

No. 17-8253

IN THE
Supreme Court of the United States

JUAN EDWARD CASTILLO,
Petitioner,

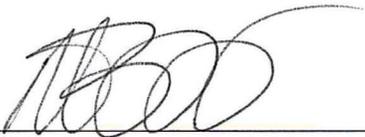
v.

STATE OF TEXAS,
Respondent.

On Petition for a Writ of Certiorari to the
Court of Criminal Appeals of Texas

PROOF OF SERVICE

I hereby certify that on the 17th day of April, 2018, a copy of **Respondent's Brief in Opposition to Petition for a Writ of Certiorari** was sent by mail to: Jared Tyler, Texas Defender Service, 1927 Blodgett Street, Houston, TX 77004, jptyler@texasdefender.org. All parties required to be served have been served. I am a member of the Bar of this Court.



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IN THE
Supreme Court of the United States

JUAN EDWARD CASTILLO,
Petitioner,

v.

STATE OF TEXAS,
Respondent.

**RESPONDENT'S BRIEF IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI**

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This is a capital case.

QUESTIONS PRESENTED

In October 2017, Juan Edward Castillo filed a successive habeas application in the Texas Court of Criminal Appeals (CCA) seeking relief from his death sentence pursuant to Texas Code of Criminal Procedure Article 11.071. Castillo argued that Gerardo Gutierrez, a witness for the state, had presented perjured testimony during the guilt/innocence phase of Castillo's trial. The CCA stayed Castillo's pending execution to remand the case to the trial court. The trial court issued findings of fact and conclusions of law, which made recommendations as to the credibility of Castillo's claims. The CCA ultimately agreed with the trial court's recommendation, finding that the recommendation was supported by the record. The CCA concluded that Castillo failed to prove that the testimony presented at trial was false. *Ex parte Castillo*, No. WR-70,510-04, 2018 Tex. Crim. App. Unpub. LEXIS 124, at *6 (Crim. App. Feb. 7, 2018). The following questions are presented:

1. What process is due a prisoner who invokes a state post-conviction statute sounding in the nature of habeas corpus?
2. Did the state court violate fundamental due process in the course of adjudicating the petitioner's habeas corpus claim?

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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Petitioner Juan Edward Castillo was properly convicted and sentenced to death for the murder of Tommy Garcia. His conviction and sentence were affirmed on direct appeal, and his state application for writ of habeas corpus was denied. His federal application for writ of habeas was denied by the Western District, and his request for certificate of appealability was denied by both the Western District and the Fifth Circuit. Castillo now seeks certiorari review of the CCA's denial of his successive petition for writ of habeas corpus, arguing that the state court's denial violated fundamental due process. However, this Court has held that a petitioner like Castillo has no due process right to collateral proceedings at all.

STATEMENT OF THE CASE

I. Facts of the Crime

The United States Court of Appeals for the Fifth Circuit summarized the facts of the crime as follows:

On the night of December 2 and early morning hours of December 3, 2003, Castillo and his girlfriend, Debra Espinosa, along with Castillo's friend, Francisco Gonzales, and Gonzales's girlfriend, Teresa Quintero, developed a plan to rob Tommy Garcia, Jr. Espinosa, who had been intimate with Garcia in the past, was to take Garcia to a secluded spot in a residential neighborhood in San Antonio for another sexual encounter. Castillo and Gonzales, masked and armed with guns, would storm the car and rob Garcia. Espinosa would play along as if she, too, was a victim. Quintero would be the get-away driver.

During the ensuing robbery, Castillo shot and killed Garcia.

Gonzales was arrested fleeing the scene and Espinosa was arrested shortly after. Implicated in the killing, both negotiated agreements to testify against Castillo. In exchange for Gonzales's testimony, the State agreed to a charge of murder and a sentence of forty years in prison; for Espinosa's testimony, the State agreed to a charge of aggravated robbery and a sentence of forty years in prison.

Gonzales and Espinosa testified at Castillo's trial that Castillo took the lead in planning the robbery and they saw him shoot Garcia.

Two of Gonzales's family members testified that they saw Castillo, Gonzales, and Quintero leave Gonzales's house together shortly before the murder in a car borrowed from one of the witnesses. Later that night, only Quintero came back to the house to return the car. In the days after the murder, both family members overheard, on separate occasions, Castillo incriminate himself as the shooter and talk about how he got rid of the evidence.

