No.

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL EGGERS,
Petitioner,
v.

ALABAMA,
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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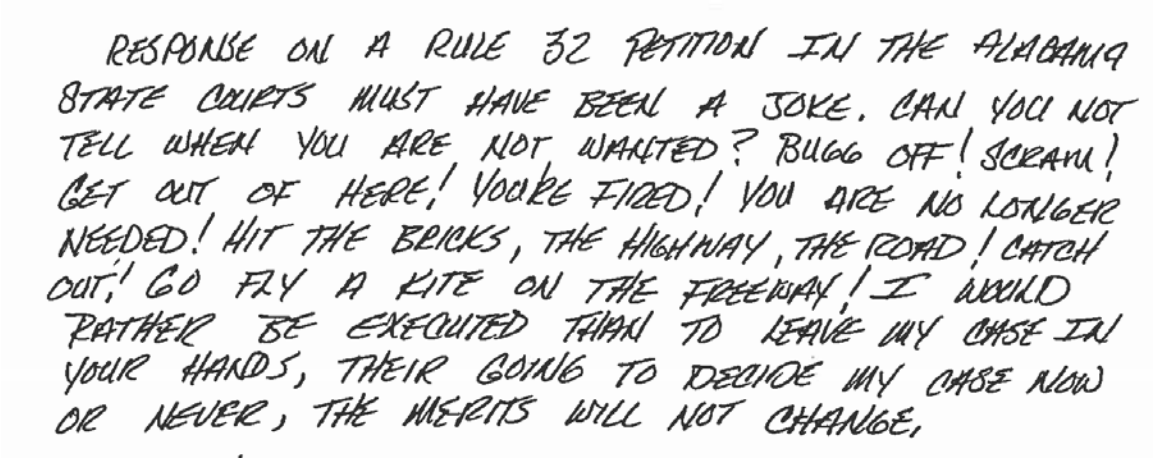
March 12, 2018

CAPITAL CASE
EXECUTION SCHEDULED FOR MARCH 15, 2018
QUESTIONS PRESENTED

Michael Eggers was unhappy with Sidley Austin, the attorneys who represented him on direct appeal of his capital murder conviction:

Figure 1 - December 2005 Letter from Mr. Eggers to Counsel



RESPONSE ON A RULE 32 PETITION IN THE ALABAMA STATE COURTS MUST HAVE BEEN A JOKE. CAN YOU NOT TELL WHEN YOU ARE NOT WANTED? BUGG OFF! SCRAM! GET OUT OF HERE! YOU'RE FIRED! YOU ARE NO LONGER NEEDED! HIT THE BRICKS, THE HIGHWAY, THE ROAD! CATCH OUT! GO FLY A KITE ON THE FREEWAY! I WOULD RATHER BE EXECUTED THAN TO LEAVE MY CASE IN YOUR HANDS, THEIR GOING TO DECIDE MY CASE NOW OR NEVER, THE MERITS WILL NOT CHANGE.

In the years after he wrote that letter, nothing has changed. Michael Eggers claims he would rather die than be represented by lawyers who do not support his delusional view of his case. Mr. Eggers' actual intent is debatable.

For over four years, Mr. Eggers has been unequivocal about one thing: He does not want appointed counsel to represent him. Whether he wants to be executed is a completely different matter. The Eleventh Circuit Court of Appeals allowed Mr. Eggers to terminate his appeal and be executed. That execution is looming. These facts lead to the following unresolved and important question:

If a severely mentally ill habeas petitioner wants to fire his lawyers and be executed because he believes counsel are in a conspiracy against him, and the federal court finds him competent to do so, should the court allow him to be executed, or just allow the petitioner to discharge counsel?

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PETITION FOR A WRIT OF CERTIORARI

Counsel for Mr. Eggers respectfully request that this Court grant a writ of certiorari to review the Court of Appeals for the Eleventh Circuit's judgment that Mr. Eggers is competent to discharge his appointed counsel, waive the direct appeal of his habeas corpus petition, and be executed on March 15, 2018.

OPINIONS BELOW

The Court of Appeals' decision is published.[1] The opinion is included in Petitioner's Appendix.[2]

JURISDICTION

The Court of Appeals' judgment was issued on December 5, 2017. Rehearing was denied on February 7, 2018.[3] The Court has jurisdiction pursuant to 28 U.S.C. § 1254(a).

RELEVANT STATUTORY PROVISIONS

18 U.S.C. § 3599(e) states:

> Unless replaced by similarly qualified counsel upon the attorney's own motion or upon motion of the defendant, each attorney so appointed shall represent the defendant throughout every subsequent stage of available judicial proceedings, including pretrial proceedings, trial, sentencing, motions for new trial, appeals, applications for writ of certiorari to the Supreme Court of the United States, and all available post-conviction process, together with applications for stays of execution and other appropriate motions and procedures, and shall also represent the defendant in such competency proceedings and proceedings for executive or other clemency as may be available to the defendant.

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[1] *Eggers v. Alabama*, 876 F.3d. 1086 (11th Cir. 2017).

[2] Pet. App. 1a.

[3] Pet. App. 16a.

STATEMENT OF THE CASE

Michael Eggers is severely mentally ill. Years before his crime, those who knew him reported that he: heard voices; "became 'paranoid' after Federal officers had him become an informant;" talked "about bikers and the Mexican Mafia being after him;" seemed to have symptoms of paranoid schizophrenia like his elder brother, David, who was involuntarily institutionalized; and "acted weird' most all of the time, as if responding to internal stimuli." Mr. Eggers believes that his elder brother is not "'crazy' but rather was made 'crazy' by the same people that were conspiring against him."

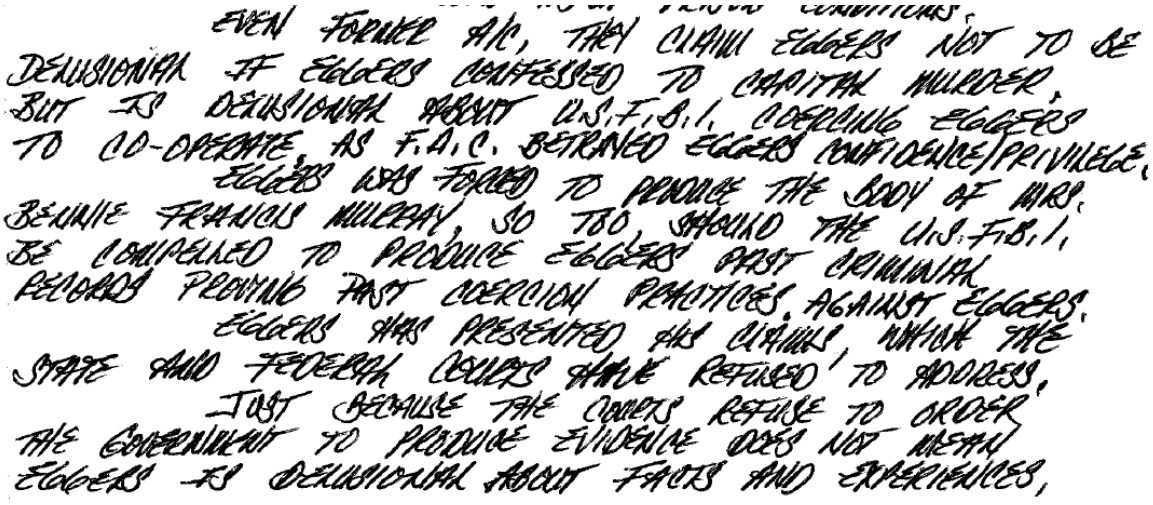
The over-arching theme that pervades Mr. Eggers' thinking is that since he briefly served as an informant in California in 1985, he has been manipulated by all levels of the government, while also persecuted by individuals (including those from the "Mexican Mafia") who are seeking revenge for the information he at one point voluntarily supplied to the government.

He believes that governmental entities have worked to cover up his role as informant as well as the serious consequences to which it has led to this day. He believes that there have been "thousands of conspirators" to this plot. It is Mr. Eggers' understanding that his brother's (i.e., David's) psychiatric institutionalization was orchestrated by the State of California as a way of incapacitating him and shutting off his complaints about the

conspiracy, and that his father was murdered as part of the same scheme to punish him and his family. Mr. Eggers believes that the malfeasance of law enforcement led him to kill his victim, Mrs. Bennie Murray.

Persecutory delusions have permeated Mr. Eggers' thoughts, words, and deeds since 1985. Indeed, his most recent filing in the Alabama Supreme Court refers to the conspiracy of the Department of Corrections and the courts to cover up incidents related to his treatment while in prison, including his delusional allegations that he has been the subject of surveillance at the prison.[4]

Figure 2- Mr. Eggers' Response to Motion to Vacate Execution Date


EVEN FORMER A/C, THEY CLAIM EGGERS NOT TO BE DELUSIONAL IF EGGERS CONFESSED TO CAPITAL MURDER, BUT IS DELUSIONAL ABOUT U.S.F.B.I. COERCING EGGERS TO CO-OPERATE AS F.A.C. BETRAYED EGGERS CONFIDENCE/PRIVILEGE. EGGERS WAS FORCED TO PRODUCE THE BODY OF MRS. BENNIE FRANCIS MURRAY, SO TOO, SHOULD THE U.S.F.B.I. BE COMPELLED TO PRODUCE EGGERS PAST CRIMINAL RECORDS PROVING PAST COERCION PRACTICES AGAINST EGGERS. EGGERS HAS PRESENTED HIS CLAIMS, WHICH THE STATE AND FEDERAL COURTS HAVE REFUSED TO ADDRESS. JUST BECAUSE THE COURTS REFUSE TO ORDER THE GOVERNMENT TO PRODUCE EVIDENCE DOES NOT MEAN EGGERS IS DELUSIONAL ABOUT FACTS AND EXPERIENCES,

Mr. Eggers' mental illness, which has been mainly untreated, has worsened in prison. He requested a prison transfer because he believed his life was in danger. He asked to be placed in protective custody. He expressed fears about accepting trays of food from prisoners and corrupt officials, and

[4] *See* Pet.App.17a.

refused to eat. In January 2014, Mr. Eggers was referred to mental health because he was "having issues with sleep, flashbacks, self-isolation, and fears the unknown." When the Department of Corrections psychologist met with Mr. Eggers to address these concerns, however, he denied them.

Mr. Eggers' stated reason for being transferred to Donaldson Correctional Facility was "that he was having problems with the Holman [Correctional Facility] administrators and inmates. He report[ed] having been sodomized by inmates there, and that the 'Mexican Mafia was tampering with (his) food.'" Mr. Eggers more specifically described that delusion during his competency hearing testimony, stating:

> Inmates down at Holman Correctional Facility in the Mexican Mafia were making threats of violence and threats of death against me on or about November 4th, 2002. I was attacked when I was down at Holman. My cell door was rolled open and I was attacked.

Mr. Eggers believes that officials and inmates at Donaldson Correctional Facility have been retaliating against him, too. In detailing this retaliation, Mr. Eggers testified that a "prison official" opened his cell door "on or about July 15, 2010" to allow "[e]ight individuals . . . African American gang members" to assault him. Since 2011, Mr. Eggers believes that his food has been contaminated at Donaldson[5] and that "numerous officials, numerous inmates" have threatened retaliation against him,[6] after guards

[5] Competency Hr'g Tr. at 177-79.

[6] *Id.* at 179.

publically outed him as a "snitch."[7] To protect himself from food contamination threats, Mr. Eggers began to "wash [his food], depending on what it looks like. Meat products, vegetables."[8]

Mr. Eggers' paranoia also manifested itself elsewhere in his testimony and in his *pro se* filings. [9] His testimony and filings are strong evidence of the irrationality of his reasons for wanting to terminate present counsel and to abandon his appeals.

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[7] *Id.* at 180.

