

No. 17-8105
CAPITAL CASE

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

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MICHAEL WAYNE EGGERS,
Petitioner,

v.

STATE OF ALABAMA,
Respondent.

-----◆-----
*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT*

**BRIEF IN OPPOSITION TO PETITION FOR WRIT OF
CERTIORARI**

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**CAPITAL CASE
QUESTION PRESENTED
(Restated)**

1. Whether the Eleventh Circuit correctly determined that the district court's factual finding that Mr. Eggers was competent to waive his appeals was not "clearly erroneous."

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INTRODUCTION

After his habeas petition was denied, Michael Wayne Eggers discharged his appointed attorneys, waived his appeals, and sought to proceed with his execution. Before permitting him to do so, the district court took careful pains to conduct a full competency hearing, providing both former appointed counsel and Eggers the opportunity to present evidence. After considering all of this evidence, the district court made the factual finding that Eggers was competent to waive his appeals and seek and expedited execution.

Appointed counsel do not seriously contest the district court's factual finding that Eggers is competent, nor do they point to any portion of the district court's findings that are clearly erroneous. Instead, appointed counsel attempt to change the issue on appeal, arguing that the real issue in this case is that Eggers wants to represent himself, but does not want to be executed. But appointed counsel's argument is not certworthy for several reasons. First, appointed counsel do not have standing to assert new claims on behalf of Eggers, their former client, outside of the limited context of challenging the district court's competency determination. Second, even if appointed counsel could assert this claim, it is factually wrong: Eggers has not pursued pro se litigation, but has consistently sought to have the Alabama Supreme Court set his execution date since his habeas petition was denied. When questioned by the district court both during and after

the competency hearing about whether he wanted to pursue his appeals *pro se*, Eggers declined and made clear that “I simply withdraw and waive all future appeals in their entirety.” *Eggers v. State*, 212 F. Supp.3d 1130, 1148 (N.D. Ala. 2016). And consistent with his desire, since the district court found Eggers competent to discharge his counsel and waive his appeals, Eggers has repeatedly asked the Alabama Supreme Court to set his execution date.

Appointed counsel’s convoluted attempt to cloud the issue with a novel argument despite evidence of Eggers’ clear intent to expedite his execution does not create a certworthy issue. More importantly, appointed counsel’s attempt to create a new issue further establishes that the district court correctly found that Eggers is competent, and certainly included no clear error. Thus, certiorari should be denied.

STATEMENT OF THE CASE

A. The Facts of Eggers' Crime.

Eggers is on Alabama's Death Row for the murder of Bennie Francis Murray, a former employer, just after Christmas in 2000. Eggers has never denied killing Ms. Murray, and admitted to many of the details of her murder during his trial. In its opinion on direct appeal, the Alabama Court of Criminal Appeals described Eggers' account of the attack, which took place while Ms. Murray, acting as a good Samaritan, was driving Mr. Eggers to find his car:

Eggers then asked her if she was "joining everyone else on the fuck Mike bandwagon." (C. 404.) At that point, Eggers said, Francis "backhanded" him and he "let go ... [and] just started hitting her." (C. 404.) Eggers beat Francis with his fists until she was unconscious, at which point he pushed her as far against the driver's side door of the pickup truck as he could, and drove down a nearby dirt road. When Francis started to regain consciousness—"[s]he was making noises and stuff like that" (C. 406)—Eggers stopped the truck and pushed her out of the cab of the truck onto the road. Eggers got out of the truck and started cursing at Francis and kicked her several times in the head with the steel-toed boots he was wearing. Eggers then got back in the truck, drove toward the end of the road and turned around, but decided to stop where he had left Francis because he wanted to make sure she was dead and "wasn't going to stay out there suffering." (C. 406.) When Eggers stopped, Francis was starting to regain consciousness so he kicked her again and choked her with his hands "to make sure she was dead." (R. 406.) Eggers again said that he "didn't want to leave her out there suffering." (C. 406.) Eggers then dragged Francis into nearby woods where she could not be seen from the road and, because he believed she was still alive at that point, he put a tree limb on her throat and stood on it in an effort to kill her.

Eggers v. State, 914 So.2d 883, 888-890 (Ala. Crim. App. 2004).

B. The Proceedings regarding Mr. Eggers' Competency and the Waiver of his Habeas Appeals.

After the conclusion of state court proceedings, Eggers sought relief under 28 U.S. C. §2254. Initially, 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 (hereinafter “former counsel”) 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 the district court expressing his desire to refrain from appealing the dismissal of his habeas petition and to terminate former counsel’s representation. (Docs. #136, 139.) Former counsel then moved for a competency determination. (Doc. #140.) On February 4, the district court extended the deadline for taking an appeal and granted the request for a competency hearing. (Doc. #141.) On March 9, former counsel filed a motion in the Eleventh Circuit, 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, the Eleventh Circuit stayed the appeal (appeal no. 16-10785), remanding the proceeding for a competency hearing which was held on April 8. At that hearing, the district court heard testimony from former 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 former counsel, Mr. Eggers, and the State, the district court specifically addressed the question of whether Mr. Eggers wished to proceed with any appeals in a pro se capacity. (Doc. #160.) Eggers response was clear and unequivocal: "Eggers simply withdraws and waives all future appeals in their entirety." (Doc. #161.)¹ The district court considered the "exceedingly full record"² and 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."

