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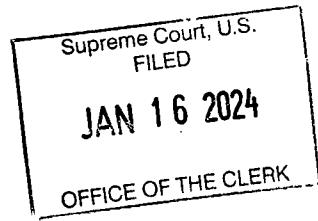
No. 23-6993

~~ORIGINAL~~

IN THE
SUPREME COURT OF THE UNITED STATES

LEON AKINS - *Petitioner*
(Your Name)

VS.



STATE OF FLORIDA,
SECRETARY DEPT. OF CORR. RICKY DIXON - *Respondent(s)*

on

PETITION FOR A WRIT OF CERTIORARI

to

UNITED STATES COURT OF APPEALS ELEVENTH CIRCUIT
(Name of Court that last ruled on merits of your case)

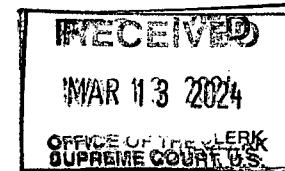
PETITION FOR A WRIT OF CERTIORARI

LEON AKINS

(Your Name)

F.D.O.C. #N23941

BLACKWATER RIVER CORRECTIONAL FACILITY
5914 JEFF ATES ROAD
MILTON, FLORIDA 32583



QUESTION(S) PRESENTED

**DOES THE ELEVENTH CIRCUIT COURT OF APPEALS DECISION
CONFLICT WITH THIS COURTS DECISION IN DUSKY V. UNITED
STATES, 362 US 402 (1960) AND DROPE V. MISSOURI, 420 U.S. 162 (1975)
ON THE MATTER OF WHAT QUALIFIES AS A RECORD SUFFICIENT
TO SUPPORT A FINDING OF MENTAL COMPETENCY TO STAND
TRIAL?**

LIST OF PARTIES

- [X] 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:

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APPENDIX E- 1D17-4038 Appeal from summary denial. First DCA reversed and remanded for an evidentiary hearing in Ground 2 of Akins motion raising the competency issue raised here on 5-25-18

APPENDIX F- Denial of Ground 2 of Motion for Postconviction Relief after evidentiary hearing on February 4, 2019

APPENDIX G- 1D19-472 Appeal from denial of Motion for Postconviction Relief affirmed on 8-10-20

APPENDIX H- Writ of Habeas Corpus to US District Court Northern District 4:20-cv-00346-MW-HTC Filed 7-2-20 Denied on 2-28-23

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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 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 I to the petition and is;

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[X] is unpublished.

JURISDICTION

[X] For cases from **Federal Courts**:

The date on which the United States Court of Appeals decided my case was OCTOBER 17, 2023.

[X] 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. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves a question of mental competency as raised in the state court as a claim of ineffective assistance of counsel for failing to properly have Petitioner's competency evaluated. The constitutional provisions involved are the 5th, 6th, and 14th Amendments implicating due process and the right to effective assistance of counsel.

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.

Amendment 14

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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 deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Leon Akins was charged in Leon County's Second Circuit Court with First Degree Murder (Count 1) and Attempted First Degree Murder (Count 2) on 9-4-12:

1. Leon County Clerk case number 2012-cf-2887- Judgement of guilt entered on 11-19-14. Akins sentenced to Life in Count 1 and 30 years in Count 2
2. Direct appeal First DCA docket number 1D14-5552 Per curiam affirmed on 12-9-15
3. Motion for Post Conviction Relief filed 12-9-16
4. Denial of Motion for Postconviction Relief 8-17-17 Rehearing denied 9-6-17
5. 1D17-4038 Appeal from summary denial. First DCA reversed and remanded for an evidentiary hearing in Ground 2 of Akins motion raising the competency issue raised here on 5-25-18
6. Denial of Ground 2 of Motion for Postconviction Relief after evidentiary hearing.
7. 1D19-472 Appeal from denial of Motion for Postconviction Relief affirmed on 8-10-20
8. Writ of Habeas Corpus to US District Court Northern District 4:20-cv-00346-MW-HTC Filed on 7-2-20; Denied on 2-28-23
9. Eleventh Circuit Docket number 23-11031 - Motion for Certificate of Appealability in the Eleventh Circuit US Court of Appeals Denied 10-17-23