Two of Garcia's friends testified that they were hanging out with Garcia when he received a call from Espinosa asking to meet up. Not long after Garcia left to meet Espinosa, one of the friends received a call from a hysterical Espinosa. She told him that Garcia had been shot.

A fellow jail inmate testified that Castillo admitted to him, while they were in the jail together, that he had murdered Garcia during a robbery.

Witnesses who lived near the murder scene testified that a car like the one Castillo and the others borrowed was seen fleeing the scene right after the shooting. A witness saw Castillo wearing, after the murder, a distinctive necklace that Garcia owned and wore the night he died.

Castillo v. Stephens, 640 F. App'x 283, 286-87 (5th Cir. 2016).

II. Facts Pertaining to Punishment

The United States District Court for the Western District of Texas, San Antonio Division, summarized the facts pertaining to punishment.

The punishment phase commenced on August 31, 2005, with Petitioner advising the state trial court he wished to represent himself throughout the remainder of trial. The prosecution presented testimony from the mother of Petitioner's son Juan, Jr. about (a) numerous instances of physical violence Petitioner inflicted upon her, (b) an instance in which Petitioner forced her and Juan, Jr. to accompany him to California and remain there for a month, (c) an incident in which Petitioner pointed a gun at her sister while her sister was holding Juan, Jr., and (d) an incident in which Petitioner pointed a rifle or large pistol at her and fired a shot through the ceiling.

A South San Antonio resident testified about an incident in September, 2002 in which Petitioner fired multiple shots into the vehicle driven by this witness in an unprovoked assault which (a) shattered the passenger window in the victim's truck, (b) left three bullet holes in the passenger door of the victim's truck, and (c) struck the windshield of the victim's truck. A San Antonio Police Officer testified about an incident in February, 1998 in which he arrested Petitioner and found Petitioner was carrying a knife, cork screw, a plastic bag containing a white powder, and nineteen small zip lock baggies which he explained were used on the street to subdivide cocaine.

Debra Espinosa testified about the many criminal activities in which she and Petitioner jointly engaged or made plans to engage in before Garcia's robbery-murder, including (a) a planned robbery of a convenience store, (b) a planned robbery of an IHOP restaurant, (c) a home invasion of a South Side drug dealer's residence in which Petitioner tied up and stabbed the victims, and (d) an incident in which Petitioner and Petitioner's friend, Gilbert, beat an old man who had attempted to run off with their money without furnishing the marijuana he had promised to sell them. Petitioner's wife testified regarding (a) her joint arrest

with Petitioner and others for attempting to pass a forged, stolen, check and (b) her purchase of guns and a bullet proof vest for Petitioner while Petitioner was on parole.

A San Antonio Police patrol officer and crime scene investigator testified regarding (a) a traffic stop of Petitioner on July 20, 2002, (b) Petitioner's arrest on an outstanding warrant, (c) an inventory search of the vehicle Petitioner was driving, and (d) the subsequent arrest of Petitioner for possession of two fully loaded semi-automatic handguns, a pair of bullet proof vests, and additional ammunition, all of which were illegal given Petitioner's status as a convicted felon.

Francisco Gonzales testified regarding (a) the multiple incidents in which he and Petitioner jointly robbed inebriated bar patrons (identified by Gonzales as illegal immigrants) as the victims exited a bar late at night, (b) Petitioner's admission to having shot a drug dealer in the face during a robbery, (c) Petitioner's admission to having stabbed someone in a bar, and (d) the fact Petitioner never had a job other than robbing people. A records custodian from the Bexar County Adult Detention Center testified regarding Petitioner's multiple arrests. Petitioner did not cross-examine any of these witnesses and offered no evidence or jury argument during the punishment phase of trial.

On September 1, 2005, the jury returned its verdict at the punishment phase of Petitioner's capital murder trial, finding (1) beyond a reasonable doubt there was a probability Petitioner would commit acts of violence that would constitute a continuing threat to society and (2) unanimously, taking into consideration all of the evidence, including the circumstances of the offense and the defendant's background, character, and personal moral culpability, there was not a sufficient mitigating circumstance to warrant that a sentence of life imprisonment rather than a death sentence be imposed. The state trial court imposed the sentence of death.

Castillo v. Stephens, No. SA-12-CA-924-XR, 2014 U.S. Dist. LEXIS 159705, at *3-8 (W.D. Tex. 2014).

