No. 20-6603

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

In re Antonio U. Akel — PETITIONER
(Your Name)

vs.

— RESPONDENT(S)

ON PETITION FOR A WRIT OF MANDAMUS TO

United States Court of Appeals for the Eleventh Circuit (17-14707)
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF MANDAMUS

Antonio U. Akel (Incarcerated Pro Se Petitioner)
(Your Name)

U.S.P Big Sandy P.O. Box 2068
(Address)

Inez, KY 41224
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

WHETHER:

(1). WRIT OF MANDAMUS IS THE ONLY APPROPRIATE REMEDY, WHERE BELOW, THE ELEVENTH CIRCUIT COURT OF APPEALS IS IN CLEAR AND INTRANSIGENT DEFIANCE OF GIDEON v. WAINWRIGHT, 372 U.S. 335, 83 S.Ct 792 (1963) AS EXTENDED TO THE DIRECT APPEAL PROCESS BY DOUGLAS v. CALIFORNIA, 372 U.S. 353, 83 S.Ct 814 (1963) ACCORD PENSON V. OHIO, 488 U.S. 75, 109 S.Ct 346 (1988), AND AS A CONSEQUENCE, HAS DELIBERATELY DENIED THE "EQUAL PROTECTION OF ONE" U.S. CITIZEN ANTONIO AKELS "RELIANCE INTEREST" IN THE UNITED STATES CONSTITUTIONS SIXTH (VI) AMENDMENT RIGHT TO THE ACTUAL ASSISTANCE OF COUNSEL DURING A "CRITICAL STAGE OF THE PROCEEDINGS" UNITED STATES v. CRONIC, 466 U.S. 648, 104 S.Ct 2039 (1984), NOT ONCE, BUT TWICE, IN DIRECT APPEAL #'S 17-14707 AND 08-13771

(2). IF IT IS A LAWFUL EXERCISE OF U.S. ARTICLE III APPELLATE COURTS PRESCRIBED JURISDICTION TO PROVIDE APPELLANTS ON FIRST TIER DIRECT REVIEW WITH THEIR SIXTH AMENDMENT RIGHT TO THE ACTUAL ASSISTANCE OF COUNSEL DURING THE "CRITICAL STAGE OF THE PROCEEDINGS", IS IT NOT AN "EXCEPTIONAL CIRCUMSTANCE AMOUNTING TO A JUDICIAL USURPATION OF POWER [AND] CLEAR ABUSE OF DISCRETION", WHERE BELOW, THE ELEVENTH CIRCUIT CAN BE SEEN TO HAVE CONSISTENTLY AND EGREGIOUSLY REFUSED TO AFFORD THE PETITIONER A CONSTITUTIONALLY ADEQUATE PROCESS TO CONTEST THE LOSS OF HIS LIBERTY IN TWO OUT OF TWO DIRECT APPEAL PROCEEDINGS, i.e. #'S 17-14707 AND 08-13771, SUCH THAT WRIT OF MANDAMUS IS THE ONLY APPROPRIATE REMEDY HE HAS LEFT WHERE THE ELEVENTH CIRCUITS THWARTING OF A "REGULAR APPEAL PROCESS" IS CLEAR AND UNEQUIVOCAL. See:

No. 17-14707-AA

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANTONIO U. AKEL,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Florida

Before: WILSON, EDMONDSON, and HULL, Circuit Judges.

BY THE COURT:

Before the Court is Appellant's "Motion to Recall the Mandate to Prevent Injustice, 11th Cir. R. 41-1(b), and/or Motion Raising a Structural Error, Where the Complete Absence of Counsel During the Briefing Stage of Dec 6, and July 30, 2018, as Well as this Courts Actual Decisional Process of Sept. 11, 2019 was a Violation and Denial of the Appellants Sixth Amendment Right. Cf 11th Cir. R. 2-1."

Appellant's motion is DENIED.

CF:

"The Sixth Amendment withholds from federal courts, in all criminal proceedings, the power and authority to deprive an accused of his life or liberty unless he has or waives the assistance of counsel." Johnson v. Zerbst, 304 U.S. 458, 463, 58 S. Ct. 1019, 1022, 82 L. Ed. 1461, 1466 (1937); Adams v. United States ex rel. McCann, 317 U.S. 269, 63 S. Ct. 236, 87 L. Ed. 268 (1942).

The right to the assistance of counsel guaranteed by the Sixth and Fourteenth Amendments is indispensable to the fair administration of our adversarial system of criminal justice.[6]

[474 US 169]

Embodying "a realistic recognition of the obvious truth that the average defendant does not have the professional legal skill to protect himself," Johnson v Zerbst, 304 US 458, 462-463, 82 L Ed 1461, 58 S Ct 1019, 146 ALR 357 (1938), the right to counsel safeguards the other rights deemed essential for the fair prosecution of a criminal proceeding. Justice Sutherland's oft-quoted explanation in Powell v Alabama, 287 US 45, 77 L Ed 158, 53 S Ct 55, 84 ALR 527 (1932), bears repetition here:

"The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and <*pg. 492> knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every stage of the proceedings against him."

The right to counsel on appeal, recognized in ***Douglas v. California***, 372 U.S. 353, 83 S. Ct. 814, 9 L. Ed. 2d 811 (1963), has also been retroactively applied. *See McConnell*, 393 U.S. at 3, 89 S. Ct. at 33.

Schaefer, Federalism and State Criminal Procedure, 70 Harv L Rev 1, 8 (1956) ("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").

Under 18 U.S.C. § 3006A, an indigent defendant is entitled to have counseled representation when, inter alia, the Sixth Amendment requires or when the defendant "faces loss of liberty in a case, and Federal law requires the appointment of counsel." 18 U.S.C. § 3006A(a)(1)(H)-(I)

Indeed, we have found an error to be "structural," and thus subject to **automatic reversal**, only in a "very limited class of cases." Johnson v United States, 520 US 461, 468, 137 L Ed 2d 718, 117 S Ct 1544 (1997) (citing Gideon v Wainwright, 372 US 335, 9 L Ed 2d 799, 83 S Ct 792 (1963) (complete denial of counsel);

. Only once in the 30 years since the Cronic decision was issued has the Supreme Court applied Cronic to presume prejudice. See **Penson v. Ohio**, 488 U.S. 75, 88, 109 S. Ct. 346, 354, 102 L. Ed. 2d 300 (1988) (holding that "the presumption of prejudice must extend as well to the denial of counsel on appeal" when the granting of an attorney's motion to withdraw had left the petitioner "entirely without the assistance of counsel on appeal").

(3). THE ELEVENTH CIRCUITS PATTERN AND PRACTICE OF FLAGRANTLY AND EGREGIOUSLY REFUSING TO AFFORD THE PETITIONER A CONSTITUTIONALLY COMPLIANT/ADEQUATE PROCESS TO CHALLENGE THE LOSS OF HIS LIBERTY ON DIRECT REVIEW FOR THIRTEEN (13) YEARS AND COUNTING, IS NOT ONLY CONDUCT UNBECOMING OF U.S. ARTICLE III COURTS, BUT, EVINCES SUCH A CLEAR DEPARTURE FROM THE REST OF THE CIRCUITS, THAT THE WRIT OF MANDAMUS IS THE ONLY APPROPRIATE REMEDY TO CONFINE THE HIERARCHAL STRUCTURE OF THE FEDERAL COURT SYSTEM CREATED BY CONGRESS AND THE CONSTITUTION UPON THE LOWER COURT SO AS TO MAINTAIN PUBLIC FAITH IN THE INTEGRITY OF THE FEDERAL JUDICIARY AND THE VERY ESSENCE OF DEMOCRACY WITHIN THE UNITED STATES.

