

Sup. Ct. Case No. 21-7008

THE SUPREME COURT OF THE UNITED STATES

MARCO DANE ACOFF,
Petitioner,

vs.

THE STATE OF ALABAMA,
Respondents.

ON WRIT OF CERTIORARI
FROM THE SUPREME COURT OF
ALABAMA. Case No. 1200005

PETITION FOR REHEARING EN BANC

ADDRESS OF COUNSEL:

Mr. Marco Dane Acoff (Pro Se)

100• Warrior Lane

Bessemer, Alabama 35023

RECEIVED

MAY - 6 2022

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTIONS PRESENTED FOR REVIEW

I.

WHETHER THE ALABAMA SUPREME COURT WRONGFULLY DECIDED AN IMPORTANT ISSUE RAISED TO THEM BY PETITIONER MARCO DANE ACOFF WHERE HE WAS DENIED A TIMELY AND MEANINGFUL MENTAL EVALUATION WHEN THE STATE'S HIGHEST COURT WAS REPUGNANT TO THE PREVIOUS DECISIONS RENDERED BY THIS COURT AS WELL AS TO THE PROTOCOLS OF THE UNITED STATES CONSTITUTION?

A.

THE PETITIONER MARCO DANE ACOFF SAYS THAT THE PANEL DECISION TO DENY HIS PETITION FOR A WRIT OF CERTIORARI CONFLICTS WITH THE DECISIONS RENDERED BY THIS COURT IN CASES LIKE AKE v OKLAHOMA, 470 U.S. 68 (1985); PATE v ROBINSON, 383 U.S. 375 (1966); GREENFIELD v. GUNN, 434 U.S. 928 (1977); and BARKER v. WINGO, 407 U.S. 514 (1972), AND CONSIDERATION BY THE FULL COURT IS THEREFORE NECESSARY TO SECURE AND MAINTAIN UNIFORMITY OF THIS COURT'S STANDING DECISIONS.

B.

THE PROCEEDINGS INVOLVED QUESTIONS OF EXCEPTIONAL IMPORTANCE THAT REQUIRE ACOFF'S PETITION FOR REHEARING EN BANC TO BE GRANTED.

(in)

TABLE OF CONTENTS

	<u>Page</u>
1) Questions Presented	i
2) Table of Contents	ii
3) Jurisdiction	iii
4) Reasons for Granting Petition	iv
5) Statement of the Case and Facts	v
6) Argument	1
7) Conclusion	15
8) Proof of Service	16
9) Certification of Counsel	17

JURISDICTION

The jurisdiction to hear this writ is governed by Rule 10(c), Fed. R. App. Proc.

And the jurisdiction to entertain Acoff's Petition for Rehearing En Banc is governed by Rule 44, Fed. R. App. Proc.

REASONS FOR GRANTING THE PETITION

This Petition should be granted because people in the public would want to know how Acoff was in custody for three years after the judge ordered that he be mentally evaluated and all trial processes are suspended until he was evaluated in a timely and meaningful manner, yet three years went by before he was evaluated and the U.S. Supreme Court had stated in the past that such evaluations to inquire into the condition of one's mental state at the time of the offense be done timely and meaningful.

STATEMENT OF THE CASE
AND FACTS

This is a Petition For Rehearing En Banc filed by the Petitioner, Marco Dane Acoff (hereinafter referred to as Acoff).

Acoff is a state prisoner, in Alabama, who was sentenced to a prison term of life without parole for Pharmacy Robbery and a life without parole sentence for Armed Robbery, as well.

After appealing his convictions and sentences to the Alabama Court of Criminal Appeals, he sought Petition For Writ of Certiorari from the Supreme Court of Alabama, in which they affirmed his convictions on July 9, 2021.

The sole issue that Acoff is raising here is that the State of Alabama was being repugnant ^{to} Acoff's constitutional right to make an insanity plea at the time of the offense, and if the mental examination is ordered would not his rights to a timely and meaningful mental evaluation be violative enough to require that it was far too late to give him a mental evaluation four years after the order.

Thus the charges lodged against him should be dismissed thereby voiding any further indictment on the charges.

And that the public would be concerned to hear that a man's constitutional right to not be held accountable and be tried while one is incompetent.

Because they may encounter the same situation as Acoff has.

It is too late now to evaluate Acoff because the ~~timeliness~~ was gone. Four years too late. And it could not have been meaningful. Because four years after the order he had forgotten how he actually felt way back then.