[8] *Id.*

[9] *See, e.g.*, Doc. 31- Motion for Appointment of Successor Counsel or Alternative Action (¶31 "Counsel is protecting the USFBI, SBCSD and other government agencies for their gross criminal negligence, refusing to produce and provide documentation derived from their investigations relating to Eggers involuntary special relationship with the United States as a confidential informant.") and (¶39 "It appears as though counsel has found something and is trying to conceal it and/or protect the United States and other government agencies."); Doc. 38 - Objection to Order Denying Motion(¶ 79 "Eggers asserts that an ongoing crime is being committed by the State, federal government and appointed counsels in Eggers case, as they have conspired to conceal evidence: A) to ensure the unlawful murder of the petitioner through state sanctioned execution, B) to protect the United States and San Bernardino County, California Sheriffs Dept. from civil prosecution for their gross criminal negligence in the wrongful death of Bennie Francis Murray."); Doc. 47 – Eggers "pro se" response to appointed counsels motion for competency hearing (¶ 23 "Present counsel has now joined in that concealment, unable to explain her actions and false information provided to Eggers and wants to be able to declare Eggers incompetent, unable to rationally discuss 'with the petitioner as fully as possible all potential grounds for relief,' including 'statutes and rules governing habeas petitions…'"); Doc. 56 - Motion for Court to overrule appointed counsels motion to file under seal (¶ 20 "Eggers adamantly asserts that her [counsel's] real objective is to prevent Eggers from challenging the distortion of facts which she is attempting to provide to this court in her efforts to protect the United States and the San Bernardino County Sheriffs Department for their gross criminal negligence in the wrongful death of Bennie Francis Murray."); Doc. 60 - Motion to appoint successor counsel or motion to proceed pro se at 3 ("When Eggers discovered that current counsel was concealing evidence, Eggers inquired, at which time counsel went on the defensive, compelling Eggers to seek to protect himself, reporting the actions of counsel to the court. Counsel then elected to declare Eggers delusional.").

Mr. Eggers believes that his attorneys are involved in a conspiracy with the San Bernardino County Sheriff's Department, the Federal Bureau of Investigation, and the District Court to conceal exculpatory evidence.[10]

> Q: That the concealment of the records and the involvement of counsel and law enforcement and the court is continuing at this time?
>
> A: Yes. And my beliefs are that way because it's the basis, the basis of that is the acts and omissions of the individuals and officers of the court. When they do something, yes, that right there is going to leave another individual to believe certain things. And yes, when you come and tell me records are no longer in existence but you refuse to provide me with something in writing which specifically states the records have been destroyed, that's still going to leave something open in my mind that the records are still in existence and, yes, you may be concealing them.
>
> Q: So you have asked this Court to allow yourself to be executed because you believe we are all part of something designed to conceal malfeasance of the United States government, correct?
>
> A: Yeah; Yeah. I would say yeah. I actually believe that all of these records are definitely material.[11]

That is a delusion. Mr. Eggers believes that the District Court or the Alabama Attorney General's Office engaged in *ex parte* communications with this Court to ensure the dismissal of a *pro se* writ of mandamus he filed.[12] That's also a false belief.[13] Mr. Eggers testified that he would rather be executed if he is not allowed to proceed *pro se*.[14] He believes that proceeding

[10] Competency Hr'g Tr. at 163; 193.

[11] *Id.* at 168.

[12] *Id.* at 189-190.

[13] *Id.* at 38.

[14] *Id.* at 158.

pro se is the only way for him to prove that he is not delusional about the existence of a 31-year conspiracy against him,[15] which is itself a delusional thought process.

Mr. Eggers has equivocated for years about wanting to end his litigation and be executed.

Mr. Eggers was convicted of capital murder and sentenced to death in 2002.[16] During the penalty phase of the trial, against the advice of counsel, he read a statement where he asked the jury to sentence him to death. In 2003, Mr. Eggers asked the Alabama appellate court to disregard direct appeal counsel's brief and to execute him. He later elected to pursue a direct appeal with counsel's assistance, but fired his counsel while the case was pending at this Court. He also filed a *pro se* writ of habeas corpus with this Court asking for relief from his conviction and death sentence.[17]

After mostly representing himself during state post-conviction proceedings, Mr. Eggers fired his appointed appellate counsel and filed a bar complaint against him, stating:

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[15] *Id.* at 193-94.

[16] *Eggers v. State*, 914 So. 2d 883, 921 (Ala. Crim. App. 2004).

[17] *Eggers v. State*, 05-7071.

Figure 3 - Bar Complaint Filed March 2012 Against State Post-Conviction Counsel

21. COUNSEL IS NOW A PARTY TO THE STATE COURTS & STATE OFFICIALS UNLAWFUL PATTERNS, CUSTOMS, PRACTICES, & POLICIES IN PROCEDURE TO DISRUPT THE PROPER ADMINISTRATION OF CRIMINAL JUSTICE SEEKING TO PROTECT LOWER COURT JUDICIAL OFFICERS, THE UNITED STATES, & OTHER AGENCIES OF LAW ENFORCEMENT FOR THEIR UNLAWFUL ACTS, OMMISSIONS, & GROSS CRIMINAL NEGLIGENCE IN THE WRONGFUL DEATH OF BENNIE FRANCIS MURRAY, CONCEALING LAW ENFORCEMENT RECORDS CREATED ON EGGERS IN AN INVOLUNTARY SPECIAL RELATIONSHIP WITH THE UNITED STATES & THE SAN BERNARDINO COUNTY SHERIFFS DEPARTMENT, SHEILDING THEM FROM A CIVIL PROSECUTION BY THE VICTIMS FAMILY, WHILE UNLAWFULLY DETAINING EGGERS THROUGH AN UNLAWFUL CONVICTION.

Mr. Eggers then filed two *pro se* federal habeas petitions.[18] At Mr. Eggers' request,[19] the District Court eventually appointed counsel. However, Mr. Eggers' motion foreshadowed his relationship with counsel. It was not merely a request for counsel. It was a request with 19 specific qualifications for counsel, including expertise in "unlawful coercement of suspects, compelled to engage in involuntary special relationships with the United States Department of Justice" and "wrongful deaths derived from the United States' unlawful acts, omissions & gross criminal negligence."[20]

In March 2014, the District Court appointed the Federal Defenders' Office for the Middle District of Alabama to represent Mr. Eggers. Five months later, Mr. Eggers began avidly seeking their discharge so that he could either have different counsel or no counsel.[21] In his first motion to

[18] *See Eggers v. Jones*, 6:06-cv-01315-LSC-HGD (N.D. Ala. filed July 6, 2006); *Eggers v. State*, 2:13-cv-01460-LSC-HGD, Doc. 1 (N.D. Ala. filed Aug. 5, 2013).

[19] Doc. 17.

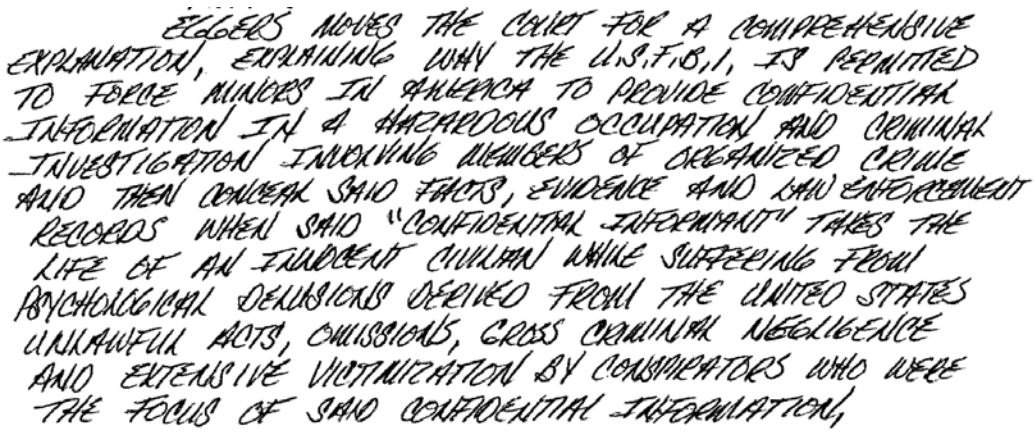
[20] *Id.*

[21] *See* Docs. 31, 39, 60, 136.

discharge counsel, he alleged that counsel were concealing facts and evidence from him and were pursuing a "hidden agenda" concerning the death penalty. At no point in the motion did he mention wanting to drop his appeals.

When the District Court refused Mr. Eggers' demands to relieve appointed counsel, and appoint new counsel or let him represent himself, Mr. Eggers then threatened to drop his appeals.[22] He accused the court of selecting the Federal Defenders because they could be "manipulated into presenting sentencing issues only and would refuse to challenge the rectitude of official misconduct."[23] He further claimed that counsel were trying to silence him by purchasing him food during visits, and then requested the following:

Figure 4-Waiver of Counsel and Motion for Ruling[24]


EGGERS MOVES THE COURT FOR A COMPREHENSIVE EXPLANATION, EXPLAINING WHY THE U.S.F.I.S.I. IS PERMITTED TO FORCE MINORS IN AMERICA TO PROVIDE CONFIDENTIAL INFORMATION IN A HAZARDOUS OCCUPATION AND CRIMINAL INVESTIGATION INVOLVING MEMBERS OF ORGANIZED CRIME AND THEN CONCEAL SAID FACTS, EVIDENCE AND LAW ENFORCEMENT RECORDS WHEN SAID "CONFIDENTIAL INFORMANT" TAKES THE LIFE OF AN INNOCENT CIVILIAN WHILE SUFFERING FROM PSYCHOLOGICAL DELUSIONS DERIVED FROM THE UNITED STATES UNLAWFUL ACTS, OMISSIONS, GROSS CRIMINAL NEGLIGENCE AND EXTENSIVE VICTIMIZATION BY CONSPIRATORS WHO WERE THE FOCUS OF SAID CONFIDENTIAL INFORMATION,

[22] Doc. 42, 47.

[23] Doc. 42.

[24] Doc. 42

Because Mr. Eggers asked to be executed, counsel responded by requesting a competency hearing.[25] The District Court denied counsel's motion for a competency hearing, absent evidence Mr. Eggers truly intended to volunteer for execution.[26] The court was unconvinced that Mr. Eggers wanted to dismiss his § 2254 petition in its entirety because his pleadings created substantial uncertainty about his actual intent. In the court's view, Mr. Eggers' pleadings "indicate[d] that he is waiving his right to appointed counsel but wishes to proceed in a pro se capacity," but "Eggers subsequently filed a document in which he states that he is not waiving any grounds for relief and lists the specific grounds for relief that he would like to raise in an amended petition," and he later said he "may be able to move forward with current counsel if an objective agreement can be reached."[27]

In November 2014, Mr. Eggers again asked the District Court to allow him to proceed *pro se* or with successor counsel, because counsel were not raising the issues he wanted presented or investigating areas he believed needed investigating. For example:

[25] Doc. 44.

[26] Doc. 46.

[27] Doc. 46 at 3.

Figure 5-Motion to Appoint Successor Counsel or To Proceed Pro Se[28]

EGGERS ADAMANTLY CONTENDS THAT INVESTIGATIVE L.E. RECOR
RDS, VICTIMIZATION REPORTS, & RETALIATION REPORTS ARE IN EXIST-
ENCE, WHICH ARE MATERIAL TO EGGERS FEDERAL CLAIMS.
MOREOVER, THAT THOSE RECORDS WOULD FURTHER DEMONSTRATE
THAT THE U.S.F.B.I. & S.B.C.S.D. WERE & ARE IN FACT LIABLE
FOR THE WRONGFUL DEATH OF ONE BENNIE FRANCIS MURRAY, DUE TO
THEIR GROSS CRIMINAL NEGLIGENCE IN THE ENFORCEMENT OF THE V.W.P.
A., WHICH WAS & IS THE PROXIMATE CAUSE FOR EGGERS MENTAL DEFECTS.

In this motion, Mr. Eggers did not make any reference to wanting to waive his rights to future appeals.

