No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

In re MARVIN III WADDLETON — PETITIONER
(Your Name)

vs.

STATE OF TEXAS et al, — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Fifth Circuit Court of Appeals New Orleans La.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MARVIN III WADDLETON
(Your Name)

1697 FM 980
(Address)

Huntsville, Texas 77343-3314
(City, State, Zip Code)

(936) 295-5756
(Phone Number)

QUESTION(S) PRESENTED

The plain error of the State of Texas Appeals Courts on direct collateral review. The use of Jackson standard of view in the light most favorable to the prosecution an unreasonable application of clearly established law as determined by the U.S. Supreme Court. In voilation of Texas Const. Art. V § 5,6 and U.S. Const 5,6,14 of Burden of proof of necessary elements of offense.

The Plain meaning rule applied to the AEDP Act of 1996 fundamental unfair to non capital cases where counsel is not appointed to file timely, and have access to information more readly than incarcerated pro se offender with not any formal legal law training. The plain language of the statute mean death penalty cases.

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

BRYAN COLLIER Executive Director of T.D.C.J.

LORIN DAVIS DIRECTOR

GOVERNOR OF TEXAS

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

TABLE OF AUTHORITIES CITED

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was March 28, 2018.

[X] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A.E.D.P. Act of 1996 Freedom of Information Act

28 U.S.C.S. § 2241, 2244, 2254, 2201, 2202:

U.S.A. Constitution amendments 5,6,8, & 14:

18 U.S.C.S § 3599 PLAIN Meaning Rule

STATE

Texas Constitution Art. V § 5,6: Texas Penal Code 2.01

Texas C. Cr. Pro. Art. 1.14 (b), 11.07, 44.25;

STATEMENT OF THE CASE

This case involve the 1 year limitation, placed on a state Non-capital, and non death penalty cases. Where the right to appointed counsel through out collateral appeal review procedural process, the defendant hasnot any assistance nor right to counsel. Thus a pro se state petitioner left to navigate the process, the best of his untrained understanding. Where the timely rehearing of THE Petition with this court did not toll the time. And the difficulty of acquiring the trial record to present his claims of ineffective of counsel during the trial and on direct review hindered the timeliness filing of his petition to the state court to exhaust state remedies.

AND

The State appeals courts unreasonable application of clear established Federal Law as determined by this U.S. Supreme court in JACKSON V VIRGINIA the standard of review of the evidence in light most favorable to the prosecution. In violation of the state and federal constitution of the finding of guilt, beyound a reasonable doubt of the necessary elements of the offense. As defined by the PENAL CODE, indictment and the hypothetical correct jury charge.

REASONS FOR GRANTING THE PETITION

The U.S. Supreme court and even circuits courts had not yet had an occasion to interpert A.E.D.P.-A in any meaningful, substantive way. Winfield v. Dorethy, 871 F3d 555, 562 (7th Cir. 2017); The A.E.D.P.A statute of limitation has unreasonable denied the original Right to the Great Writ and Due process clause. U.S. Const. Art 1 § 9, 5,6,8, and 14th amendments.

To futher set forth , the plain meaning-error of the AEDP Act of 1996 that properly incorporate the exhaustion rule, finality of the conviction for non State Death penalites cases. Where a untrianed convicted prisoner, has been expected to know and learn, case law, state statutes, federal laws as well as to know the difference of clear establishe law as defined by this court, within the one year limit. Where it takes at least 3 years to get a licence to practice to be an attorney.

The plain meaning rule is that if a writing, or aprovision in a writing, appears to be unabiguous on it's face, it's meaning must be determined from the writing itself without resort to any extrinsic evidence . In Davis v. Johnson 158 F3d 806(5th Cir. 1998) When the language of a statute is unambiguous a court must follow it plain meaning. Johnson v. American Airlines Inc, 745 F2d 988,992 (5th Cir 1984) CITING Philbrook v Cladgett, 421 U.S. 707, 713, 95 S.Ct. 1893 (1975) The clearest indication of congressional intent is the words of the statue itself. The words of the AEDP Act in itself set out the plain meaning that the act apply to death penalty cases.

In Martinez v. Court of Appeals of California, 528 U.S. 152, 120 S. Ct. 684 (2000) held that defendant did not have Federal Constitution right to represent himself on direct appeal from his conviction. The 18 U.S. C.S § 3599 (a)2) GUARANTEES Federal habeas petitioners on death row the right to Federal funded counsel.