¹ After expressly stating that "Nothing below voids the waiver above", Eggers response goes on to address, among other things, the fact that he blames the course of his life, including his murder of Bennie Frances Murray, on his experiences as a confidential informant at an early age. However, he unequivocally states his intent: "Let's move forward eliminating any further undue delays in my execution providing the people with justice long overdue. Nobody else is to blame, no one should feel guilty granting my request and prayer for relief. The decision was mine alone to make. Please do not make me beg any more. I simply withdraw and waive all future appeals in their entirety." (Doc. #161 at 11.)

² *Eggers v. Alabama*, 876 F.3d 1086, 1102 (11th Cir. 2017).

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, under Eleventh Circuit precedent, Eggers’ former 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, former 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, former counsel filed their notice of appeal from the competency hearing, which was designated appeal no. 16-16805. (Doc. #181.)

On November 28, the Eleventh Circuit consolidated the appeals and ordered briefing on “the district court’s competency ruling.” (Eleventh Cir. Order, Nov. 28, 2016) 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. Noting that it had not given him leave to file additional *pro se* pleadings, the Eleventh Circuit returned that motion to him. On October 25, Eggers filed a petition for writ of

mandamus in this Court, 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”.) Eggers’ mandamus petition was eventually mooted by the Eleventh Circuit’s decision discussed below.

On December 5, the Eleventh Circuit affirmed, holding that “the district court did not clearly err in finding Eggers competent to abandon his appeals, dismiss counsel and proceed to execution,” and that “there is no longer any live controversy between Eggers and the respondent.” App. at 15a.

On December 26, former counsel filed an application for rehearing en banc. That application 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 “A”.) In this response, Mr. Eggers strongly contested 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 “A”, pp. 4, 9.) Indeed, Eggers takes former counsel to task for “deliberately fail[ing] to cite portions [of documents] where Eggers provided clear and unequivocal waivers” of his right to appeal. *Id.* at p. 6. Further, Eggers criticized

former counsel for “falsely claiming” that Eggers’ pleadings “prove Eggers intent to continue litigating his appeal as a pro se litigant, misinterpreting the proceedings.” *Id.* at 8. Mr. Eggers also explained that he “has not filed a Rule 60(b) motion in the District Court, which would substantiate [former counsel’s] claim that Eggers is pursuing appeals.” *Id.* at 9. Eggers’ decision to abandon his appeals 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 counsel’s motion for *en banc* rehearing. App. 16a.

C. Eggers’ Motions to Expedite his Execution

Contemporaneous with the federal court proceedings, there were parallel proceedings in the Alabama Supreme Court (hereinafter “ASC”) in which Mr. Eggers sought to expedite his execution. These began on January 11, 2016, when Mr. Eggers first filed a “Waiver/Notification/Motion to Expedite Execution” in which he criticized former counsel, wrote of his unwillingness to delay execution, and asked the ASC to set an execution date. (Exhibit “B”.) Undersigned counsel notified the ASC that federal proceedings remained pending, and requested that no date be set “until such time as the denial of relief on his 28 U.S.C. §2254 petition is made final.” (State’s Response, Jan. 29, 2016.) On November 2, 2016, Mr. Eggers again moved the ASC to set an execution date, and the ASC issued a Show Cause Order, requiring the State to show cause why Eggers’ motion should not be granted.

(Exhibit “C”.) Again, the State responded noting that former counsel’s limited challenge to Mr. Eggers competency remained pending in the Eleventh Circuit of Court of Appeals. (State’s Response, Nov. 29, 2016.)

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 “D”.) 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. (ASC Order, Mar. 2.)

REASONS FOR DENYING THE WRIT

Former counsel’s petition fails to meet this Court’s requirement that there be “compelling reasons” for granting certiorari. Sup. Ct. R. 10. Former counsel’s petition is splitless, heavily fact-bound, and he has not shown that any of the grounds for granting certiorari review set out in Rule 10 exist. The district court properly found that Mr. Eggers was competent to discharge his counsel and waive his appeals, and former counsel’s challenge to that ruling was properly rejected by the Eleventh Circuit. The factual finding that Eggers was competent was a decision particularly

suit for the district court to make, who was able to consider and observe the testimony from both experts and Eggers himself. That decision can be overturned only if it is found to be clearly erroneous. Because former counsel fail to identify any facts within the district court's decision that are clearly erroneous, certiorari should be denied for this reason alone.

Moreover, former counsel have made no genuine effort to show any conflict between that decision and a decision from a state court of last resort, court of appeals, or this Court, including *Whitemore v. Arkansas*, 495 U.S. 149 (1990) or *Rees v. Peyton*, 384 U.S. 312 (1966). Sup. Ct. R. 10. Further, certiorari should be denied because former counsel do not genuinely dispute the district court's finding that Eggers is competent. Instead, former counsel attempt to create a cert-worthy question out of whole cloth by disputing not Mr. Eggers competence, which has been fully litigated below, but his *intent*, which was not at issue in the Eleventh Circuit. Finally, former counsel's standing below was explicitly limited to the narrow issue of competence. That standing rested solely on Eleventh Circuit precedent, rendering this action a poor vehicle to consider the novel, and fact-bound question presented by former counsel. For the reasons set forth below, former counsel's petition is without merit and should be denied.