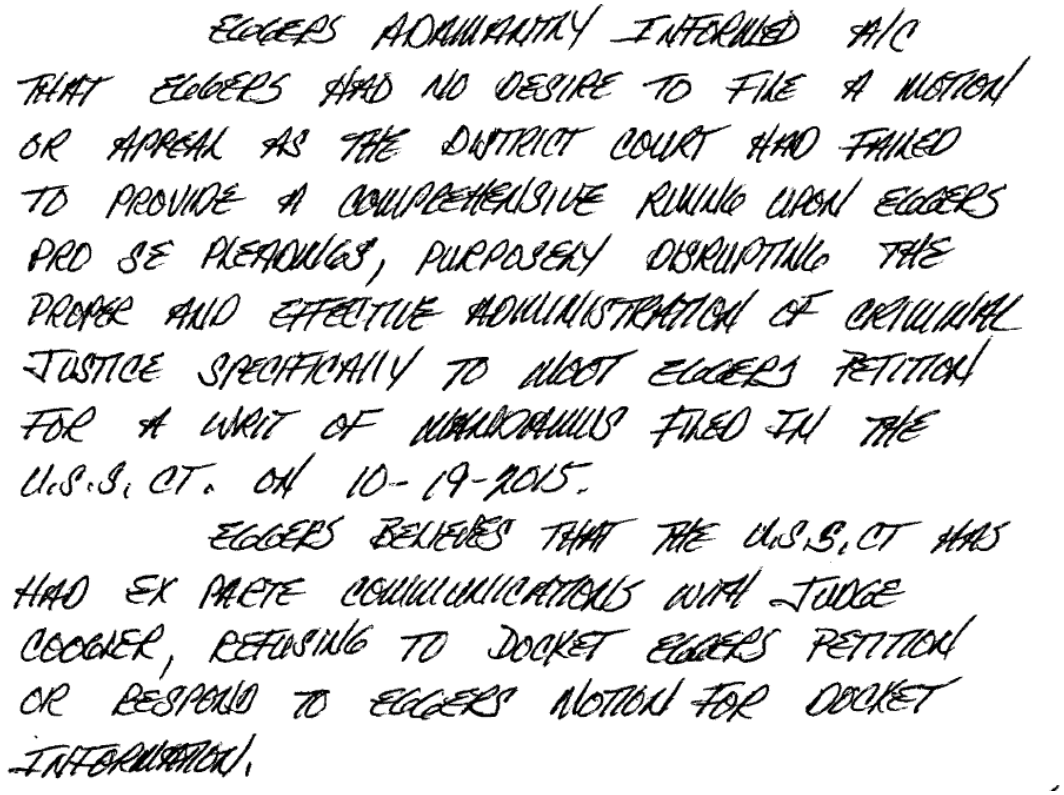
The District Court denied Mr. Eggers' habeas petition on November 25, 2015, in an opinion discussing appointed counsel's claims, as well as Mr. Eggers' *pro se* claims.[29]

Within a month of that ruling, Mr. Eggers filed another motion for successor counsel. Specifically he requested that successor counsel be appointed who would waive his appeals. His stated reason for wanting to waive his future appeals was:

[28] Doc. 60.

[29] Doc. 134.

Figure 6-Motion to Appoint Successor Counsel to Waive Future Appeals


EGGERS ADAMANTLY INFORMED A/C THAT EGGERS HAD NO DESIRE TO FILE A MOTION/ OR APPEAL AS THE DISTRICT COURT HAD FAILED TO PROVIDE A COMPREHENSIVE RULING UPON EGGERS PRO SE PLEADINGS, PURPOSELY DISRUPTING THE PROPER AND EFFECTIVE ADMINISTRATION OF CRIMINAL JUSTICE SPECIFICALLY TO MOOT EGGERS PETITION/ FOR A WRIT OF MANDAMUS FILED IN THE U.S.S. CT. ON 10-19-2015.

EGGERS BELIEVES THAT THE U.S.S. CT HAS HAD EX PARTE COMMUNICATIONS WITH JUDGE COOGLER, REFUSING TO DOCKET EGGERS PETITION/ OR RESPOND TO EGGERS MOTION FOR DOCKET INFORMATION/.

Foreseeing that Mr. Eggers might change his mind, as he had every other time he sought to end his case, counsel filed a motion to extend the notice of appeal deadline[30] and lodged a protective notice of appeal.[31] The District Court ordered a competency hearing in February 2016 after counsel obtained a limited remand from the Eleventh Circuit for that purpose.[32] On April 8, 2016, the court considered evidence respecting Mr. Eggers'

[30] Doc. 140.

[31] Doc. 144.

[32] Doc. 147.

competency at a contested hearing. It eventually ruled that Mr. Eggers was competent to waive further appeals.[33]

Mr. Eggers, unhappy with pace of the competency litigation, filed a petition for writ of mandamus in this Court, requesting that it order the Eleventh Circuit to immediately rule on the appeal from the District Court's ruling. The Eleventh Circuit affirmed the District Court's decision on December 5, 2017. Counsel filed a rehearing petition, arguing, among other things, that Mr. Eggers' true desire was not be executed, but to represent himself. Rehearing was denied on February 7, 2018.

REASONS FOR GRANTING THE WRIT

In over 50 years since this Court's opinion in *Rees v. Peyton*, this Court has never heard a case on the merits arising from the application of *Rees* in the lower federal court, and never considered a case where the petitioner's true desire was to represent himself, not be executed.

In *Rees v. Peyton*, this Court, in the context of a death-sentenced inmate who requested that his counsel withdraw his previously filed *certiorari* petition, ordered that the case be remanded to the District Court for a hearing on Mr. Rees' mental competence.[34] The Court later ordered that the case be held without any action on the petition until further order.[35] The

[33] Doc. 173.

[34] *Rees*, 384 U.S. 312, 314 (1967).

[35] *Rees v. Peyton*, 386 U.S. 989 (1967).

case never returned to the Court on the substantive question, with the writ being dismissed in 1995 after Mr. Rees' death.[36]

Rees did not involve a question of a death-sentenced inmate who wanted to represent himself. This Court has never considered *Rees* in the context of an inmate who has requested self-representation in habeas proceedings and to withdraw his appeals. Further, this case presents the Court with the ability, 50 years later, to conduct the review that never occurred in *Rees*. This case is the appropriate vehicle to review specific issues related to severely mentally ill death-sentenced inmates ending challenges to their convictions.

A. Previous cases that came to this Court where certiorari was denied did not involve requests for self-representation combined with vacillating requests to end further proceedings.

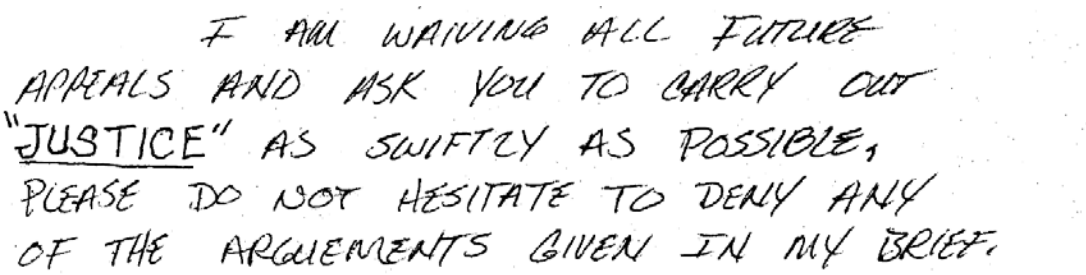
It is logical that someone under a death sentence who wants to end his litigation wants to discharge counsel. A request for self-representation along with a request to be executed is not logically consistent, and not the way these cases have come to this Court in the years since *Rees*. Yet, that is exactly the posture of this case.

Mr. Eggers has always wanted to represent himself, or at minimum, dictate to counsel exactly what issues should be raised and how they should be raised. When denied that opportunity, he falls back on an old standby,

[36] *Rees v. Superintendent*, 516 U.S. 802 (1995).

requesting to be executed. His first request to be executed occurred in September 2003:

Figure 7 - Letter from Michael Eggers to Court of Criminal Appeals


I AM WAIVING ALL FUTURE APPEALS AND ASK YOU TO CARRY OUT "JUSTICE" AS SWIFTLY AS POSSIBLE, PLEASE DO NOT HESITATE TO DENY ANY OF THE ARGUEMENTS GIVEN IN MY BRIEF.

The hundreds of pleadings Mr. Eggers filed since this 2003 request indicate that his desire to be executed is not based on anything other than an attempt to get attention for his *real* request -- self-representation. While *Rees* outlined the standard for evaluating the competency of a death-sentenced inmate who is choosing to be executed, it did not discuss what happens when that inmate wants to proceed *pro se*, and as an afterthought says that he wants to be executed.

In *Smith v. Armentrout*,[37] a habeas petitioner vacillated about whether to proceed with his petition. The District Court ruled that he was competent to terminate litigation. While the case was pending in the Eighth Circuit, he informed that court that he wanted to pursue habeas corpus remedies. The Eighth Circuit found that such a request did not render the case moot, and found that the District Court did not err in deciding that Mr.

[37] 812 F.2d 1050 (8th Cir. 1987).

Smith was competent to drop his habeas corpus case. This Court denied review.

In *Lopez v. Stephens*,[38] the Fifth Circuit affirmed a district court's decision to allow the petitioner to end habeas litigation after appointing counsel and an expert and holding a hearing where the court extensively questioned Mr. Lopez. Mr. Lopez' stated desire was to allow the state to carry out its sentence, because his conviction and sentence were justifiable. This Court denied review.

In 1985, this Court was faced with a petitioner who wanted to waive collateral review of his death sentence, and again denied certiorari. However, in *Rumbaugh v. McCotter*,[39] Justice Marshall, dissenting from the denial of certiorari, lamented that the courts were in essence allowing "a state capital punishment scheme to become an instrument for the effectuation of a suicide by a mentally ill man." Rumbaugh was acknowledged to be mentally ill, but the lower courts found that he logically chose death because he lost hope that his mental illness, which included paranoia, depression, and auditory hallucinations, could be treated. Mr. Rumbaugh was executed three months after this Court denied his petition.

As these cases demonstrate, *Rees* is applied normally in the situation where a death-sentenced inmate wants to discharge counsel to hasten his

[38] 783 F.3d 524 (5th Cir. 2015).

[39] 473 U.S. 919 (1985).

execution. The *Rees* analysis says it should be conducted "in the present posture of things."[40] But in this case, what is that present posture? Mr. Eggers wishes to be rid of present counsel, but does he wish to be executed? The lower courts presumed this in the context of Mr. Eggers' motion to withdraw his notice of appeal, but that presumption is not proper given his 15-year history of vacillation on the issue of whether he truly wants to be executed. Mr. Eggers has asked to be executed on nine occasions.[41] His reasons for wanting to be executed ranged from a judge refusing to read *pro se* pleadings to believing that present counsel waived his "procedural bar exceptions."[42] Each time he has requested to be executed, going back to 2003, he has followed it with more litigation on the issues in this case. For example, he requested to be executed in 2003, but filed a state post-conviction petition in 2006, along with a motion to proceed *pro se.* During the appeal of his state post-conviction case, he filed a 135 page document listing over 1500 "issues" about his conviction and sentence.

In the present litigation, he first asserted an intent to end his habeas case on September 18, 2014, and then again on September 29, 2014. When the trial court allowed him to engage in hybrid representation, he changed his mind and filed over 40 pleadings and notices with the District Court. When the District Court failed to address his *pro se* claims in the manner Mr.

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[40] *Rees*, 384 U.S. at 314.

[41] Competency Hr'g Tr. 183.

[42] *Id.*

Eggers deemed appropriate, he changed his mind and again asked to withdraw his appeal.