(4). THE ISSUANCE OF THE WRIT OF MANDAMUS IS NECESSARILY CLEAR AND INDISPUTABLE BECAUSE THE ELEVENTH CIRCUIT COURT OF APPEALS HAS UNEQUIVOCALLY, IN TWO SEPERATE FIRST TIER DIRECT APPEAL PROCEEDINGS, JUDICIALLY USURPED THE PETITIONERS SIXTH AMENDMENT RIGHT TO THE ACTUAL ASSISTANCE OF COUNSEL DURING THE "CRITICAL STAGE OF THE PROCEEDINGS", AND, ON BOTH OCCASSIONS HAS DELIBERATELY SOUGHT TO INSULATE THIS "STRUCTURAL ERROR" FROM THE MANDATED REDRESS OF "AUTOMATIC REVERSAL" FOR CONSTITUTIONALLY COMPLIANT PROCEEDINGS AS INSTRUCTED BY THIS COURT IN U.S. v. CRONIC, 466 U.S. 648, 104 S.Ct 2039 (1984) AND PENSON v. OHIO, 488 U.S. 75, 109 S.Ct 346 (1988) REVEALING RESPECTIVELY:

> The Sixth Amendment principle animating Cronic's presumption of prejudice is the fundamental idea that a defendant must have the **actual assistance of counsel** at every critical stage of a criminal proceeding for the court's reliance on the fairness of that proceeding to be justified.
>
> ....
>
> "[t]he Supreme Court has given explicit instructions for remedying **structural error**: remand for new, constitutionally-compliant proceedings." *Id.* at 1246 (Wilson, J. dissenting) (citing *United States v. Cronic*, 466 U.S. 648, 659, 104 S. Ct. 2039, 2047, 80 L. Ed. 2d 657 & n.25 (1984)).
>
> ....
>
> Furthermore, it is important that the denial of counsel in this case left petitioner completely without representation during the appellate court's actual **decisional process**, since such a total denial is legally presumed to result in prejudice and can never be considered harmless error, whether at the trial or the appellate stage.

CF: THE COURT BELOW ON SEPT. 30, 2020:

> **Docket Text:**
> ORDER: Before the Court is Appellant's "Motion to Recall the Mandate to Prevent Injustice, 11th Cir. R. 41-1(b), and/or Motion Raising a Structural Error, Where the Complete Absence of Counsel During the Briefing Stage of Dec 6, and July 30, 2018, as Well as this Courts Actual Decisional Process of Sept. 11, 2019 was a Violation and Denial of the Appellants Sixth Amendment Right. Cf 11th Cir. R. 2-1." Appellant's motion is DENIED. [9185089-2] [9171435-2] CRW, JLE and FMH

(5). THE WRIT OF MANDAMUS IS APPROPRIATE UNDER THE CIRCUMSTANCES BECAUSE THE PETITIONER, A MINORITY U.S. CITIZEN, HAS LANGUISHED IN PRISON FOR OVER THIRTEEN (13) YEARS NEVER ONCE HAVING A CONSTITUTIONALLY COMPLIANT DIRECT APPEAL PROCEEDING TO CONTEST THE LOSS OF HIS LIBERTY FOR WHICH THE UNITED STATES JUDICIARY CAN ALLEGE WAS FAIR AND JUSTIFIED BECAUSE:

(A). As this court pointed out in NEDER v. US, 527 US 1, 37, 119 S.ct 1827 (1999):

Some structural errors, like the **complete absence of counsel** or the denial of a public trial, are **visible at first glance**.

and both of the petitioners Direct Appeal Proceedings within the ELEVENTH CIRCUIT, i.e #'s 08-13771 and 17-14707, can be seen at FIRST GLANCE to have been a PRO SE representation without the assistance of Counsel during the briefing stages and decisional process of them both. See:

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.

and See:

UNITED STATES OF AMERICA, Plaintiff-Appellee, versus ANTONIO U. AKEL, Defendant-Appellant.
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
787 Fed. Appx. 1002; 2019 U.S. App. LEXIS 27390
No. 17-14707 Non-Argument Calendar
September 11, 2019, Decided

Notice:

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

Editorial Information: Prior History

(2019 U.S. App. LEXIS 1)Appeals from the United States District Court for the Northern District of Florida. D.C. Docket No. 3:07-cr-00136-LC-EMT-1.

Disposition:
AFFIRMED.

Counsel For UNITED STATES OF AMERICA, Plaintiff - Appellee: Lennard B. Register, III, Robert G. Davies, Alicia Forbes, U.S. Attorney Service - Northern District of Florida, U.S. Attorney's Office, PENSACOLA, FL.
ANTONIO U. AKEL, a.k.a. Tony Ake, Defendant - Appellant, Pro se, INEZ, KY.

Judges: Before WILSON, EDMONDSON, and HULL, Circuit Judges.

Opinion

{787 Fed. Appx. 1004} PER CURIAM:

Antonio Akel, a federal prisoner proceeding pro se,1 appeals the district court's resentencing order and the district court's denial of several motions related to Akel's resentencing and post-conviction proceedings.

(B). In both proceedings, i.e.#'S 08-13771 AND 17-14707, the petitioner ANTONIO AKEL had a Constitutional right to the assistance of counsel:

The Sixth Amendment to the Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defense." The Court has construed this language to include not only the right to assistance of counsel at trial, Gideon v Wainwright, 372 US 335, 9 L Ed 2d 799, 83 S Ct 792, 23 Ohio Ops 2d 258, 93 ALR2d 733 (1963), but also to the assistance of counsel on appeal. Douglas v California, 372 US 353, 9 L Ed 2d 811, 83 S Ct 814 (1963).

....

The **right to counsel** attaches in a criminal prosecution after the initiation of adversarial judicial proceedings, Kirby v. Illinois, 406 U.S. 682, 689-90, 92 S. Ct. 1877, 1882, 32 L. Ed. 2d 411 (1972), and continues through the first-tier of non-discretionary direct appeal, if the state provides an appeal as a matter of right. **{2011 U.S. App. LEXIS 8}Penson v. Ohio**, 488 U.S. 75, 88, 109 S. Ct. 346, 354, 102 L. Ed. 2d 300 (1988).

(C). In neither proceeding, i.e.#'S 08-13771 AND 17-14707, did the petitioner ever waive his right to Counsel explicitly, implicitly or otherwise:

It is through criminal counsel that a defendant's rights are protected and it "affects his ability to assert any other rights he may have." Penson, 488 U.S. at 84, 109 S. Ct. at 352 (quotation marks and citation omitted). Because of the importance of counsel, a defendant cannot waive his right to counsel and assert his right to represent himself without "knowingly and intelligently for[egoing] those relinquished benefits." Faretta, 422 U.S. at 835, 95 S. Ct. at 2541 (quotation marks and citation omitted). "[I]n the context of [such a] waiver, 'knowing' is synonymous with **{2010 U.S. App. LEXIS 43}**'intelligent' and 'voluntary' is synonymous with 'competent' and 'intentional.'" Jones v. Walker, 540 F.3d 1277, 1287 n.4 (11th Cir. 2008) (en banc). The defendant must be informed "of the dangers and disadvantages of self-representation, so that the record will establish that he knows what he is doing and his choice is made with eyes open." Faretta, 422 U.S. at 835, 95 S. Ct. at 2541 (quotation marks and citation omitted).

....

Brewer v. Williams, **430 U.S. 387, 404**, 97 S. Ct. 1232, 51 L. Ed. 2d 424 (1977) (``[C]ourts indulge in every reasonable presumption against waiver"); Zerbst, 304 U.S., at 464, 58 S. Ct. 1019, 82 L. Ed. 1461.