III. Direct Appeal and Post-Conviction Proceedings

On August 30, 2005, the jury found Castillo guilty of the capital murder of Tommy Garcia. I CR at 157. Based on the jury's answers to the special issues in the punishment phase, a sentence of death was imposed. I CR at 158. On direct appeal to the CCA, Castillo argued that (1) the evidence was insufficient to corroborate the accomplice-witness testimony as required by Article 38.14; (2) the evidence was factually insufficient to support a finding that Appellant robbed the victim or that he shot the victim; (3) the death penalty is cruel and unusual punishment in violation of the Eighth Amendment; and (4) the trial court erred when it denied Appellant's pretrial motion objecting to the testimony of the two accomplice witnesses on the ground that their testimony would violate Rule 3.04 of the Texas State Bar Rules of Professional Conduct, and 18 U.S.C. §§ 201(b)(1)(A), 201(b)(3). *Castillo v. State*, 221 S.W.3d 689 (Tex. Crim. App. 2007). On May 2, 2007, the CCA issued a unanimous opinion affirming Appellant's conviction and death sentence on direct appeal. *Id.* at 695.

Castillo then filed his original state application for writ of habeas corpus, presenting four allegations challenging the validity of his conviction and sentence. Pursuant to Art. 11.071, Section 8, of the Texas Code of Criminal Procedure, the trial court entered findings of fact and conclusions of law recommending that Castillo be denied relief. *Ex Parte Castillo*, No. WR-

70,510-01, 2012 Tex. Crim. App. Unpub. LEXIS 901, at *2 (Crim. App. Sep. 12, 2012). The CCA reviewed the record with respect to the allegations made by Castillo, and on September 12, 2012, issued an opinion denying relief on the merits. *Id.*

Castillo filed his federal habeas corpus petition in the United States District Court for the Western District of Texas, San Antonio Division on June 28, 2013, reasserting the ineffective assistance complaints he urged in his state habeas corpus proceeding, along with his claim the state trial court erroneously granted his request for self-representation during the punishment phase of trial. *Castillo v. Stephens*, No. SA-12-CA-924-XR, 2014 U.S. Dist. LEXIS 159705, at *12 (W.D. Tex. 2014). Castillo also presented a new claim that a prosecution witness, Gerardo Gutierrez, committed perjury during Castillo's trial. *Id.*

The Western District independently reviewed the entire record from Castillo's trial, direct appeal, and state habeas corpus proceeding. With regard to the claim of perjured testimony, the Western District found that the claim was procedurally defaulted under the state abuse of writ doctrine. *Id.* at 195-196. The Court also found the claim meritless, because no federal due process violation occurs when false testimony is used to secure a conviction unless the government knowingly used false testimony. *Id.* at 197, citing *Kinsel v. Cain*, 647 F.3d 265, 271-72 (5th Cir. 2011). On November 12, 2014,

the Western District issued an order denying Castillo's federal habeas petition, and denied Castillo a certificate of appealability on all claims. *Castillo v. Stephens*, No. SA-12-CA-924-XR, 2014 U.S. Dist. LEXIS 159705, at *206-07 (W.D. Tex. 2014).

Castillo sought to appeal to the United States Court of Appeals for the Fifth Circuit. *Castillo*, 640 F. App'x at 283. In addition Castillo's other claims, the Fifth Circuit examined Castillo's claim that his due process rights were violated when he was convicted on the basis of Gerardo Gutierrez's perjured testimony. *Id.*

The Fifth Circuit agreed with the Western District, finding that the court held correctly that under Texas' regularly and strictly applied abuse of the writ rule, such a claim would now be procedurally barred from state habeas review. *Id.* at 298, citing *Nickleson v. Stephens*, 803 F.3d 748, 754 (5th Cir. 2015). The Fifth Circuit also agreed with the Western District's merits determination, finding no due process violation. *Id.* at 298. On February 8, 2016, the Fifth Circuit denied Castillo's application for a certificate of appealability under 28 U.S.C.S. § 2253(c)(2). *Id.*

Castillo then filed a motion for DNA testing in the trial court. *Castillo v. State*, No. AP-77,074, 2018 Tex. Crim. App. Unpub. LEXIS 123, at *6 (Crim. App. Feb. 7, 2018). The trial court denied appellant's request for DNA testing, and Castillo appealed to the CCA. *Id.* Castillo raised two points of

error. *Id.* First, Castillo asserted that the trial court erred in failing to enter findings of fact or conclusions of law in support of its order denying DNA testing. *Id.* Second, Castillo asserted that the trial court erred in denying his motion for DNA testing. *Id.* On February 7, 2018, the CCA affirmed the trial court's decision, finding that Castillo failed to meet his burden under the state DNA retesting statute. *Id.* at *20.