The truth is that Mr. Eggers wants to litigate his case, but wants to do so in a way to prove that his delusions are not delusions, but reality. When counsel refuse to litigate the case the way he wants it litigated, he asks to be executed. Prior to this present ruling, these requests were ignored. Now however, we have a mentally ill death-sentenced inmate using Alabama's system as his method of suicide because he cannot get anyone to believe that his delusions are not delusions.

Rees does not address this situation, and review in this case is necessary to clarify those aspects of *Rees* left open for the last 50 years. Further, these issues are of national importance. In the last decade, 14 executions of 'volunteers' have taken place.[43] This Court is well aware of the mental health issues that accompany capital cases, having recently granted *certiorari* in another case from Alabama regarding competency to be executed.[44] *Certiorari* in this case is proper to allow the Court to consider the interplay between mental illness, self-representation, and waiver of appeals.

B. This case has an extensive record and is a good vehicle to conduct the review that never occurred in *Rees.*

[43] https://deathpenaltyinfo.org/views-executions?exec_name_1=&sex=All&sex_1=All&federal=All&foreigner=All&juvenile=All&volunteer=y&&&&&&&&order=exec_date&sort=desc

[44] *Madison v. Alabama*, 17-7505.

The record in this case is extensive. Mr. Eggers filed over 50 motions *after* counsel was appointed to represent him, and those motions detail the story of his delusions. The record is replete with Mr. Eggers' beliefs about the judicial system, about the need for "narco-analysis" in criminal cases (truth serum) and his explanations of exactly how state and federal governments have conspired to cover up the fact that they are responsible for his actions in killing Mrs. Murray.

In addition, there was an evidentiary hearing, where the state and counsel for Mr. Eggers called expert witnesses, and Mr. Eggers was allowed to question those witnesses. And then there is his wide ranging testimony, where he detailed the conspirators that he believes have plagued his life since 1985, and told the story of how he believes this Court conspired with the District Court to continue hiding what happened to him. Taking this case will allow this Court to resolve the interplay between a request for self-representation and a request to be executed, which was not resolved in *Rees* and has never been addressed by this Court in the 50 years since *Rees*.

CONCLUSION

For the above reasons, this Court should grant this petition for writ of *certiorari*.

Respectfully submitted,

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Eggers v. Alabama, 876 F.3d 1086 (2017)
27 Fla. L. Weekly Fed. C 419

876 F.3d 1086
United States Court of Appeals,
Eleventh Circuit.

Michael Wayne EGGERS, Petitioner–Appellant,
v.
State of ALABAMA, Respondent–Appellee.

Nos. 16-10785 and 16-16805
|
Non-Argument Calendar
|
(December 5, 2017)

Synopsis

Background: After defendant's Alabama capital murder conviction and death sentence were affirmed on appeal, 914 So.2d 883, he petitioned for writ of habeas corpus. After petition was denied, 2015 WL 7567551, and after his counsel filed notice of appeal, the United States District Court for the Northern District of Alabama, No. 2:13-cv-01460-LSC, L. Scott Coogler, J., 212 F.Supp.3d 1130, found defendant mentally competent and granted his motion to withdraw appeal, discharge counsel, and be executed. Counsel filed second notice of appeal challenging competency ruling.

Holdings: The Court of Appeals, Marcus, Circuit Judge, held that:

[1] defendant understood his legal position and options available to him, and

[2] district court's factual finding that defendant's personality disorder did not prevent him from making rational choice among his options was not clearly erroneous.

Affirmed.

***1087** Appeals from the United States District Court for the Northern District of Alabama, D.C. Docket No. 2:13-cv-01460-LSC

Attorneys and Law Firms

Christine A. Freeman, John Anthony Palombi, Leslie S. Smith, Federal Defender Program, Inc., MONTGOMERY, AL, for Petitioner–Appellant.

Michael Wayne Eggers, Donaldson CF–Inmate Legal Mail, BESSEMER, AL, Pro Se.

Richard Dearman Anderson, Alabama Attorney General's Office, for Respondent–Appellee (Case No. 16-10785).

Richard Dearman Anderson, Thomas R. Govan, Jr., Alabama Attorney General's Office, for Respondent–Appellee (Case No. 16-16805).

Before HULL, MARCUS and WILSON, Circuit Judges.

Opinion

***1088** MARCUS, Circuit Judge:

At issue in this capital case is whether Michael Wayne Eggers, an Alabama death row inmate, is competent to waive his right to appeal from the denial of his § 2254 federal habeas petition, to discharge counsel and proceed with execution. Eggers admitted to having beaten and choked to death Bennie Francis Murray, his former employer, because she slapped him during an argument and because he felt betrayed by her refusal to help him fetch his disabled car from a remote location. On August 5, 2013, Eggers filed a pro se federal petition for a writ of habeas corpus in the United States District Court for the Northern District of Alabama, challenging the validity of his convictions and sentence. Counsel was appointed to represent him. Throughout the § 2254 proceedings, Eggers disagreed with his counsel's litigation strategy, sought to have different counsel appointed, and asserted claims for habeas relief in his own voluminous pro se filings.

After his counsel filed a notice of appeal from the district court's denial of his § 2254 petition, Eggers filed recurrent pro se requests to withdraw the appeal, discharge counsel and be executed. At counsel's request, the district court conducted a mental health hearing on Eggers's competency to waive his appeals, and this Court stayed the appeal in order to allow the district court to complete its inquiry. After taking extensive testimony from two psychologists and Eggers himself, in addition to examining voluminous documentary evidence bearing

on Eggers's competency, the district court concluded that Eggers was mentally competent and had made a rational choice to forego further collateral review, dismiss his attorneys, and proceed to execution. Thus, it granted Eggers's application to withdraw his appeal from the denial of his § 2254 petition and discharge counsel.

A second notice of appeal was then filed by his counsel challenging the district court's competency ruling too. In light of the petitioner's expressed choice to dismiss all appeals, discharge counsel and proceed with execution, we are obliged to address the ancillary issue of Eggers's competency before turning to the merits of this habeas appeal. To that end, we have obtained briefing from the State, Eggers himself and his counsel to resolve this threshold matter. After review of a lengthy record, we are satisfied that the district court engaged in a thorough and comprehensive analysis of the record and acted within its discretion in finding that the petitioner was competent to proceed as he saw fit and rationally chose to abandon his federal habeas appeal. We can discern no clear error in this determination and, thus, affirm the judgment of the district court and dismiss this appeal.

I.

A.

In order to properly address the matter of competency, we briefly recount the essential factual and procedural history surrounding this case. The underlying facts were summarized by the Alabama Court of Criminal Appeals this way:

> Bennie Francis Murray ("Francis") and her husband, Frank, owned and operated a concession business that traveled around the southeast with a carnival. Francis hired Eggers to work concessions; he traveled with the carnival until September 2000, when the carnival arrived in Jasper, [Alabama,] where Eggers met a woman. When the carnival left Jasper, Eggers stayed behind and found a job, but apparently lost the job at some point and was unable to find another one. On December 26, 2000, Eggers telephoned Francis, who, along ***1089** with her husband, lived in Talladega when they were not traveling with the carnival, and asked for a job. Francis explained that the carnival would not begin traveling again until mid-March and that the Murrays' "bunkhouse," a trailer that had been converted into rooms for their employees, would not be available until mid-February. On December 28, 2000, Eggers telephoned Francis again. He told Francis that he and his 15-year-old son were at the bus station in Birmingham, and asked Francis to come pick them up. Francis picked up Eggers and his son and brought them back to Talladega, where she tried to help Eggers find a temporary job, but was unable to do so. On December 30, 2000, Eggers asked Francis to take him and his son back to Jasper; she agreed.
>
> According to Eggers's statements to police, on their way to Jasper, Eggers asked Francis to take him to his car, which was outside Jasper; he had driven it off the road in inclement weather the week before Christmas and had gotten stuck in a ditch. Francis agreed and, after dropping off Eggers's son at Eggers's apartment in Jasper, Francis and Eggers left in search of Eggers's car. After driving for some time in a rural area of Walker County, Francis stopped her pickup truck on the side of the road and indicated that she was unwilling to go any further and was going to turn around. Eggers then asked her if she was "joining everyone else on the fuck Mike bandwagon." At that point, Eggers said, Francis "backhanded" him and he "let go ... [and] just started hitting her." 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"—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." 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." Eggers again said that he "didn't want to leave her out there suffering." 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 then took Francis's truck to a car wash and washed Francis's blood out of the

cab of the truck. He also went through Francis's purse, which was in the truck, and found cash and a debit card. Eggers said that the killing was not premeditated, but was spontaneous.

[Eggers eventually was arrested in Florida and brought back to Alabama for criminal proceedings.]

Eggers v. State, 914 So.2d 883, 888-89 (Ala. Crim. App. 2004) (citations omitted).

Trial began in August 2002. Id. at 890. During trial, Eggers's counsel had him evaluated by a psychologist in an effort to establish that he was not guilty by reason of insanity. Id. at 890, 912-13. Although Eggers pleaded not guilty and not guilty by reason of mental disease or defect, and although the jury was charged on the defense of insanity, Eggers did not argue, nor present evidence denying that he ***1090** killed Francis or that he was insane at the time of the crime. Id. at 890. Rather, the petitioner claimed that he suffered from intermittent explosive disorder and personality disorder, that the initial attack on Francis was the result of blind rage precipitated because Francis slapped him and that the ensuing kidnapping and robbery were merely afterthoughts unrelated to the homicide. Id.

The insanity defense failed and the jury convicted Eggers of two counts of capital murder. Id. at 888. The homicide was made capital because it was committed during the course of a kidnaping, see Ala. Code § 13A-5-40(a)(1) (1975), and because it was committed during the course of a robbery, see id. § 13A-5-40(a)(2). Eggers, 914 So.2d at 919-20. The jury recommended that the petitioner be sentenced to death by a vote of eleven to one. Id. at 920. The trial court accepted the jury's recommendation and sentenced Eggers to death. Id. at 921.

Eggers appealed, through new appointed counsel; the Alabama Court of Criminal Appeals affirmed the conviction and sentence. Eggers v. State, CR-02-0170, 2004 WL 2200853 (Ala. Crim. App. Oct. 1, 2004). After Eggers filed an application for rehearing, the Alabama Court of Criminal Appeals substituted its opinion with another on November 24, 2004, also affirming the conviction and sentence, and overruled a second application for rehearing. Eggers, 914 So.2d at 883. The Alabama Supreme Court initially granted Eggers's petition for a writ of certiorari, but later quashed the petition. The Alabama Court of Criminal Appeals issued its certificate of judgment on May 20, 2005. Eggers subsequently petitioned the United States Supreme Court twice for certiorari review—a pro se petition and an attorney-authored one. Both applications were denied on January 17, 2006. Eggers v. Alabama, 546 U.S. 1140, 126 S.Ct. 1143, 163 L.Ed.2d 1004 (2006).

B.

On April 20, 2006, Eggers timely filed a pro se post-conviction petition pursuant to Rule 32 of the Alabama Rules of Criminal Procedure in the Circuit Court of Walker County, Alabama. At the State's request, the court held a hearing to determine whether to appoint counsel to represent Eggers. Right from the outset, Eggers said that he wanted to proceed without appointed counsel; not surprisingly, the circuit court denied the State's motion to appoint a lawyer for him. Eggers amended his pro se petition five times, filing several procedural and discovery motions and writs of mandamus; in some of the filings, he claimed that his capital crime and conviction was, for one reason or another, the result of a conspiracy against him by the San Bernardino County, California, Sheriff's Department, the Federal Bureau of Investigation ("FBI"), and elements of organized crime. On October 4, 2010, the circuit court dismissed Eggers's Rule 32 petition, holding that Eggers's claims lacked merit, lacked specificity, or were procedurally defaulted.

