

No. _____

23-5928 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

OCT 25 2023

OFFICE OF THE CLERK

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. Can a magistrate judge, at an Initial Appearance hearing, FORCE counsel upon a defendant who was never asked to nor did waive any of his rights, particularly the right to the assistance of counsel?
2. Can a magistrate judge, at an Initial Appearance hearing, FORCE counsel upon a defendant without ever have engaged in an 18 U.S.C § 3006(A) inquiry?
3. Can a magistrate judge, at an Initial Appearance hearing, FORCE counsel upon a defendant who from the first instance FIRED said counsel, and Continually rejected the courts attempts to FORCE counsel upon him?

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. 22-11733

United States v. MICHAEL DAVID BEITER, JR.

Case No. 0:11-CR-60273-WPD

There are no other proceedings in state or federal trial or appellate courts.

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APPENDIX 11 United States v. Gabriel Jimenez-Antunez, 820 F.3d 1267 (11th Cir 2016), Opinion from the Eleventh Circuit

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Farella v. California, 422 U.S. 806, 807, 95 S.Ct. 2525, 45 L.Ed. 2d 562 (1975)	PASSIM
Johnson v. Zerbst, 304 U.S. 458, 463, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938)	PASSIM
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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

[] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix 1 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 2 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 August 30, 2023.

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: October 17, 2023, and a copy of the order denying rehearing appears at Appendix 8.

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. § 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. A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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

"In all criminal proceedings, 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 ascertained by law, and to be informed of the nature of the accusation; to be confronted with the witnesses in his favor, and to have the assistance of counsel for his defense."

18 U.S.C. § 3066 (A) provides: "(a) Choice of plan. Each United States district court, with the approval of the Judicial Council of the circuit, shall place in operation throughout the district a plan for furnishing representation for any person financially unable to obtain adequate representation in accordance with this section... Each plan shall provide the following:

(1) Representation shall be provided for any financially eligible person who --

(H) is entitled to appointment of counsel under the Sixth Amendment of the Constitution

STATEMENT OF THE CASE

On May 9, 2022, Mr. Beiter, Jr. filed a Motion to Correct the Record in the district court (see Appendix 3). Said Motion sought to have the court record reflect the fact that the Federal Public Defender's office NEVER represented Mr. Beiter, Jr., being FIRED from the first instance, and that if the court record reflected that the Federal Public Defender's office did represent Mr. Beiter, Jr., it did so illegally.

On May 10, 2022, the district court denied Mr. Beiter, Jr.'s Motion to Correct the Record (see Appendix 2).

On May 20, 2022, Mr. Beiter, Jr. filed a timely Notice of Appeal (ECF NO. 941) and subsequently filed his Initial Brief on appeal with the Eleventh Circuit on September 21, 2022 (see Appendix 4).

On February 2, 2023, the government filed its Motion for Summary Affirmance against Mr. Beiter, Jr.'s Initial Brief (see Appendix 5).

On February 24, 2023, Mr. Beiter, Jr. filed a Reply to the government's Motion for Summary Affirmance (see Appendix 6).

On August 30, 2023, the Eleventh Circuit issued its Opinion, denying Mr. Beiter, Jr.'s relief (see Appendix 7).

On September 11, 2023, the Petitioner filed a Petition for Rehearing En Banc (and panel rehearing) (see Appendix 7). Said Petition was denied on October 17, 2023 (see Appendix 8).

REASONS FOR GRANTING THE PETITION

This Court has both the authority and the oath bound Constitutional duty, to provide a BRIGHT LINE guidance that will prevent the lower court's from disavowing this Court's jurisprudence, as well as its own Circuit panel precedent rule regarding binding precedent. For if this Court takes no action then any defendant who has an Initial Appearance hearing at the Eleventh District, can be assured that Supreme Court precedent, Eleventh Circuit binding precedent and 18 U.S.C. § 3006 (A), have no legal force or effect whatsoever, ensuring the following:

1. Counsel can be FORCED upon a defendant who never waives any rights, particularly the right to assistance of counsel;
2. Counsel can be FORCED upon a defendant even if the defendant FIRES said counsel from the first instance and thereafter;
3. Counsel can be FORCED upon a defendant without any 18 U.S.C. § 3006 (A) inquiry whatsoever before the counsel was FORCED;
4. The case discovery can be sent directly to FIRED counsel that was FORCED upon a defendant, ensuring that the defendant cannot access discovery but through FIRED counsel.

This Court, at three distinct cases, has laid forth Congressional intent with regards to the Sixth Amendment's

right to assistance of counsel to wit—

1. Johnson v. Zerbst, 304 U.S. 458, 463 58 S.Ct. 1019, 82 L.Ed. 1461 (1938);

Holding that, "[T]he 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." (emphasis added)

2. Faretta v. California, 422 U.S. 806, 807, 95 S.Ct 2525, 45 L.Ed. 2d 562 (1975);

Holding that, "[W]hen a defendant 'CHOSES' to have a lawyer manage and represent his case, law and tradition may allocate to 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 unwarranted counsel, 'represents' the defendant only through a tenuous 'UNACCEPTABLE' legal fiction. 'UNLESS' the accused '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 OWN DEFENSE.'" (emphasis added)

3. United States v. Gonzalez-Lopez, 548 U.S. 140, 144, 147, S.Ct. 2557, 165 L.Ed. 2d 409 (2006);

Holding that, "[a] trial court's erroneous deprivation of a criminal defendant's 'CHOICE' of counsel entitles him to a reversal of his conviction." (emphasis added)