I. Former Counsel Lacks Standing to Raise the Question Presented.

Former counsel seeks this Court to engage in a fact finding regarding whether Mr. Eggers' explicitly stated desire to cease his appeals is merely a cover for his desire to "litigate his case." (Pet. 18.) However, former counsel entirely fail to make any attempt to demonstrate how they would have standing to pursue this claim. Counsel have, in fact, been terminated by Mr. Eggers. Mr. Eggers competence to terminate them has been firmly established upon an "exceedingly full" record. *Cf. Rees*, 384 U.S. 313 ("Rees' mental competence is of prime importance" when petitioner sought to withdraw petition filed *in this Court*); *Hamilton v. Texas*, 497 U.S. 1016, 1017–18, 110 S. Ct. 3262, 3263, 111 L. Ed. 2d 772 (1990), (Brennan, J. dissenting) (Criticizing denial of a stay where state competency proceeding did not involve cross-examination, psychological testing, or additional evidence regarding inmate's history of mental illness.) Neither *Ford v. Haley*, nor *Rees v. Peyton*, nor *Whitmore v. Arkansas*, nor any precedent of this Court, or any other court, grants a terminated attorney the right to pursue an appeal disputing a competent prisoner's *motives* for terminating him.

Former counsel are not entitled to pursue this action merely because they sincerely wish to or because they allege the issues are important. As this Court has explained:

Most important for present purposes, "next friend" standing is by no means granted automatically to whomever seeks to pursue an action on

behalf of another. Decisions applying the habeas corpus statute have adhered to at least two firmly rooted prerequisites for “next friend” standing. First, a “next friend” must provide an adequate explanation—such as inaccessibility, mental incompetence, or other disability—why the real party in interest cannot appear on his own behalf to prosecute the action.

Whitmore v. Arkansas, 495 U.S. 149, 163 (1990). Mr. Eggers has been found competent and former counsel does not dispute that he is fully able to “appear on his own behalf.” Indeed, since the denial of his habeas petition, Mr. Eggers has frequently appeared on his own behalf in an effort to (1) expedited his execution and (2) prevent former counsel from further involving themselves in the litigation of this matter. Mr. Eggers has made it abundantly clear that he believes that former counsel’s interests are directly opposed to his and his desire that they refrain from further litigation is unequivocal.³ Former counsel make no effort to challenge either the District Court’s competency determination or the Eleventh Circuit’s finding that the District Court’s ruling was not “clearly erroneous.” This Court should not allow former counsel’s attempt to thwart Mr. Egger’s stated desires by indulging their speculation as to what Mr. Eggers’ “true” intentions are. To do otherwise bears “the risk of making the actual defendant a pawn to be manipulated on a chessboard larger than his own case.” *Lenhard v. Wolff*, 443 U.S. 1306, 1312, 100 S. Ct. 3, 7, 61 L. Ed. 2d 885 (1979).

³ “Capital law firms creating inordinate delays to prolong the life of a client housed in a tomb for as many years as they possibly can ... is sad.” (Exhibit A.)

II. Certiorari Should Be Denied because Former Counsel's Supposition about Mr. Eggers' Motives is Demonstrably Incorrect.

In addition to their lack of standing to raise the issue, former counsel are also demonstrably incorrect about Mr. Eggers's supposed desire to engage in further litigation. Mr. Eggers' intentions were made quite clear at the evidentiary hearing.

As the district court observed:

During Eggers's own testimony at the hearing, he explained that if he “wouldn't have [filed the motion to withdraw his appeal] I would be stuck in an appeal with [his appointed counsel] as my representatives, which could go on for years. And the issues which I actually want resolved have never been addressed. Not by this Court.” [*Id.* at 155.] But when the Court then asked him if he wanted the Court to dismiss his counsel and allow him to continue his appeal *pro se*, he denied that he wanted to do that. He then mentioned that his appointed counsel had suggested to him that he file a *pro se* motion for reconsideration of the Court's ruling pursuant to Fed. R. Civ. P. 60(b). He stated that if this Court would reopen his case and consider the arguments he advanced in a *pro se* capacity, not the arguments advanced by his appointed counsel, then he might want to continue with his case *pro se*, but “if you are not going to do that, then there is no reason for me to even proceed *pro se* on appeal because you have given me nothing to appeal except a blanket denial.” [*Id.* at 156.] The Court explained to Eggers that Rule 60(b) motions are not often granted, and that if he filed a Rule 60(b) motion and the Court denied it, he would likely be subject to being executed. Eggers responded that he “absolutely” understood that. [*Id.* at 157.] The Court then asked Eggers if he understood that if he simply terminated his appeal with no Rule 60(b) motion, that he would be subject to being executed, and Eggers stated that he understood.

Eggers v. State, 212 F. Supp. 3d 1130, 1140 (N.D. Ala. 2016), *aff'd in part, appeal dismissed in part*, 876 F.3d 1086 (11th Cir. 2017). Indeed, as noted above, Eggers himself has pointed to his decision not to file a Rule 60(b) motion as a clear

demonstration that he does not intend to pursue any appeal in a *pro se* capacity. (Exhibit A, p. 9.)