On appeal, the Alabama Court of Criminal Appeals appointed counsel to represent Eggers. Some months later, counsel moved to withdraw, citing conflicts with Eggers. The petitioner likewise notified the state appellate court that he had "discharged" counsel, in part, because counsel would not sign his "attorney/client objective agreement" to litigate the appeal the way he wanted to proceed. When the Alabama Court of Criminal Appeals denied the motion to withdraw, Eggers's counsel filed a "no merits" brief, citing Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). Eggers then filed a pleading raising 1,581 "issues" with the ***1091** circuit court decision. The Alabama Court of Criminal Appeals affirmed the dismissal of Eggers's Rule 32 motion on April 20, 2012, writing that it had reviewed the entirety of Eggers's claims, along with the record, and concluded that the issues had no merit. On September 20, 2013, the Alabama Supreme Court denied his petition for writ of certiorari.

C.

On August 5, 2013, Eggers filed the instant pro se federal habeas petition, pursuant to 28 U.S.C. § 2254, in district court and sought the appointment of counsel. The district court first requested that two known death-penalty litigation attorneys meet with Eggers about the possibility of representing him, but after the meeting, Eggers complained to the district court about their strategy and advice. A magistrate judge subsequently appointed attorneys from the Middle District of Alabama Federal Defender Program, Inc. to represent the petitioner.

Eggers originally allowed his appointed counsel, John Palombi and Leslie Smith, to litigate his § 2254 petition. Despite many pro se filings from Eggers complaining about his counsel's litigation strategy, the district court refused to appoint new counsel, but permitted Eggers to file a pro se amended petition for habeas relief in addition to the petition submitted by counsel. Eggers's counsel asked the district court to conduct a competency hearing and declare Eggers incompetent to proceed. In support, they offered a psychological evaluation of Eggers from Dr. Ken Benedict, a psychologist who had met with the petitioner at Donaldson Correctional Facility on May 22 and 23, 2014, and August 28 and 29, 2014. The district court denied counsel's motion for a competency hearing on the ground that a hearing would only be required if a death penalty petitioner whose competency was in question sought to dismiss the entirety of his § 2254 petition. Because Eggers had filed pleadings suggesting that he did not want to abandon his federal habeas petition but rather only sought to proceed pro se or with different counsel, a competency hearing was not required.

On November 25, 2015, the district court denied the counseled and pro se § 2254 petitions in their entirety. The district court fully addressed the claims contained in Eggers's counseled petition—including that: (1) Eggers was mentally incompetent at trial and during the post-conviction proceedings, and the trial court deprived him of a constitutionally-mandated competency hearing; (2) appellate counsel rendered ineffective assistance; (3) trial counsel rendered ineffective assistance in litigating his insanity defense at trial and his competence to stand trial, in investigating and litigating the claim that Eggers was mentally ill when he confessed, in investigating Eggers's mental illness in order to support a lesser included offense or to show that he lacked the intent to commit capital murder, and in preparing for the penalty phase of the trial; (4) the State withheld evidence concerning Eggers's 1987 arrest and commitment in a mental hospital; (5) the State caused mental health experts to present false testimony that Eggers was not insane; and (6) Eggers was denied counsel during a custodial interrogation.

The district court also thoroughly considered Eggers's pro se claims that: (1) the State withheld evidence concerning Eggers's 1987 arrest and commitment in a mental hospital, and records from the FBI and San Bernardino Sheriff's Department; (2) his arrest and the admission of his confessions were unconstitutional because he was arrested pursuant to an illegal search and seizure and the three confessions he made to law enforcement were ***1092** involuntary; (3) he was incompetent to stand trial; (4) the trial court erred in addressing his mental illness and incompetency; and (5) his trial counsel rendered ineffective assistance of counsel on various other grounds. After explaining in detail that the state court had not issued a decision that was either contrary to or an unreasonable application of Supreme Court law, the district court denied Eggers's motions for discovery and an evidentiary hearing, and denied him a certificate of appealability.

On December 22, 2015, Eggers filed in district court a pro se "Motion to Appoint Successor Counsel Who Shall Effectively Waive Future Appeals," seeking leave to "move forward with his state sanctioned execution without any further undue delays." Soon thereafter, Eggers filed what he characterized as a pro se "Motion for a Final Order," asking the district court to give him a copy of its final order so he could send it to the Alabama Supreme Court "to expedite [his] execution." Eggers also contemporaneously lodged a pro se "Waiver/Notification/Motion to Expedite Execution" in the Alabama Supreme Court. The State responded that it had no objection to the waiver of any appeal.

At that point, and on appointed counsel's motion, the district court agreed to conduct a competency hearing.

D.

After Eggers's counsel filed a notice of appeal from the denial of his underlying § 2254 petition, we stayed the appeal so that the district court could conduct a competency hearing. The district court held an extensive hearing, taking testimony from Dr. Ken Benedict, a psychologist retained by counsel; Dr. Glen King, a psychologist retained by the State; and from Eggers himself. The court also received in evidence, among other things, Eggers's extensive Alabama Department of Corrections ("ADOC") file, Dr. Benedict's psychological evaluation report dated October 17, 2014, and Dr. King's psychological evaluation report dated April 5, 2016.

Dr. Benedict opined that Eggers suffered from schizophrenia, a psychotic spectrum disorder, and possibly from a delusional disorder, as well as a narcissistic personality disorder and a history of substance abuse. The district court allowed Eggers to personally question Dr. Benedict, and in that exchange, Eggers challenged many of the things Dr. Benedict had based his diagnosis on, denied that he was delusional, explained several of his legal filings, and detailed his complaints about prison and the courts. Eggers also explained that he was trying to establish that while he suffered from psychological problems at the time of the murder, he was no longer suffering from any of them, he was not delusional and fully understood the claims he sought to raise on federal habeas review.

Dr. King, retained by the State, testified next. He opined that Eggers "does not have a serious mental illness or mental defect and that he certainly is able to proceed pro se. And he has a rational understanding of courtroom procedures, the issues in the courtroom, and that he has a rational and reasonable understanding of what it means to consult with counsel." Dr. King formally diagnosed Eggers with narcissistic personality disorder, and observed that the separate diagnoses of a psychiatrist and psychologist at the time of Eggers's trial in 2002 reached essentially the same diagnosis as he did. He explained that a narcissistic personality disorder "is not considered to be a serious mental illness," and that it is not a psychotic disorder or a delusional disorder.

***1093** Eggers then testified. The petitioner reiterated his views concerning his legal proceedings, explained his delusions at the time of trial, and detailed some of the problems he encountered in prison, and with lawyers and the court. He offered that if the district court would reopen his case and consider the arguments he had advanced in a pro se capacity—not the arguments advanced by his counsel—then he might want to continue with his case, 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." He also flatly claimed that he was competent to decide to forgo any further appeals because

> I have full understanding of all the proceedings. I mean, I understand my claims, I understand what these proceedings are for. I understand that I was convicted of capital murder. I understand that I was sentenced to death. I understand the appellate process. I understand that I went through the state post-conviction proceedings, state post-conviction appeal. I am in federal habeas corpus. I tried to get counsel who would present my claims. You have abandoned my claims. You have presented your own claims. The Judge dismissed your claims, ignored my claims. I don't want to go on to the United States Eleventh Circuit or the United States Supreme Court.

Eggers adamantly denied that he was currently delusional or suffering from any mental disease or defect.

After the hearing, the district court received briefing from counsel, the State, and Eggers. Counsel claimed that Eggers was not competent to waive his appellate rights or undertake self-representation because he suffered from psychotic delusions, and asked the court to appoint a person as next of friend to prosecute Eggers's § 2254 appeal. Before the State's brief was due, Eggers filed two additional pro se pleadings: a "Pro se Response to Competency Hearing and Brief in Support Submitted by A/C and State," and a "Summary Argument to Eggers Response to Competency Hearing, Appointed Counsel and State of Alabama." Again, Eggers said that he was competent, that he should be allowed to discharge his counsel and proceed pro se, and that he should be permitted to waive all appeals and proceed immediately to execution. He also reiterated his dissatisfaction with the

district court's treatment and ultimate denial of his claims for habeas relief.

Out of an abundance of caution, the district court directed Eggers to file a statement indicating whether (1) he wanted to appeal on any of the grounds he had asserted pro se, or on any other basis, if the court allowed him to discharge counsel and appeal pro se; or whether (2) he truly wished to withdraw his habeas application and waive all future appeals in their entirety. In a May 5, 2016, response, Eggers unambiguously answered that he "simply withdraws and waives all future appeals in their entirety." The State subsequently filed a brief arguing that Eggers was competent to waive all appeals and discharge counsel because he was not suffering from a severe mental illness, was fully aware of his options, and had made a rational choice.

In a lengthy opinion, the district court found that Eggers had made a rational choice to dismiss counsel and abandon his appeal. It also found that Eggers was fully competent to make those decisions and had the right to do so. Accordingly, the district court granted Eggers's pending motions to withdraw his appeal, dismiss counsel and proceed to execution. Following the district court's order, we lifted the ***1094** appellate stay so that we could address, as an initial matter, counsel's challenge to the district court's finding of competency.

This timely appeal followed.

II.

The sole issue before us today is the ancillary question of whether Eggers is competent to withdraw his appeal, dismiss counsel and proceed to execution. In Rees v. Peyton, 384 U.S. 312, 86 S.Ct. 1505, 16 L.Ed.2d 583 (1966), the Supreme Court established the operative test for determining competency to waive post-conviction review in a capital case. The Court framed the essential question this way: whether the defendant "has capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation or on the other hand whether he is suffering from a mental disease, disorder, or defect which may substantially affect his capacity in the premises." Id. at 314, 86 S.Ct. 1505. We have since explained that

> "[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 v. Zant, 978 F.2d 637, 641 (11th Cir. 1992).

Because a defendant may be found incompetent if he satisfies either of the last two prongs of the Lonchar test, we analyze all three prongs. See id. at 641-42; see also Rumbaugh v. Procunier, 753 F.2d 395, 398-99 (5th Cir. 1985).

[1] Whether Eggers is competent to dismiss his § 2254 habeas petition in order to proceed with execution is purely a factual question. Ford v. Haley, 195 F.3d 603, 617 (11th Cir. 1999) ("Whether Ford is competent to dismiss his § 2254 habeas petition in order to be executed in a capital case is a factual question." (citing Lonchar, 978 F.2d at 640)). Not only is the ultimate determination about competency factual in nature, so too are any subsidiary findings. See Hauser ex rel. Crawford v. Moore, 223 F.3d 1316, 1323 (11th Cir. 2000). However, to the extent any party claims that the district court misinterpreted Lonchar's three legal requirements, we review those legal questions de novo. Ford, 195 F.3d at 617.

[2] **[3]** **[4]** **[5]** **[6]** In examining the district court's factual findings, we are obliged to accept them unless they are clearly erroneous. Ford, 195 F.3d at 617. "Clear error is a highly deferential standard of review." Holladay v. Allen, 555 F.3d 1346, 1354 (11th Cir. 2009) (quotation omitted). "A factual finding is clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." Id. (quotation omitted); Ford, 195 F.3d at 617; see also Anderson v. City of Bessemer City, 470 U.S. 564, 573, 105 S.Ct. 1504, 84 L.Ed.2d 518 (1985). In Anderson, the Supreme Court explained that the clear error standard

> plainly does not entitle a reviewing court to reverse the finding of the trier of fact simply because it is convinced that it would

> have decided the case differently. The reviewing court oversteps the bounds of its duty under Rule 52(a) if it undertakes to duplicate the role of the lower court. In applying the clearly erroneous standard to the findings of a district court sitting without a jury, appellate courts must constantly have in mind that their function is not to decide ***1095** factual issues de novo. If the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous.

470 U.S. at 573–74, 105 S.Ct. 1504 (citation and quotation marks omitted). Indeed, it is well settled that an appellate court may set aside a trial court's findings of fact only if they are "clearly erroneous," and we must afford "due regard ... to the opportunity of the trial court to judge of the credibility of the witnesses." Amadeo v. Zant, 486 U.S. 214, 223, 108 S.Ct. 1771, 100 L.Ed.2d 249 (1988) (quoting Fed. R. Civ. P. 52(a)). In other words, we cannot substitute our interpretation of the evidence for that of the trial court simply because we "might give the facts another construction [or] resolve the ambiguities differently." Inwood Labs., Inc. v. Ives Labs., Inc., 456 U.S. 844, 857, 102 S.Ct. 2182, 72 L.Ed.2d 606 (1982) (quotation omitted).

