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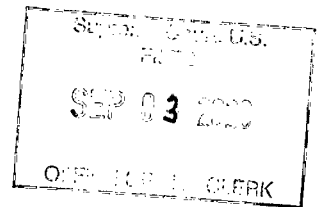
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IN THE

SUPREME COURT OF THE UNITED STATES



Robert William Moynihan — PETITIONER
(Your Name)

vs.

Mark S. Inch, Sec. FL D.O.C., et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals - Eleventh Circuit,
United States District Court - Ocala Division - Middle District.

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

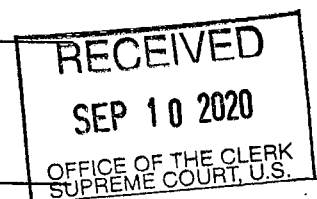
Robert William Moynihan DC#318295
(Your Name)

New River Correctional Institution
P.O. Box 900

(Address)

Raiford, FL 32083

(City, State, Zip Code)



(Phone Number)

— Question Presented —

Whether or not, as a matter of law, a pro se litigant, who has presented clear and convincing evidence demonstrating a constitutional in nature manifest injustice, is entitled to Certificate of Appealability, under exceptional circumstances, where all courts have the power and authority to correct such injustice despite any procedural default?

— List of Parties —

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:

- 1) Bobb, Howard Jr. Elected Public Defender, 5th Jud. Cir. Fla
- 2) Berger, Wendy W Judge, 5th DCA, FL
- 3) Dalton, Roy B, Junior, Judge, U.S.D.C. - Ocala FL
- 4) Edwards, James E, Judge, 5th DCA, FL
- 5) Evander, Kerry I, Judge, 5th DCA, FL
- 6) Hagan, Lori N, Assistant Attorney General, FL
- 7) Howard, Richard A, Circuit Ct. Judge, 5th Jud. Cir., FL
- 8) Lambert, Brian D, Judge, 5th DCA, FL
- 9) Lammens, Phillip R, U.S. Magistrate Judge
- 10) Moody, Ashley Brook, Elected Atty General, FL
- 11) Norville, Paul, Assistant State Atty., FL
- 12) Orfinger, Richard B, Judge, 5th DCA, FL
- 13) Palmer, William D, Elected Public Defender, Appellate Div., FL
- 14) Purdy, James S, Elected Public Defender, Appellate Div., FL
- 15) Ryan, Nancy, Assistant Public Defender, Appellate Div., FL
- 16) Waatti, Luke, Assistant Public Defender
- 17) Wallis, F. Rand, Judge, 5th DCA, FL
- 18) Wilson, Charles R, Judge, U.S.C.A. Eleventh Cir., GA.

Related Cases

Federal - Descending

Moynihan v. Sec. Dept. of Corr., Atty. General, State of Florida,
No. 19-14799, U.S. Court of Appeals, Eleventh Circuit,
Judgment entered Feb. 14, 2020; Reconsideration denied
April 10, 2020

Moynihan v. Sec. Dept. of Corr., Atty. General, State of Florida,
No. 5:17-cv-17-Oc-37 PRL, U.S. District Court for the
Middle District of Florida, Ocala Division,
Judgment entered on Oct. 22, 2019

State - Descending

- △ State v. Moynihan, No. 5D16-4123 (Fla. 5th 5/16/2017)
- △ " " , No. 5D15-4492 (Fla. 5th 10/11/2016)
- △ " " , No. 5D15-2394 (Fla. 5th 9/28/2015)
- △ " " , No. 5D12-4426 (Fla. 5th 6/17/2014,
rehearing denied 7/23/2014)
- ⊙ " " , No. 2012-CF-810 (Fla. 5th Circuit 11/7/2012)

△ Fifth District Court of Appeal, State of Florida - Per Curiam
Affirmed

⊙ Fifth Circuit Court, Citrus County, State of Florida

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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, pages ① and ⑩ to the petition and is unknown if it is reported, or has been published,

✓ The opinion of the United States District Court appears at Appendix B, pages ① to ②① to the petition and is unknown as to if it has been reported or published.