Eggers made his intentions clear in pleadings filed since that time. First, in response to a post-hearing inquiry from the district court, he again made it clear that he wished to waive his appeals in their entirety. (Doc. 161.) Second, in his most recent substantive filing—his opposition to former counsel’s application for rehearing—Mr. Eggers again stated that his “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 A, pp. 4, 9.) Certiorari review should not be granted in order to allow former counsel to substitute their belief about Mr. Eggers’ intentions for his own statements about what he actually intends.

III. The Courts Below Applied the Correct Standard.

Mr. Eggers had a fundamental right to dismiss his former counsel and his appeal. However, in *Rees*, 384 U.S. 312, this Court determined that a federal court should evaluate a petitioner’s competency prior to permitting him to do so. As the Eleventh Circuit has explained:

applying the *Rees* test “involves a determination of (1) whether that person suffers from a mental disease, disorder, or defect; (2) whether a mental disease, disorder, or defect prevents that person from understanding his legal position and the options available to him; and

(3) whether a mental disease, disorder, or defect prevents that person from making a rational choice among his options.” *Lonchar*, 978 F.2d at 641-42 (citing *Rumbaugh v. Procunier*, 753 F.2d 395, 398 (5th Cir.), *cert. denied*, 473 U.S. 919, 105 S.Ct. 3544, 87 L.Ed.2d 668 (1985)).

Ford v. Haley, 195 F.3d 603, 617 (11th Cir. 1999). Accordingly, the District Court ordered that a competency hearing be held to determine whether Mr. Eggers was competent to terminate his former counsel and waive his appeals. (Doc. #141.) A competency hearing was held on April 8, 2016.⁴ At that hearing, the District Court heard testimony from former counsel’s expert, Dr. Kenneth Benedict, the State’s expert, Dr. Glen King, and from Mr. Eggers himself. The district court determined that Eggers “has made a rationale choice to dismiss his appointed counsel and to abandon his appeal.” *Eggers v. State*, 212 F. Supp. 3d 1130, 1148 (N.D. Ala. 2016); *see Rees*, 384 U.S. at 314. As the Eleventh Circuit recognized, “[w]hether Eggers is competent to dismiss his § 2254 habeas petition in order to proceed with execution is purely a factual question.” *Eggers v. Alabama*, 876 F.3d 1086, 1094 (11th Cir. 2017).

⁴ The transcript of the April 8, 2016 competency hearing in this matter is cited to herein as “C. H. Tr.”

IV. The Eleventh Circuit Correctly Determined that the District Court’s Competency Finding was not Clearly Erroneous.

A. Eggers Understands his Legal Position.

In attempting to meet the test set out in *Lonchar* and *Ford* before the District Court, former counsel effectively conceded that they could not satisfy *Lonchar*’s second prong⁵. Mr. Eggers understands the legal system, the options available to him, and the fact that he will face execution if he is permitted to exercise his right to drop his appeal. (Doc. 156, pp. 22-23.) This is consistent with the testimony of Dr. Benedict, who opined that he was not concerned “with Mr. Eggers’ understanding of legal proceedings” and that Eggers understands that he will face execution if he is allowed to drop his appeal. (C.H. Tr. 45-46.) It is also consistent with Dr. King’s determination that Eggers does understand his legal position and what it would mean to represent himself. *Id.* at 119. Likewise, it is consistent with the district court’s determination that:

“perhaps the most persuasive evidence that Eggers understands his legal situation is his own testimony. He made it clear that he understands his claims, what these proceedings are for, that he was convicted of capital murder, that he was sentenced to death, how the appellate process worked, how the state post-conviction proceedings operated, that he is now in federal habeas corpus proceedings, that his attorneys did not present the claims he wanted them to, and that he does not want to go on to the Eleventh Circuit Court of Appeals.”

(Doc. 173, p. 38.)

⁵ As the District Court correctly found, *Lonchar*’s first prong is not in dispute.

In their letter brief to the Eleventh Circuit, former counsel reversed course somewhat, speculating that Eggers might not understand his legal position because he “entertain[ed] filing a Rule 60(b) motion.” (Former Counsel’s 11th Circuit Letter Brief, p. 25.) However, the record shows that *former counsel* told Mr. Eggers that he should file a Rule 60(b) motion. (C.H. Tr. 155.) Eggers went on to discuss that possibility with the district court and confirmed that he “absolutely” understood that if a Rule 60(b) motion was filed, it would likely be denied and Eggers would be subject to being executed. *Id.* at 156-157. That Mr. Eggers considered following the advice of former counsel is hardly a valid means to bootstrap an argument that Eggers doesn’t understand his legal position. As the record shows, “[t]he district court’s finding that [Eggers] understands his legal position and the options available to him is supported by substantial evidence in this record and is not clearly erroneous.” *Ford*, 195 F.3d at 619. In any event, as discussed above, Mr. Eggers explicitly decided *not* to file a Rule 60(b) motion or to otherwise pursue any appeals in a *pro se* capacity.

B. The District Court’s Determination that Mr. Eggers does not Suffer from a Mental Illness that Prevents him from Making a Rational Choice Among his Options was not Clearly Erroneous.