People would wonder. And therefore this writ of certiorari should be granted.

ARGUMENT

I.
WHETHER THE ALABAMA SUPREME COURT WRONG-
FULLY DECIDED AN IMPORTANT ISSUE RAISED TO
THEM BY PETITIONER MARCO DANE ACOFF WHERE
HE WAS DENIED A TIMELY AND MEANINGFUL MENTAL
EVALUATION WHEN THE STATES HIGHEST COURT WAS
REPUGNANT TO THE PREVIOUS DECISIONS RENDERED
BY THIS COURT AS WELL AS TO THE PROTOCOLS OF
THE UNITED STATES CONSTITUTION?

The Petitioner, Marco Dane Acoff (hereinafter
referred to as "Acoff"), sought writ of certiorari
in this most Honorable Supreme Court of the United
States of America from a decision rendered by
the Supreme Court of the State of Alabama dated
July 9, 2021.

Pursuant to the 90 days provision for entry
into this Court, his petition was received on
October 8, 2021.

But due to a deficiency in the petition, it
was returned to him. And subsequently on March
25, 2022, his writ of certiorari was docketed
and reviewed by a "Three-Judge" panel.

On March 28, 2022, a decision was
issued by the three judge panel to deny his
petition.

Without affording Acoff any reasons as to
why his certiorari was denied, he is required
now to initiate his desire to be reheard by
this most Honorable Court without knowing which

reason the panel had for denying it. He wrote the Clerk of the Supreme Court a letter seeking reasons. He asked for a prompt copy of the "Slip Opinion" in a letter that he wrote to their office on April 5, 2022.

The response given to him from the Supreme Court clerk's office was that they were construing his "letter to the Clerk" to be his "Petition For Rehearing" pursuant to Rule 41, Fed. R. App. Proc.

But Acoff had eight (8) more days left to file such rehearing when the Clerk gave him a fifteen (15) day extension from the date that he answered Acoff's letter on, and not from the deadline date of April 22, 2022.

The extension was supposed to have been given with intentions to aid Acoff, who is a pro se litigant who has limited knowledge of the law. See Haines v. Kerner, 404 U.S. 519 (1972).

Instead of extending the time for filing at the conclusion of the 25 day period of time which started on March 28, 2022, the day the denial was released, See Rule 44, Fed. R. App. Proc., but the Clerk claimed that his letter was a petition for rehearing and set the extension to start immediately.

And it took seven (7) days for that notice of the extension to get to him in the mail, leaving Acoff with only 8 days left to file it.

To deny Acoff his sought after relief clearly conflicts with this Court's own rulings in cases like Ake v. Oklahoma, 470 U.S. 68 (1985) and Pate v. Robinson, 383 U.S. 375 (1966), where this Court ruled and stated how it was illegal to try an incompetent person (see pg. 6 of Acoff's "Argument" on Writ of Certiorari).

Also, to deny Acoff's Certiorari conflicts with what the Fourteenth Amendment to the United States Constitution says: (In pertinent part):

"... 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 within its jurisdiction deny any person equal protection of the laws."

See pg. 3 of Acoff's Certiorari. To simply deny him his equal protection right on his incompetency at the time of the offense claim would be the same as to say that the State of Alabama knew about "Ake" and "Pate", but failed to follow their progeny. But that's alright.

Furthermore, to make matters even worse, Alabama created a statute, § 15-16-21, Code of Alabama 1975, in order to protect a criminal defendants rights under the U.S. Constitution to not carry an incompetent person to trial.

Still, they failed to obey their own state created statute.

Acoff extensively explained to the Court on Certiorari how §15-16-21 applied to his case. (See §15-16-21):

"If any person charged with a felony is held in confinement under indictment and the trial court shall have reasonable ground to doubt his sanity the trial of such person for such offense shall be suspended until the jury shall inquire into the fact of such sanity."

And Acoff showed this Court in his writ of certiorari how the trial judge saw the reasonable grounds to doubt his sanity, and he also showed how the trial of Acoff was suspended. (See Acoff's "Argument" at page 5).

Surely the Court saw how this statute, §15-16-21 was applied in his case.

And surely this Court understands how "Ake" and "Pate", as well as many other numerous United States Supreme Court cases have stressed the importance of courts taking special care with criminal defendants who present a genuine doubt as to their sanity.

