

No. 17-6390
CAPITAL CASE

**In the
SUPREME COURT of the UNITED STATES**

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MICHAEL WAYNE EGGERS,
Petitioner,
v.

STATE OF ALABAMA,
Respondent.

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*ON PETITION FOR A WRIT OF MANDAMUS TO
THE ELEVENTH CIRCUIT COURT OF APPEALS*

**RESPONSE TO PETITION FOR WRIT OF
MANDAMUS**

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February 8, 2018

**CAPITAL CASE
QUESTIONS PRESENTED
(Restated)**

1. Should a writ of mandamus issue where the Eleventh Circuit Court of Appeals “erroneously granted a next of friend applicant limited right to appeal” the District Court for the Northern District of Alabama’s ruling that Michael Wayne Eggers was competent to dismiss his appointed attorneys and waive his appeals?

2. Should a writ of mandamus issue where the Eleventh Circuit Court of Appeals has refused to “timely rule upon an emergency *ex parte* motion for an immediate ruling on the sole issue before the court:” whether Mr. Eggers is competent?

3. Should a writ of mandamus issue compelling the Eleventh Circuit Court of Appeals to dispose of Mr. Eggers’ case?

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EGGERS' PETITION IS MOOT

Eggers' petition to this Court seeks only one form of relief: a writ of mandamus compelling a panel of judges from the Eleventh Circuit Court of Appeals to "resolve the issue of Eggers [sic] competency and rule upon Eggers [sic] outstanding [motion for a timely ruling]." (Eggers' Petition, pp. "cover", "H-12".) To quote Mr. Eggers, "the issue upon which Eggers has requested an immediate ruling is the issue of Eggers [sic] competence, whether or not the U.S. District Court competency ruling is clearly erroneous." (Eggers' Petition, p. "H-6".) However, as set forth below, because the Eleventh Circuit panel has already affirmed the District Court's ruling, the issues presented in this petition are moot.

I. EGGERS HAS OBTAINED THE RELIEF SOUGHT IN THIS PETITION.

A. Procedural Posture

In his initial efforts seeking relief under 28 U.S. C. §2254, Eggers was represented in the Federal District Court for the Northern District of Alabama by Leslie Smith and John Palombi, attorneys with the Federal Defenders for the Middle District of Alabama. On November 25, 2015, Judge Scott Coogler, presiding over case no. 2:13-cv-01460-LSC, denied habeas relief and denied a certificate of appealability. (Doc. #134.) On December 23, 2015, Ms. Smith and Mr. Palombi filed a motion for

reconsideration of the District Court's denial of habeas corpus relief. (Doc. #137.) That motion was denied on January 8, 2016. (Doc. #138.)

Subsequently, Mr. Eggers filed motions in District Court expressing his desire to refrain from appealing the dismissal of his habeas petition and to terminate appointed counsel's representation. (Docs. #136, 139.) Appointed counsel then moved for a competency determination. (Doc. #140.) On February 4, 2016, the District Court extended the deadline for taking an appeal and granted the request for a competency hearing. (Doc. #141.) On March 9, 2016, appointed counsel filed a motion in the Eleventh Circuit Court of Appeals, seeking a "protective appeal" and a limited remand to the District Court for a hearing to determine Mr. Eggers' competency to dismiss his appeal.

That motion was granted and on April 7, 2016, and the Eleventh Circuit stayed the appeal (appeal no. 16-10785) and remanded the proceeding to the District Court for a competency hearing. The District Court held the competency hearing on April 8, 2016. At that hearing, the District Court heard testimony from appointed counsel's expert, Dr. Kenneth Benedict, the State's expert, Dr. Glen King, and from Mr. Eggers himself.

After hearing the testimony, and after the submission of post-hearing briefs by appointed counsel, Mr. Eggers, and the State, Judge Scott Coogler found that:

“Eggers has made a rational choice to dismiss his appointed counsel and abandon his appeal. Eggers has the right to make that decision, provided he is competent to do so, and the evidence indicates that he is.”

Eggers v. State, No. 2:13-CV-1460-LSC, 2016 WL 5339686, at *14 (N.D. Ala. Sept. 21, 2016). Accordingly, the court ruled that “Eggers's pending motions to withdraw his appeal, dismiss appointed counsel, and proceed to execution (docs. 136 and 139) are hereby **GRANTED.**” *Id.* (emphasis in original.)