While former counsel has seemingly abandoned the question of Mr. Eggers competency in pursuit of the greener pastures of Mr. Eggers’ “true intentions,” they at least suggest that he is irrational. (Cert. Pet., p. 5.) However, contrary to former

counsel's suggestions, the record demonstrates that Mr. Eggers understands his legal position and the options before him, and that Mr. Eggers' decision to terminate former counsel and discontinue his appeals is a rational choice and not the product of mental illness. After all, the mere presence of mistaken, odd, or fanciful beliefs does not warrant a finding of incompetency. As the Eleventh Circuit has explained:

[Ford] suffered from depression and a personality disorder, thought he was going to sit at God's left hand and be an important person, stated that he had many wives, concubines, and children whom he had visited in various parts of the world, and that he had once "visited Heaven." 195 F.3d at 612-13. The district court, relying on the three-prong test enunciated in *Lonchar*, found Ford to be competent. The district court in *Ford II* noted that in *Lonchar*, the Eleventh Circuit had found Lonchar competent because he knew what he had been charged with, the penalty that had been given, and the ultimate outcome if the penalty was imposed on him.

Hauser ex rel. Crawford v. Moore, 223 F.3d 1316, 1322 (11th Cir. 2000), discussing *Ford v. Haley*, *supra*.

In the courts below, former counsel chiefly relied on the opinions of their retained psychologist, Dr. Kenneth Benedict. However, Dr. Benedict's testimony failed to establish that Eggers suffers from any serious mental illness.⁶ Further, the district court correctly determined that the reliability of Dr. Benedict's opinion is

⁶ As discussed below, Dr. King and Dr. Shealy both diagnosed Mr. Eggers as having a personality disorder. However, a personality disorder "is not considered to be a serious mental illness." (C. H. Tr. 129.)

undercut by his failure to account for evidence that tends to show that Mr. Eggers is not psychotic. (Doc. #173, pp. 35-37.)

As Dr. Benedict acknowledged, the DSM-V sets forth certain diagnostic criteria that must be present in order to diagnose a person with a psychotic-spectrum disorder, such as schizophrenia. As Dr. Benedict testified:

In the DSM-V, there are five cardinal symptoms, if you will. And those are hallucinations, delusions, disorganized thinking, catatonic behavior or grossly disorganized behavior... and negative symptoms. ... Of those five cardinal symptoms, two must be present for a period of at least six months.

(C.H. Tr. 36.) Dr. Benedict opined that Mr. Eggers “most obvious and consistent [symptom of psychosis] is the delusional activity that has been in evidence for many years.” *Id.* at 37.⁷ Mr. Eggers former counsel focused on these “delusions” in proceedings before the courts below. The crux of former counsel’s argument was that Eggers’ psychotic delusions were the reason that he couldn’t make a rational choice among his legal options.

⁷ Benedict also mentions “episodes of disorganized thinking” as a symptom of Mr. Eggers alleged schizophrenia. (C. H. Tr. 37.) Because Dr. Benedict described these episodes as “brief”, it does not appear that they would meet the DSM-V’s requirement that symptoms be present for at least six months to support a diagnosis of psychosis. Similarly, Dr. Benedict did not testify regarding the duration of Mr. Eggers’ negative symptoms. Nor does it appear that he considered that Mr. Egger’s “withdrawal” could be caused not by psychosis, but by his desire to improve his art or to avoid trouble. *Id.* at 84.

However, the district court determined that Dr. Benedict’s testimony reveals that he had an insufficient basis to support his diagnosis. As Dr. Benedict acknowledged, the DSM-V specifically defines delusions as: “**falsely-held** beliefs that persist in the presence of **evidence** to the contrary.” *Id.* (emphasis added). Despite this, Dr. Benedict was repeatedly unable to substantiate his apparent opinion that Mr. Eggers’ beliefs are actually delusional, i.e. that they are falsely-held and persist in the face of evidence to the contrary. (Doc. # 173, pp. 33-34.) For example, Dr. Benedict cited Eggers belief that *ex parte* communications may have occurred between the district Court and the United States Supreme Court clerk’s office as an example of a psychotic delusion. However, on cross by Mr. Eggers, Dr. Benedict admitted that he did not know what Eggers based this belief on. (C. H. Tr. 84-85.) However unlikely Dr. Benedict thinks Eggers’ belief is, his ignorance as to *why* Eggers holds that belief suggests that Dr. Benedict’s opinion that Eggers is subject to psychotic delusions is not reliable.

Moreover, Eggers cross-examination of Dr. Benedict suggested that his belief is based not on some fantastic or impossible scenario, but rather are on an inference drawn from his interpretation of this Court’s Rules.⁸ (C. H. Tr. 86-87.) As this Court

⁸ Mr. Eggers reasoning stands in sharp contrast to cases in which a defendant maintains clear, non-fact-based, delusions and has been confronted with evidence to disprove them. e.g. *United States v. Battle*, 235 F. Supp. 2d 1301, 1317 (N.D. Ga. 2001) (petitioner believed that “microchips had been implanted in his brain” and that the government was able to monitor and control him); *see also United States v.*

is aware, it is not unheard of for petitioners (even those represented by counsel) to raise allegations that a court has engaged in *ex parte* communications. *See, e.g., Alford v. Florida*, 436 U.S. 935, 939, 98 S. Ct. 2835, 2837, 56 L. Ed. 2d 778 (1978); *Whisenhant v. Allen*, 556 F.3d 1198, 1200 (11th Cir. 2009).