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:

RELATED CASES

AKEL v. US, 137 S.ct 1432 (2017)

AKEL v. US #15-15341 (11th cir)

AKEL v. US, 2016 US. App. LEXIS 24492 (11th cir)

AKEL v. US, 2018 US. App. LEXIS 15666 (11th cir)

US v. ANTONIO U. AKEL CASE#3:07-cr-136-LAC-EMT (N.D. FLA)

US v. AKEL, 337 Fed. Appx. 843 (11th cir 2009)

US v. AKEL #17-14707 (11th cir)

US v. AKEL, 2019 US. App. LEXIS 35330 (11th cir)

US v. AKEL, 2020 US. App. LEXIS 4146 (11th cir)

AKEL v. US # 20-10574 (11th cir)

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TABLE OF AUTHORITIES CITED

STATUTES AND RULES

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF MANDAMUS

Petitioner respectfully prays that a writ of MANDAMUS issue to Confine the lower Court to the hierarchal structure of the federal Court System created by the Constitution and Congress

OPINIONS BELOW

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

The opinions of the United States court of appeals appears at Appendix A,B,C 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 _____ 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 SEPTEMBER 30,2020.

[ ] 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. § 1651 (a)

[ ] 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

Amendment 5 Criminal actions—Provisions concerning—Due process of law and just compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment 6 Rights of the accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

§ 1651. Writs

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

STATEMENT OF THE CASE

(1). The Petitioner is a UNITED STATES Citizen for whom of which has been incarcerated within the Federal Bureau of prisons for over 13 years Stemming from case no. 3-07-cr-136-LAC-EMT Northern District of Florida.

(2). During these 13 years the ELEVENTH CIRCUIT COURT OF APPEALS has purported to have provided the petitioner with two First Tier DIRECT APPEAL PROCEEDINGS, i.e. #s 08-13771 and 17-14707.

(3). However in not one of these Direct Appeal proceedings did the petitioner have nor waive the assistance of Counsel and a simple glance of the appellate dockets of #08-13771 and #17-14707 will prove unequivocally that the petitioner was completely without the Assistance of Counsel during the briefing Stages and Courts decisional process of them both. See:

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
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Editorial Information: Prior History

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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.

And See:

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787 Fed. Appx. 1002; 2019 U.S. App. LEXIS 27390
No. 17-14707 Non-Argument Calendar
September 11, 2019, Decided

Notice:

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

Editorial Information: Prior History

{2019 U.S. App. LEXIS 1}Appeals from the United States District Court for the Northern District of Florida. D.C. Docket No. 3:07-cr-00136-LC-EMT-1.

Disposition:
AFFIRMED.

Counsel For UNITED STATES OF AMERICA, Plaintiff - Appellee: Lennard B. Register, III, Robert G. Davies, Alicia Forbes, U.S. Attorney Service - Northern District of Florida, U.S. Attorney's Office, PENSACOLA, FL.
ANTONIO U. AKEL, a.k.a. Tony Ake, Defendant - Appellant, Pro se, INEZ, KY.

Judges: Before WILSON, EDMONDSON, and HULL, Circuit Judges.

Opinion

{787 Fed. Appx. 1004} PER CURIAM:

Antonio Akel, a federal prisoner proceeding pro se,1 appeals the district court's resentencing order and the district court's denial of several motions related to Akel's resentencing and post-conviction proceedings.

See and Compare PENSON v. OHIO, 488 U.S. 75, 88, 109 S.Ct 346 (1988) Stating:

—Finally, it is important to emphasize that the denial of counsel in this case left petitioner completely without representation during the appellate court's actual **decisional process**. This is quite different from a case in which it is claimed that counsel's performance was ineffective. As we stated in Strickland, the "[a]ctual or constructive denial of the **assistance of counsel** altogether is legally presumed to result in prejudice." 466 US, at 692, 80 L Ed 2d 674, 104 S Ct 2052. Our decision in United States v Cronic, likewise, makes clear that "[t]he presumption that counsel's assistance is essential requires us to conclude that a trial is unfair if the accused is denied counsel at a critical stage of his trial." 466 US, at 659, 80 L Ed 2d 657, 104 S Ct 2039 (footnote omitted). Similarly, Chapman recognizes that the right to counsel is "so basic to a fair trial that [its] infraction can <*pg. 314> never be treated as harmless error." 386 US, at 23, and n 8, 17 L Ed 2d 705, 87 S Ct 824, 24 ALR3d 1065. And more recently, in Satterwhite v Texas, 486 US 249, 256, 100 L Ed 2d 284, 108 S Ct 1792 (1988), we stated that a pervasive denial of counsel casts such doubt on the fairness of the trial process, that it can never be considered harmless error. Because the fundamental importance of the **assistance of counsel** does not cease as the prosecutorial process moves from the trial to the appellate stage, see supra, at 85, 102 L Ed 2d, at 312, the presumption of prejudice must extend as well to the denial of counsel on appeal.

(4). Time and again the petitioner has informed the UNITED STATES and the ELEVENTH CIRCUIT that the Complete absence of Counsel in DIRECT APPEAL PROCEEDING #'S 08-13771 and 17-14707 Constitutes the "VERY LIMITED CLASS OF STRUCTURAL ERROR THAT REQUIRES AUTOMATIC REVERSAL"

(5). The petitioner raised the error as it pertained to Direct Appeal # 08-13771 on his § 2255 proceeding, but was unable to get the Judiciary to even acknowledge that the claim was even raised, however he did manage to get the SOLICITOR GENERAL OF THE UNITED STATES in ANTONIO U. AKEL v. UNITED STATES, CERT # 16-6032 at Govt. BR page 6 n.3 to reveal:

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.

(6). Indeed the petitioner originally had retained private counsel and Indeed fired his retained counsel, however, missing from the SOLICITOR GENERALS Characterization of

events is that:

(A). THE STATEMENT: "mid-way through the appellate process, petitioner fired the lawyer," is a mischaracterization, because the petitioner fired the lawyer during the month of OCTOBER, 2008 at least two months before the filing of the PROSE "OPENING BRIEF".

(B). THE STATEMENT; "Petitioner fired the lawyer and ELECTED to proceed pro se", is also a mischaracterization, because the petitioner felt coerced and forced to proceed pro se resulting from his retained Counsels explicit advice telling the petitioner that if he were to fire her, his only options were to hire new counsel or proceed pro se, because the Court would not appoint counsel to a defendant whom was unhappy with Retained Counsel. A few days after the phone conversation, the attorney sent the petitioner a letter once again pointing out his options of only being able to "RETAIN NEW COUNSEL" or "PROCEED PROSE" if the petitioner Fired her. See:

Based on our extensive research and information we have reviewed from you, and on our own for the appeal, we believe the issues we are presenting are the most likely to have any chance of success. Should you decide that you are not satisfied with the direction we have taken, you have the ability to pursue any other matter you wish in a *pro se* pleading and filing the appeal yourself and we will withdraw from continued representation; retain new counsel; or remain with us through the completion of the appeal process. We have an accounting prepared of the work that has been done to date and will provide that to you and your father if you decide you wish to pursue alternative representation options. We certainly will be happy to continue to represent your interests on the appeal issue we feel are most worthy of further review. As you can see from the draft brief we have incorporated many of your concerns however have done so in a format that affects the issues presented.