Petitioner raised in his Florida Rule 3.850 motion that his trial counsel was ineffective for failing to have him evaluated for competency and that he proceeded to trial even though he was incompetent and unable to assist in his own defense in Ground 2 of his Motion for Postconviction Relief. The motion was timely. Ultimately, the Second Circuit Court for Leon County held an evidentiary hearing. Attorney Baya Harrison was called by the State to introduce an email and testified

that the letter proves that Petitioner was evaluated and found competent. Akins appealed this decision in the state's First District Court of Appeals and the lower court's decision was affirmed without an opinion. Attorney Michael Ufferman filed a writ of habeas corpus pursuant to Title 28 USC 2254 on behalf of Petitioner raising this issue, which was denied by the United States District Court for the Northern District of Florida. Attorney Ufferman filed his notice of appeal to the 11th Circuit Court of Appeals for the United States. Petitioner filed his own *pro se* motion for Certificate of Appealability after counsel chose not to make a specific argument for COA. The 11th Circuit denied the COA in a written opinion issued on October 17, 2023. Petitioner now moves for the issuance of a Writ of Certiorari in timely and proper manner.

REASONS FOR GRANTING THE PETITION

Supreme Court Rule 10(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

The United States Court of Appeals for the Eleventh Circuit found that reasonable jurists would not debate the district court's decision to deny an evidentiary hearing. Akins was not afforded a full and fair adjudication of his issue in the state court where he was never evaluated by a mental health expert or an expert

on the types of brain injuries that would cause cognitive deficiencies. Akins maintains that he was not evaluated and that he was not competent to stand trial. The Eleventh Circuit found that: Because the state court record squarely refuted any claim that counsel failed to ensure that Akins received mental health evaluation, the district court properly declined to hold an evidentiary hearing.

For an impaired defendant "to stand trial, consistent with notions of due process, he must be able to satisfy the ordinary competency standard: that is, he must be able to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceeding against him."

Id. (citing *Dusky v. U.S.*, 362 U.S. 402, 80 S. Ct. 788, 4 L. Ed. 2d 824 (1960); *U.S. v. Rodriguez*, 799 F.2d 649, 654 (11th Cir. 1986); *U.S. v. Mota*, 598 F.2d 995, 998 (5th Cir. 1979))

In *U.S. v. Duhon*, 104 F. Supp. 2d 663 (W.D. La. 2000), the court interpreted a post-*Dusky* case, *Drope v. Missouri*, 420 U.S. 162, 95 S. Ct. 896, 43 L. Ed. 2d 103 (1975), as adding a new prong to the *Dusky* standard, namely, that a defendant must be able to "assist in preparing his defense." *Id.* at 670 (citing *Drope*, 420 U.S. at 171) (emphasis added). In *Drope*, however, the Supreme Court restated the *Dusky* standard verbatim. *Drope* 420 U.S. at 172 ("Accordingly, as to federal cases, we have approved a test of incompetence which seeks to ascertain whether a criminal defendant 'has sufficient present ability to consult with his lawyer with a reasonable

degree of rational understanding-and whether he has a rational as well as factual understanding of the proceedings against him."") (quoting *Dusky*, 362 U.S. at 402). Thus, nothing in *Drope* supports the *Duhon* court's engrafting on the *Dusky* standard a defendant's ability to "assist in *preparing* his defense." See *U.S. v. Merriweather*, 921 F. Supp. 2d 1265, 1301-02 & n.52 (N.D. Ala. 2013) (rejecting the *Duhon* court's interpretation of *Drope* and stating, "Nowhere in *Drope* did the Supreme Court modify or replace the *Dusky* Standard, so *Dusky* remains the standard that this court must follow today.").

In making a competency determination, a "court may consider the testimony of medical experts to establish facts; however, it may not abdicate its duty to reach the ultimate determination of a defendant's competency to stand trial." *Merriweather*, 921 F. Supp. 2d at 1303. "Not every manifestation of mental illness demonstrates incompetence to stand trial; rather, the evidence must indicate a present inability to assist counsel or understand the charges. Similarly, neither low intelligence, mental deficiency, nor bizarre, volatile, and irrational behavior can be equated with mental incompetence to stand trial." *Medina v. Singletary*, 59 F.3d 1095, 1107 (11th Cir. 1995) (citations omitted). In *U.S. v. Hogan*, 986 F.2d 1364 (11th Cir. 1993) the Eleventh Circuit affirmed the trial court's finding that "the minor defects in Hogan's cognitive abilities did not render him incapable of providing rational assistance to his attorney." Id. at 1373. The Eleventh Circuit

