

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Arne Soreide — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Arne Soreide
(Your Name)

P.O. Drawer 55030

(Address)

McRae Helena, GA 31055

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Whether the Eleventh Circuit Court of Appeals committed a “structural” error by Affirming the district court’s finding that petitioner’s Title 28 U.S.C. § 2255 Motion is second or successive in violation of Rule 8(c) governing § 2255 proceedings, and Title 18 U.S.C. § 3006A, and, Neder V. United States, 527 U.S. 1, 9 (1999); UNITED STATES v. CRONIC, 466 U.S. 648,649(1984); STEWART v. MARTINEZ-VILLAREAL, 523 U.S. 637,639,640, 118 S. Ct. 1618(1998); PANETTI v. QUARTERMAN, 551 U.S. 930, 943-945, 127 S. Ct. 2842(2007)

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:

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STATUTES AND RULES

Rule 8(c) governing § 2255 procedures.

Title 18 U.S.C. § 3006A

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 A 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☒ is unpublished.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 B 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☒ is unpublished.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☐ is unpublished.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☐ is unpublished.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 November 17, 2017.

☐ 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: February 22, 2018, and a copy of the order denying rehearing appears at Appendix D.

☐ 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

Rule 8(c) Appointing counsel; Time of hearing. If an evidentiary hearing is warranted, the judge must appoint an attorney to represent a moving party who qualify to have counsel appointed under 18 U.S.C. § 3006A. Soreide was granted in forma pauperis status by the district court and had a statutory right to counsel, Title 18 U.S.C. § 3006A. Title 18 U.S.C. § 3006A(a)(1) Representation shall be provided for any financially eligible person who – (2)(B) is seeking relief under section 2241, 2254, or 2255 of title 28.

Due Process Clause of the Fifth Amendment as there was nothing fair about an evidentiary hearing without a counsel for the defendant.

STATEMENT OF THE CASE

Soreide was resentenced on September 29, 2006. His paid counsel failed to file a timely notice of appeal. He then filed a timely premature Title 28 § 2255 Motion to vacate, set aside or correct the sentence on March 21, 2007, Case No: 0:07-60401-JIC. The district court ordered an evidentiary hearing for March 20, 2008. At the evidentiary hearing the court stated that; *"Mr. Soreide did file a Motion for appointment of counsel for the purpose for this hearing. The court denied that request because the court felt that the issue here is pretty simple and did not require any legal expertise"*. Soreide filed a timely notice of appeal for denial of counsel for the evidentiary hearing. This was denied by the Eleventh Circuit Court of Appeals. He then filed a timely 60(b)(6) motion for denial of counsel which the district court found to be time bared and the Eleventh Circuit again affirmed the district court's order. Soreide filed a Timely notice of Appeal, from the resentencing, on July 15, 2013, pursuant to F. R. App. P. 4(b)(1)(A)(i), 4(b)(2) and 4(b)(6). The 11th Circuit Appointed counsel for the direct appeal on March 7, 2014. The counsel filed an Anders Brief on November 28, 2014. The Circuit Court affirmed movant's sentence, as a Mandate, on October 2, 2015, and the Motion to recall the Mandate was denied on May 19, 2016. Soreide then filed timely the current § 2255 Motion on June 6, 2016.

The district court ordered the United States Magistrate Judge to write a Report and Recommendation [Appendix C] for the district judge dated August 8, 2016. The district court adopted the R & R, [Appendix B] dated August 30, 2016. Soreide filed a timely Notice of appeal, and an Initial Appeal Brief which was filed on October 17, 2016. The Court ordered the United States to file an answer on May 25, 2017, within 30 days. On June 20, 2017, the United States filed a Motion for Summary Affirmation and for a stay of the briefing schedule. Soreide filed a timely answer to the Motion for Summary Affirmation on July 7, 2017. The Court affirmed the district court's finding that the § 2255 Motion was second or successive on November 28, 2017. [Appendix A]. Soreide filed a Motion for reconsideration on December 2, 2017, [Appendix E], which was denied on February 22, 2018. [Appendix D].

REASONS FOR GRANTING THE PETITION

Pursuant to this Honorable Court's Rule 10 (a); The Eleventh Circuit Court of Appeals has entered a decision in conflict with every other United States Court of Appeals on the same matter, and has so far departed from the accepted and usual course of judicial proceedings, and sanctioned such a departure by the lower court, as to call for an exercise of this Court's supervisory power.

The Eleventh Circuit Court of Appeals is the only Circuit in which appointment of counsel is based on the perceived difficulty of the underlying issue[s] for an evidentiary hearing pursuant to Rule 8(c) governing § 2255 procedures. The Court found that;

"His argument that the district court's decision that the interest of justice did not require appointment of counsel to represent Soreide at the evidentiary hearing is unpersuasive because the court's decision was reasonable; the issue on which the evidentiary hearing was being held – whether counsel was ineffective for failing to file a direct appeal – was not unusually complex, and Soreide had no absolute entitlement to representation in the proceeding". [Appendix A, Page two].