While Castillo's DNA appeal was pending he also filed a successive application for post-conviction writ of habeas corpus, filed on October 30, 2017. *Ex parte Castillo*, No. WR-70,510-04, 2018 Tex. Crim. App. Unpub. LEXIS 124, at *2 (Crim. App. Feb. 7, 2018). That application alleged that Castillo's conviction and sentence were based on the perjured testimony of Gerardo Gutierrez. *Id.* at 2. That court, citing the new legal basis of *Ex parte Chabot*, 300 S.W. 3d 768 (Tex. Crim. App. 2009), found that Castillo had met the requirements of the state subsequent writ statute, and stayed his execution to remand for further proceedings. *Ex parte Castillo*, No. WR-70,510-04 (Tex. Crim. App. Nov. 28, 2017)(not designated for publication). On remand, the trial court issued findings of fact and conclusions of law finding that the affidavit of Gerardo Gutierrez, recanting his testimony at trial, was not credible. *Ex parte Castillo*, No. WR-70,510-04, 2018 Tex. Crim. App. Unpub. LEXIS 124, at *6 (Crim. App. Feb. 7, 2018), citing *Ex parte Weinstein*, 421 S.W.3d 656, 665 (Tex. Crim. App. 2014).

The CCA reviewed Castillo's false testimony claim, writing that a reviewing court must first determine whether the testimony at trial was, in fact false, and then whether the testimony was material. *Ex parte Castillo*, No. WR-70,510-04, 2018 Tex. Crim. App. Unpub. LEXIS 124, at *6 (Crim. App. Feb. 7, 2018), citing *Ex parte Weinstein*, 421 S.W.3d 656, 665 (Tex. Crim. App. 2014). The CCA held that, because the trial court determined that Castillo failed to prove that the testimony presented at trial was false, and because that determination was supported by the record, the court need not address the whether the testimony was material. *Id.* On February 7, 2018, the CCA denied relief on Castillo's successive application. *Id.*

REASONS FOR DENYING THE WRIT

Review on writ of certiorari is not a matter of right but of judicial discretion, and it will be granted only for “compelling reasons.” Sup. Ct. R. 10. Where a petitioner asserts only factual errors or that a properly stated rule of law was misapplied, certiorari review is “rarely granted.” *Id.* Castillo contends that the state court violated his fundamental due process in the course of adjudicating the petitioner’s successive habeas corpus claim, citing what he believes to be violations of the state post-conviction statute. But this Court has long held that a petitioner like Castillo has no due process right to collateral proceedings. Additionally, this Court has held on numerous occasions that it will not review the decision of a state court if the decision rests on a state law ground that is independent of the federal question and adequate to support the judgment. Since the state-law determination is sufficient to sustain the judgment, any opinion of this Court on the federal question would be purely advisory. Castillo advances no compelling reason for this Court to grant review on writ of certiorari in this case, and no such compelling reason exists.

ARGUMENT

I. **Castillo Has No Due Process Right to State Collateral Review, and Even Where the State Provides Such, the Constitution Does Not Mandate the Proceedings Take Any Particular Form.**

Castillo argues that the state court's failure to follow mandatory statutory procedures for adjudicating habeas corpus claims violated his right to due process. *See generally*, Petition. But there is no due process right to such proceedings. As Justice O'Connor has stated:

A post-conviction proceeding is not part of the criminal process itself, but is instead a civil action designed to overturn a presumptively valid criminal judgment. Nothing in the Constitution requires the States to provide such proceedings . . . nor does it seem [] that that Constitution requires the States to follow any particular federal role model in these proceedings.