A.

Here, the parties are in basic agreement that the district court did not clearly err in finding that Eggers had satisfied the first step of the Lonchar test and that he had not satisfied the second one. Again, the first step simply asks whether Eggers suffers from a "mental disease, disorder, or defect." Lonchar, 978 F.2d at 641. The district court found Dr. King's diagnosis of a personality disorder more persuasive than Dr. Benedict's diagnosis of paranoid schizophrenia. The court concluded, however, that Eggers still satisfied the first prong of the test for incompetence because a personality disorder constitutes "a mental disease, disorder or defect" in this Circuit. See Ford, 195 F.3d at 617. While his counsel maintains that Eggers suffers from paranoid schizophrenia, rather than only from a personality disorder, no party on appeal—not the State, not Eggers, and not his counsel—disputes that the first prong of the Lonchar test has been satisfied.

[7] As for the second prong, the district court found that counsel had conceded Eggers understood "his legal position and the options available to him." The district court added that "perhaps the most persuasive evidence that Eggers understands his legal situation is his own testimony." See Lonchar, 978 F.2d at 642. The record fully supports the district court's finding. In fact, Eggers made it abundantly clear that he understood the legal system, all of the options available to him, and the fateful reality that he will face execution if he is allowed to withdraw his appeal. This was wholly consonant with Dr. Benedict's testimony that he was not concerned about whether Eggers understood the legal proceedings or that he will face execution if allowed to drop his appeal.

[8] In a letter brief to this Court, counsel speculates, nevertheless, that Eggers might not understand his legal position because he "entertain[ed] filing a Rule 60(b) motion." Yet a review of the record shows that counsel told Eggers that he should file a Rule 60(b) motion. Eggers went on to discuss that possibility in a colloquy 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. The record clearly indicates that Eggers fully understood the legal posture of his case. We add, however, that the petitioner need not understand the particulars of each legal issue. Ford, 195 F.3d at 619. Rather, Eggers ***1096** must exhibit "a basic understanding of the habeas proceedings" and understand "that without further proceedings he would be executed." Id.; see also United States v. Hogan, 986 F.2d 1364, 1373 (11th Cir. 1993) ("Even 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."). Here, as in Ford, the record established that the district court's findings are supported by substantial evidence and are not clearly erroneous. Ford, 195 F.3d at 619.

B.

[9] That leaves us with the third prong of the Lonchar test—whether Eggers's mental disease, disorder, or defect prevented him from making a rational choice among his options, Lonchar, 978 F.2d at 641—and the essential dispute in this appeal. 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.

The district court also made numerous subsidiary findings of fact bearing on Eggers's competency, all of which were based on an ample record. For starters, the district court found that Eggers did not suffer from psychotic delusions or paranoid schizophrenia. In making this finding, the district court first recounted—and then squarely rejected—the opinion of counsel's expert, Dr. Benedict. Dr. Benedict—who reported that he had testified as a psychology expert in about fifteen death penalty cases, and had always testified on behalf of an inmate—opined at length at Eggers's competency hearing.

Benedict detailed that in preparing his opinion report, he had spoken with Eggers's family members and friends, and reviewed numerous materials, including a 1987 record from the El Paso, Texas Police Department about Eggers and his brother, David, who had reported being followed by unknown subjects and were described as "not appear[ing] to be mentally stable";[1] a 2001 transcript of Eggers's confession, in which he admitted he killed the victim because "I felt like everybody was on the fuck you bandwagon"; records from the Walker County, Alabama jail while Eggers was awaiting trial and reporting high anxiety; two mental health evaluations conducted during Eggers's trial by Dr. Alan Shealy, a psychologist, and Dr. James Hooper, a psychiatrist; four Alabama Board of Corrections incident reports from 2002-03 about Eggers threatening inmates, attempting to commit suicide and admitting to hallucinations; and three complaints Eggers filed with prison officials in April and May 2014, detailing his concerns that his food was unsanitary and that prison staff were possibly delaying the delivery of his mail. Dr. Benedict also reported that several of Eggers's family members and friends said Eggers had begun to seem "paranoid" around 1985, when federal officers forced Eggers to become a confidential informant for the San Bernardino Sheriff's Office. They added that Eggers's brother suffered from paranoid schizophrenia, but most believed Eggers's problems were not as severe as his brother's.

Dr. Benedict's report recounted that he had administered several personality tests in 2014: the Personality Assessment Inventory, or PAI, the Minnesota Multiphasic Personality Inventory–2 ("MMPI-2"), and *1097 the Rorschach inkblot test. Benedict said the PAI, which yields a profile of a person's emotional, social, and behavioral functioning, indicated that Eggers suffered from "extremely high levels of clinical paranoia and persecutory ideas." According to Benedict, the results of the MMPI-2 also revealed "very high levels of paranoia at levels similar to what was indicated by the PAI." As for the Rorschach ink blot test, Dr. Benedict said that it showed in some instances thought disorder and self-involvement.

Dr. Benedict's formal diagnosis was that Eggers suffered from a psychotic spectrum disorder, namely schizophrenia, and possibly a delusional disorder, as well as a narcissistic personality disorder and a history of substance abuse. Dr. Benedict explained that a psychotic spectrum disorder, as listed in the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition ("DSM-V"), includes these diagnostic criteria: "hallucinations, delusions, disorganized thinking, catatonic behavior or grossly disorganized behavior ... and ... negative symptoms, ... such as interpersonal withdrawal...." "Of those five cardinal symptoms, two must be present for a period of at least six months." Benedict opined that Eggers's "most obvious and consistent [symptom] is the delusional activity that has been in evidence for many years." He added that Eggers also suffers from "brief episodes of disorganized thinking" and has a "variety of negative symptoms, including interpersonal withdrawal."

As for Eggers's delusional activity, the psychologist discussed Eggers's numerous suspicions arising out of having been a confidential informant during his youth in the 1980s in San Bernardino, when he informed on motorcycle gangs and the mafia. According to Eggers, he was under a tremendous amount of stress at the time of the capital murder because of his role as a confidential informant—stress that may have caused him to commit the murder—and that, either because of his

cooperation with law enforcement, or in spite of it, none of his counsel, trial or otherwise, ever adequately pursued this line of defense, and conspired with the courts to suppress it. As other examples of delusional activity, Dr. Benedict cited Eggers's beliefs that the district court was engaging in ex parte communications with the Supreme Court about his case; that his counsel was withholding information from him and colluding with law enforcement to conceal evidence; that conspirators within the prison were tampering with his food; and that his confession to law enforcement at the time of the murder of the victim was false because an agent of the FBI with knowledge of his prior involvement as a confidential informant in California coerced him into confessing.

Although Eggers denied having hallucinations, the psychologist opined that Eggers's past assertions to correctional officers and accounts from Eggers's family showed otherwise. Benedict explained that he disagreed with Dr. King's diagnosis because Dr. King's opinion was based solely on Eggers's statements and not on collateral interviews. And while Dr. Benedict opined that Eggers understood that if he dropped his appeal he would face execution, Benedict believed the petitioner's decision was "irrational."

The district court thoroughly summarized Dr. Benedict's testimony and report, but rejected the psychologist's opinion. In doing so, the district court instead relied on three other mental health professionals, each of whom had formally evaluated Eggers and each of whom had agreed that while Eggers suffered from various types of personality disorders he did not suffer from any severe mental illness. The district court first pointed to the opinions of ***1098** Dr. Alan Shealy, a psychologist, and Dr. James Hooper, a psychiatrist, each of whom had evaluated Eggers at the time of his trial in 2002. Neither diagnosed him as either being psychotic or suffering from any severe mental illness. Rather, Dr. Shealy, who had interviewed Eggers, his lawyer, and two family members and administered an MMPI-2 and part of an IQ test, diagnosed Eggers with "intermittent explosive disorder" and "paranoid personality disorder." But, he did not diagnose the petitioner with schizophrenia. Dr. Shealy noted that Eggers had suffered "one episode of psychotic delusional paranoi[a] at age 20, lasting for weeks to a few months, most likely a result of significant amphetamine abuse combined with a predisposition to mental disorder," and added that Eggers's older brother, David, is an "institutionalized paranoid schizophrenic." For his part, Dr. Hooper interviewed Eggers and reviewed Dr. Shealy's report. He opined that Eggers "has many characteristics of an antisocial personality disorder," that he "denied any hallucinations or delusions no[w] or ever," and that while he had "been drawn into his brother's delusions in 1985 [he] had no problems since then ... or at the time of the index crime." Dr. Hooper also found that Eggers "does not suffer from severe mental disease or defect and has not suffered from a serious mental disease or defect."

The district court found these opinions to be consistent with the diagnosis offered by the State's witness, Dr. Glen King, at the competency hearing. Dr. King, a psychologist, began his testimony by relaying that he had been retained by the State in about eighty post-conviction death penalty cases or serious criminal cases. Notably, however, he ultimately testified in favor of the inmate in approximately ten of those cases.

Dr. King met with Eggers at Donaldson Correctional Facility for approximately two and a half hours on April 4, 2016. King administered a test he called the Evaluation for Competency to Stand Trial, Revised Form, or ECST-R. He employed that test because he thought it was the most appropriate one to help answer whether Eggers had a serious mental illness or mental defect and whether that illness or defect affected his ability to make rational decisions about his case and consult with his lawyers. Dr. King described the ECST-R as a structured interview with three parts: the first dealt with competency to consult with counsel; the second with a factual understanding of courtroom procedures; and the third with a rational understanding of courtroom procedures. According to King, Eggers scored "basically zeros" on everything, meaning that "he had a perfect understanding of all the roles of participants, the factual understanding of courtroom procedure, and his ability to consult with counsel." Although Dr. King brought two other tests with him (an MMPI-2 and a test for malingering), he didn't administer either because, in his words, "[w]hen I first met Mr. Eggers and went through approximately a two-hour interview with him, there was absolutely no evidence for any psychological difficulty, no evidence for mental illness that I could see. He answered all my questions directly, and he also showed no evidence whatsoever for malingering."

Dr. King also opined that during his interview with Eggers, he "saw [no] overt paranoia ... during any of the time that [he] spent with him." Eggers denied that he suffered from "delusions, hallucinations, depersonalization or derealization." King added that the Alabama Department of Corrections records from the years 2002 through 2014 never indicated that Eggers suffered from any kind of psychosis, nor that he was ever treated for any psychosis. ***1099** Rather, to the extent Eggers reported mental health issues around the time of his trial in 2002, Dr. King emphasized that two different prison officials said Eggers was malingering psychotic symptoms in an effort to try to get off death row, and that Eggers actually admitted that he was malingering and reported he was going to stop, in his words, "acting crazy."

Dr. King concluded that Eggers "does not have a serious mental illness or mental defect and that he certainly is able to proceed pro se. And he has a rational understanding of courtroom procedures, the issues in the courtroom, and that he has a rational and reasonable understanding of what [it] means to consult with counsel." King's formal diagnosis of Eggers was narcissistic personality disorder, and, he noted, Drs. Shealy and Hooper's diagnoses at the 2002 trial were essentially the same as his. He explained that a narcissistic personality disorder "is not considered to be a serious mental illness," and is not a psychotic or a delusional disorder. The district court accepted Dr. King's opinion, finding it to be supported by the results of the ECST-R, as well as Dr. King's own observations.