While the District Court determined that Mr. Eggers was competent and that his habeas proceedings were at an end, Eggers’ appointed counsel retained limited standing to appeal the narrow question of whether the District Court’s competency determination was “clearly erroneous.” *Ford v. Haley*, 195 F.3d 603, 617, 624 (11th Cir. 1999). On October 25, 2016, appointed counsel filed motion for a certificate of appealability stating their intent to pursue a limited appeal of the competency determination. The District Court denied a certificate of appealability on October 25, 2016. (Doc. #180.) On October 27, 2016, appointed counsel filed their notice of

appeal from the competency hearing, which was designated appeal no. 16-16805. (Doc. #181.)

Despite the denial of a certificate of appealability, on November 28, 2016, the Eleventh Circuit Court of Appeals entered an order consolidating the appeal nos. 16-10785 and 16-16805, and ordered briefing on “the district court’s competency ruling.” (Exhibit “A”, p. 3.)

On July 17, 2017, during the pendency of this limited appeal, Eggers filed a *pro se* motion for an immediate ruling on the issue of his competency.¹ Noting that it had not given him leave to file additional *pro se* pleadings, the Eleventh Circuit returned that motion to him. (Attached hereto as Exhibit “B”.) In his petition to this Court, Eggers objects to the Eleventh Circuit’s refusal of his motion, arguing that the Eleventh Circuit was taking too long to rule and had “no right to hold Eggers [sic] and his case hostage” and that the court had “a duty to resolve the issue of Eggers [sic] competency and rule upon Eggers outstanding motions.” (Eggers’ Petition, p. “H-12”.)

On December 5, 2017, the Eleventh Circuit Court of Appeals issued its opinion in consolidated appeals no. 16-10785 and 16-16805, *Michael Wayne Eggers vs. The State of Alabama*. (Attached hereto as Exhibit “C”.)

¹ This was the motion referred to in Eggers’ second question presented.

Finding that “the district court did not clearly err in finding Eggers competent to abandon his appeals, dismiss counsel and proceed to execution,” the Eleventh Circuit found that “there is no longer any live controversy between Eggers and the respondent.” *Id.* at 43.

On December 26, 2017, former counsel for Mr. Eggers, the Federal Defenders for the Middle District of Alabama, filed an application for rehearing en banc in the Eleventh Circuit Court of appeals. (Exhibit “D”.) That application, filed on December 26, 2017 was not served on the State but was timely-filed under Rule 35-2 of the Local Rules of the Eleventh Circuit Court of Appeals. Subsequently, Mr. Eggers has filed a *pro se* response. (Exhibit “E”.) In this response, Mr. Eggers strongly contests former counsel’s claims and states that “Eggers’ waiver and pleadings are not ambiguous,” that “Eggers has relinquished all appeals,” that “no conflicting ambiguous evidence exists about Eggers’ decision to waive appeals,” and that “Eggers fully understands the significance and consequences of his waiver of appeals.” (Exhibit “E”, pp. 4, 9.) Eggers’ decision is motivated by his belief that “being executed, being freed from unlawful confinement in a 7x10 [cell] is not sad, it is relief.” *Id.* at 11. On February 7, 2018, the Eleventh Circuit denied former appointed counsel’s motion for en banc rehearing. (Exhibit “F”.)

Finally, on November 3, 2017, during the pendency of the limited appeal on competency, Eggers filed a “Renewed Motion to Expedite Execution” in which he again criticized the Eleventh Circuit for not ruling on the issue of his competency. (Exhibit “G”.) Eggers’ motion laid out the basis for his belief that the Eleventh Circuit had a duty to speedily rule on the competency issue and asked the Alabama Supreme Court to “enter an execution date.” *Id.* at 3. On January 23, 2018, after the issuance of the Eleventh Circuit’s decision affirming the District Court, the Alabama Supreme Court entered an order setting an execution date for Mr. Eggers on March 15, 2018. (Exhibit “H”.)

B. Eggers has Obtained the Relief he Sought.

As shown in above, Eggers has obtained the ruling he sought from the Eleventh Circuit. The Eleventh Circuit has correctly determined that the District Court did not “clearly err in finding Eggers competent to abandon his appeals, dismiss counsel and proceed to execution.” (Exhibit E, at 43.) Consequently, “there is no longer any live controversy between Eggers and the respondent” and Eggers’ petition for a writ of mandamus should be dismissed as moot. *Id.* at 43.

CONCLUSION

For the foregoing reasons, this Court should dismiss Eggers' petition for writ of mandamus.

Respectfully submitted,

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