Please take notice that the insanity statute of the Alabama Code of 1975 was followed by the presiding judge, See and compare Gonzalez v. Southern Pacific Transportation Co., 755 F.2d 1179;

"When confronted with a statute which is plain and unambiguous on its face, the court ordinarily does not look to the legislative history as guide to its meaning."

Therefore, it is not necessary for the Supreme Court panel to look beyond the words of §15-16-21, as it has been quoted by Acoff here.

Because its wording and its meaning are both plain and simple. And he showed the Court his Exhibit #5 on certiorari how the Honorable Trial Judge Brian P. Howell "ordered" on August 23, 2016, that all trial processes be "suspended" until an evaluation be conducted on him.

That order was made by Judge Howell because of the wording of the statute.

And what makes §15-16-21 binding on the State of Alabama in its law making process is the fact that they also have a rule in the Alabama Rules of Criminal Procedures Manual entitled Rule 11.6, Ala. R. Cr. P., that require them (Alabama) to conduct the evaluation within 42 days.

Now surely this Court can understand why Acoff filed for certiorari review. In layman terms, it was because Alabama created §15-16-21. And they (Alabama) also created Rule 11.6.

And he (Acoff) did not make or create either of those rules or codes. But through the 14th Amendment of the United States Constitution, he thought that he was entitled to equal protection of the laws.

what occurred was that if Acoff would not be evaluated in a timely and meaningful manner then his due process rights to not be tried as an incompetent person would have been violated. See Ake v. Oklahoma, 470 U.S. 68 (1985)

And this Court has stated in Greenfield v. Gunn, 434 U.S. 928 (1977), that a competency hearing is necessary when there is a genuine doubt as to defendant's competency to stand trial.

When the judge at Acoff's arraignment heard his diminished responsibility plea, he acknowledged that there was a genuine doubt as to his sanity.

But when the evaluation was not done on him until some four years later, and where his insanity claim was rejected and he was carried to trial.

It was a conflict by the State of Alabama to try Acoff because what "Ake", "Greenfield", and "Pate" stand for is that it is violative of the due process clause to take an incompetent person to trial. See Davis v. Alabama, 545 F.2d, 460 (5th Cir. 1977).

And further in the mix of the State of Alabama not following the United States Supreme Court rulings in those cases, they did not provide Acoff with both the "timely and meaningful" mental evaluation to ensure that he receive a fair and speedy trial. See Barker v. Wingo, 407 U.S. 514 (1972).

Because Acoff had an interest protected by the Sixth Amendment in not having his defense impaired by delay, as this skews the fairness of the entire system.

When answering Acoff's claim being reviewed by the State of Alabama, it ruled:

"Acoff's reliance on Beshear is misplaced. Beshear did not involve the dismissal of an indictment in a criminal case. Additionally, Acoff was not a pretrial detainee in the custody of the A.D.M.H. Furthermore, Acoff was free on bond until his bond was revoked for committing new offenses. And Acoff made no attempt to hasten the evaluation process. Therefore, other than the bare allegation that his evaluation may have been tainted by the delay, Acoff had failed to show any prejudice resulting from the delay. Accordingly, Acoff is not entitled to any relief on this claim."

The above-quote was taken from Petitioner's Exh #2, of his appendix on writ of certiorari.

When the Alabama Supreme Court adopted that opinion by affirming Acoff's conviction and sentence on July 9, 2021, it was from that ruling that Acoff based his argument to this Court on, in his writ of certiorari that was submitted to the three-judge panel on March 25, 2022.

The State of Alabama was acting "repugnant" to the cases that this Court set forth, that when a criminal defendant makes it known to the court that he was not in his right frame of mind at the time of the commission of the offense(s) charged took place, that if the judge sees evidence that his plea poses a reasonable ground to doubt his sanity, then the evaluation must be ordered,

with the purpose of which would be to inquire into his sanity.

So back to Judge Howell's "Order", dated August 23, 2016.

When we look at that order, it clearly says that all processes be suspended until the evaluation be conducted. See Petitioner's Exh. #5, again.

A comparison of Judge Howell's order to suspend follows the same pattern as does the State of Alabama's statute, § 15-16-21, Code of Ala. 1975.