Murray v. Girratano, 492 U.S. 1, 13 (1989) (O'Connor, J., concurring); see also *Pennsylvania v. Finley*, 481 U.S. 551, 557 (1989) (states have no obligation to provide collateral review of convictions). "State collateral proceedings are not constitutionally required as an adjunct to the state criminal proceedings and serve a different and more limited purpose than either the trial or appeal." *Giarratano*, 492 U.S. at 10. This Court has explained that "[t]he additional safeguards imposed by the Eighth Amendment at the trial stage of a capital case are . . . sufficient to assure the reliability of the process by which the death penalty is imposed." *Id.*

Where a State allows for post-conviction proceedings, the Federal Constitution [does not] dictate[] the exact form such assistance must assume. *Finley*, 481 U.S. at 555, 557, 559; cf. *Estelle v. McGuire*, 502 U.S. 62, 67–68 (1991) (“federal habeas corpus relief does not lie for errors state law”) (internal quotation marks and citation omitted); *Henderson v. Cockrell*, 333 F.3d 592, 606 (5th Cir. 2003) (infirmities in state habeas proceedings do not state a claim for federal habeas relief); *Beazley v. Johnson*, 242 F.3d 248, 271 (5th Cir. 2001); *Wheat v. Johnson*, 238 F.3d 357, 361 (5th Cir. 2001). “Federal courts may upset a State’s postconviction procedures only if they are fundamentally inadequate to vindicate the substantive rights provided.” *Dist. Attorney’s Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 69 (2009).

Castillo’s petition presents a stark contrast to those situations involving the right to counsel on first appeal and the right to be free from cruel and unusual punishment, i.e., competency to be executed and intellectual disability. Because these rights are firmly grounded in the Constitution, any measures taken by the States to allow vindication of them will necessarily implicate due process. See *Brumfield v. Cain*, 125 S. Ct. 2269 (2015); *Panetti v. Quarterman*, 551 U.S. 930 (2007); *Evitts v. Lucy*, 469 U.S. 387 (1985).

Castillo’s invocation of due process rights where no such right exists presents no such situation. Castillo fails to present any justification for not

applying the Court's long-standing rule against reviewing claims denied by state courts on state law grounds, and none exists. There is simply no jurisdictional basis for granting certiorari review in this case, and it should be denied.

II. Castillo Has Not Established that the State Habeas Proceedings Were Fundamentally Inadequate to Protect his Substantive Rights.

Castillo argues that his due process rights were violated because the state habeas court substantially deviated from the procedures for adjudicating state habeas applications as set forth in Texas Code of Criminal Procedure Article 11.071, Sections 8 and 9. This resulted in an unreliable fact-finding process that deprived him of any meaningful opportunity to present evidence in support of the allegations he raised or to challenge evidence against him. Castillo asks this Court for an opportunity to prove his constitutional claims in a proceeding that complies with state law. *See generally*, petition.

Article 11.071, Section 9(a) explicitly permits trial judges to resolve controverted, previously unresolved facts “by affidavits, depositions, interrogatories, and hearings, as well as using personal recollection.” There is no requiring for a hearing unless and until the trial judge determines that one is necessary. It is well-established that a state court “hearing” does not have to be a live evidentiary hearing, and the Court has “not mean[t] to imply

that the courts are required to hold hearings.” *Townsend v. Sain*, 372 U.S. 292, 319 n. 9 (1963) (discussing federal evidentiary hearings pre-AEDPA), overruled in part, *Keeney v. Tamayo-Reyes*, 504 U.S. 1 (1992) (superseded by AEDPA). Indeed, the Fifth Circuit has “repeatedly found that a paper hearing is sufficient to afford a petitioner a full and fair hearing on the factual issues underlying petitioner’s claims.” *Clark v. Johnson*, 202 F.3d 760, 755 (5th Cir. 2000); *see also Morrow v. Dretke*, 367 F.3d 309, 315 (5th Cir. 2004) (citing *Valdez v. Cockrell*, 274 F.3d 941, 950–51 (5th Cir. 2001)); *Armstead v. Scott*, 37 F.3d 202, 208 (5th Cir. 1994) (finding that a hearing by affidavit was adequate to allow presumption of correctness to attach to the state court’s factual findings). Other circuits are in agreement. *See Strong v. Johnson*, 495 F.3d 134, 139 (4th Cir. 2007) (“[C]redibility determinations may sometimes be made on the written record without live testimony. Specifically, there is no prohibition against a court making credibility determinations based on competing affidavits in certain circumstances.”); *Tanberg v. Sholtis*, 401 F.3d 1151, 1161 (10th Cir. 2005) (a trial court’s “determination of credibility of affidavits [will not be disturbed on appeal] unless that determination is without support in the record, deviated from the appropriate legal standard, or followed a plainly erroneous reading of the record”). This is true even where intellectual disability is at issue. *See Hines v. Thaler*, 456 F. App’x 357, 363 (5th Cir. 2011) (noting that “while a live evidentiary hearing

may be recommended in some *Atkins* cases in Texas, a thorough presentation of the evidence at the habeas proceedings can obviate the need for such a hearing). As the Fifth Circuit explained,