The 11th Circuit found that Soreide did not have an absolute entitlement to a court appointed attorney for the evidentiary hearing based on its finding that the issue for the evidentiary hearing "*was not unusually complex*". Further, the district court stated at the evidentiary hearing that; "*Mr. Soreide did file a motion*

*to appoint counsel for the purpose of this hearing. The court denied that request because the court “felt” that the issue here is pretty simple and did not require any legal expertise”. [Please see Appendix E]. In its denial for reconsideration the Circuit Court state; “that Soreide has raised no new grounds for reconsideration because he repeats his arguments from his response to the government’s motion for summary affirmance and has not presented any new evidence. He is attempting to relitigate old matters, and to the extent that any of his arguments are new, they could have been raised prior to the entry of judgment.” My one and *only* argument is, and has been raised before the judgment, the denial of counsel for the evidentiary hearing. Please let me be clear. The issue here is that the district court committed a “structural” error by denying Soreide his statutory right to counsel for the evidentiary hearing from his initial 2255 Motion. Clearly the denial of counsel for the 2255 Motion could not have been included in the initial 2255 Motion. Soreide appealed the denial of counsel, and a 60(b)(6) motion for denial of counsel, all denied by the district court and affirmed by the Circuit Court. There is nothing new. The facts are that now both the Circuit Court and the district court have committed “structural” error that the United States Supreme Court has said is subject to “automatic reversal” and “reversible under all circumstances.” Why is it that this does not apply to this petitioner?*

It is clear that not only did the district court abuse its discretion, and committed a clear “structural” error, by denying Soreide counsel for the evidentiary hearing when, “the court felt that the issue here is pretty simple and did not require any legal expertise”, but so did the Circuit Court in affirming the district court’s holding by adding that “the issue for the evidentiary hearing was not unusually complex”.

Pursuant to the District Court for the Southern District of Florida and the Eleventh Circuit Court of Appeals, a defendant granted an evidentiary hearing for a § 2255 Motion Pursuant to Rule 8(c) governing § 2255 procedure must first overcome the district court’s requirement that “legal expertise” is required for the district court to appoint counsel, and, further, the Circuit Court’s determination that the issue for the hearing has to be “unusually complex” before a defendant is considered for the appointment of an attorney. This is a clear violation of Rule 8(c) which states “the district court must appoint counsel for a defendant who qualifies under Title 18 U.S.C. § 3006A”, and this Court’s precedents in; United States v. Cronin, 466 U.S. 648, 659 (1984) (“Denial of counsel at a critical stage represents one of the egregious circumstances that require the presumption of prejudice”, because, “the adversary process itself has been rendered presumptively unreliable”.) Neder v. United States, 527 U.S. 1, 9 (1999) (“Only a very “limited

class of cases” involves “structural” error and is subject to “automatic reversal”, complete denial of counsel; bias trial judge---“.) GIDEON v. WAINWRIGHT, 372 U.S. 335, 9 L. Ed 2d 797(1963) (The complete absence of a lawyer to defendant is considered to be “structural” error *Reversible under all circumstances*). UNITED STATES v. GONZALES-LOPEZ, 558 U.S. 140, 165 L. Ed 2d 409 (2006), (The Touchstone of “structural” error is fundamental unfairness and unreliability). , STEWART v. MARTINEZ-VILLARD, 523 U.S. 637-640, 118 S. Ct. 1618(1998) (“In order for a proposed § 2255 Motion to be deemed successive it must at the minimum be filed subsequent to the Conclusion of a proceeding that ‘Count as a first’ “.) Panetti v. Quarterman, 551 U.S. 930, 944, 947, 127 S. Ct. 2842 (2007) (creating an “exception” to §2244(b) for a second application raising a claim that would have been unripe had the petitioner presented it in his first application).

Soreide believes that his initial §2255 Motion cannot be considered a *First* as the evidentiary hearing was held without a counsel as guaranteed by Rule 8(c), and a Statutory Right to a court appointed attorney pursuant to 18 U.S.C. § 3006A, and the Fifth Amendment Due Process Clause as the proceeding was utterly unfair, and this Court’s precedents as stated above which clearly finds that both the district court and the Circuit Court committed “structural” error subject to “automatic reversal”, Neder, Supra, “and reversible under all circumstances”,

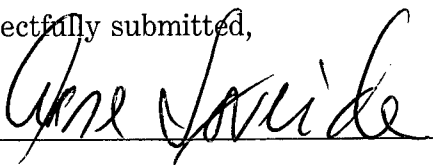
Gideon, Supra. Further, Soreide could not have included the complete denial of counsel for the evidentiary hearing in his initial 2255 Motion as he was informed by the judge at the evidentiary hearing that he was denied counsel for the hearing, Panetti, Supra. Soreide believes that he is clearly right, as a matter of law, that his current § 2255 Motion is not second or successive, Stewart, Supra. The district court as well as the Eleventh Circuit Court of Appeals committed clear “structural” error in clear violation of Soreide’s rights and the Case Laws presented in this petition for Certiorari. Petitioner believes that this Honorable Court will find that he had a Statutory Right to counsel at the evidentiary hearing for his initial § 2255 Motion. The holdings of both the district court and The Eleventh Circuit Court of Appeals can have far reaching and seemingly perverse implications for any future habeas procedure.

All Soreide is asking for is a new evidentiary hearing in front of a new judge who is not biased and prejudicial towards him as found by this Honorable Court in Cronic, Supra. If Soreide does not have the right to a new evidentiary hearing then who does?

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: February 28, 2018