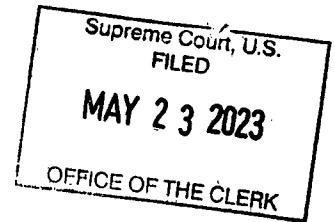


No. 22A962

22-7661 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



Michael David Beiter, Jr. — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Michael David Beiter, Jr.
(Your Name)

FCI BENNETTSVILLE, P.O. BOX 52020
(Address)

BENNETTSVILLE, SC 29512
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Whether a defendant who continually terminated (FIRED) his/her counsel ab initio of the proceedings and throughout the proceedings can gain access to his case file and discovery material through the same counsel who was REPEATEDLY FIRED during open court, but despite acknowledging to be terminated was forced by the court to represent the defendant, all in violation to the Sixth Amendment to the U.S. Constitution.

2. Whether a defendant who is prevented by the lower courts and his/her forced counsel to obtain his/her case file and discovery material to assist him/her in the preparation of his/her PRO SE defense be subject to a violation of his/her Due Process rights under the Fifth Amendment to the U.S. Constitution.

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:

The Petitioner herein, who was the Defendant-Appellant below, is Michael David Beiter, Jr., henceforth, Mr. Beiter, Jr. The Respondent herein, which was the Plaintiff-Appellee below, is the United States of America.

RELATED CASES

this case arises from the following proceedings in the United States Court of Appeals for the Eleventh Circuit and the United States District Court for the Southern District of Florida, FT. Lauderdale Division:

United States v. Michael David Beiter, Jr.

CASE NO. 22-13008

United States v. Michael David Beiter, Jr.

CASE NO. 0:09-CR-60202-JJC

There are no other proceedings in state or federal trial or appellate courts. However, this application may be directly related to another application in this Court. Mr. Beiter, Jr. does not have the case number yet.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix 1 to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[x] is unpublished.

The opinion of the United States district court appears at Appendix 2 to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[x] 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 January 30th, AD2023.

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: April 19th, AD2023, and a copy of the order denying rehearing appears at Appendix 3.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. 22A 962.

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

For cases from **state courts**:

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

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

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. 22A 962.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the U.S. Constitution provides: "No person shall...be deprived of life, liberty, or property, without due process of law...."

The Sixth Amendment to the U.S. Constitution provides: "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 defense."

The American BAR Association Standards for Criminal Justice, Defense Functions Standards and Commentary provide: "The resounding message is that defense attorneys because of their intimate knowledge of the trial proceedings and their possession of unique information regarding possible post-conviction claims, have an OBLIGATION to cooperate with the client's attempt to challenge their convictions." (emphasis added).

STATEMENT OF THE CASE

On AD2010, Mr. Beiter, Jr. faced trial with counsel forced upon him. Such counsel was time and again fired on open court. Despite that the forced counsel acknowledged to have been terminated and in fact, filed a Motion to Withdraw as Counsel (see APPENDIX 4), the magistrate judge forced the Federal Public Defender to represent Mr. Beiter, Jr. (see APPENDIX 5). Later, on August 17th, AD2010, now seated Federal Judge, katherine M. Williams, who was then the Federal Public Defender for the Southern District of Florida, Ft. Lauderdale Division, filed an Objection to Order my Magistrate Judge and Motion to Set Aside Pursuant Federal Rule of Criminal Procedure (see APPENDIX 6), to which, on August 18th AD2010, a hearing was held to discuss the matter (see APPENDIX 7, particularly at 9-12, 17-19). Henceforth, the Federal Public Defender was forced upon Mr. Beiter, Jr. to represent him against his will.

While it is true that the Federal Public Defender mailed to Mr. Beiter, Jr. the discovery material he now requests, If Mr. Beiter, Jr. would've accepted such material from the forced counsel, he would've been acquiescent with the lower courts unconstitutional decision of imposing an unwanted counsel upon him. Hence, Mr. Beiter, Jr. returned "UNOPENED" every piece of correspondence that the forced counsel send to him, as well as he refused to meet with the forced counsel during several attempted "legal visits." (revisit APPENDIXS 6 & 7).

Years later, on November 15th, AD2021, Mr. Beiter, Jr. sent a letter to the Federal Public Defender, Attorney Berube,

requesting the ENTIRE case/file pertaining to his case (see EXHIBIT 1, attached to APPENDIX 8). After receiving no response from Attorney Berube, Mr. Beiter, Jr. sent a second letter, again requesting the aforementioned documents and files (see EXHIBIT 2, id).