After reviewing the competing expert opinions, the district court found that Dr. Benedict's opinion was not supported by the record. Among other things, the district court expressly found that Benedict could not substantiate the view that Eggers's beliefs are actually delusional —i.e., that they are falsely-held and persist in the face of evidence to the contrary. A large portion of the record involved Eggers's longstanding concerns stemming from his role as a confidential informant in 1985. The record revealed, however, that Eggers was, indeed, a confidential informant at that time and had provided law enforcement with information about "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." Thus, as Benedict acknowledged, the danger that Eggers faced as a confidential informant was neither made up nor imagined. Moreover, Eggers subsequently denied that he was still being persecuted by the people he had informed against and reported to Dr. Benedict that he did not believe his attorneys were associated with them.

As for other "delusions," Dr. Benedict had cited to Eggers's belief that ex-parte communications may have occurred between the district court and the United States Supreme Court clerk's office. But, as the district court noted, Eggers disclosed at the hearing that his belief was based on his interpretation of the Supreme Court's filing rules, rather than on some fantastic or impossible scenario. Dr. Benedict also offered Eggers's reports of ill treatment by inmates and prison personnel, through food tampering, threatened violence and physical assault. However, the district court found that no one had presented evidence that this does not go on at prisons. Nor was any evidence presented that any of this had not happened to Eggers.

Dr. Benedict's diagnosis of paranoid schizophrenia was further weakened, the district court found, because Benedict did not offer how Eggers suffered from any of the other symptoms listed in the DSM-V's definition. Dr. Benedict mentioned "brief episodes of disorganized thinking" as a symptom of Eggers's alleged schizophrenia. But, the district court found, Benedict described these episodes as being brief, which suggested they would not meet the DSM-V's requirement that the symptoms be present for at least six months to support a diagnosis of psychosis. Nor did Dr. Benedict testify about the duration of Eggers's ***1100** negative symptoms. He merely observed that Eggers evinced a strong preference to be housed in isolation and to withdraw from others.

The district court also found that other parts of the record undermined the reliability of Benedict's opinion. In his report, Benedict discounted the prior conflicting mental health evaluations of Drs. Shealy and Hooper—each of whom had found that Eggers suffered from a personality disorder and nothing more—observing only that the passage of time provided him with a major advantage in tracking Eggers's symptoms. Again the district court remained unconvinced. It determined that based on a review of all of the documentary evidence, Eggers never displayed clear symptoms of psychosis prior to trial. And, while Dr. Benedict relied on a 1987 police report describing Eggers's mental state after a methamphetamine-fueled road trip, Benedict conceded

that Eggers's behavior could have been explained simply by his drug use.

Moreover, the district court observed that Eggers had no contact with any mental health authorities over the ten-year period before the murder. And, to the extent Eggers's ADOC medical file reported that he suffered mental health issues around the time of his trial, the file also explained that Eggers was malingering psychosis around the time of his trial in 2002 and 2003, he admitted that fact, and he decided to stop. Specifically, the records reported that Eggers's treatment stopped in 2004 because he said he didn't want to "play crazy anymore." The district court also cited to the correctional records drawn from the period covering 2005 to 2014, which consistently described Eggers as alert, calm, cooperative, normal in affect and thinking, coherent, and without symptoms of anxiety, depression, mania, or psychosis. Nor did these records indicate that Eggers had been on any medication for anxiety or depression for many years.

At the hearing, Benedict was asked about the correctional records from 2007 that described Eggers as being normal in affect and thinking, from 2008 that also described Eggers as being normal and calm and not corroborating psychotic or schizophrenic symptoms or delusions, and finally, those drawn from 2009 that also described Eggers as calm, cooperative, normal in speech and thoughts, and oriented as to time, place, and person. Dr. Benedict did not recall reviewing those records. And when presented with a 2014 report by a psychologist at Donaldson Correctional Facility (Dr. D. Tytell), who had assessed Eggers as being stable and noted that he denied having any problems, Dr. Benedict simply said that he had no reason to doubt that diagnosis. On these more recent records, the district court found no indication that the petitioner was hallucinatory, delusional, aphasic, disoriented, or suffering from any sort of mental instability. [2]

The district court recognized that the results of the MMPI-2 showed "very high levels of paranoia at levels similar to what was indicated by the PAI." However, Dr. King criticized the MMPI-2 results, reasoning that if Eggers's "extraordinarily high" results on some scales of the MMPI-2 were valid Eggers would have evinced "frank and open clear delusions of persecution ... that would be evident to anybody." ***1101** Yet Dr. King found no evidence of any such delusions. As for Dr. Benedict's use of the Rorschach ink blot test, the district court relayed that Benedict himself acknowledged the test had been criticized as unreliable.

After reviewing the totality of the evidence, the district court found that Eggers's decision to terminate counsel and waive his appeals was not the product of psychosis. As the district court detailed, Eggers explained to Dr. King that his desire to terminate counsel and waive his appeals was based on his belief that counsel had a political agenda to get rid of the death penalty, and that counsel didn't follow his directions and didn't provide him with information when he asked for it. The district court noted, and Dr. Benedict conceded, that Eggers's counsel did not provide him with a copy of a declaration from his ex-wife about his mental state for a period of several months, and that counsel's refusal to turn over the document had been a serious point of contention between them. As Eggers testified, he had learned from talking with his daughter in June 2014 that his ex-wife had provided the declaration to counsel, and when he asked for a copy of it, counsel told him "they didn't have to provide me with any type of evidence whatsoever and I had no right to anything." Eggers also recounted one instance in May 2014 when he had requested copies of all the written requests his lawyers had made to various law enforcement agencies for records, and counsel declined to provide him with any. The district court recognized that Eggers may have been highly suspicious by nature, but reiterated that Dr. Benedict was unable to point to anything that showed Eggers's beliefs were "falsely-held."

The district court also addressed one of Eggers's explanations for why he wanted to abandon his appeal—because counsel should have pursued different claims than they did, such as claims based on exculpatory documents, and now those claims were unavailable. Eggers testified he was "stuck in an appeal ... which could go on for years," but that would not address "the issues [he] actually want[ed] resolved." Eggers also perceived that the court system essentially failed him. He asserted that courts don't always do what they should, and that law enforcement will lie "just to insure that a suspect will be found guilty." But as the district court framed it, while Eggers's beliefs about the court system may have been cynical, they did not amount to a psychotic delusion.

The district court underscored that it had the opportunity to observe Eggers's behavior and demeanor at the hearing, allowed counsel to question Eggers, and found

"absolutely nothing" that even remotely suggested mental incompetence or delusional thought processes. As the district court put it, Eggers "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."

The district court also recognized that while Eggers had been dissatisfied with the district court's resolution of his earlier pro se habeas claims, whether Eggers's legal opinions about the merits of his case were correct or not, they did not establish his incompetency. Rather, the question is "whether Eggers's decision to waive his appeal is the product of his rational reasoning or a psychotic delusion." The district court also determined that Eggers's post-hearing pleadings again established ***1102** that Eggers truly wanted to withdraw his appeal in its entirety. 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." The district court offered a reasoned basis for its findings, explaining why it relied on Dr. King's opinion, and the evidence consistent with that opinion, and why it rejected Dr. Benedict's contrary opinion.

C.

To be sure, as Eggers's counsel argues on appeal, there is evidence in the record cutting both ways. The pieces of evidence that counsel has highlighted are no doubt significant, but "[w]e cannot overturn the district court's finding of fact simply because this evidence was merely conflicting." Ga. State Conference of Branches of NAACP v. Georgia, 775 F.2d 1403, 1419 (11th Cir. 1985). While a reasoned factfinder may have reached a different decision, we cannot say that the district court's findings amounted to clear error. Anderson, 470 U.S. at 573–74, 105 S.Ct. 1504. They were grounded in the record and copiously detailed.

Counsel's argument on appeal that Dr. King's testing was insufficient to assess Eggers's competence under Lonchar is unpersuasive. For his part, King explained that he chose the ECST-R because he thought it was the most appropriate way to determine whether Eggers had a serious mental illness or mental defect and whether that

illness or defect affected his ability to make rational decisions. While King did not comment on Dr. Benedict's ***1103** PAI testing, he took issue with the results of Dr. Benedict's MMPI-2 test, and explained that he had abandoned using an MMPI-2 and a test for malingering based on Eggers's conduct throughout the interview. The long and short of it is that the district court faced a classic "battle of the experts," and was required to make credibility determinations between them. See, e.g., Wells v. Ortho Pharm. Corp., 788 F.2d 741, 745 (11th Cir. 1986). And the district court did just that, having reviewed the materials and the testimony offered by each of the experts, weighed the information, and reasonably determined which opinion it found more credible.

[10] Counsel also attacks Dr. King and the district court too for not considering Eggers's entire history. The first problem with the argument, however, is that in determining competency, the factfinder must make a contemporaneous determination. Indeed, in Rees itself, the Supreme Court remanded for the lower courts to determine "Rees' mental competence in the present posture of things, that is, whether he has capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation or on the other hand whether he is suffering from a mental disease, disorder, or defect which may substantially affect his capacity in the premises." Rees, 384 U.S. at 314, 86 S.Ct. 1505 (1966) (emphasis added); see also Dusky v. United States, 362 U.S. 402, 402, 80 S.Ct. 788, 4 L.Ed.2d 824 (1960) (The "test must be whether [the petitioner] 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.") (emphasis added). This makes sense, because as it is well established, an inmate's competency could change over the years. See Ford, 195 F.3d at 613 n.8; see also Indiana v. Edwards, 554 U.S. 164, 175, 128 S.Ct. 2379, 171 L.Ed.2d 345 (2008) (holding that mental competency "can vary over time"); Tompkins v. Sec'y, Dep't of Corr., 557 F.3d 1257, 1260 (11th Cir. 2009) ("Mental competency to be executed is measured at the time of execution, not years before then.... because mental conditions of prisoners vary over time.").

And in Ford, which addressed the same question before us today—whether a petitioner was competent to waive his appeal and proceed to execution—we reviewed a variety of contemporaneous evidence, including Ford's testimony, recent letters, and two recent expert reports. There, the district court had deemed Ford's old trial testimony somewhat irrelevant, and we nevertheless affirmed the district court's finding of competency, observing that "[the court] was charged with evaluating Ford's current competence in 1998, as opposed to Ford's competence at the time of trial in 1984." Ford, 195 F.3d at 622 n.13; see also Wright v. Sec'y for Dep't of Corr., 278 F.3d 1245, 1259 (11th Cir. 2002) (holding that an inmate's "incompetency to stand trial seven and eight months [after trial], like his incompetency to stand trial seventeen years earlier, is relevant, but it is not enough to counter the best evidence of what his mental condition was at the only time that counts, which is the time of the trial. The best evidence of Wright's mental state at the time of trial is the evidence of his behavior around that time....").

In the face of this caselaw, we cannot fault the district court, nor Dr. King for that matter, for relying more heavily on recent evidence in assessing Eggers's competency. As the district court explained:

> While Dr. Benedict relied heavily on reports by friends and family members who told him things like Eggers once reported "hearing voices;" he "became ***1104** 'paranoid' after Federal officers had him become an informant;" he talked "about bikers and the Mexican mafia being after him;" and he seemed to have symptoms of paranoid schizophrenia like his brother; these accounts describe events that allegedly occurred years before his crime and nearly thirty years ago. The Court declines to give these non-contemporaneous accounts much weight, given that Eggers's medical records show a finding of malingering and the absence of any subsequent delusions or hallucinations.

Similarly, Dr. King admitted that he had reviewed Dr. Benedict's report when he was preparing his own—and Dr. Benedict's report contained much of the historical evidence that counsel now relies upon—and Dr. King rejected the notion that the additional facts he was presented on cross-examination would have changed his opinion. Moreover, while Dr. Benedict did interview several of Eggers's friends and family members, it is unclear from his report how much recent contact these individuals had with Eggers. Aside from his brother Carl's statement that Eggers seemed "paranoid in prison," much of the report described the friends' and family members' impressions of Eggers sometime before his lengthy incarceration.

