

NO:

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2020

ANTHONY O. WINT, Jr.,
by and through his next friend ORAL WINT,

Petitioner,

v.

STATE OF FLORIDA PALM BEACH SHERIFF,
STATE OF FLORIDA'S FIFTEENTH JUDICIAL CIRCUIT,
FLORIDA DEPARTMENT OF CORRECTIONS,
STATE OF FLORIDA OFFICE OF PUBLIC DEFENDER,

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Where a federal case is brought by a non-lawyer parent on behalf of an incompetent who cannot represent him or herself *pro se*, should no issues concerning the litigation be decided until the counsel issue is resolved, as the Second, Third, and Seventh Circuits have held, or may a district court dismiss the proceeding based on the parent's failure to comply with a court order, as held by the Eleventh Circuit below?

INTERESTED PARTIES

There are no parties to the proceeding other than those named in the caption of the case.

RELATED PROCEEDINGS

United States Court of Appeals for the Eleventh Circuit:

*Anthony O. Wint, Jr., by and through Oral Wint v. State of Florida
Palm Beach Sheriff, et al.,*
No 17-13459 (January 21, 2021),
rehearing denied (February 25, 2021)

United States District Court for the Southern District of Florida:

Anthony O. Wint, Jr. v. State of Florida Palm Beach Sheriff, et al.,
No. 9:17-cv-80631-KAM (July 17, 2017)

Florida Supreme Court:

Anthony Olan Wint v. State of Florida,
No. SC15-1934 (October 22, 2015)

Florida Fourth District Court of Appeal:

Anthony Olan Wint v. State of Florida,
No. 4D15-3962 (January 5, 2016)

Anthony Olan Wint v. State of Florida,
No. 4D12-121 (July 17, 2014)

Anthony Olan Wint, Jr. v. Ric. L. Bradshaw, Sheriff, et al.,
No. 4D09-3627 (Sept. 25, 2009)

Florida Fifteenth Judicial Circuit Court:

State of Florida v. Anthony O. Wint, Jr.,
No. 50-2009-CF-007177-CXXX-MB
Judgment (October 27, 2011)

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PETITION FOR WRIT OF CERTIORARI

Anthony O. Wint, Jr., by and through his next friend Oral Wint, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in case number 17-13459 in that court.

OPINIONS BELOW

The Eleventh Circuit’s order denying rehearing is unpublished and reproduced in Appendix A-1. The Eleventh Circuit’s opinion affirming the district court’s dismissal without prejudice is unpublished and reproduced in Appendix A-2. The district court’s order appointing Oral Wint as next friend is unpublished and reproduced in Appendix A-3. The Eleventh Circuit’s order for limited remand is unpublished and reproduced in Appendix A-4. The district court’s order adopting the magistrate judge’s report regarding dismissal for non-compliance is unreported and reproduced in Appendix A-5. The magistrate judge’s report is unreported and reproduced in Appendix A-6. The decision of the Florida Fourth District Court of Appeal affirming Mr. Wint’s convictions and sentence on direct appeal is unpublished but reported at 145 So.3d 858, and reproduced in Appendix A-8.

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and Part III of the Rules of the Supreme Court of the United States. The jurisdiction of the district court was invoked under 28 U.S.C. § 2254. The court of appeals had jurisdiction under 28 U.S.C. §§ 1291 and 2253. On January 21, 2021, the court of appeals affirmed the district court’s dismissal of the case without prejudice. App. A-2. On February 25, 2021, the court of appeals denied a timely petition for rehearing. App. A-1. This petition is timely filed under Supreme Court Rule 13.1.

STATUTORY PROVISIONS INVOLVED

Title 28, U.S.C. § 1654 provides:

In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

Federal Rule of Civil Procedure 17 provides, in pertinent part:

Rule 17. Plaintiff and Defendant; Capacity; Public Officers

(a) Real Party in Interest.

(1) *Designation in General.* An action must be prosecuted in the name of the real party in interest . . .