Dr. Benedict's opinion, and former counsel's arguments, are similarly ill-founded with regard to other alleged "delusions." For instance, former counsel discusses Eggers' reports of having been subject to ill treatment by inmates and prison personnel. (Former Counsel's Petition, p. 4.)) Despite the fact that inmate-on-inmate violence and/or harassment is an unfortunate reality, appointed counsel makes no argument or explanation to show why Egger's belief that he was subject to persecution by other prisoners was "delusional." On cross-examination by Mr. Eggers, Dr. Benedict testified that he could make nothing more than assumptions about these events. (C.H. Tr. 90-91.) Thus, it is beyond clear that neither Dr. Benedict nor former counsel presented any evidence that Mr. Eggers' beliefs about harassment were "falsely held" in the face of contrary evidence. With regard to the involvement of prison "officials," Mr. Eggers testimony made it clear that his belief

Battle, 264 F. Supp. 2d 1088, 1163 (N.D. Ga. 2003) (defense counsel obtained CT Scan "for the purpose of convincing him that there were no implants in his brain.")

was based on supposition and didn't allege direct involvement by guards in tampering with his food or attacking him.

Similarly, former counsel failed to establish that Mr. Eggers' suspicions that arose out of his having been a confidential informant during his youth qualify as "delusions" under the DSM-V's definition. Former counsel themselves wrote that Mr. Eggers was a confidential informant and provided information regarding "a notorious figure in San Bernardino County known for his connection to the Monks Motorcycle Club and its criminal activities, including drug-dealing, weapons offenses, and murder." (Doc. 52 at 8.) Thus, as Dr. Benedict acknowledged, and as the District Court found, the danger that Mr. Eggers faced as a confidential informant was not simply made up or imagined. (C. H. Tr. 61-62); Doc. 173 at 15. Moreover, Mr. Eggers has subsequently denied that he is still being persecuted by the people that he informed against and he does not believe that his attorneys are associated with them. (C. H. Tr. 69-70; St. Ex. 1 at 5.) However, to the degree that Mr. Eggers may have in the past exhibited a certain amount of paranoia or fixation on this threat, there is no evidence to show that it has inhibited his current ability to make rational choices with regard to his legal options.

More pertinently, Dr. Benedict's testimony failed to establish that either Mr. Eggers' desire to terminate former counsel or his appeal are based on his alleged psychotic delusions. Mr. Eggers appears to have an intractable disagreement with

former counsel's choice of strategy and their reluctance to provide him with certain information. (C. H. Tr. 122, 154-155, 158.) He may be wrong about what the best strategy would have been, but a petitioner's poor legal judgment is not the equivalent of a psychotic delusion. *See e.g. United States v. Garey*, 540 F.3d 1253, 1270 (11th Cir. 2008) ("it is clear Garey weighed his constitutional options and made the reasoned (even if imprudent) decision he would rather forego counsel".)

While Mr. Eggers clearly does not trust his attorneys in some matters, there is no clear evidence that his distrust is the product of psychosis. There is evidence of a bad working relationship, however. In his report, Dr. Benedict conceded that trial counsel had, in fact, withheld at least one document (an affidavit from his ex-wife) from him for a period of months. (Pet. Ex. 19 at 11; C. H. Tr. 65-66; Doc. 173 at 15.) During his own testimony, Mr. Eggers explained that when he was attempting to obtain information regarding his ex-wife's affidavit, former counsel told him that they "didn't have to provide [him] with any type of evidence whatsoever...." (C. H. Tr. 164.) Eggers also explained that former counsel's refusal to document their attempts to obtain documents caused him to suspect that either they had not been diligent or that they were concealing what they found. *Id.* at 165.

Dr. Benedict appears to have concluded that Eggers' dissatisfaction with trial counsel's efforts was delusional, without ever learning whether there was any factual basis for Mr. Eggers' concerns. *Id.* at 64-65, 110-11. Eggers may have a highly

suspicious nature, but Dr. Benedict was never able to point to anything that showed that Eggers' beliefs were "falsely-held" and that he persisted in them despite evidence that they were untrue. To the contrary, the record suggests that there was some factual basis for Eggers' beliefs and that former counsel *refused* to provide him with the information that would have disproved his "delusions." *Id.* at 165.

Dr. Benedict's testimony also presents other facts that undercut the reliability of his opinion. Mr. Eggers was evaluated by a psychiatrist and a psychologist at the time of his trial. Neither diagnosed him as either psychotic or suffering from any severe mental illness. (Pet. Ex. 8, 9.) In his report, Dr. Benedict discounted those prior evaluations by contending that the passage of time has provided him with the "major advantage" of having been able to "track[] the course of Eggers' symptoms." (Pet. Ex. 19 at 30.)

However, the documentary evidence does not show that Eggers ever displayed clear symptoms of psychosis⁹ prior to trial. Mr. Eggers extensive Alabama Department of Corrections medical file was admitted into evidence. (Pet. Ex. 21.)