Appointed attorneys are required to have experience in death penalty litigation. In 18 § 3599 (b)-(d) and once appointed, are directed to represent the defendant throughout every subsequent stage of available judical proceedings § 3599 (e). The statue also gives federal district courts the power to authorize funidng for investigatative, expert, or other services as are reasonably necessary for the representation of the defendant 18 § 3599 (f) See Ryan v. Gonzales 133 S.Ct. 696,702 (2013): Congress enacted AEDP act to reduce delays in the execution of state and federal criminal sentences particularly in capital cases. Woodford v. Garceau, 538 U.S 202,206, 123 S Ct. 1398 (2003); William v. Taylor 529 U S. 362,386, 120 S.Ct 1495; To futher the principles of comity, finality and federlism. Williams v. Taylor, 529 U.S. 420, 120 S.Ct. 1479 (2000): A non capital pro se petitioner untrained in the procedural rules and stages of available judical proceeding has a unfair fundamental unfair chance in filing his federal writ within the one limitation period. It takes at least 3 years of formal schooling to become a lawyer without any actual experience The Freedom of Information Act does not work 100 % with a convicted individuals. Where a simple phone call to get a copy of trial records or any other discovery evidence or newly discovered evidence.. Can take a prisoner weeks or months and still not get the complete record. An incarcerated prisoner suffer even in the mailing of receiving the courts opinion. The Fifth Circuit opinion occured on the 28th of March 2018, post marked two days later on the 03/30/18, but not received until April 05,2018 9 days after the day of the opinion. Whether intented or unintended that only leave 81 days to petition to this court. Fundamental unfair

The opinion of Rose V Ludy, 455 U.S. 509,518, 102 S.Ct. 1198,1203 (1982): Exhaustion rule happen pre A.E.D.P. Act. of 1996:

Thus must be followed and with that, for the purpose of final conviction on colatteal direct appeal review can not begain the one year limitation until exhaust of state remedies The procedure of allowing a petitioner to return to the state court to exhaust unexhausted claims in federal court is only a trap to get the petition dismissed as untimely. In Pliler v. Ford, 542 u.s. 225, 124 S.Ct. 2441 (2004); Pro se petition containing both exhausted and unexhausted claims dismissed without prejudice, prisoner return to exhaust claims. Afterexhausting claims prisoner again filed in federal court. District court dismissed as time barred. The S.Ct. held that the district was not required to warn pro ss petitioner about consequances prior to dismissal of 2254 containing both exhausted and unexhausted claims. In McKaskle v. Wiggins, 445 U.S. 168,183-84, 104 S.Ct. 944 (1984); Held that [a] defendant does not have a constitutional right to receive personal instruction from the trial judge on courtroom procedure and that the constitution [does not] require judges to take over chores for a pro se defendant that would normally be attended to by trianed counsel as a matter of course. See also Martinez v. Court of Appeals of Calfornia 528 U.S. 152 162; Explaining the details of Fed 2254 procedure and calculating statutes of limitation are task normally and properly performed by trained counsel as a matter of course.

In applying the AEDP Act statue to non death penalty cases where counsel is not appointed is a fundamental unfair. The plain error standard articulated by United States v. Oleno, 597 U.S. 725,730, 113 S.Ct. 1770 (1993). The Olano standard, cannot reverse if the party fail to establish (1) there is an error, (2) the error is plain, (#) the error affets the substantial rights and (4) the court determines... that the error seriously affects the fairness, intergrity or public reputation of judical proceedings.

For a state petitioner seeking review from federal courts they have to exhaust state remedies and follow state procedural to present there claims. See Castillo v. State, 810 S.W.2d 180; Because a defendant failed to direct the court of criminal appeals to any place in the record where argument that all of the evidence should have been suppressed was made to the trial court argument would be considered inadequately brief and would not be addressed. Maida v. Fire Incs. Exchange, 990 S.W.2d 836; Without petitioner Waddleton not having the trial record to direct the reviewing court to his claim would have been frivolous. Because Waddleton has a ineffective trial counsel claim the record was necessary to present the calim to the state courts. See Trevino v. Thaler, 132 S.Ct. 1991,1919; Texas Prac. Seris § 29,76 p.p. 844-845-the required that a claim of ineffective of trial counsel be supported by a reccords containing direct evidence of why and what counsel acted as he did will require that the claim be raised in post conviction Habeas proceeding where a full record of matter can be raised... See Andrews v. State, 159 S.W.3d 449,453.