Jurisdiction

a) A petitioner may seek a Petition for Writ of Certiorari from the United States Supreme Court on the Circuit courts denial of C.O.A.

Hohn v. United States, 524 U.S. 236, 248 (1998) (Supreme Court has jurisdiction to review denial of application for Certificate of Appealability by Circuit judge or appellate panel because the application qualifies as "case" under 28 U.S.C. § 1254 (1); See, e.g. United States v. Apker, 174 F.3d 934, 937 (8th Cir. 1999) (reversing denial of Certificate of Appealability for petitioners Brady claim in light of Hohn which held such claim was constitutional in nature)

(b) For cases from Federal Courts

1. The date on which the U.S. Court of Appeals decided my case was Feb. 14, 2020, a copy of order is located at Appendix: A

2. A timely petition for reconsideration was denied by the U.S. Court of Appeals on April 10, 2020, and a copy of the order denying reconsideration is located at Appendix: A

3. An extension of time to file petition for a Writ of Certiorari was filed on May 18, 2020, see Appendix C, and the U.S. Supreme Court clerk Scott S. Harris by Redmond K. Barnes responded with an order attached extending the time to file 150 days from the date of the lower court judgment, in this case from Apr 10, 2020 to and including Sept. 7, 2020, this order was sent to petitioner on June 3, 2020, see Appendix: C 4; the Jurisdiction of this court is invoked under 28 U.S.C. § 1254 (1).

- Constitutional and Statutory Provisions Involved -

The Constitution of United States

Article I, Section 9.

...The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in cases of Rebellion or Invasion the public safety may require it.

Art. I, § 9, U.S. Const. (1787)

Article VI.

...This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary notwithstanding.^a

Art. VI, cl. 2, U.S. Const. (1787)

The Bill of Rights - Amendment I.

Congress shall make no law... abridging the freedom... to petition the Government for redress of grievances.

U.S. Const. amend. I (Dec. 15 1791)

^a Time Warner Cable V. Doyle, 66 F.3d 867 (7th Cir. 1995)
(the Supremacy Clause)

The Bill of Rights - Amendment V.

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

U.S. Const. amend. V (Dec 15, 1791)

The Bill of Rights - Amendment VI.

In all criminal prosecutions, the accused shall enjoy the right... to have the Assistance of counsel for his defence.

U.S. Const. amend. VI (Dec 15, 1791)

The Bill of Rights - Amendment XIV

All persons born or naturalize in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend XIV.

(passed by Congress June 13, 1866; Ratified July 9, 1868)

Federal Statutes

To merit a certificate of appealability, appellant must show that reasonable jurist would have found debatable both ;

- 1) the merits of the underlying claim, and
- 2) the procedural issues that he seeks to raise.

28 U.S.C. § 2253(c)(2)

— Statement of Case —

First, the Petitioner reasserts the statement of the case and facts as were originally presented and detailed in his application for certificate of appealability. See Appendix A pages 12 - 27.

Subsequent to the aforementioned case and facts the Petitioner, on November 21, 2019, filed application for COA to the Eleventh Circuit Court of Appeals for the United States making a substantial showing to grant COA, from the plain on the face of the record clear, plain errors and manifest injustice where the trial court deprived Petitioner due process to a fair trial for failing to observe the procedures and law that is in place to prevent him from being tried or convicted while incompetent to stand trial once the trial court called into question his mental competence; and under ground two the structural defect denial of effective assistance of conflict free counsel where the trial court never made a preliminary inquiry into why Petitioner was discharging counsel, in addition to failing to inquire into Petitioner's unhappiness with court-appointed counsel. Petitioner is basing these constitutional in nature manifest injustice with respect to Drope v. Missouri, 420 U.S. 162, 172 (1975); Ariz. v. Fulminante, 499 U.S. 279, 309-10 (1991); Chapman v. Cal., 386 U.S. 18, 23 (1967); U.S. Const. amend 5, 6, 14. See Appendix A, All pages; and Appendix A, pages 30-37.

