

No. 17 AG79

IN THE
SUPREME COURT OF THE UNITED STATES

Frank Amodeo — PETITIONER
(Your Name)

vs.

United States — 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

Frank Amodeo
(Your Name)
Federal Correction Complex (ccw)
D.C. Box 1031
(Address)

Clemson, Fla. 33521
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. This Court holds that a habeas petitioner has no right to be competent. Does an incompetent habeas petitioner has a right to the assistance of counsel?
2. This Court held in Dobbs v. Zant, 506 U.S. 357 359 (1993), that an appeals court abused its discretion when it refused to expand the record to include a late discovered transcript. Does the Dobbs rule extend to other documents including post-hearing medical reports?

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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OTHER

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☒ is unpublished.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 C 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☒ is unpublished.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**: *Not Applicable*

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☐ is unpublished.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☐ is unpublished.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 ~~February 17, 2017~~ January 6, 2017 (Appendix B)

☐ 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: September 15, 2017, and a copy of the order denying rehearing appears at Appendix A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including February 6, 2018 (date) on January 3, 2018 (date) in Application No. 17 A 629.

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

1. The Fifth Amendment of the Constitution and the Fourteenth Amendment. The Amendments provide for due process of law and equal protection of law. These Amendments and principles provide ~~for that~~ protection for the mentally incapacitated.
2. 18 U.S.C. § 3006(A) providing for the appointment of counsel to assist the mentally infirm in exercising their right to habeas corpus.
3. Federal Rules Appellate Procedure 106e(2)(c) Supplemental record may be certified to the appeals court.
4. 28 U.S.C. § 2253(c)(2) "A certificate of appealability may issue under paragraph (1) only if the applicant makes a substantial showing of the denial of a constitutional right."

STATEMENT OF THE CASE

The district court refused to appoint Mr. Amodeo an attorney to assist with a Rule 60(e) motion. The Rule 60(e) was meant to reopen a §2255 dismissed in March 2012 because Mr. Amodeo could not follow the court's directions.

In 2012, Mr. Amodeo was mentally incapacitated and unrepresented. (2017 Capacity Report at 2, 10, 11); see *Amodeo v. United States*, Case No. 6:12-cv-06411-JA-DAB, Doc. 106 (M.D. Fla. 2015) ("Mr. Amodeo's 'mental health is not in controversy; he has been declared incapacitated by the State of Florida in 2008. ... There is no indication that the State of Florida has found Petitioner's capacity restored. "). Two months later the State of Florida found Mr. Amodeo still incapacitated and appointed a successor guardian. (Appendix E).

In 2016, with help from his non-lawyer (retired police officer) guardian, Charles Rohn, Mr. Amodeo sought to reopen his 2012 §2255 motion (Case No. 6:11-cv-1850-Orl-JA-GJK) to show the court that Mr. Amodeo's failure to comply was caused by his disease. The district court summarily denied the Rule 60 motion. Mr. Amodeo appealed pro se and next friend. After the 11th Circuit denied a CCA, the state guardian — with funds from Mr. Amodeo's friends — retained counsel and request an updated evaluation from the State of Florida psychiatric evaluating committee member — Dr. Antonia.

Dr. Antonia found that Mr. Amodeo remained incapable of unassisted litigation (2017 Capacity Report at 11-12). And that Mr. Amodeo had been incapable of unassisted litigation in 2011. Moreover, her report records the Bureau

of Prison admission that it did not and could not provide Mr. Amodeo the proper medication management. (2017 Capacity Report at 9). Dr. Anterio reports to State guardian and State court that unmonitored and unmonitored the medication makes Mr. Amodeo worse not better, (2017 Capacity Report at 10).

Mr. Rahn attempted to bring the State of Florida's examining report to the appeals court's attention. He retained his attorney to file a motion for reconsideration and to supplement the record. The appeals court refused to supplement the record and did not reconsider its decision to deny a COA.

REASONS FOR GRANTING THE PETITION

The Eleventh Circuit and the District Court in the Middle District of Florida rulings conflict with those of other circuits like the Seventh Circuit and the decisions of this court. *Christeson v. Roper*, 135 U.S. 891 (2015) (permitting substitution of appointed counsel ten years after the judgment was final in order to seek Rule 60(b)(6) based on equitable tolling). Also, the Seventh Circuit stated that *Christeson* applies in the context of a non-capital case, and that a district court should appoint counsel to assist the mentally ill prisoner with demonstrating that equitable tolling saved his §2255 motion. *Schmid v. McCauley*, 828 F.3d 348 (7th Cir. 2016). If Mr. Anodee was in the Seventh Circuit, then he would have been appointed counsel to show that the district court's dismissal of the timely §2255 was a mistake, and then counsel could have properly prepared the §2255 motion.

The Eleventh Circuit rule — not appointing the mentally ill counsel — also conflicts with this court's decision in Rees v. Payton, 384 U.S. 312 (1966). (The Supreme Court did not allow an incompetent habeas prisoner to dismiss counsel or the habeas case). It seems the Supreme Court says a habeas petitioner does not have a right to be competent, but does have right to be assisted by counsel. Ryan v. Gonzalez, 133 S. Ct. 696 (2013)

Finally, the Eleventh Circuit rule on supplementing the record on appeal does not comport to this court's holding in Dobb v. Zant, 506 U.S. 357, 359 (1993) where the Supreme Court suggested that

CONCLUSION

This court grant the writ vacate the opinion of appeals court and the district and

The petition for a writ of certiorari should be granted.

remand either for briefing at the appeals court or a hearing in the district court, with appointed counsel.

Respectfully submitted,



Date:

2/4/18