The district clerk of Smith county did not and has not responded to the request for the amount-cost of the pretrial and guilt innocence part of the trial records after the denial for loan or free trial transcript. The records was not obtained until diligently writing the State law library, the Court of Criminal Appeals and finally the Twelveth Court of Appeals nine months later but still not the getting the complete record. It do not contain the first day of trial, vior dire, leave to amend the indictment and the reset of the trial. Again for an incarcerated petitioner the freedom of information act does not work properly, untrained pro se in non capital death penalty cases applying the AEDP Act without appointing counsel is a fundamental unfair of the one year limitation to file in federal court.

UNREASONABLE APPLICATION OF JACKSON:

The state of Texas on direct appeallate review, the use of Jackson v. Virginia 443 U.S. 307, 99 S.Ct. 2781(1979) STANDARD of REVIEW in light most favorable to the prosecution. Is in violation of Texas Const. Art. V §,5,6 and U.S. Constitution amendments 5,6, and 14. Proof beyound a reasonable doubt of the necesssary elements of Offense. Thompson v. Louisville, 362 U.S. 199, 80S.Ct. 624; In reWinship, 397 U.S. 358, 90 S.Ct. 1068; Freeman v. Zahradnick, 429 U.S. 111, 97 S.Ct. 1150; The State of Texas unreasonable[y] applied clearly establish Federal law as determine by the U.S. Supreme Court 28 U.S.C. § 2254(I) See Williams v. Taylor, 529 U.S. 362, 120 S.Ct. 1495 (2000); Carey v. Musladin, 549 U.S. 70 129 S.Ct. 649 (2006):

The 28 U.S.C. § 2254 (e)1) provides that in a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursurant to the judgment of a state court a determanation of a factual issue made by a state court shall be presumed to be correct. The applicat shall have the burden of rebutting the presumption of correctness by clear and convincing evidence. Schriro v, Landrigan 550 U.S. 465,473, 127 S Ct. 1933, (2007); Rice v Collins, 546 U.S. 333 338, 126 S.Ct. 2969 (2006);

Where the State appeal courts pursuant to Texas C.Cr.Pro. Art. 44.25 have the authority to review question of facts in a criminal case to examine factual and legally sufficent. Therefore determine if a jury finding is against the great weight and preponderance of the evidence. Yet making the appellant court the 13th juror, by Const. Art. V § 5,6,; When federal courts review of state prisoner claims under 28 § 2254 (d)1(2)e) and the state reviewed the claim most favorable to the prosecution, the petitoner has been denied a fundamental fair review of his claims in state proceeding amount to no review of claims.

The plain error of the state of Texas appeals courts in dire review, in light most favorable to the prosecution is an unreasonable application of clear establish law of JACKSON for the state direct collateral review sine 1979.

Thus with Federal court review chpter 153 § 2254 (e)1) and (d) amount to getting nothing on appellate collteral review. The stATE of TESAS in Brooks v. State of TexaS, 323 S.W.3d 893 (Tex.Cr.App. 2010) Held that the Jackson v. Virginaia legal sufficency standardwas indistingushable from the Clewis Factual-sufficency standard, therefore the Jackson standarad was the only standard a reviewing court should apply in determing whether the evidence was sufficent. Since the decission in Brooks by the Hightest Court this principle has been used, and before. Escamill v. State, 143 S.W.3d 814,817(Tex.Cr.App. 2004); Hooper v State, 214 S.W.3d 9,13,(Tex. Cr.App.2007); Laster v. State 275 S.W.3d 512,523 (Tex App.2009); Clayton v. State, 235 S.W.3d 772,778(Tex.Cr.App. 2007); Hartsfield v. State, 305,S.W.3d 859,863(Tex.App 6th 2010) Polk,337 S.W.3d 286, 288(Tex.App.11th 2010); Villarreal, 504 S.W.3d 494,511(Tex.App.13th 2016); Nelson, 504 S.W.3d 410,411(Tex.App.11th 2016); Reynolds v. State, 507 S.W.3d 805,808(Tex.App.6th 2016); Buentello, 512 S.W.3d 508,512(Tex.App.1st 2016); And also in Waddleton v. State cause No. 12-05-00266-Cr State Reply p.5 (Tex.App.12th 2006); Waddleton cause No. 12-10-00355-Cr Def. Brief p.4 (Tex.App 12th 2011);