On February 14, 2020 the Eleventh Circuit denied application for COA stating in the order it stated that Petitioner failed to make a requisite showing citing 28 U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 478 (2000) See Appendix A page 10

On February 28, 2020, Petitioner filed a timely motion to reconsider, vacate, or modify pursuant to 11th Cir. R. 22-1(c) and 27-2 based on overlooked and misapprehended manifest injustice, miscarriage of justice showing as a general rule a motion to reconsider is available when ⁽¹⁾ a party presents the court with either ⁽²⁾ an intervening change in controlling law, ⁽³⁾ the availability of new evidence, or ⁽³⁾ the need to correct clear error or manifest injustice. See Appendix A pages 2-3; (citations omitted) The Petitioner also demonstrated how due to clear error - manifest injustice he had overcome the or any procedural default. See Appendix A pages 2-9. (citations omitted)

Despite the aforementioned showing the Eleventh Circuit disregarded the clear error - manifest injustice and the second option of the three regarding "motion to reconsider" was chosen to deny Petitioner's motion to reconsider stating "Denied because he has offered no new evidence or arguments of merit to warrant relief." See Appendix A page 1. Denied April 10, 2020.

On May 18, 2020, Petitioner filed a Motion for Extension of time to file Petition for Writ of Certiorari on the Courts denial of COA. See Appendix C page 4-8.

On June 3, 2020 the U.S. Supreme Court clerk responded with a letter attaching an order that extended Petitioner's deadline 150 days from the date of the lower court judgment, extending the deadline to Sept. 7, 2020. See Appendix C pages 1-3.

According to this order this instant petition is timely filed before Sept. 7, 2020.

The following may be liberally construed per pro se litigant and Haines v. Kerner, 404 U.S. 519, 520 (1972)

— Reason For Granting This MOTION —

I. The Record - To Read or NOT to Read

The lower courts, thus far, have not adequately reviewed the record and law, that has been pointed out by the pro se petitioner on multiple instances where a compounded manifest injustice has occurred. (Appendix A, page 2-9 and 11-39)

The Petitioner has shown by court record that the trial court (1) called into question his mental competency, (Appendix A, p. 50) (See original Appendix A-2, p. 499, U.S.D.C. record on appeal) yet never observed the procedures of law that were put into place to adequately determine and protect him from being tried or convicted while incompetent to stand trial, subsequent to his "Meltdown" [suicide attempt] during court recess with razor blade, (Appendix A, p. 53) (See original Appendix A-2, p. 509, U.S.D.C. record on appeal) and deprived him due process to a fair trial; Drope v. Missouri, 420 U.S. 162, 172 (1975); Dusky v. United States, 362 U.S. 402 (1960); S. 916.106, S. 916.12, S. 916.115, Fla. Stat.; Fla. R. Crim. P. 3.210-3.212; Dougherty v. State, 149 So. 3d 672, 673, 676, 678 (Fla. 2014); see also 18 USCS §§ 4241-4248; and (2) never observed the procedures in place to make a preliminary inquiry as to ascertain why Petitioner wished to discharge court-appointed counsel and represent himself, "leap-frogging" directly into a Faretta inquiry, (Appendix A, p. 59, 60; full 58-66) and ignored or overlooked - disregarded the multiple subsequent and unequivocal statements in front of Venire and court during jury selection and opening statements that "I'm not happy with my counsel," (Appendix D, p. 1); original Appendix A-2, p. 138; U.S.D.C. record on appeal) and "... I'm unhappy with my counsel," (Appendix D, p. 2; Original Appendix A-2, p. 190; U.S.D.C. record on appeal) by failing

