
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Frank Louis Amodeo,
Petitioner/Appellant,

v.

United States of America,
Respondent/Appellee.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

**REPLY TO THE GOVERNMENT'S RESPONSE TO THE MOTION TO
SUPPLEMENT THE RECORD ON APPEAL**

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SUPPLEMENT THE RECORD ON APPEAL**

Frank Amodeo moved to supplement the record on appeal with a State of Florida mental health evaluation that explained why his illness prevented him from timely filing a proper §2255 motion, and showing why the district court should have appointed him counsel to assist in the preparation of the §2255 motion.

The government filed a response in opposition to the motion to supplement, essentially asking the court to ignore the evidence. The government cites to a spattering of authority in support of its opposition. Mr. Amodeo, in turn, refers the court to this circuit's prior decisions that guide the inquiry on whether supplementation is appropriate.

Standards of Review

Although appellate courts generally decline to supplement the record on appeal with materials that were not before the district court, the appellate courts have equitable power to admit evidence that assists in the proper resolution of pending issues. See, e.g., *CSX Transp. Inc., v. City of Garden City*, 235 F.3d 1325, 1330 (11th Cir. 2000); *Ross v. Kemp*, 785 F.2d 1467 (11th Cir. 1986). Furthermore, this court has found it should permit supplementation when the supplemental evidence is pivotal to resolution of the appeal or is necessary in the interests of justice. See *Cabalceta v. Standard Fruit Co.*, 883 F.2d 1553, 1555

(11th Cir. 1989) (allowing supplemental evidence because a consideration of all relevant information is necessary to make an informed and final decision).

Nature and Importance of Evidence

The April 2017, Evaluation of Capacity report is particularly significant in that it incorporates the opinions of Mr. Amodeo's treating doctors and eyewitnesses from the relevant period of time (Evaluation of Capacity, pp. 1, 2, 5). The stark conclusion of the State of Florida (whose doctors have conducted 3 examinations over 9 years) and the government's doctors (who treated Mr. Amodeo during the relevant time period) demonstrate that the law entitled Mr. Amodeo to counsel.

1. Dr. Darlene Antonio, State of Florida examiner, concludes "that Dr. Park's evaluation and recommendations support Mr. Amodeo's contention that he was cognitively impaired due to the effects of medication [he] [was] taking at the time of his trial and plea agreement. Mr. Amodeo was under the influence of these medications when he filed his appeal and motions to vacate, set aside, or correct a sentence between 2009 and 2012." (Evaluation of Capacity, p. 10).
2. Even without the debilitating drugs, Dr. Antonio finds that "due to his mental illness, Mr. Amodeo does not have the capacity to act as his own attorney." (Evaluation of Capacity, p. 10).
3. As the Bureau of Prisons' treating doctor notes: "the structure and routine of the prison environment provides stability for Mr. Amodeo, and likely helps with management of the disorder. [Nonetheless], Mr. Amodeo continues to experience manic and depressive episodes, delusional beliefs, and grandiose ideation." (Evaluation of Capacity, p.5).

In sum, Mr. Amodeo has a serious disorder that makes him incapable of making significant life decisions. And between 2008 and 2012 that incapacity was made worse because of medication treatment that required "careful

psychopharmacology management," which did not (could not) occur within the prison environment. (Evaluation of Capacity, pp. 4, 5, 9).

Conclusion

The Evaluation of Capacity report shows that Mr. Amodeo's illness prevents him from representing himself on many matters including "[i]nitiation, defense, or settlement of lawsuits." (Evaluation of Capacity, p. 12). At no time since 2008 has Mr. Amodeo had the capacity to act without counsel. The district court's failure to appoint counsel to assist Mr. Amodeo is an extraordinary circumstance that prevented any court from addressing the merits of Mr. Amodeo's claim, including his claim of factual innocence. This court should allow the supplementation of the appellate record and remand the cause to the district court.

Respectfully submitted through undersigned counsel by Charles Rahn, guardian for Frank Louis Amodeo on this 15th day of May 2017.

/s Brian D. Horwitz
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CERTIFICATE OF SERVICE

A copy of this Reply to Governments Response was sent by first class United States mail to Linda McNamara in the United States Attorney's Office, 400 N. Tampa Street, Tampa, Fl. 33602, Roger Handberg, Assistant United States Attorney, 400 W. Washington St, Orlando, Fl. 32801 and to Frank Louis Amodeo, Federal Correction Complex, P.O. Box 1031, Coleman, Fl. 33521, Register #48883-019, Unit B-3. The copies were mailed on May 15, 2017.

CERTIFICATE OF INTERESTED PERSONS

Frank L. Amodeo,	Appellant
Roger Handberg,	Assistant United State Attorney
The Honorable John Antoon II,	United States District Judge
The Honorable Gregory Kelly,	United States Magistrate Judge
Linda McNamara,	Assistant United States Attorney
Charles Rahn,	Appellant's Guardian
Brian Horwitz,	Attorney for Charles Rahn

CERTIFICATE OF COMPLIANCE

This Reply complies with the appropriate type-volume limitations. This Reply contains 831 words in total.

/s Brian D. Horwitz

Brian D. Horwitz, Esq.,