The Eleventh Circuit has also laid forth both Supreme Court and Congressional intent with regards to the Sixth

Amendment's right to assistance of counsel, to wit-

1. United States v. Gabriel Jimenez-Antunez, 820 F.3d 1267 (11th Cir 2016) (see Appendix II)

Holding that, '[t]he denial of the right to counsel of choice is a structural error, Gonzalez-Lopez, 548 U.S. at 150.' Also holding that, '[t]he Sixth Amendment right to counsel of 'CHOICE' means that a defendant has the right to 'fire his retained... lawyer... for any reason or [for] no reason' (alterations in original) (quoting Rivera-Corona, 618 F.3d at 990).'
(emphasis added). Also holding that, '[a] defendant who has retained counsel has the absolute right to dismiss retained counsel for good cause 'OR NO CAUSE WHATSOEVER'', at 820 F.3d 1267 (emphasis added). And as well holding that, '[A] defendant exercises the right to choice of counsel when he moves to dismiss retained counsel, 'REGARDLESS OF THE TYPE OF COUNSEL HE WISHES TO ENGAGE AFTERWARD.'; at 820 F.3d 1271. (emphasis added)

The Eleventh Circuit has also laid forth that its decisions are bound to the court's panel precedent rule, to wit-

1. United States v. Billir, 938 F.3d 1181, 1198 (11th Cir 2019)

Holding that, '[t]his court is bound by a prior-panel decision "regardless of whether that later panel believes the prior panel's opinion to be correct."'

2. United States v. Golden, 854 F.3d 1256, 1257 (11th Cir 2017)

Holding that, '[t]he prior precedent rule applies even if the prior precedent is arguably flawed.', as well as, '[t]he prior panel precedent rule applies even if there is "a perceived defect in the prior panel's reasoning or analysis as it relates to the law in existence at that time."'

Here, at an Initial Appearance hearing, a defendant's Constitutional rights under the Sixth Amendment were clearly violated, only to have the Circuit Court in a concerted effort,

ignore and thus disavow the Constitution, this Court's jurisprudence, and even its own binding precedent via its panel precedent rule. For example, as the transcripts of the Initial Appearance hearing (see Appendix 10) both reveal and reflect:

- A. No inquiry into the eligibility of counsel, as required by 18 U.S.C. § 3006(A)(a)(i)-(2), was ever performed by magistrate Judge Robin S. Rosenbaum (now seated at the Eleventh Circuit), before she FORCED counsel upon the defendant;
- B. Mr. Beiter, Jr. NEVER waived any of his rights, including but not limited to the right to assistance of counsel;
- C. Mr. Beiter, Jr. filed a Notice of Fraud into the case for the continuing attempts to FORCE counsel upon himself without his permission, consent, or consent by assent. (See Appendix 9);
- D. The magistrate judge, Robin S. Rosenbaum, acknowledged that Mr. Beiter, Jr. 'FIRE'D the attempts to force counsel upon himself (See Appendix 10, page 6, lines 22-24);
- E. The Federal Public Defender's office acknowledged being 'FIRE'D by Mr. Beiter, Jr., and that they were 'not his lawyer,' (See Appendix 10, page 23, lines 22-25);
- F. After both the court and the Federal Public Defender's office acknowledge the firing of the Federal Public Defender's office, counsel would be FORCED upon Mr. Beiter, Jr. anyway, and all discovery would be sent to the Federal Public Defender's office, making it impossible for Mr. Beiter Jr. to even attempt a defense, but through FIRE'D counsel.

As Mr. Beiter, Jr.'s Initial Brief (ECF No. 25), Reply to the government's Motion for Summary Affirmance (ECF No. 35), and his Petition for Rehearing; Rehearing En Banc (ECF No. 39) point out in exhaustive detail, neither the District court nor the Appellate court offered a single citing of precedent, not one, that would prove that Zerbst, Fareta, Gonzalez-Lopez, Jimenez-Antunez, and even 18 U.S.C. § 3006(A), have in any manner whatsoever, been abrogated. It has been well stated in law that, "Where law ends, tyranny begins." *Merritt v. Welsh*, 26 L.Ed. 896, 104 U.S. 694 (1882), and rather than abide by the Constitution, this Court's jurisprudence and its own binding precedent via its panel precedent rule, the lower courts have failed and refused to abide by the law, causing serious violations of Mr. Beiter, Jr.'s constitutional rights via the Bill of Rights.

This entire matter is predicated upon one single Initial Appearance hearing (see again, Appendix 10) and the lower courts have continually failed and refused to apply binding law, and thus have dockets that claim to purport that Mr. Beiter, Jr. was "represented" by the Federal Public Defender's office, while the facts and the law prove beyond ANY and ALL reasonable doubt, said counsel was FIRED in the first instance and perpetually. That the court records would thus reveal that counsel was FORCED upon Mr. Beiter, Jr. even so, is also proven beyond ANY and ALL reasonable doubt.

Though thorough analysis is warranted concerning the Constitutional and statutory violations that clearly took place at the Initial Appearance hearing, even a cursory review leaves no legal doubt that Mr. Beiter, Jr.'s Constitutional

were violated by the lower courts, continually, which leaves any "defendant" of and from the Eleventh Circuit/District, in a dire position of having life, liberty and the pursuit of happiness stripped from them, the law and the Constitution having zero force and effect.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "N. S. R.", is written over a horizontal line.

Date: October 25, 2023