to make any inquiry into Petitioner's reasons for discharge and in addition his dissatisfaction with court-appointed counsel, (Appendix A, p. 58-66) (Faretta hearing); (Appendix D, p. 1-2) (Petitioner's dissatisfaction exclaimed) depriving him of effective assistance of conflict free court-appointed counsel, Arizona v. Fulminante, 499 U.S. 279, 309-10 (1991); see also U.S. v. Gonzalez-Lopez, 548 U.S. 140, 149-50 (2006) (deprivation of counsel of choice creates "consequences that are necessary unquantifiable and indeterminate", constituting structural error not subject to harmless error review); Satterwhite v. Tex., 486 U.S. 249, 256 (1988) (denial of counsel affects entire proceeding and is never harmless error because it casts too much doubt in trial process); Strickland v. Washington, 466 U.S. 668, 692 (1984) (actual or constructive denial of counsel presumed to result in prejudice); Chapman v. Cal., 386 U.S. 18, 23, & n. 8 (1967) (right to counsel so "basic" to a fair trial that infraction can never be treated as harmless error"); see, e.g., Norde v. Keane, 294 F.3d 401, 413-14 (2nd Cir. 2002) (denial of right to counsel, even temporarily, during critical stage of trial was structural error); Benitez v. U.S., 521 F.3d 625, 630, 636 (6th Cir. 2008) (Courts failure to inquire into defendants dissatisfaction with counsel, constituting denial of counsel, was structural error); see also Nelson v. State, 274 So.2d 256 (Fla. 4th DCA 1973) (Procedure in place when a defendant seeks to discharge his court-appointed counsel) (adopted by Florida Supreme Court in Hardwick v. State, 521 So.2d 1071, 1074-75 (Fla. 1988) termed "Nelson hearing"); see also Milkey v. State, 16 So.3d 172, 174 (Fla. 2nd DCA 2009) (failure to make preliminary Nelson inquiry to response to a defendants wishes to discharge court-appointed counsel is structural defect constituting reversible error) and in total an all encompassing constitutional set of violations of the Fifth, Sixth, and Fourteenth Amendments of the Constitutional protections: (1) due process of law, fair trial and effective assistance of

Conflict-free-court-appointed counsel to an indigent defendant, and (2) the protections of the aforementioned through enforcement on the States including the equal protection of the law; i.e. due process of the law, U.S. Const. amend 5, 6, 14; see also Art. VI, cl. 2, U.S. Const. (the Supremacy clause)

II. The Record - Contrary to Courts Ruling

Thus far, all courts have either agreed with the trial court's ruling or have disregarded-overlooked that the court record is contrary to the State courts ruling and that clear, plain, fundamental and structural errors have occurred resulting in manifest injustice with respect to the related original claims the Petitioner seeks appellate review in the United States Circuit Court of Appeals.

The court record as attached in U.S.D.C. case number 5:17-cv-17-Dc-37 PRL under Appendix A-2, clearly documents that the trial court (1) called into question Petitioners mental competency, (Id at 499, see also attached Appendix A. p. 51 {excerpt p. 499}) yet did not determine or protect Petitioners right not to be tried or convicted while incompetent to stand trial, depriving him due process, which such laws and procedures have been required since Dusky Supra; Florida Statutes S. 916.106, S. 916.115, S. 916.12; Florida Rules of Criminal Procedure 3.210-3.212; and Drope Supra have been enacted and decided, and (2) never advised Petitioner of his "rights to have any attorney" at the specific portion of record cited by both the U.S.D.C. - M.D. of Florida and the Fifth Circuit for Citrus County, Florida, (Appendix B. p. 10) (citing Faretha inquiry transcripts p. 9-25; see also attached Appendix A. p. 60-64) (At no point in the entire record of the U.S.D.C. - M.D. of Fla. or the trial court was the