Sincerely,

Marcia G. Shein
Attorney at Law

(6). The Petitioners act of firing his Retained Counsel in no way, Shape or Form can Serve as a Waiver of his right to the assistance of counsel in Direct Appeal #08-13771, CF UNITED STATES v. JIMENEZ-ANTUNEZ, 820 F.3d 1267 (11th Cir 2016) Stating:

> To be sure, a district court reviewing a motion to dismiss counsel must know how the defendant wishes to proceed so that the defendant will not be left without representation in violation of the Sixth Amendment. "**The Sixth Amendment withholds from federal courts, in all criminal proceedings, the power and authority to deprive an accused** of his **life** or **liberty unless he has or waives the assistance of counsel**." *Johnson v. Zerbst*, 304 U.S. 458, 463, 58 S. Ct. 1019, 82 L. Ed. 1461 (1938) (footnote omitted). So, before granting a motion to dismiss retained counsel, a district court must determine that the criminal defendant either will be represented by counsel or has made a knowing and voluntary waiver of the right to counsel. *Brown*, 785 F.3d at 1345; *see also United States v. Evans*, 478 F.3d 1332, 1340 (11th Cir. 2007). If a defendant intends to move the{**2016 U.S. App. LEXIS 10**} court to appoint counsel, the court should determine whether the defendant is eligible for appointed counsel. *See* 18 U.S.C. § 3006A.

and this HONORABLE SUPREME COURT has acknowledged:

> We have said that the right to counsel does not depend upon a request by the defendant, Carnley v Cochran, 369 US 506, 513,<***pg. 440***> 8 L Ed 2d 70, 82 S Ct 884; cf. Miranda v Arizona, 384 US, at 471, 16 L Ed 2d 694, 86 S Ct 1602, 10 Ohio Misc 9, 36 Ohio Ops 2d 237, 10 ALR3d 974, and that courts indulge in every reasonable presumption against waiver, e.g., Brookhart v Janis, supra, at 4, 16 L Ed 2d 314, 86 S Ct 1245, 7 Ohio Misc 77, 36 Ohio Ops 2d 141; Glasser v United States, 315 US 60, 70, 86 L Ed 680, 62 S Ct 457. This strict standard applies equally to an alleged waiver of the right to counsel whether at trial or at a critical stage of pretrial proceedings. Schneckloth v Bustamonte, 412 US 218, 238-240, 36 L Ed 2d 854, 93 S Ct 2041; United States v Wade, 388 US, at 237, 18 L Ed 2d 1149, 87 S Ct 1926

(7). After this Honorable court blessed the instant petitioner by GRANTING him CERTIORARI in AKEL v. US, NO. 16-6032 on APRIL 3, 2017 on a different matter, he filed a petition for Rehearing attempting to call this Courts attention to the PENSON v OHIO Supra violation within his DIRECT APPEAL.

(8). However, the court decided not to review this error at that time.

(9). The petitioner ever diligent decided upon simply utilizing the words from the SOLICITOR GENERAL and on AUGUST 31, 2017 filed a "MOTION TO RECALL THE MANDATE TO PREVENT INJUSTICE" bringing to the ELEVENTH CIRCUITS attention that "THE GRANTING OF AKELS RETAINED COUNSELS MOTION TO WITHDRAW HAD LEFT HIM ENTIRELY WITHOUT THE ASSISTANCE OF COUNSEL ON APPEAL FOR WHICH IS A STRUCTURAL ERROR REQUIRING AUTOMATIC REVERSAL THUS A RECALL OF MANDATE".

(10). The United States, via A.U.S.A DAVIES of the U.S. ATTORNEY's office for the Northern District of Florida, responded to the motion by Stating:

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.

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).

(11). The United States, via A.U.S.A DAVIES, MISDIRECTED the issue entirely to take the focus off of the fact that the petitioner did not have nor waive the assistance of Counsel in the Direct Appeal proceeding, i.e. THE TRUTH, and as such BINDING RULE OF LAW found within UNITED STATES v. CRONIC, 466 U.S. 648, 104 S.Ct 2039 (1984) and PENSON V. OHIO, 488 U.S. 75, 109 S.Ct 346 (1988) mandates the restoration of the petitioners right to a Constitutionally compliant first tier Appellate proceeding, to place the blame for the errors of an ARTICLE III Court onto the petitioner.

(12). Contrary to the United States position, just for the sake of argument, it does not matter whether a defendant and/or appellant were informed of their right to the assistance of Counsel, all that matters is:

(A). Did the defendant/Appellant have the actual assistance of Counsel, and,

(B). If not did the defendant/Appellant waive the assistance of counsel, and any fair representative of the United States Seeking to ensure the impartial administration of Justice and Rule of law knows that as it has been established precedent for over eighty-three (83) years! See JOHNSON v. ZERBST, 304 U.S. 458, 463, 58 S.Ct 1019, 1022, 82 L.Ed. 1461, 1466 (1937). CF:

- **In representing the United States, a federal prosecutor has a special duty not to impede the truth. The United States Department of Justice's Mission Statement describes the government's duty as one "to ensure fair and impartial administration of justice for all Americans." United States Department of Justice, About DOJ, .**

(13). Despite the unequivocal fact that the "COMPLETE ABSENCE AND DENIAL OF COUNSEL IN APPEAL #08-13771 IS A STRUCTURAL ERROR FITTING WITHIN A VERY LIMITED CLASS OF CASES FOR WHICH ARE SUBJECT TO AUTOMATIC REVERSAL" See JOHNSON v. UNITED STATES, 520 U.S. 461, 468, 137 L.Ed 2d 718, 117 S.Ct 1544 (1997), On OCTOBER 5, 2017 the ELEVENTH CIRCUIT COURT OF APPEALS Summarily DENIED the petitioner relief and this Court would not review this INJUSTICE at that time. See ANTONIO AKEL v. US, CERT #18-5578

(14). However, as a result of litigation based upon this Courts ruling in ANTONIO U. AKEL v. UNITED STATES, 137 S.Ct 1432 (2017) the petitioner was allegedly provided an additional first Tier Direct Appeal based upon a new Amended Criminal Judgment within the ELEVENTH CIRCUIT at #17-14707.

(15). Just like his first direct Appeal proceeding at #08-13771, once again the ELEVENTH CIRCUIT denied the petitioner his Constitutional right to the Assistance of Counsel during the "CRITICAL STAGE OF THE PROCEEDINGS".

(16). In appeal #17-14707, there was a "COMPLETE DENIAL OF COUNSEL" during the briefing Stages and the courts decisional process of SEPTEMBER 11, 2019, see APPENDIX "B" REVEALING:

UNITED STATES OF AMERICA, Plaintiff-Appellee, versus ANTONIO U. AKEL, Defendant-Appellant.
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
787 Fed. Appx. 1002; 2019 U.S. App. LEXIS 27390
No. 17-14707 Non-Argument Calendar
September 11, 2019, Decided

Notice:

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

Editorial Information: Prior History

{2019 U.S. App. LEXIS 1}Appeals from the United States District Court for the Northern District of Florida. D.C. Docket No. 3:07-cr-00136-LC-EMT-1.

Disposition:
AFFIRMED.

Counsel For UNITED STATES OF AMERICA, Plaintiff - Appellee: Lennard B. Register, III, Robert G. Davies, Alicia Forbes, U.S. Attorney Service - Northern District of Florida, U.S. Attorney's Office, PENSACOLA, FL.
ANTONIO U. AKEL, a.k.a. Tony Ake, Defendant - Appellant, Pro se, INEZ, KY.

Judges: Before WILSON, EDMONDSON, and HULL, Circuit Judges.

Opinion

{787 Fed. Appx. 1004} PER CURIAM:

Antonio Akel, a federal prisoner proceeding pro se,1 appeals the district court's resentencing order and the district court's denial of several motions related to Akel's resentencing and post-conviction proceedings.