On January 7th, AD2022, Attorney Berube responded stating that he has in receipt of "your letter requesting that we reproduce the discovery material that was provided to you prior to your trial." and that "the discovery will be placed in envelopes and mailed to your facility." Mr. Beiter, Jr. complaint to Attorney Berube's remark about the discovery material beeing provided to him prior to his trial, for he contends that every piece of mail sent to him by Attorney Berube's Office was returned, "UNOPENED", for accepting such mail would've been acquiescent with the lower courts unconstitutional decision of imposing a TERMINATED (fired) counsel upon him (see EXHIBITS 3 & 4, id.).

After more than a month awaiting for his discovery material, Mr. Beiter, Jr. again requested Attorney Berube to comply to his request (see EXHIBIT 5, id.). As of the date of this filing, Attorney Berube has failed to comply to Mr. Beiter, Jr.'s request.

On April 18th, AD2022, Mr. Beiter, Jr. filed a Motion to Compel Attorney/Supervisory Assistant, Federal Public Defender, Robert Berube, to Surrender the Entire Case/Work File in Case No. 0:09-CR-60202-JJC (see APPENDIX 8). On April 19th, AD2022, the district court ordered the Federal public Defender's

Office to respond. Attorney Berube responded, alleging, inter alia, that "all the discovery must be reviewed in order to locate the material under the Protective Order" that the district court had entered (see APPENDIX 9). Mr. Beiter, Jr. did not file a reply brief. Later, on August 25th, AD2022, the district court denied as moot Mr. Beiter's motion to compel (see APPENDIX 2).

On September 6th, AD2022, Mr. Beiter, Jr. timely filed a notice of Appeal which the Eleventh Circuit docketed on September 7th, AD2022. Then on October 17th, AD2022, Mr. Beiter, Jr. Filed his Initial Brief on Appeal with the Eleventh Circuit (see APPENDIX 10). Mr. Beiter, Jr. sought reversal of the district courts denial for the district court could have properly imposed a deadline for the Federal Public Defender's Office to produce Mr. Beiter, Jr.'s discovery material, since the Federal public Defender's Office appeared not to oppose to surrender such material.

The government filed a Motion for Summary Affirmance on November 4th, AD2022, to which Mr. Beiter replied on November 14th, AD2022 (see APPENDIX 11). The Eleventh Circuit ruled on the government behalf, thus denying relief to Mr. Beiter, Jr. (see APPENDIX 1). Mr. Beiter, Jr. contends that he timely filed a Motion for Rehearing, but the Eleventh Circuit denied it as untimely (see APPENDIX 3). This Petition for Writ of Certiorari follows.

REASONS FOR GRANTING THE PETITION

This Court held that "the right to effective assistance fully encompasses the client's right to obtain from trial counsel the work files generated during and pertinent to that client's defense." Maxwell v. Florida, 479 U.S. 972, 93 L.Ed.2d 418-420, 107 S.Ct. 474 (1986). This is an assertion recognized by the American BAR Association, which says that "The resounding message is that defense attorneys, because of their intimate knowledge of the trial proceedings and their possession of unique information regarding possible post-conviction claims, have an obligation to cooperate with their client's attempt to challenge their convictions." Standard for Criminal Justice, Defense Functions Standards and Commentary.

However, the case at hand is distinct and unique, for what of those defendants who were forced counsel upon them by the lower courts in violation to their Sixth and Fifth Amendment rights? Should these defendants be excluded from their right to defend themselves PRO SE?

In a Nation that alleges to be a model of justice for the world, this cannot be tolerated. This Court is tasked with setting a BRIGHT LINE that defines a timeline in which an attorney who represented an accused, surrender his/her case/work file and discovery material to the extent permitted by law. For justice delayed is justice denied.

When the lower courts acquiesce in order to trump justice is untenable, for it would be well to take heed of what Kenneth Culp Davis teaches: "Where law ends tyranny begins."

When an attorney states in writing that he/she is preparing 'the discovery" material, and that he/she will place such material "in envelopes" and will mail it to a defendant's facility (revisit EXHIBITS 3 & 4, attached to APPENDIX 8), but as here, 17 months (a little less than 1 year and a half) have passed and still a defendant has not received what was promised from his/her attorney, wouldn't this be considered as a conscious effort to delay, or worse, prevent a defendant from challenging the constitutionality of his conviction and sentence, particularly when the requested discovery material (which neither counsel, the government, nor the lower courts have denied to surrender) contains the evidence which proves a defendant's innocence?

