Garry Coleman*