See and Compare PENSON v. OHIO, 488 U.S. 75, 88, 109 S.ct 346 (1988) Stating:

—Finally, it is important to emphasize that the denial of counsel in this case left petitioner completely without representation during the appellate court's actual **decisional process**. This is quite different from a case in which it is claimed that counsel's performance was ineffective. As we stated in Strickland, the "[a]ctual or constructive denial of the **assistance of counsel** altogether is legally presumed to result in prejudice." 466 US, at 692, 80 L Ed 2d 674, 104 S Ct 2052. Our decision in United States v Cronic, likewise, makes clear that "[t]he presumption that counsel's assistance is essential requires us to conclude that a trial is unfair if the accused is denied counsel at a critical stage of his trial." 466 US, at 659, 80 L Ed 2d 657, 104 S Ct 2039 (footnote omitted). Similarly, Chapman recognizes that the right to counsel is "so basic to a fair trial that [its] infraction can <*pg. 314> never be treated as harmless error." 386 US, at 23, and n 8, 17 L Ed 2d 705, 87 S Ct 824, 24 ALR3d 1065. And more recently, in Satterwhite v Texas, 486 US 249, 256, 100 L Ed 2d 284, 108 S Ct 1792 (1988), we stated that a pervasive denial of counsel casts such doubt on the fairness of the trial process, that it can never be considered harmless error. Because the fundamental importance of the **assistance of counsel** does not cease as the prosecutorial process moves from the trial to the appellate stage, see supra, at 85, 102 L Ed 2d, at 312, the presumption of prejudice must extend as well to the denial of counsel on appeal.

CF:

Indeed, we have found an error to be "structural," and thus subject to **automatic reversal**, only in a "very limited class of cases." Johnson v United States, 520 US 461, 468, 137 L Ed 2d 718, 117 S Ct 1544 (1997) (citing Gideon v Wainwright, 372 US 335, 9 L Ed 2d 799, 83 S Ct 792 (1963) (complete denial of counsel);

(17). Ironically the Court in Appeal #17-14707 decided to appoint counsel on Feb. 10, 2020 for the purpose of filing a "PETITION FOR REHEARING" at which point the SIXTH AMENDMENT RIGHT to Counsel no longer even applies. See PENNSYLVANIA v. FINLEY, 481 U.S. 551, 557, 107 S.Ct 1990, 95 L.Ed. 2d 539 (1987).

(18). In hindsight the petitioner has determined that this post-decision appointment was done, not in the interest of Justice, but in effort to suppress and insulate the clear "STRUCTURAL ERROR REQUIRING AUTOMATIC REVERSAL" from the appellate Record in #17-14707, and to hide it from the SUPREME COURT, where Counsel NOEL LAWRENCE filed a petition for certiorari to this Court at NO: 20-5564 despite being explicitly informed not too, and deliberately and strategically leaving out the United States v. Cronic supra/Penson v. Ohio supra violations on the behalf of someone other than the petitioner.

(19). In any regard, the petitioner ever diligent in seeking yet again to be afforded "EQUAL JUSTICE UNDER THE LAW" from the UNITED STATES and its Judges, FILED A "MOTION TO RECALL THE MANDATE AND/OR MOTION RAISING A STRUCTURAL ERROR" for which the ELEVENTH CIRCUIT Summarily denied on SEPTEMBER 30, 2020 Stating:

No. 17-14707-AA

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANTONIO U. AKEL,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Florida

Before: WILSON, EDMONDSON, and HULL, Circuit Judges.

BY THE COURT:

Before the Court is Appellant's "Motion to Recall the Mandate to Prevent Injustice, 11th Cir. R. 41-1(b), and/or Motion Raising a Structural Error, Where the Complete Absence of Counsel During the Briefing Stage of Dec 6, and July 30, 2018, as Well as this Courts Actual Decisional Process of Sept. 11, 2019 was a Violation and Denial of the Appellants Sixth Amendment Right. Cf 11th Cir. R. 2-1."

Appellant's motion is DENIED.

See APPENDIX "A"

(20). As of the date of the writing of this petition the petitioner has a "MOTION TO RECONSIDER THE DENIAL OF THE RECALL OF MANDATE" that he sent to the ELEVENTH

CIRCUIT via U.S. POSTAL SERVICE certified mail receipt # 7018 1830 0001 1519 6672 Still pending.

(21). In this motion the petitioner explicitly informs the Court that BINDING RULE OF LAW does not allow the ELEVENTH CIRCUIT the discretion to have denied the claim and that because it is indeed BOUND by CRONIC and PENSON to proceed with this denial of the petitioners right to the Actual Assistance of Counsel during the Critical Stage of the Proceedings, would prove absolutely and unequivocally that the ELEVENTH CIRCUIT COURT OF APPEALS is practicing Something other than Constitutional law Unbecoming of UNITED STATES ARTICLE III courts.

(22). As a collateral matter, further demonstrating the Clear USURPATION of the petitioners Constitutional Rights and Abuse of discretion thereof, within Appeal #17-14707, the petitioner once again brought the CRONIC/PENSON Structural error within Appeal # 08-13771 to the courts attention and implored the ELEVENTH CIRCUIT to function properly and thus preserve public Confidence in the Judicial process and Integrity of the Court, but as is customary no equity is provided by that court and it held, inter-alia, that PENSON v. OHIO, US v. CRONIC, DOUGLAS v. CALIFORNIA and GIDEON v. WAINWRIGHT are not "AUTHORITY FOR THE REQUESTED RELIEF". See:

UNITED STATES OF AMERICA, Plaintiff-Appellee, versus ANTONIO U. AKEL, Defendant-Appellant.
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
2018 U.S. App. LEXIS 23037
No. 17-14707-AA
August 17, 2018, Filed

Editorial Information: Prior History

{2018 U.S. App. LEXIS 1}Appeal from the United States District Court for the Northern District of Florida.Akel v. United States, 2018 U.S. App. LEXIS 15666 (11th Cir. Fla., June 8, 2018)

Counsel For United States of America Plaintiff - Appellee: Robert G. Davies, Alicia Forbes, U.S. Attorney Service - Northern District of Florida, U.S. Attorney's Office, Pensacola, FL.

Antonio U. Akel, a.k.a.: Tony Akel, Defendant - Appellant, Pro se, Estill, SC.

Judges: Before: TJOFLAT, MARCUS and JORDAN, Circuit Judges.

Opinion

BY THE COURT:

Antonio U. Akel has filed multiple motions for reconsideration, pursuant to 11th Cir. R. 27-2, of this Court's June 8, 2018, order denying a certificate of appealability as unnecessary, and denying his motions for summary reversal, to recuse and disqualify, and for a confession of error. Upon review, Akel's motions for reconsideration are DENIED because he has offered no new evidence or arguments of merit to warrant relief.1

Additionally, Akel's "Motion for Issuance of an Order **Restoring Akel's Right to a Direct Appeal and Transfer to Another Circuit**" and "Motion to Correct the Appellate Record" are DENIED because Akel provided no authority for the relief requested. His "Motion for the Eleventh Circuit to Function Properly" is DENIED because he has not made any showing that he is entitled to relief. Finally,{2018 U.S. App. LEXIS 2} his "Motion to Amend Question #7 of the Certificate of Appealability" is DENIED AS MOOT, as this Court already has determined that a certificate of appealability is not necessary.

Footnotes

1

Specifically, the "Motion Pursuant to Christionson v. Colt," "Motion for United States Confession of Error," "Motion to Preserve Public Confidence in the Judicial Process and Integrity of this Court," the four "Motions for Reconsideration," and "Motion to Reinstate the Certificate of Appealability" are all denied.