Instead of the State of Alabama admitting to the error, they try and justify their failure by ruling that, Hunter v. Beshear, No. CV 2:16 CV 298 MHT, 2018 WL 564856 (M.D. Ala. Jan. 25, 2018), did not apply to him. They said because Acapp was seeking dismissal of the charges in his indictments and not a civil matter like the prisoners in Beshear were, that he was not entitled to relief.

The State of Alabama thought that he should have sought civil relief, not criminal relief.

The inmates that piled for relief from long delays by the circuit courts in Alabama not giving its pretrial detainees the timely and meaningful mental evaluations,

When the United States District Court for the Middle District of Alabama ruled that pretrial detainees should now be evaluated within 34 days of an order by a circuit court judge for the A.D.M.H. (Alabama Department of Mental Health), meant that such evaluations be promptly conducted.

Not within a four years. But 34 days, 42 days, For it was not only what § 15-16-21 says about suspending all trial processes until the evaluation is conducted, but Rule 11b, Ala. R. Cr. P., that says the evaluation should be conducted within 42 days.

So by either avenue the destination was the same. To alert the State of Alabama to please give pretrial detainees a prompt evaluation.

Thereby detainees like Acoff would not lose their right to make a diminished responsibility plea and be given a chance to enhance his defense with evidence derived from the prompt evaluation that would show that he was not in his right mind at the time of the offense.

But since he didn't get evaluated until four years later, that potential evidence was irretrievably lost.

There was nothing left for Alabama to do except to void his indictments.

Right there the State of Alabama was being repugnant to "Barker". As if the long delay was not cause to infringe upon this Court's ruling that implied that such long and injurious wait span can be cause to dismiss an indictment.

Also see "Pate". Because, in Pate the Honorable Court here ordered:

"... that since it was too late for the trial court to conduct a meaningful hearing on the issue, the case would be remanded to the district court to conduct a meaningful hearing on the issue, the case would be remanded to the district court with directions that it order the respondent discharged."
... "

The State of Alabama has refused to give Acoff his sought after relief in spite of the fact that four years after Judge Howell's order was far too late for any timely and meaningful mental evaluation to have been conducted.

Alabama's conduct required for Acoff to be discharged.

After trying to shake the error with Beshear is not about an indictment they add that Acoff was not a pretrial detainee in the custody of the A.D.M.H.

Neither Acoff nor the pre-trial detainees in "Beshear" were in the custody of the A.D.M.H.

Acoff was a pretrial detainee in the custody of the State of Alabama far beyond the 42 days in Rule 11.6 pursuant to §15-16-21 or the 34 days agreed upon in "Beshear."

The central question that the State of Alabama posed to Acoff was that he had posted bail and been released from pretrial detention before the evaluation could take place.

But such is not true. The truth of the matter was Acoff did "post" bail money on February 2, 2016. But was not released from state custody until May 2, 2018.

Some two years and five months later, after paying the bond money,

Clearly far beyond the 42 days or the 34 days.

So while Acoff was in custody for that period of time before his actual release free on bond, he had been in state custody for 20 months continuously, after Judge Howell entered his August 23, 2016 order for the evaluation.

Still far beyond the 34 days or the 42 day time frame for the evaluation to be conducted

Here, Acoff has shown how the State of Alabama's denial of his appeal was not adequately reviewed by them because neither Acoff or any pretrial detainees make bond from the "custody of the A.D.M.H."

Bond was posted to release Acoff from custody of the county jail.

(3) The State next claimed that Acoff was out free on bond until his bond was revoked.

Right here the State was acting like Acoff had made bond on February 2, 2016 and stayed free all the way until his bond got revoked in 2018.

But that also was not the truth. Acoff showed on writ of certiorari to this Court how he posted bail but was not released from custody.

For he had other cases at other circuit courts within the State of Alabama. And he showed his exhibit #10 where he wasn't released free on bail until May 3, 2018.

How did the three judge panel miss that? And finally the State claimed that Acoff did nothing to hasten the evaluation process.

While the records show where he went from jail to jail and to prison back to jail before he was finally released free on bond. His records also show where it was Acoff who motioned for a evaluation to be conducted on him again when he got picked up on some bogus charges that got his bond revoked.

These intervening circumstances of substantial and controlling effect clearly support the fact that the State of Alabama has failed to give Acoff the timely and meaningful mental evaluation that he was required to receive pursuant to the due process clause of the 14th Amendment.