Petitioner ever advised or questioned on his rights to have any attorney") Specifically, at the above-cited page 9-25 of the September 20, 2012 Fareta hearing transcript, the trial court is vehemently badgering the Petitioner with the duties of an attorney, condescendingly inquiring of the Petitioner with a fury of questions, cutting the Petitioner off with another question before he can answer the previous question at multiple instances, all due to him executing his right to self-representation. (Appendix A, p. 60-66) The Florida Supreme Court requires courts in Florida to question, specifically as attached to the Appendices in: Amendments to Florida Rule of Criminal Procedure 3.111 (d)(2)-(3), 719 So. 2d 873 (Fla. 1988); In re: Amendments to Florida Rule of Criminal Procedure 3.111 (d)(2)-(3), 17 So. 3d 273 (Fla. 2009); McGirth v. State, 209 So. 3d 1146 (Fla. 2017) (reaffirming the requirement to read questions)

It is apparant that the record has either been misread, misconstrued or simply not read at all by all courts whom have had the duties to notice, adress, and correct these injustices.

III. The Application for COA and Motion for Reconsideration

With the aforementioned, underwritten arguments included: (1) herein; (2) within Petitioners application for COA; (3) within Petitioners Motion for Reconsideration; (4) within Petitioners "liberally construed" 18 U.S.C. § 2254; and (5) within Petitioners "liberally construed" State postconviction 3.850 motion on different yet pointed out-related grounds of denial of counsel and competency-due process claims, including in this motions (3.850) summary stating manifest injustice, the Petitioner, by court recorded fact, has shown that a reasonable jurist would find debatable both: (1) the merits of an underlying claim, and (2) the procedural issues that he seeks to raise. 28

U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 478 (2000); Haines Supra at 520 (liberally construed pro se filing)

IV. Procedural Default

Moreover, the Petitioner had also provided clear and convincing evidence, supported by the record and law of fundamental miscarriage of justice, clear error or manifest injustice to overcome any procedural default. Especially in his application for COA and including his motion for Reconsideration. Coleman v. Thompson, 501 U.S. 722, 750 (1991); Skelton v. Saia, 2018 U.S. Dist. Lexis 62531, *3-4 (N.D. Ala. April 13, 2018) (citing Reuter v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 440 F. Supp. 2d 1256, 1268 (N.D. Ala. 2006) (quoting Summit Med. Ctr. of Ala. Inc. et al. v. Bob Riley, 284 F. Supp. 2d 1350, 1355 (M.D. Ala. 2003); Jenkins v. Dunn, 2017 U.S. Dist. Lexis 71194, *9 (11th Cir. May 10, 2017) (same). See also 4 prongs of Manifest injustice - plain error standard, e.g. U.S. v. Quintana, 300 F.3d 1227, 1232 (11th Cir. 2002); Johnson v. U.S., 520 U.S. 461, 466-68 (1997); U.S. v. Olano, 507 U.S. 725, 726, 732-34 (1993)

V. Conclusion

In conclusion, this Highest Court must intervene, notice, address, and quash the lower court's order denying C.O.A., ordering the U.S. Court of Appeals to issue a C.O.A. to the Petitioner, so he can adequately raise ~~him~~ his claims and clearly demonstrate to the Federal Courts the errors, plain on the face of the record, constitutionally deprived, substantive, encapsulated due process rights that affected the Petitioner's court proceedings to the very core - ultimately, unfairly, and illegally finding him guilty, convicting and sentencing him without the guaranteed due process of law, and without such intervention will ensue an Ultimate Manifest Injustice.

Moreover, Petitioner's case should have been ~~g~~ resolved before reaching the desk of this Clerk of the U.S. Supreme Court. The presented pertaining Constitutional issues, Federal and State laws, along with U.S. Supreme Court rulings have already long since decided. Petitioner's record is clear and undeniable. In Petitioner's application for C.O.A. he asked the 11th Cir. to consider vast information provided as an appeal as well since all necessary for ruling is provided to fix the obvious illegality. This court has the same authority to send this case back to 11th Cir. for hearing and ruling that already could have and should have occurred. In the interest of judicial economy and the original intended integrity of the designers, it is asked that you also consider this option.

The Petition for Writ of Certiorari should be granted.

On Behalf of and by
Devine Intervention

x Robert Moynihan
Petitioner; Robert Moynihan 318295 prose