⁹ Former counsel and Dr. Benedict rely on a fragmentary police report describing Eggers' mental state after a methamphetamine fueled road trip. (Ex. 19, p. 3.) However, as Dr. Benedict conceded, Mr. Egger's behavior in that incident could have been explained by his drug use. (C. H. Tr. 49.) Dr. Benedict also relied on collateral reports from Eggers' friends and family members. Given that Eggers' medical records show a finding of malingering and absence of any subsequent delusions of hallucinations, these non-contemporaneous reports by interested parties should be given little weight.

That file notes that Mr. Eggers was malingering around the time of his trial, that he admitted the fact, and that he decided to stop. Throughout the rest of Mr. Eggers' file (covering a period of over ten years), there is a total absence of any indication that he was ever hallucinatory, delusional, aphasic, disoriented, or suffering from any sort of mental instability. Dr. Benedict was somewhat unfamiliar with the records of this period, and did not address them in his report. (C. H. Tr. 59-60; Pet. Ex. 19.) Despite this, Dr. Benedict contends that his opinion was "corroborated" by "psychiatric professionals for the Alabama Department of Corrections." (Pet. Ex. 19, p. 30.) Shockingly, despite claiming that DOC records "corroborated" his findings, Dr. Benedict's report and direct testimony wholly fail to address the fact that Mr. Eggers was malingering in the early 2000s.¹⁰ (C. H. Tr. 55.) That fact, especially when taken in context with the subsequent absence of any record of mental instability in Mr. Egger's medical file, strongly support the District Court's finding that Dr. Benedict's opinion is ill-founded and not deemed credible. (Doc. 173 at 37.)

¹⁰ Despite Dr. Benedict's failure to address the issue of Eggers' malingering, former counsel dismissed the contemporaneous conclusions mental health professionals as being based on "false, rosy, self-reports." (Doc. 156 at 16.) Contrary to former counsel's arguments, there is no basis to conclude that Eggers was "faking good" or that the conclusions in his records are based solely on self-reporting.

C. The Evidence Shows that Mr. Eggers is Able to Make a Rational Choice Among his Legal Options.

After reviewing the record available to the District Court, the Eleventh Circuit concluded:

After a detailed review of the record, we are left with no doubt that the district court had a solid evidentiary foundation for finding Eggers competent and that he made a rational choice to forego further collateral review. There is no clear error in these determinations.

Eggers v. Alabama, 876 F.3d 1086, 1096 (11th Cir. 2017). Former counsel has made no attempt to demonstrate that his determination was in any way erroneous.

As the district court correctly found, of the four mental health professionals who have formally evaluated Mr. Eggers, three (Drs. King, Shealy, and Hooper) agree that he does not suffer from any severe mental illness. Doc. 173 at 30. Dr. Shealy diagnosed Mr. Eggers with a paranoid personality disorder. *Id.* at 14. Dr. Glen King, a psychologist retained by the State, diagnosed him with narcissistic personality disorder. *Id.* at 21. In explaining why he didn't give more credence to the results of Dr. Benedict's testing, Dr. King explained if Eggers' "extraordinarily high" results on some scales of the MMPI-2 were valid he would "have frank and open clear delusions of persecution that would be evident to anybody." (C. H. Tr. 124.) However, Dr. King found no evidence of such delusions in his evaluation of

Mr. Eggers. (St. Ex. 1.) Nor did Mr. Eggers demeanor or testimony evince delusions that he maintained in the face of evidence to the contrary.¹¹

Dr. King also administered the Evaluation for Competency to Stand Trial, Revised Form (hereinafter ECST-R) to Mr. Eggers. (C. H. Tr. 118.) The results of that test supported Dr. King's opinion that Mr. Eggers was able to understand his legal options and to make a rational choice among them. *Id.* at 118-121. The presence of a personality disorder is sufficient to meet the first *Lonchar* prong. Nonetheless, as in *Ford*, Mr. Eggers understands his legal situation and "has the ability to make rational choices among his options and has done so." *Ford*, 195 F.3d at 617, 623.

The record also shows that Mr. Eggers' decision to terminate former counsel and waive his appeals is not the product of psychosis. Mr. Eggers explained to Dr. King that his desire to terminate counsel and waive his appeals was based on his

¹¹ In their post-hearing brief, former counsel cited portions of Mr. Eggers' testimony as evidence of delusions. (Doc. 156 at 22-23.) In the first instance, Mr. Eggers belief about "concealment" of documents appears to relate more to his feeling that counsel has failed to adequately pursue his *Brady* claims than to any true conspiracy. (C. H. Tr. 168-169, 193-195.) Eggers testimony also reflects inferences and suspicions that he has drawn based on actual facts. His inferences may be mistaken, but they are clearly not "delusional" as that term is defined by the DSM-V. Moreover, as discussed above, Eggers dissatisfaction with trial counsel's efforts and communication appears to have some factual basis. Similarly, Mr. Eggers suspicions regarding *ex parte* communications are based on his reading of the Supreme Court Rules and his cynicism about the court system, not on aliens, talking animals, implanted computer chips, or some other bizarre or impossible scenario.