* * *

(c) Minor or Incompetent Person.

(1) *With a Representative.* The following representatives may sue or defend on behalf of a minor or an incompetent person:

- (A) a general guardian;
- (B) a committee;
- (C) a conservator; or
- (D) a like fiduciary.

(2) *Without a Representative.* A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem--or issue another appropriate order--to protect a minor or incompetent person who is unrepresented in an action.

STATEMENT OF THE CASE

In June 2009, a Florida grand jury indicted Anthony Wint, then a juvenile, and charged him as an adult with home invasion robbery, sexual battery, and false imprisonment. Anthony was tried before a jury, convicted, and sentenced to a 45-year term of imprisonment. His conviction and sentence were affirmed on appeal. App. A-7.

In May 2017, the United States Court of Appeals for the Eleventh Circuit received from Oral Wint, father of Petitioner Anthony Wint, a *pro se* document entitled “Request for Certificate of Appealability” (“Request”). App. A-2 at 2. Oral Wint had signed the document, “Oral Wint – Father/Next Friend.” The document stated that Anthony Wint, “per Federal Statute, 28 U.S.C. § 2254, is requesting a Certificate of Appealability (COA) from The U.S. District Court, Southern District of Florida.” The Request asserted that “[d]ue to the current mental condition of Anthony O. Wint, I, Oral A. Wint, his father and ‘Next Friend’ petitioner, states that Anthony Wint’s Constitutional rights were not protected by the state of Florida.” It asserted further that Anthony “has been subjected to violations of his 4th, 5th, 6th, 8th and 14th Amendments.” The Request asked that it be forwarded to the United States District Court for the Southern District of Florida.

The Eleventh Circuit did exactly that, and the Clerk of the District Court for the Southern District of Florida docket the Request as a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, and opened a case entitled *Anthony O. Wint v.*

State of Florida, et al. The case was assigned to a magistrate judge, who filed an order. The order warned of the magistrate judge's intent to recharacterize the pleading as a § 2254 petition pursuant to *Castro v. United States*, 540 U.S. 375 (2003). The order further noted that the Request was "signed by Mr. Wint's father, Oral A. Wint, as 'next friend' due to his son's unspecified 'current mental condition.'" The order cited *Whitmore v. Arkansas*, 495 U.S. 149, 163 (1990), and stated that "[i]f the Petitioner is going to proceed via a next friend, the basis for the next friend status as well as the reason for the Petitioner's inability to proceed on his own behalf must be clearly demonstrated to the Court."

In light of these circumstances, the magistrate judge ordered Oral to refile the pleading and (1) "expressly" notify the district court whether he agreed to recharacterization of the Request as a § 2254 habeas petition or whether he would withdraw it; (2) if he agreed to recharacterization, to file an amended petition using a form petition provided to him; and (3) if the amended petition were filed by a "next friend" on Anthony's behalf, clearly set forth the basis for next friend status and Anthony's inability to proceed for himself. App. A-2 at 2.

Oral Wint, calling himself "Next Friend/Father," filed a *pro se* document entitled "Request to Reclas[s]ify Document From Habeas Corpus to Next Friend Styled Request for Certificate of Appealability," to which was attached his previous Request. *Id.* Two days later, Oral Wint filed another *pro se* document entitled "Request for Certificate of Appealability" which was 36 typewritten pages, and raised

seven substantive claims. App. A-7. In the body of that document, Oral asserted that he was filing as a “next friend” acting on behalf of his son, Anthony. *Id.* at 6. Oral asserted that Anthony was “unable to litigate his own case due to mental illness;” that the State of Florida is “currently treating Anthony for mental illness;” and that “next friend” status is appropriate “in that Anthony Wint’s mental condition, his lack of understanding and his lack of access to the Court due to his mental capacity to understand the nuances, of not only his reality but also the process of filing a habeas corpus.” *Id.* at 7.