See APPENDIX "C"

REASONS FOR GRANTING THE PETITION

I. THE WRIT OF MANDAMUS IS NECESSARY IN AID OF THE SUPREME COURTS APPELLATE JURISDICTION, BECAUSE THE ELEVENTH CIRCUIT COURT OF APPEALS IS VISIBLE AT FIRST GLANCE, TO HAVE CONSISTENTLY JUDICIALLY USURPED THE PETITIONERS SIXTH AMENDMENT RIGHT TO THE ASSISTANCE OF COUNSEL IN TWO "DIRECT APPEAL CRITICAL STAGE OF THE PROCEEDINGS" FOR WHICH IS SO OUT OF STEP WITH THE REST OF THE CIRCUITS AND THE HIERARCHAL STRUCTURAL OF THE FEDERAL COURT SYSTEM CREATED BY THE CONSTITUTION AND CONGRESS, THAT THE PUBLIC WOULD LOSE FAITH IN THE INTEGRITY OF THE UNITED STATES JUDICIARY, AND, IN THE ABILITY FOR ANY U.S. CITIZEN TO ACHIEVE JUSTICE WITHIN THE SOUTHEAST REGION OF THIS COUNTRY IF LEFT UNCORRECTED.

(1). The petitioner, ANTONIO U.AKEL, IS a UNITED STATES CITIZEN whom despite being incarcerated by the UNITED STATES OF AMERICA for thirteen (13) years, has not one time been provided with a "Constitutionally-compliant proceeding" on two out of two First tier Direct Appeals before the Eleventh Circuit in it's 08-13771 and 17-14707, evincing a lack of Stability and predictability in the federal Judiciary.

(2). With Respect, this would never occur if the petitioners Direct Appeal proceedings were conducted before the HONORABLE JUSTICES of this SUPREME COURT, or Direct Review were before the Jurist of Reason within the D.C. CIRCUIT, or for that matter before the Honorable Judges of the FIRST, THIRD, FOURTH, FIFTH, SIXTH, SEVENTH, EIGHTH, NINTH and TENTH CIRCUITS, and the one instance where a Similar situation occurred both the UNITED STATES and SECOND CIRCUIT Spoke upon and Corrected the injustice. See UNITED STATES v. FRANKEL, 589 F.3d 566, 567 (2d cir 2009):

> Frankel petitioned the Supreme Court for a writ of certiorari. On October 14, 2009, the Supreme Court granted the petition, vacated our dismissal order, and remanded the case "for further consideration in light of the position asserted by the Solicitor General in her brief for the United States filed August 4, 2009." ***Frankel v. United States***, 130 S. Ct. 72, 175 L. Ed. 2d 4 (2009). That brief pointed out the well-settled rule that an indigent defendant has a right to have counsel appointed on appeal, *see* ***Frankel v. United States***, No. 08-10150, U.S. Sup. Ct., Br. for the United States, 2009 WL 3236337, Aug. 4, 2009, at *13 (citing *Halbert v. Michigan*, 545 U.S. 605, 610, 125 S. Ct. 2582, 162 L. Ed. 2d 552 (2005); *Douglas v. California*, 372 U.S. 353, 83 S. Ct. 814, 9 L. Ed. 2d 811 (1963)), and argued that this right could be waived only by knowing and intentional conduct, *see id.* (citing *Halbert*, 545 U.S. at 624), and that Frankel had not waived his right, 1 *see id.* at *14.

(3). Indeed, within this Court, and these aforementioned circuits, the petitioner would have been afforded "EQUAL JUSTICE UNDER LAW" if for no other reason than all of which

Follow Rule of law and the law is clear and unambiguous;

The Sixth Amendment to the Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defense." The Court has construed this language to include not only the right to assistance of counsel at trial, Gideon v Wainwright, 372 US 335, 9 L Ed 2d 799, 83 S Ct 792, 23 Ohio Ops 2d 258, 93 ALR2d 733 (1963), but also to the assistance of counsel on appeal. Douglas v California, 372 US 353, 9 L Ed 2d 811, 83 S Ct 814 (1963).

••••

The right to counsel on appeal, recognized in ***Douglas v. California***, 372 U.S. 353, 83 S. Ct. 814, 9 L. Ed. 2d 811 (1963), has also been retroactively applied. *See McConnell*, 393 U.S. at 3, 89 S. Ct. at 33.

••••

The right to the assistance of counsel guaranteed by the Sixth and Fourteenth Amendments is indispensable to the fair administration of our adversarial system of criminal justice.[6]

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

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The **right to counsel** attaches in a criminal prosecution after the initiation of adversarial judicial proceedings, Kirby v. Illinois, 406 U.S. 682, 689-90, 92 S. Ct. 1877, 1882, 32 L. Ed. 2d 411 (1972), and continues through the first-tier of non-discretionary direct appeal, if the state provides an appeal as a matter of right. {2011 U.S. App. LEXIS 8}**Penson v. Ohio**, 488 U.S. 75, 88, 109 S. Ct. 346, 354, 102 L. Ed. 2d 300 (1988).

••••

Finally, it is important to emphasize that the denial of counsel in this case left petitioner completely without representation during the appellate court's actual **decisional process**. This is quite different from a case in which it is claimed that counsel's performance was ineffective. As we stated in Strickland, the "[a]ctual or constructive denial of the **assistance of counsel** altogether is legally presumed to result in prejudice." 466 US, at 692, 80 L Ed 2d 674, 104 S Ct 2052. Our decision in United States v Cronic, likewise, makes clear that "[t]he presumption that counsel's assistance is essential requires us to conclude that a trial is unfair if the accused is denied counsel at a critical stage of his trial." 466 US, at 659, 80 L Ed 2d 657, 104 S Ct 2039 (footnote omitted). Similarly, Chapman recognizes that the right to counsel is "so basic to a fair trial that [its] infraction can <***pg. 314***> never be treated as harmless error." 386 US, at 23, and n 8, 17 L Ed 2d 705, 87 S Ct 824, 24 ALR3d 1065. And more recently, in Satterwhite v Texas, 486 US 249, 256, 100 L Ed 2d 284, 108 S Ct 1792 (1988), we stated that a pervasive denial of counsel casts such doubt on the fairness of the trial process, that it can never be considered harmless error. Because the fundamental importance of the **assistance of counsel** does not cease as the prosecutorial process moves from the trial to the appellate stage, see supra, at 85, 102 L Ed 2d, at 312, the presumption of prejudice must extend as well to the denial of counsel on appeal.

See PENSON Supra

••••

Indeed, we have found an error to be "structural," and thus subject to **automatic reversal**, only in a "very limited class of cases." Johnson v United States, 520 US 461, 468, 137 L Ed 2d 718, 117 S Ct 1544 (1997) (citing Gideon v Wainwright, 372 US 335, 9 L Ed 2d 799, 83 S Ct 792 (1963) (complete denial of counsel);

The Sixth Amendment principle animating Cronic's presumption of prejudice is the fundamental idea that a defendant must have the **actual assistance of counsel** at every critical stage of a criminal proceeding for the court's reliance on the fairness of that proceeding to be justified.

. Only once in the 30 years since the Cronic decision was issued has the Supreme Court applied Cronic to presume prejudice. See **Penson v. Ohio**, 488 U.S. 75, 88, 109 S. Ct. 346, 354, 102 L. Ed. 2d 300 (1988) (holding that "the presumption of prejudice must extend as well to the denial of counsel on appeal" when the granting of an attorney's motion to withdraw had left the petitioner "entirely without the assistance of counsel on appeal").

Now See Hutto v. Davis, 454 US 370, 375, 102 S.Ct 703, 706, 70 L.Ed.2d 556 (1982):

But unless we wish anarchy to prevail within the federal judicial system, a precedent of this Court must be followed by the lower federal courts no matter how misguided the judges of those courts may think it to be.