belief that they “had a political agenda to get rid of the death penalty”, that they didn’t listen to him, didn’t follow his directions, and didn’t provide him with information when he asked for it. (C. H. Tr. 122.) He believed former counsel (and prior counsel) should have pursued different claims than they did, but those claims are no longer available to him. *Id.* at 126, 127, 155, 158. Specifically, Mr. Eggers believed that his counsel (including current counsel) ever adequately pursued his *Brady* claims regarding documents that would have been in existence at the time of his trial. *Id.* at 193-195. Consequently, Eggers was faced with being “stuck in an appeal... which could go on for years,” but that would not address “the issues [he] actually wanted resolved.” (C. H. Tr. 154-155.) Eggers was also motivated by the suffering of his victim’s family. *Id.* at 126-127. 154-155; (Doc. 161 at 1-2.) Finally, Eggers has a belief that the court system has essentially failed him. (C. H. Tr. 167-168.) He believes that courts don’t always do what they should, and law enforcement will transgress “just to insure that a suspect will be found guilty.” *Id.* His beliefs about the court system are cynical, but they do not amount to a psychotic delusion. Indeed, many criminal defendants and petitioners, and even defense lawyers, share them.

Nor is there any genuine suggestion that Eggers’ waiver is not “absolute.” As the Eleventh Circuit concluded:

When prompted by the district court after the hearing to clarify whether he would like to appeal in a pro se capacity if he were allowed

to do so, Eggers filed a pleading stating in bold on the first page that he “simply withdraws and waives all future appeals in their entirety.” Although he continued with twelve pages of “discussion,” he wrote a disclaimer on the first page: “Nothing below voids the waiver above. I have meditated about my available legal options, giving them full serious consideration.” Throughout, Eggers explained, as he had done several times before, why he wanted to waive his appeals. He wrote:

I have often considered how, Bennie Francis Murray's son had been placed in a position to explain to his own children “why” they do not have a grandmother, recognizing his grief and agonizing pain and suffering, which has continued now for fifteen years, passed on from generation to generation....

The delays in the process are not beneficial to any party....

My position shall not change until I am executed, but an appeal shall not be filed....

Even if the Court granted relief [via a Rule 60(b) motion], the State would be free to appeal, again launching me into another undetermined time frame....

For the sake of clarity; There will always be a desire to appeal the Court's order of dismissal of my pro se claims and procedural bar exceptions, but it's not feasible....

Let's move forward eliminating any further undue delays in my execution providing the people with justice long overdue. Nobody else is to blame, no one should feel guilty granting my request and prayer for relief. The decision was mine alone to make. Please do not make me beg any more. I simply withdraw and waive all future appeals in their entirety.

On an exceedingly full record, the district court found nothing to suggest that Eggers's mental health “inhibited his current ability to make rational choices with regard to his legal options,” and that

“Eggers suffers, at most, from a personality disorder and that he is able to make a rational choice among his legal options.”

Eggers v. Alabama, 876 F.3d 1086, 1102 (11th Cir. 2017). Mr. Eggers’ clear intent is borne out by his most recent substantive filing: his *pro se* response to former counsel’s application for rehearing in the Eleventh Circuit. (Exhibit A.) As discussed above, Mr. Eggers disputes former counsel’s allegations of “wavering” on his part in no uncertain terms. Nothing in former counsel’s petition shows that the Eleventh Circuit’s finding was erroneous or in conflict with any decision of this, or any other, Court.

V. Granting Certiorari Review Upon Former Counsel’s Question Presented Would be a Pointless Endeavor.

Finally, indulging former counsel’s desire to investigate the “true motive” of Mr. Eggers’ decision to fire them would not serve any purpose. Mr. Eggers has, in fact, fired them. If, despite all indications to the contrary, his purpose in doing so was to engage in further *pro se* litigation, he remains competent and able to do so. The fact that he has not done so demonstrates that former counsel’s belief is erroneous. By all indications, Mr. Eggers remains adamant that he certainly does not wish to be represented in any manner by former counsel.

* * *

At bottom, Mr. Eggers made a rational choice to dismiss his former counsel and to abandon the claims that they had advanced on his behalf. To the extent that

there is any question before this Court, it is not whether this is a good idea¹² or whether Mr. Eggers' legal opinions are incorrect, but whether he was legally competent. Speculation into Mr. Eggers' *motive*, does not offer adequate grounds for review under Rule 10.

As the Eleventh Circuit found, the District Court did not err in finding that Mr. Eggers was capable of making rational decisions with a full understanding of their consequences, and that he has done so in this case. Like Pernell Ford, Mr. Eggers doesn't want to be stuck with "years" of waiting on an appeal that raised issues that he didn't want to raise and would rather "provid[e] the people with justice long overdue." *Ford*, 195 F.3d at 620; (Doc. #161, p. 11.)

The Eleventh Circuit's decision was correct and free of any conflict or other issue that would warrant this Court's review. Consequently, this Court should deny former counsel's petition.

¹² "That asserting the right of self-representation may often, or even usually, work to the defendant's disadvantage is no more remarkable-and no more a basis for withdrawing the right-than is the fact that proceeding without counsel in custodial interrogation, or confessing to the crime, usually works to the defendant's disadvantage." *Martinez v. Court of Appeal of California, Fourth Appellate Dist.*, 528 U.S. 152, 165, 120 S. Ct. 684, 693, 145 L. Ed. 2d 597 (2000), Scalia, J., *concurring in the judgment*.

CONCLUSION

For the foregoing reasons, this Court should deny Eggers' petition for writ of certiorari.

Respectfully submitted,

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