But more intrinsic, however, what if a defendant has, as here, no other recourse but to seek from his/her forced counsel, *id est*, one who was repeatedly terminated (FIRED) during open court, his case/work file and discovery material?

Would such defendant be denied justice?

Both the law and the American BAR Association recognize that an attorney has a duty not to IMPEDE a defendant's attempt to exercise his/her constitutional right to challenge his/her conviction and/or sentence. See, American BAR Association, Standards for Criminal Justice, Defense Functions Standards and Commentary, *supra*, at 3; see also, Maxwell v. Florida, *supra*; United States v. Dorman, 58 M.J. 295 (C.A.A.F. 2003); Hiatt v Clark, Ky. No. 2005-SC-000455-MR (June 15, 2006); Spivey v. Zant, 683 F.2d 881, 885 (5th Cir. 1982) (holding that a petitioner is

entitled to former trial attorney's file and the work-product doctrine does not apply to a situation in which the client seeks access to documents or other tangible things created during course of attorney's representation).

Loeffler v. Lanser (In re ANR Advance Transp. Co.), 302 B.R. 607, 617 (E.D. Wis. 2003) ("Clients are not adversaries of their lawyers, and the zone of privacy that the work product rule protects was designed to shield lawyers from their opponents, not their clients"); Gardner, Willis, Sweat & Handelman, LLP v. Kelly (In re Golden Grove Pecan farm), 460 B.R. 349, 352-53 (Bankr. M.D. Ga. 2011); In re Ginn-LA St. Lucie Ltd., LLP, 439 B.R. 801, 809 (Bankr. S.D. Fla. 2010) (holding that "New York follows the majority view that upon termination of the attorney-client relationship, where no claim for unpaid legal fees is outstanding, the client is presumptively accorded full access to the entire attorney's file"); Rushton v. Woodbury & Kesler, P.C. (In re C.W. Mining Co.), 442 B.R. 44, 48 (Bankr. D. Utah 2010) (assuming that documents were work product, Trustee overcame the work product doctrine with showing of need); Teleglobe Commons. Corp. v. BCE, Inc. (In re Teleglobe Commc'ns Corp.), # 02-11518 MFW, 2007 U.S. App. LEXIS 16942, 2006 WL 2568371, at *16 (D. Del. Feb. 22, 2006) ("Because work product is created for the benefit of the client, the interest in protecting documents from an adversary is not present in this case") (citing Spivey v. Zant, 683 F.2d 881, 885 (5th Cir. 1982) ("The work product doctrine does not apply to the situation in which a client seeks access to documents or other tangible things created or ammassed by his attorneys during the course of the representation)).

Clearly, both the law and the American BAR Association support this Writ of Certiorari. The only question is whether an attorney can take as long as he/she wishes in order to surrender the files he/she has promised to sent to a defendant.

This Court must take into consideration the well-trod principle stating that "justice delayed is justice denied." The APPENDIXES submitted within, particularly the exhibits contained within APPENDIX 8 establish that Attorney Berube knows that Mr. Beiter, Jr. has been diligently seeking to obtain from him his case/work file and discovery material, something that he promised to give. Accordingly, the evidence points towards an attorney's deliberate impediment of a defendant's constitutional and statutory right to file a post-conviction relief motion.

Here, the facts on the record make it clear beyond any reasonable doubt that a defendant was denied his discovery material ab initio, throughout his trial, and even now, after the proceedings concluded. Thus, ensuring that a defendant would never receive his case/work file nor discovery material, but through the REPEATEDLY TERMINATED FORCED COUNSEL. And worst, at the repeatedly terminated forced counsel's whim who allowed by the lower courts may take as long as he/she wishes (here, a little less than 1 year and a half) to surrender such documents and files, therefore, denying a defendant the right to defend him/herself. How can an accused defend him/herself if being denied direct access to the discovery material by his/her attorney?

"It is true that when a defendant chooses to have a lawyer manage and present his case, law and tradition may allocate to the counsel the power to make binding decisions of trial strategy in many areas...This allocation can only be justified, however, by the defendant's consent, at the outset, to accept counsel as his representative. An unwanted counsel 'represents' the defendant only through a tenuous and unacceptable legal fiction. Unless the accused has acquiesced in such representation, the defense presented is not the defense guaranteed him by the Constitution, for, in a very real sense, it is not his defense."
Faretta v. California, 422 U.S. 806, at 819-821 (footnotes and citations omitted).

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted on this 23 day of May, Year of YAHWEH 2023.



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