II. EXCEPTIONAL CIRCUMSTANCES THAT WARRANT EXERCISE OF THE COURTS DISCRETIONARY POWERS ARE PRESENT BECAUSE BOTH THE ELEVENTH CIRCUIT AND UNITED STATES GOVERNMENT CAN BE SEEN TO HAVE "INTENTIONALLY TREATED THE PETITIONER DIFFERENTLY FROM OTHERS SIMILARLY SITUATED WITH NO RATIONAL BASIS FOR THE DIFFERENCE IN TREATMENT" CLEARLY DENYING HIS EQUAL PROTECTION OF THE SIXTH AMENDMENT RIGHT TO THE ASSISTANCE OF COUNSEL AND SUGGESTING AN APPEARANCE OF TYRANNY NOT DEMOCRACY

(1). As established, the petitioner is a United States Citizen For which has been incarcerated for over 13 years never once having a Constitutionally-Compliant Direct Appeal proceeding within the Federal Judiciary.

(2). In PENSON V. OHIO, 488 U.S. 75, 89-90 Chief Justice Rehnquist Stated:

The Sixth Amendment to the Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defense." The Court has construed this language to include not only the right to assistance of counsel at trial, Gideon v Wainwright, 372 US 335, 9 L Ed 2d 799, 83 S Ct 792, 23 Ohio Ops 2d 258, 93 ALR2d 733 (1963), but also to the assistance of counsel on appeal. Douglas v California, 372 US 353, 9 L Ed 2d 811, 83 S Ct 814 (1963). We have also held that the <*pg. 315> right conferred is not simply to the assistance of counsel, but also to the effective assistance of counsel, both at trial, see United States v Cronic, 466 US 648, 80 L Ed 2d 657, 104 S Ct 2039 (1984); Strickland v Washington, 466 US 668, 80 L Ed 2d 674, 104 S Ct 2052 (1984), and on appeal, see Evitts v Lucey, 469 US 387, 83 L Ed 2d 821, 105 S Ct 830 (1985).

[488 US 90]

There is undoubtedly an equal protection component in the decisions extending the Sixth Amendment right to counsel on appeal; Griffin v Illinois, 351 US 12, 100 L Ed 891, 76 S Ct 585, 55 ALR2d 1055 (1956); Douglas v California, supra.

(3). However this Court stated in NEDER v. US, 527 US 1, 37 that:

Some structural errors, like the **complete absence of counsel** or the denial of a public trial, are **visible at first glance**.

and despite the fact this couldn't be more true in both of the petitioners Direct Appeal proceedings, both the UNITED STATES and ELEVENTH CIRCUIT COURT OF APPEALS have suppressed the violations from being corrected in a Regular Appeal Process. See and Compare:

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.

See also:

UNITED STATES OF AMERICA, Plaintiff-Appellee, versus ANTONIO U. AKEL, Defendant-Appellant.
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
787 Fed. Appx. 1002; 2019 U.S. App. LEXIS 27390
No. 17-14707 Non-Argument Calendar
September 11, 2019, Decided

Notice:

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

Editorial Information: Prior History

{2019 U.S. App. LEXIS 1}Appeals from the United States District Court for the Northern District of Florida. D.C. Docket No. 3:07-cr-00136-LC-EMT-1.

Disposition:
AFFIRMED.

Counsel For UNITED STATES OF AMERICA, Plaintiff - Appellee: Lennard B. Register, III, Robert G. Davies, Alicia Forbes, U.S. Attorney Service - Northern District of Florida, U.S. Attorney's Office, PENSACOLA, FL.
ANTONIO U. AKEL, a.k.a. Tony Ake, Defendant - Appellant, Pro se, INEZ, KY.

Judges: Before WILSON, EDMONDSON, and HULL, Circuit Judges.

Opinion

{787 Fed. Appx. 1004} PER CURIAM:

Antonio Akel, a federal prisoner proceeding pro se,1 appeals the district court's resentencing order and the district court's denial of several motions related to Akel's resentencing and post-conviction proceedings.

(4). That is, it is visible at first glance that the petitioner did not have the assistance of Counsel "DURING THE APPELLATE COURT'S ACTUAL DECISIONAL PROCESS" and this Courts precedent on this Subject is Clear and unambiguous in PENSON v. OHIO Stating:

Finally, it is important to emphasize that the denial of counsel in this case left petitioner completely without representation during the appellate court's actual decisional process. This is quite different from a case in which it is claimed that counsel's performance was ineffective. As we stated in Strickland, the "[a]ctual or constructive denial of the assistance of counsel altogether is legally presumed to result in prejudice." 466 US, at 692, 80 L Ed 2d 674, 104 S Ct 2052. Our decision in United States v Cronic, likewise, makes clear that "[t]he presumption that counsel's assistance is essential requires us to conclude that a trial is unfair if the accused is denied counsel at a critical stage of his trial." 466 US, at 659, 80 L Ed 2d 657, 104 S Ct 2039 (footnote omitted). Similarly, Chapman recognizes that the right to counsel is "so basic to a fair trial that [its] infraction can <*pg. 314> never be treated as harmless error." 386 US, at 23, and n 8, 17 L Ed 2d 705, 87 S Ct 824, 24 ALR3d 1065. And more recently, in Satterwhite v Texas, 486 US 249, 256, 100 L Ed 2d 284, 108 S Ct 1792 (1988), we stated that a pervasive denial of counsel casts such doubt on the fairness of the trial process, that it can never be considered harmless error. Because the fundamental importance of the assistance of counsel does not cease as the prosecutorial process moves from the trial to the appellate stage, see supra, at 85, 102 L Ed 2d, at 312, the presumption of prejudice must extend as well to the denial of counsel on appeal.

The present case is unlike a case in which counsel fails to press a particular argument on appeal, cf. Jones v Barnes, 463 US 745, 77 L Ed 2d 987, 103 S Ct 3308 (1983), or fails to argue an issue as effectively as he or she might. Rather, at the time the Court of Appeals first considered the merits of petitioner's appeal, appellate counsel had already been granted leave to withdraw; petitioner was thus entirely without the assistance of counsel on appeal.

(5). With Respect, the Conduct of the United States representatives and the Eleventh Circuit below, gives the appearance of chaos and disorder at best and the appearance of TYRANNY and ANARCHY at worst, as their is no rational basis for the instant petitioner to have been incarcerated for 13 years and being the only U.S. citizen to neither have nor waived the assistance of Counsel on two out of two "DIRECT APPEAL CRITICAL STAGE OF THE PROCEEDINGS". CF JAFFREE v. WALLACE, 705 F.2d 1526, 1537 (11th Cir 1983):

The Supreme Court, by accepting cases through the discretionary writ of certiorari, has kept order within the courts. The notion that the federal district courts and circuit courts of appeal must adhere to controlling Supreme Court decisions is reinforced whenever necessary. In *Hutto v. Davis*, 454 U.S. 370, 375, 102 S. Ct. 703, 706, 70 L. Ed. 2d 556 (1982), the Court emphasized the need to adhere to the hierarchal structure of the federal court system created by the Constitution and Congress. "Unless we wish anarchy to prevail within the federal judicial system, a precedent of this Court must be followed by the lower federal courts no matter how misguided the judges of those courts may think it to be." *Davis*, 454 U.S. at 375, 102 S. Ct. at 706.

And See BERGER v. UNITED STATES, 295 U.S. 78, 88, 55 S.Ct 629 (1935):

> "The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor-indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one."

....