In any event, the record shows that the district court actually considered all of the available evidence in making its findings. Not only did the district court detail its review, but made this additional observation:

> The record before the Court is the entire record on federal habeas review in this action. However, this section sets out and comments upon only the parts of the record that the Court deems relevant to the issue to be decided, i.e., whether Eggers is currently competent to waive his appeal, dismiss his attorneys, and proceed to execution. The Court has taken the entire record into consideration, however, in making its determination.

The district court said it had considered the "entire record," and its opinion bore out the breadth of its review.

Counsel also faults the district court for failing to fully appreciate Eggers's "delusions" stemming from his work as a confidential informant in 1985. It is undeniable that Eggers's concern over this issue did not end. It is also undeniable, however, that Eggers's concerns were at least loosely based on events that actually occurred. Counsel points to the affidavit from Eggers's ex-wife, who had served as a confidential informant with him, and said that she did not "perceive any threat of retaliation from any target of their cooperation, from the Monks Motorcycle Club, or from the Mexican Mafia." But counsel fails to convince us that one version of events is compelled over the other, or that Eggers's reaction to his experience was delusional based simply on a comparison to his ex-wife's reaction. What's more, Eggers admitted that he had delusions at the time of the crime, and had "trouble being able to identify victims or victimization conspirators," but that he now believes "he is not currently the victim of motorcycle gangs or the Mexican mafia, and that he has not been for years." And to the extent he still holds onto certain ideas, counsel has not delineated how much paranoia is "too much," or how the district court is expected to make this kind of calculus.

Indeed, in Ford, we held that even though Ford had made statements about "the 'Holy Trinity' and having ... wives, travels, and bank accounts [in heaven]," so long as the experts and the district court considered these factors, the district court did not clearly err in finding that Ford was competent under Lonchar. See ***1105** Ford, 195 F.3d at 622. Similarly, the record before us supports the finding that even if Eggers continued to discuss his "conspiracy theories," he nevertheless had "rational reasons for choosing to die," and plainly understood that "in his legal situation, he must choose either to continue his legal challenges or be executed." See Hauser, 223 F.3d at 1322–23 (quoting Ford, 195 F.3d at 615).

Counsel further claims that Eggers's statements and most recent legal filings—where he complained about counsel waiving his arguments while nevertheless maintaining that he wanted to forego his appeal—suggested that he was incapable of making a rational choice. But the record shows that when the district court asked him after the hearing whether he would like to appeal in a pro se capacity if allowed to do so, he clearly responded that while he would "always" have a "desire to appeal the Court's order of dismissal of [his] pro se claims and procedural bar exceptions, ... it's not feasible.... Let's move forward eliminating any further undue delays in my execution providing the people with justice long overdue."

Similarly, in his later pro se letter to this Court, Eggers said the district court's competency ruling was not clearly erroneous, and while he repeated at length the claims he faulted his counsel for abandoning, he made clear that if the Court will not pursue these claims, the Court should "issue an immediate order finding Eggers's waiver of all future appeals valid, removing the stay of execution, authorizing the State of Alabama to move forward with Eggers['s] state sanctioned execution." And in an even more recent filing to the United States Supreme Court, Eggers took issue with our Court's process, but nevertheless made the same unambiguous request—that his "execution and sentence of death ... be carried out immediately." We can discern no clear error in the district court's finding that Eggers has chosen to abandon his appeal.

The suggestion that Eggers's choice to forego his appeals and be executed, resulting from his unhappiness with the legal proceedings, must make him mentally incompetent likewise is unpersuasive. While Eggers's situation is undoubtedly sad, his dissatisfaction with the legal system is a not novel one. As Dr. King observed, and the district court found, just because an inmate may disagree with

counsel or with a ruling court does not yield a conclusion that the inmate is psychotic or delusional. Regardless, Eggers said in recent filings that he wanted to waive his appeals because it was futile to continue with them, that he was seeking justice for himself and for the family members of the homicide victim, and that he believed there wasn't any reason to continue on with the litigation. On this record, we cannot say that the district court clearly erred in finding that Eggers understood "the 'bottom line' of his legal situation—that he must continue to engage in the review process or be executed—[in order to be] able to make a rational choice among these options." Henderson v. Campbell, 353 F.3d 880, 894 (11th Cir. 2003) (quotation omitted); Hauser, 223 F.3d at 1323; Ford, 195 F.3d at 615.

[11] The district court's job as the finder of fact was to determine "whether a mental disease, disorder, or defect prevents [Eggers] from making a rational choice among his options." Lonchar, 978 F.2d at 641. Our task is to discern whether the district court clearly erred in its findings. As we've noted, the district court's findings were grounded in an ample record. And the law is well settled that "[i]f the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not ***1106** reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently." Anderson, 470 U.S. at 573-74, 105 S.Ct. 1504. Again, we may reverse the district court's findings only when "on the entire evidence" we are "left with the definite and firm conviction that a mistake has been committed." Id. at 573, 105 S.Ct. 1504 (marks and citation omitted). We are left with no such conviction.

In short, the district court did not clearly err in finding Eggers competent to proceed in the case. The district court could find as it did that Eggers was entitled to abandon his appeals, dismiss counsel and proceed to execution. See Ford, 195 F.3d at 605 n.11 (If the "district court's finding that Ford is mentally competent is not clearly erroneous, then the district court correctly honored Ford's wishes to dismiss his attorney and his § 2254 habeas petition."). Thus, there is no longer any live controversy between Eggers and the respondent. We vacate our stay, and dismiss both appeals for lack of jurisdiction. See id.

AFFIRMED AND DISMISSED; STAY VACATED.

All Citations

876 F.3d 1086, 27 Fla. L. Weekly Fed. C 419

Footnotes

1 Dr. Benedict said that after the incident, the police took Eggers to a psychiatric ward on an emergency hold but that records from the admission no longer existed.

2 Counsel points to a 2012 letter from Eggers requesting a psychological exam; when Dr. Tytell responded to the request, however, he noted that Eggers did not clearly state why he needed an evaluation, and, when Eggers was seen, he apparently wanted to see a psychologist only so that he could be moved to another facility. According to the letter, "[w]hen the Inmate was informed that placement of Inmates was not in the control of the psychologist, the Inmate appeared to have lost interest in dealing with the psychologist."

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IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

Nos. 16-10785-P and 16-16805-P

MICHAEL WAYNE EGGERS,

Petitioner - Appellant,

versus

STATE OF ALABAMA,

Respondent - Appellee.

Appeals from the United States District Court
for the Northern District of Alabama

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: MARCUS, WILSON and HULL, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ Stanley Marcus
UNITED STATES CIRCUIT JUDGE

ORD-42

The DOC records include the following relevant details about Mr. Eggers' worsening psychosis:

- On November 20, 2002, Mr. Eggers reported hearing voices and pacing his cell. DOC personnel observed that he was "stiff, internal, reluctant to talk - controlled, suspicious"[1]

- On November 23, 2002, Mr. Eggers broke away from a correctional officer during an outing for exercise. He ran down the stairs cursing and calling inmates racial epithets and said, "I'll kill all of you mother fuckers". . . . During the serving of the noon meal, he threw his food tray on the floor and began cursing and threatening the inmates on the tier as well as the hall runner.[2]

- A November 25, 2002 report states: "Pt ref by DOC Capt per numerous movt's by staff to facilitate an amiable environment. External report claim Pt is easily excited and agitated by fellow D/R I/M's. Pt yells unprovoked and is very suspicious of all others." He was also noted to be paranoid about mental health's efforts to help him.[3]

- A November 27, 2002 report observed that: "inmate was raving on and on & arrived as if I was part of a plot. Thinking problem paranoid delusions-- hearing voices and seeing things not there. Angry about & responsive to voices. May be realizing that he imagines voices. More I talked to him quieter he becomes. He is remorseful with staff at times. Paranoid about others talking about him."[4] The clinician suggested that "he be reevaluated regularly by staff. Inmate worsened from depression to SMI [severe mental illness] in my opinion."[5]

- On November 28, 2002, Mr. Eggers was placed on suicide watch in a stripped cell after he cut his wrists. The summary recounts: "On 11/28/2002, COI Branch was stopped by ME who reported 'I hear voices

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[1] ALDOC Medical Records, Pet'r's Competency Hr'g Ex. 21, Med Eggers 001012.

[2] ALDOC Institutional Records, Pet'r's Competency Hr'g Ex. 16, Crim Eggers 000109-000110.

[3] ALDOC Medical Records, Pet'r's Competency Hr'g Ex. 21, Med Eggers 001012.

[4] ALDOC Medical Records, Pet'r's Competency Hr'g Ex. 21, Med Eggers 000220.

[5] *Id.*

and I cut myself.'" Mr. Eggers raised his left arm and showed COI Branch two small cuts on his left wrist. He was placed in stripped cell and was given a paper gown and a suicide blanket.[6]

- A December 2, 2002 treatment note stated: "inmate calm after 3 days of isolation. . . . He acts rationally unlike my last sessions with him Wednesday when he was angry at me and everyone; acted fearful and frightened; Both then and now, he admits that his brain plays tricks on him. He says he has a chemical imbalance. His brother is in a mental institution. His brother 'drug' him into his paranoid delusions. He has masked it by rationally coping with it." He was noted to be expressing symptoms of paranoid schizophrenia possibly when under stress or a short term version of delusional disorder. Assessment: Schizotypal Personality or Paranoid. The clinician questioned whether he could remain with other death row inmates long and rationally handle it and discriminate the difference between reality and delusion. He told the clinician that he scratched himself to bring himself back. [7]

- On the same date, Mr. Eggers reported that he had "hallucinate[d] voices for 18 years," but never had medication and never told anyone. He wanted some help because he cut himself. He displayed multiple 1-2 cm superficial lacerations on his left wrist.[8]

- On December 18, 2002, a clinician observed that Mr. Eggers' behavior was grandiose and manic.[9]

- On January 2, 2003, Mr. Eggers reported hearing voices and that he had not been sleeping. Risperdal, an anti-psychotic, was prescribed.[10]

- On January 5, 2003, Mr. Eggers reported having thoughts that everyone wanted to kill him and asked to be moved. Behavioral observations: speech – makes little sense; behavior: pacing, tense, weird.[11]

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[6] ALDOC Medical Records, Pet'r's Competency Hr'g Ex. 16, Crim Eggers 000106 – 000107.

[7] ALDOC Medical Records, Pet'r's Competency Hr'g Ex. 21, Med Eggers 000221 & 000217.

[8] ALDOC Medical Records, Pet'r's Competency Hr'g Ex. 21, Med Eggers 000216.

[9] *Id.*

[10] ALDOC Medical Records, Pet'r's Competency Hr'g Ex. 21, Med Eggers 000215.

[11] ALDOC Institutional Records, Pet'r's Competency Hr'g Ex. 16, Crim Eggers 000104-000105.

- On January 9, 2003, Mr. Eggers was noted to be noncompliant with his medications, he was disturbing other inmates by talking out loud at night and was observed to be demonstrating paranoid features.[12]

- A January 22, 2003 clinician's note states that Mr. Eggers was having hallucinations and suspicious of others. He was refusing psych medications. He told the mental health provider "I want to know if you guys are messing with me. Bugging my head or something. These noises didn't start until 2 months ago. I've never had the voices."[13]

- On February 5, 2003, the Department of Corrections transferred Mr. Eggers from Holman to Donaldson Correctional Facility for "mental health reasons."[14]
- On February 6, 2003, during intake to Donaldson, Mr. Eggers reported experiencing paranoid ideation when not on antipsychotic medication and said that the Risperdal helped him.[15]

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[12] ALDOC Medical Records, Pet'r's Competency Hr'g Ex. 21, Med Eggers 000214.

[13] ALDOC Medical Records, Pet'r's Competency Hr'g Ex. 21, Med Eggers 000213.

[14] ALDOC Institutional Records, Pet'r's Competency Hr'g Ex. 16, Crim Eggers 000051-52.

[15] *Id.*