. . . Such “core procedural due process protections” do “not mean that states must give hearings to all persons with” claims that they are ineligible for the death penalty; indeed, “states retain discretion to set gateways to full consideration and to define the manner in which habeas petitioners may develop their claims.” But “if a state court dismisses a prima facie valid” claim that petitioner is ineligible for the death penalty “without having afforded the petitioner an adequate opportunity to develop the claim, it has run afoul the Due Process Clause[.]” Importantly, petitioners are not guaranteed evidentiary hearings because “[d]ue process does not require a full trial on the merits”; instead, petitioners are guaranteed only the “opportunity to be heard.” In other words, the state court’s decision is only deprived “of deference normally due” where the state court has failed to provide [petitioner] with the opportunity to develop his claims[.]”

Tercero v. Stephens, 738 F.3d 141, 148 (5th Cir. 2013).

The “[f]undamental requisite of due process of law is the opportunity to be heard.” *Ford v. Wainwright*, 477 U.S 399, 413 (1986) (internal quotation marks and citation omitted); *see also Townsend*, 372 U.S. at 312 (1963) (availability of habeas corpus “presupposes the opportunity to be heard, to argue and present evidence”). The record and procedural history of this case establish—in no uncertain terms that Castillo had just that. Represented by the Texas Defender Service, he filed a state habeas application. The state court granted a stay to allow consideration of the filings and the record. The State filed an answer, and affidavits and exhibits from both parties were

reviewed and considered before the state court's merits determination. Despite this evidentiary development, Castillo now argues that the state court should have allowed even more. This Court has held on numerous occasions that it will not review the decision of a state court if the decision rests on a state law ground that is independent of the federal question and adequate to support the judgment. *Sochor v. Florida*, 504 U.S. 527, 533 (1992); *Michigan v. Long*, 463 U.S. 1032, 1042 (1983).

Castillo fails to demonstrate any special or important reason for this Court to review the CCA's decision. Instead, Castillo asks this Court to engage in routine error correction. But the trial court strictly adhered to the state law and statute governing post-conviction proceedings and firmly rooted its findings and conclusions in the record and the evidence. The CCA, in turn, correctly denied any habeas relief based on these findings and its own review of the record. Accordingly, certiorari review is unwarranted.

CONCLUSION

Castillo was charged by the State of Texas with capital murder. He "was afforded counsel and tried before a jury of [his] peers. [He was] duly convicted and sentenced. [He was] granted the right to appeal and to seek postconviction relief[.]" *Glossip v. Gross*, 135 S. Ct. 2726, 2746–747 (2015) (Scalia, J., concurring in the opinion). An opportunity to seek federal habeas relief remains available, however as Justice Stevens noted:

The Court rarely grants review at this stage of the litigation even when the application for state collateral relief is supported by arguably meritorious federal constitutional claims. Instead, the Court usually deems federal habeas proceedings to be the more appropriate avenues for consideration of federal constitutional claims.

Kyles v. Whitley, 498 U.S. 931, 932 (1990) (Stevens, J., concurring in the denial of application for stay). Nevertheless, it is true that in recent years, the Court has shown a willingness not only to grant certiorari review but to grant relief where a petitioner has directly challenged the state's denial of his federal constitutional claims in collateral proceedings. See *Moore v. Texas*, 137 S. Ct. 1039 (2017); *Foster v. Chatman*, 136 S. Ct. 1737 (2016); *Wearry v. Cain*, 136 S. Ct. 1002 (2016) (per curiam); *Hall v. Florida*, 134 S. Ct. 1986 (2014); *Hinton v. Alabama*, 134 S. Ct. 1081 (2014); *Miller v. Alabama*, 567 U.S. 460 (2012); *Missouri v. Frye*, 566 U.S. 133 (2012); *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010). But the instant petition does not argue the merits of any federal constitutional claims; it does not directly challenge the state habeas court's denial of his federal constitutional claims. Rather, Castillo challenges the procedure by which his claims were denied and asks for a second bite at the apple by invoking the Due Process Clause and fundamental fairness. He bemoans an alleged lack of due process, but as discussed above, petitioners like Castillo have no due process right in collateral proceedings.

Further, the record establishes Castillo had more than sufficient notice and opportunity with procedures that complied with state law and statute.

For all of these reasons, certiorari review should be denied.

Respectfully submitted,

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