The magistrate judge filed a report recommending that the case be dismissed for non-compliance with his earlier order. App. A-6. The magistrate judge found that “Oral has failed to comply with the Court’s order,” in that he failed to “inform[] the Court about his wishes with regard to recharacterization and filing an Amended Section 2254 Petition, . . . failed to use the Section 2254 form that the Court provided, [and] failed to verify the pleading.” *Id.* (emphasis added). And, even though Oral had described Anthony as mentally ill, and stated that the State of Florida was treating Anthony – who was in custody – for that mental illness, the magistrate judge also found that Oral failed to comply with the court’s order because he “purport[ed] to seek relief on behalf of Anthony as a ‘next friend’ without setting forth a clear basis for his next friend status.” *Id.* The magistrate judge therefore recommended that the action be dismissed without prejudice under Federal Rule of Civil Procedure 41(b) for failure to comply with a court order. *Id.*

On July 17, 2017, the district court “affirmed and approved” the magistrate judge’s Report “in its entirety,” and dismissed the case without prejudice. App. A-5.

Oral Wint appealed. On January 31, 2018, the Eleventh Circuit issued an order noting that Oral Wint, as a non-lawyer, could not proceed *pro se* on behalf of his son, Anthony, and ultimately appointed counsel to represent Anthony. The court of appeals remanded “to the district court on a limited basis to make the relevant findings concerning whether Oral Wint should be permitted to proceed as next friend,” and stayed this appeal “pending the limited remand.” App. A-4 at 2. On limited remand, the district court appointed Oral Wint as Anthony’s next friend in light of Anthony’s well-documented mental illness. App. A-3. Thereafter, the Eleventh Circuit granted Oral Wint leave to act on behalf of Anthony as “next friend,” and the appeal proceeded.

On appeal, Petitioner argued that the district court erred in dismissing the case for Oral Wint’s failure to take actions in the litigation when Oral was not a lawyer and had not been appointed next friend to Anthony. On January 21, 2021, the Eleventh Circuit affirmed the dismissal. App. A-2. The court of appeals determined that the district court did not abuse its discretion in dismissing the action below because Oral failed to comply with the magistrate judge’s order. *Id.* at 3. Rehearing was denied on February 25, 2021. App. A-1.

REASONS FOR GRANTING THE WRIT

I. The circuits are divided on the question presented.

Individual parties in federal court generally “may plead and conduct their own cases personally or by counsel.” 28 U.S.C. § 1654. The right to appear *pro se*, however, is limited to parties conducting “their own cases.” *Id.* Section 1654 therefore “does not speak to the issue” of whether a parent “may plead and conduct his [child]’s case.” *Devine v. Indian River Cnty. Sch. Bd.*, 121 F.3d 576, 581 (11th Cir.1997), *overruled in part on other grounds by Winkelman ex rel. Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 535 (2007). Federal Rule of Civil Procedure 17(c) is equally unavailing. It permits an authorized “representative,” including a parent, “to sue on behalf of a minor or incompetent person.” Fed. R. Civ. P. 17(c). It does not, however, confer any right upon such representatives to serve as legal counsel. “[U]nder Fed. R. Civ. P. 17(c) and 28 U.S.C. § 1654, a minor child cannot bring suit through a parent acting as next friend if the parent is not represented by an attorney.” *See Meeker v. Kercher*, 782 F.2d 153, 154 (10th Cir. 1986).

Here, however, the district court ordered Oral to file pleadings on Anthony’s behalf, and then dismissed the case when Oral failed to comply with the order. On appeal, Anthony argued that the district court erred in ordering Oral to take any action at all on Anthony’s behalf because Oral was not an attorney. The court of appeals nonetheless affirmed the district court’s dismissal as an appropriate exercise

of the district court’s authority. That would not have happened had this case been brought in the Second, Third, or Seventh Circuits.