> ABA Model Rules of Professional Conduct Rule 3.8 cmt. (2002); *accord* ABA Standards for Criminal Justice 3-1.1(b) (3d. 1993) ("The prosecutor is both an administrator of justice and an advocate. The prosecutor must exercise sound discretion in the performance of his or her functions."); *id.* at 3.1-1(c) ("The duty of the prosecutor is to seek justice, not merely to convict")

See also BRADY v. MARYLAND, 373 U.S. 83, 83 S.Ct 1194 (1963):

"OUR SYSTEM OF JUSTICE SUFFERS WHEN ANY ACCUSED IS TREATED UNFAIRLY"

III. RELIEF CANNOT BE OBTAINED IN ANY OTHER FORM OR FROM ANY OTHER COURT, WHERE THIS COURT IS THE LAST RESORT IN THE HIERARCHAL STRUCTURE OF THE FEDERAL SYSTEM IT IS THE ONLY INSTITUTION FOR WHICH CAN RESTORE ORDER WITHIN THE ELEVENTH CIRCUIT COURT OF APPEALS AND COMPEL IT TO HONOR EQUAL PROTECTION OF THE SIXTH AMENDMENT AS WELL AS REINFORCE ADHERENCE TO CONTROLLING SUPREME COURT PRECEDENT

(1). The ELEVENTH CIRCUIT COURT OF APPEALS answers to no other institution but that of the United States SUPREME COURT and possibly the United States Congress.

(2) As such, when the ELEVENTH CIRCUIT can be seen to unequivocally be engaged in the deliberate denial of a U.S. citizens Equal protection of his Sixth Amendment Right to the assistance of counsel upon Direct Appeal proceedings within that institution and seen clearly to have insulated the mandated relief from being corrected during the regular appeal process, that U.S. citizen can only obtain relief by petitioning the SUPREME COURT for a Writ of Mandamus.

(3). Additionally, when the ELEVENTH CIRCUIT can be seen to be deliberately defying SUPREME COURT precedents UNITED STATES v. CRONIC, 466 U.S. 648, 659, 104 S.Ct 2039, 2047, 80 L.Ed 2d 657 & n.25 (1984) and PENSON v. OHIO, 488 U.S. 75, 109 S.Ct 346 (1988) for which effectively has

thwarted the petitioner from a constitutionally-compliant and thus adequate process to contest the loss of his liberty for 13 years and counting, it is only the SUPREME COURT for which can restore order within the ELEVENTH CIRCUIT by exercising its discretionary powers. See HUTTO v. DAVIS, 454 U.S. 370, 375, 102 S.Ct 703, 706, 70 L.Ed. 2d 556 (1982); RODRIGUEZ DE QUIJAS v. SHEARSON/AM. EXP. INC. 490 U.S. 477, 484, 109 S.Ct 1917, 104 L.Ed 2d 526 (1989).

CONCLUSION

With Respect, the petitioner is a United States citizen, born and raised, whom of which remembers pledging his allegiance to this nation throughout his formative schooling years. Is he wrong to expect that at the very least the UNITED STATES and Its JUDGES would at least afford him the EQUAL PROTECTION of his rights accorded by the UNITED STATES CONSTITUTION within its Federal Court system if it plans to wrongfully incarcerate him 13 years going on 40. CF:

> The most critical of those protections is the right to counsel. *See United States v. Cronic*, 466 U.S. 648, 654, 104 S. Ct. 2039, 2044, 80 L. Ed. 2d 657 (1984) ("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." (internal quotation marks omitted)). "The very premise of our adversary system of criminal justice is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free.'" *Herring v. New York*, 422 U.S. 853, 862, 95 S. Ct. 2550, 2555, 45 L. Ed. 2d 593 (1975).

....

> The **right to counsel** attaches in a criminal prosecution after the initiation of adversarial judicial proceedings, Kirby v. Illinois, 406 U.S. 682, 689-90, 92 S. Ct. 1877, 1882, 32 L. Ed. 2d 411 (1972), and continues through the first-tier of non-discretionary direct appeal, if the state provides an appeal as a matter of right. {2011 U.S. App. LEXIS 8}**Penson v. Ohio**, 488 U.S. 75, 88, 109 S. Ct. 346, 354, 102 L. Ed. 2d 300 (1988).

But See US v. AKEL, APPEAL #08-13771 (11th cir) and US v. AKEL, APPEAL #17-14707 (11th cir), i.e. NO COUNSEL, CF PENSON v. OHIO Supra;

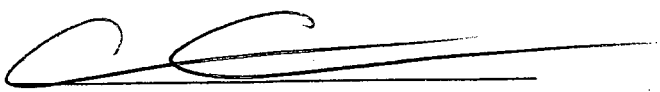
> Furthermore, it is important that the denial of counsel in this case left petitioner completely without representation during the appellate court's actual **decisional process**, since such a total denial is legally presumed to result in prejudice and can never be considered harmless error, whether at the trial or the appellate stage.

and see:

> Under 18 U.S.C. § 3006A, an indigent defendant is entitled to have counseled representation when, inter alia, the Sixth Amendment requires or when the defendant "faces loss of liberty in a case, and Federal law requires the appointment of counsel." 18 U.S.C. § 3006A(a)(1)(H)-(I)

The petition for a writ of MANDAMUS should be granted and the Restoration of the petitioners First Tier Direct Appeals restored with the assistance of counsel and if possible Reassignment to another circuit and U.S. Attorneys office that will ensure justice is done.

Respectfully submitted,



Date: NOVEMBER 8, 2020

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1. At Appendix "B" is the lower courts opinion from SEPT. 11, 2019. Within this opinion the Eleventh Circuit gave the false appearance that the recusal issue is governed by 28 U.S.C. § 455 when the claim is a Constitutional Judicial bias issue and the explicit issue raised in the briefs is that because the lower Court utilized the standard of review for recusal under 28 U.S.C. § 455 instead of the proper standard as enunciated in CAPERTON v. A.T. MASSEY COAL CO., 129 S.Ct 2252 (2009) and WILLIAMS v. PENNSYLVANIA, 136 S.Ct 1909 (2016) it necessarily abused its discretion. In addition, the ELEVENTH CIRCUIT gave the false appearance that it gave a limited remand for the district court to only consider the ACCA enhanced count (1) conviction, such that the district court can be somehow justified and affirmed for its refusal to resentence the petitioner as to his other two counts of conviction despite the fact the erroneous ACCA count (1) sentence in fact increased his criminal history category from IV to VI as to the guideline range for both of those counts, deliberately subverting MOLINA-MARTINEZ v. U.S., 136 S.Ct 1338 (2016) and hence still leaving the petitioner with a career offender enhancement with respect to criminal History, thus effectively suppressing the violation of his "SUBSTANTIAL RIGHTS". Furthermore, the very argument the petitioner presented in this appeal, relying upon persuassive authorities CHENG v. U.S., 298 F.3d 174, 177-178 (2d Cir 2002) and CLARK v. U.S., 764 F.3d 653, 658 (6th Cir 2014) was actually adopted by the ELEVENTH CIRCUIT in DARKER v. TOOLE, 736 Fed. Appx. 834 (May 31, 2018) but looking at its opinion at APPENDIX "B" pgs 10-11 for which issued over 1-year later on SEPT. 11, 2019 proves that the ELEVENTH CIRCUIT is manipulating judicial cases for its own personal desired results. In fact on OCT. 9, 2019 the petitioner filed a "motion for the return and refund of the $505 filing fee etc" for which proves clearly and unequivocally that the Eleventh Circuit strategically changes an appellants grievances or outright disregards them, effectively creating an artificial and fictional appearance that it is justified in its denial when it is not and all any person has to do to see it is read the briefs and then contrast it to the opinion of the Court to realize the Court is answering and denying its own created issues and narrative!