Because the state use of the Jackson standard of review in light most favorable to the prosecution and under § 2254 (d) once a federal const. claim has been adjudicated by state cour, a federal court cannot conduct,an independent review of that claim in a fed. 2254 proceeding. HARRINGTON v. Richter, 562 U.S. 86, 131 S.Ct. 770,787-87(2011);

In Addington v. Texas, 441 U.S. 418,431, 99 S.Ct. 1804; The standard of review, for use in civil commitment for mental illness must inform the fact finder that proof must be greater than the preponderance of evidence, (Burden of Proof) but the beyound a reasonable doubt standard is not constitutional required. The State of Texas uses the Texas Penal code 2.01 Burden of Proof standard to determine guilt in its criminal cases.

The Jurisprudence of this country judical system alone with the Judical a Article III of the U.S. Constituional which has created the U.S. Supreme court and Federal courts to uphold the constitution of the United States to protect its citizen from unreasonable oppression, vexation, false imprisonment, malicious prosecution that has resulted in the unreasonable mass incarceration of this great county of this U.S.A. The lazy judical branch, was too concern about the work load by which the state malicious prosecution and prosecution misconduct had created. See Jackson v. Virginia, 443 U.S. 307,319 (foot notes)

> #9 In the past collateral review of state proceeding has been justified largely on the ground (1) That Federal judges have a special expertise in Federal issues that regularily arise in habeas corpus cproceeding. (2) That they are less susceptible than state judges to political pressures against applying constitutional rules to overrurn convictions. See eg. Bartels Avoiding a Comity of Errors, 29 Stan L. Rev. 27,30 n 9 (1976 of Steffel V Thompson, 415 U.S. 452, 464, 94 S.Ct. 1209; ¶itchum v. Foster, 407 U.S. 225,242, 92 S.Ct. 215; Moreover, of all decisions overruling convictions, the least likely to be unpopular and thus distort decision making process are ones based on the inadequacy of the evidence.

And allowed themselves to simply confirm the conviction without any reqards to uphold the U.S. Constitional rights of the 5,6,and 14th amendments for sufficiant of evidence for states to prove beyond a reasonable doubt standard of guilt... Sufficient of elements of the offense as defined by a hypothetically correct jury charge that accurally set out the law in the penal code that is authorize by the indictment. Malik v. State, 953 S.W.2d 234,240;

The Texas Code of Criminal Procedure Art. 44.25 Case Remanded provide that the court of appeals or the court of criminal appeals may reverse the judgment in a criminal action, as well upon the law as upon the facts. While the court of appeals is always hesitant to distub the verdit, circumstances are sometimes presented where it becomes its duty to do so. Lozano v. State, 137 S.W.2d 1031 (Tex.Cr.App. 1940); The Court of criminal appeals may reverse a conviction on the facts as a whole or on facts relating to a single issue upon which a case turns and the entire record may be considered in deter mining the fore of the evidence on any particular issue Villerreal v.State, S.W.2d 406(Tex.Cr.App.1940); On direct appeal of a criminal case, the court of appeals and the court of criminal appeals in the direct appeal of a criminal and capital case have the statutory and constitutional authority to enterain a claim of factual insufficency and to reverse the conviction and remand the cause for a new trial in the event they find the evidence to be indeed factual insufficent Watson v. State 204 S.W.3d 404, (Tex.Cr.App. 2006); overruling Zuniga 144 S.W.3d 477 (Tex.Cr.App. 2004); Yet the Appeal court chose to rely on the unreasonable use of the clear establish law of Jackson v. Virginia reviewing in light most favorable to the prosecution. Thus denying Texas Petitioners the constitutional right to proof beyound a reasonable doubt of the necessary element of the offense as defined by the Penal code statue, indictment and a hypothetically correct jury charge. A fundamental unfair miscarriage of Justice.

The opinion from the Fifth Circuit Court of Appeals was issued on March 28, 2018 and post marked mailed on 03/30/18 and received by Petitioner Waddleton on April 05, 2018.

CERTIFICATION

I Marvin III Waddleton pro se hereby declare under the penalty of perjury that this petition on the 24th day of June 2018, shall be placed in the prison mailing system postage paid on the 06/25/2018. Pursuant to 28 § 1746 and Fed.R.App.Pro. rule 4 (c).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Marvin III Waddleton

Date: June 24, 2018

Ellis Unit TDCJ-ID 1355746
1697 FM 980
Huntsville, Texas, 77343-3314