Because Judge Howell ordered that all trial processes be suspended until he be evaluated. It was as if the order was made to comply with "Ake", "Pate", Greenfield, and "Barker".

But the State of Alabama refused to give Acoff that timely and meaningful mental evaluation pursuant to and according to the above Supreme Court decisions.

It was as if they said, we know what the law is and we will still not follow it, because we don't care if Acoff was out of his mind at the time of the offense, he still shouldn't have robbed that drug store.

That is not what the 14th Amendment's purpose is. Because he had recently gotten out of prison and hadn't been taking his psychotropic medications. He felt depressed and he was financially unable to afford the costs of his meds. A timely evaluation was needed.

B.

THE PROCEEDINGS INVOLVED QUESTIONS OF EXCEPTIONAL IMPORTANCE THAT REQUIRE ACOFF'S PETITION FOR REHEARING EN BANC TO BE GRANTED.

There are many questions of exceptional importance which require that Acoff's Petition for a Rehearing En Banc to be granted. See Rule 35, Fed. R. App. Proc.

(a) First of all the reason for the delay should have been researched by the three Judge panel because Acoff was on direct appeal instead of a writ of habeas corpus where he may have had to appeal to a United States Court of Appeals before entering into the U.S. Supreme Court.

Pursuant to Rule 10(c), Fed. R. App. Proc., this Court has jurisdiction to entertain Acoff's writ of certiorari and petition for a rehearing en banc because his challenge is from:

"... a state court... has decided an important question of federal law... in a way that conflicts with relevant decisions of this Court."

And so, Alabama has done that. They are in conflict with "Ake", "Pate", "Greenfield", and "Barker".

The delay in giving him a timely and meaningful mental evaluation should have been reviewed and examined pursuant to Mathews v. Eldridge, 424 U.S. 319, 325 (1976), where such case law seeks to explain why the four year delay before giving Acoff the evaluation was prejudicial. And also using the process of "Mathews" to determine what the true rules for conducting the mental evaluation are.

(b) Secondly, there is an important question out there as to why wasn't Acoff notified about the reasons why he did not receive a "Slip Opinion" or a "Syllabus" from the ruling by the three Judge panel.

As stated from the beginning of his litigation, Acoff does not know why his certiorari was denied. But he does note that the Clerk of this Court wrote him explaining to him that the clerk's office do not forward slip opinions or syllabus' as for that matter to pro se litigants which is in direct contrast to what Rule 41, Fed. R. App. Pr. says:

"Thereafter, the clerk will cause the opinions to be issued in slip form."

Under the title of "Access to Slip Opinions", it says there that, "the Court mails a copy of the slip opinions to the parties proceeding pro se on the day it is entered on the docket." But when Acoff wrote for a copy on his case he was told to obey and follow U.S. Supreme Court rulings.

Judge Howell tried to comply, but when the State got confused about the whereabouts of Acoff, Had he made bond? Had he been released. Was he still in custody. They just said to heck away with it. He can get evaluated ~~whenever~~ whenever he wants to. We don't care where he's at.

Surely the public would be concerned in this matter as well. Their interest would be aroused because the public wants the courts to obey their own rules and laws. Because the due process clause is for us all. This matter deserves the attention of the full court.

CONCLUSION

Wherefore, premises considered, Petitioner prays that this Petition for Rehearing En Banc will be granted.

Dated: April 28, 2022

Respectfully Submitted
Thomas O. Acoff

100. Warrior Lane.

Bessemer AL 35023

PROOF OF SERVICE

I, Marco Dane Acoff, the petitioner in the foregoing Petition for Rehearing, do hereby certify under the penalty of perjury that I have forthwith forwarded a true and correct copy of this petition upon the Attorney General for the State of Alabama by placing it in the US mail with US postage prepaid on this the 28th day of ~~April~~ April, 2022 in compliance to 28 U.S.C. § 1746.

Signed,
X Marco Dane Acoff
1000 Warrior Lane
Bessemer, Ala 35023

CERTIFICATION OF COUNSEL

I, Marco Dane Acapp, the petitioner in the foregoing Petition For A Rehearing En Banc, do hereby certify that I will be representing myself in the matter and I am also appearing pro se. I further swear that I present these matters before the court in good faith and not for delay but to seek justice.

Respectfully Submitted,

Dated this the 28th of April, 2022.

X Marco Dane Acapp

600. Warrior Lane

Bessemer, Ala. 35023