commented, "[e]ven perfectly competent defendants often do not fully comprehend the intricacies of some of the defensive theories offered by their lawyers. That level of comprehension is not a requirement of competency. All that is required is that [the defendant have] a rational as well as a factual understanding of the proceedings against him and [have] sufficient present ability to consult with his attorney with a reasonable degree of rational understanding." Id. See also *Merriweather*, 921 F. Supp. 2d at 1307 n.62 ("The *Dusky* standard, as commentators have noted, does not require that a defendant have a high level of ability or performance. After all, a defendant surely does not have to be as intelligent and reasonable as his lawyers to be competent to stand trial.") (citing Note, *Incompetency to Stand Trial*, 81 Harv. L. Rev. 454, 458 (1967))

The statutory framework for determining competency is found at *Title 18, United States Code, Section 4241*, which provides:

- (a) ...
- (b) Psychiatric or psychological examination and report.--Prior to the date of the hearing, the court may order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247 (b) and (c).

Similarly, Florida Rule of Criminal Procedure 3.211 provides that the experts shall consider and include in their report: “the prisoner's capacity to understand the adversary nature of the legal process;... and any other factors considered relevant by the experts and the court as specified in the order appointing the experts.” It is the duty of the trial court to determine what weight should be given to conflicting testimony. *Alston v. State*, 894 So. 2d at 54 (quoting *Mason v. State*, 597 So. 2d 776, 779 (Fla. 1992)). “The reports of experts are 'merely advisory to the [trial court], which itself retains the responsibility of the decision.'” *Id.* Thus, when the experts' reports or testimony conflict regarding competency to proceed, it is the trial court's responsibility to consider all the relevant evidence and resolve such factual disputes. *Id.*; *see also Hardy*, 716 So. 2d at 764.

Here, there was no expert testimony or reports filed or reviewed by the state court. Therefore, the state court record does not “squarely refute any claim that counsel failed to ensure that Akins received mental health evaluation, and the district court did not properly decline to hold an evidentiary hearing. The procedural history of this case, if replicated, would allow a denial of due process to mentally incompetent criminal defendants by setting the precedent of a defense attorney testifying as to a defendant's competency without an expert witness or expert report being entered into the record.

The question of great importance presented here is: What qualifies as a record sufficient to support a finding of mental competency to stand trial?

As a subsidiary questions included within:

- (a) Is trial counsel's testimony that the criminal defendant is competent, sufficient record support to establish competence?; and
- (b) Once competency is in question, can hearsay establish competency?
- (c) At what point is due process violated when a criminal defendant's competency is in question and no expert testimony, expert report, or competency determination is made other than trial counsel's personal opinion?

Generally, the remedy for a trial court's failure to conduct a proper competency hearing is for the defendant to receive a new trial, if deemed competent to proceed on remand. *Pate v. Robinson*, 383 U.S. 375, 386-87, 86 S. Ct. 836, 15 L. Ed. 2d 815 (1966) A new trial is not always necessary where the issue of competency was inadequately determined prior to trial; a retroactive determination of competency is possible in Florida courts. However, as noted previously, this Court has cautioned that determining competency to stand trial retrospectively is inherently difficult, even under the most favorable circumstances. (citing *Drope*, 420 U.S. at 183)

CONCLUSION

This Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

/s/  Akins

Date: 1-15-24

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

LEON AKINS - Petitioner

VS.

**STATE OF FLORIDA,
SEC. DEPT. OF CORR., RICKY DIXON - Respondent(s)**

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**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE
DISCLOSURE STATEMENT**

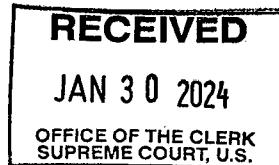
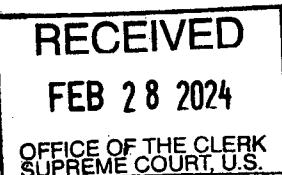
The following certificate of interested persons and corporate disclosure statement is provided pursuant to:

Dixon, Ricky D.: Secretary, Florida Department of Corrections

Moody, Ashley B.: Attorney General, State of Florida

I hereby certify that no publicly traded company or corporation has an interest in the outcome of this appeal.

/S/ *Leon AKINS*
Leon Akins N23941



No. _____

**IN THE
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