The Second Circuit confronted this issue in *Cheung v. Youth Orchestra Foundation of Buffalo, Inc.*, 906 F.2d 59 (2d Cir. 1990). There, a father brought a civil rights action on behalf of his daughter. *Id.* at 60. The district court dismissed the action for lack of subject matter jurisdiction. *Id.* at 61. The Second Circuit declined to reach the jurisdictional question, however, because it concluded that a parent could not bring suit on behalf of a minor child without representation by counsel. *See id.*

The Second Circuit noted that although § 1654 provides a litigant in federal court the right to act as his or her own counsel, that right is inapplicable where an individual lacks the capacity to represent themselves due to minority or incompetence. *Id.* In that circumstance, it ruled, “[t]here is . . . no individual choice to proceed *pro se* for courts to respect, and the sole policy at stake concerns the exclusion of non-licensed persons to appear as attorneys on behalf of others.” *Id.* It further recognized that “it is not in the interests of minors or incompetents that they be represented by non-attorneys,” and that in appropriate cases, the district court may appoint counsel pursuant to Rule 17(c). *Id.* It held, therefore, that “no issues concerning th[e] litigation should be decided until the counsel issue is resolved.” *Id.* at 62. And without counsel representing the child, the Second Circuit determined, the case could not go forward at all. *See id.* It therefore declined to consider the

district court's subject matter jurisdiction. *See id.* at 61. Instead, it remanded to the district court for retention or appointment of counsel for the child. *Id.* Only if those options failed, would dismissal without prejudice be appropriate. *Id.*

Thus, had this case been brought in the Second Circuit, the result would have been utterly different. The analysis required by *Cheung* would have been as follows: Oral Wint is not an attorney, and informed the district court that he was representing his mentally incompetent son. Oral could not represent Anthony in that circumstance, and Anthony could not represent himself. It was not in Anthony's best interest for Oral to litigate Anthony's constitutional challenges to his conviction and sentence. Indeed, despite being well-intentioned, Oral possibly endangered any chance for meaningful litigation of those claims when he repeatedly and mistakenly refused to allow the court to recharacterize the motion he had labelled a certificate of appealability as a 28 U.S.C. § 2254 petition.

In those circumstances, the Second Circuit would have held that the case could not go forward at. *See Cheung*, 906 F.2d at 61. Rather, the district court would have been required to decline to consider any other issue before the counsel issue was resolved. *See id.* And instead of repeatedly ordering Oral to make decisions that might jeopardize Anthony's first, and most likely only, opportunity for federal habeas corpus relief, *see* 28 U.S.C. § 2244(b), the district court would have been required to give Oral an opportunity to secure counsel for Anthony, or appoint Anthony counsel itself, before entering a dismissal order. *See id.*

The Third and Seventh Circuits employ the same remedial approach as that undertaken by the Second Circuit in *Cheung*. “Many of the cases that reject parents’ pleadings filed *pro se* on behalf of their children acknowledge that the appropriate remedy is to allow the child to re-litigate the case with counsel.” *Elustra v. Mineo*, 595 F.3d 699, 706 (7th Cir. 2010) (collecting cases). *See also Osei-Afriyie v. Medical College of Pa.*, 937 F.2d 876, 883 (3d Cir. 1991) (vacating judgment entered against children and suggesting that on remand father could retain counsel for children or district court could enlist counsel to represent them, and failing that, dismiss without prejudice).

Indeed, in this very case the Eleventh Circuit undertook a process similar to that described by *Cheung* and its sister circuits when the case was on appeal. Once the court of appeals understood that Oral was a parent attempting to litigate on behalf of his mentally incompetent child, it appointed counsel to represent Anthony on appeal before it considered any other issue in the case.

But the Eleventh Circuit did not hold the district court to the same standard, and its ultimate decision affirming the district court’s dismissal in light of non-lawyer Oral Wint’s actions on behalf of his son is in conflict with longstanding decisions of the Second, Third, and Seventh Circuits to the contrary. This Court should therefore grant the petition to resolve the conflict in the federal courts of appeal.

CONCLUSION

Based upon the foregoing petition, the Court should grant a writ of certiorari to the United States Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

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