

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

GARY DEWAYNE OATMAN — PETITIONER  
(Your Name)

vs.

LORIE DAVIS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES DISTRICT COURT - WESTERN DISTRICT - TEXAS - WACO  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

GARY DEWAYNE OATMAN  
(Your Name)

59 DARRINGTON ROAD  
(Address)

ROSHARON, TX 77583  
(City, State, Zip Code)

N/A  
(Phone Number)

QUESTION(S) PRESENTED

One - Does a District Court or a Court of Appeals abuse its discretion, commit plain error, or both by refusing to follow United States Supreme Court precedent when deciding whether to grant a habeas writ or an application for certificate of appealability? And more specifically, did the lower courts do so in Oatman's case?

Two - Can a defendant be actually innocent of a sentence in a non-capital case?

Three - In a second or third trial on the same charge, does a prior mistrial render nugatory all prior proceedings?

Four - Must a defendant be given adequate notice that the state intends to seek an enhanced sentence?

## LIST OF PARTIES

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

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

## TABLE OF CONTENTS

OPINIONS BELOW .....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	3
STATEMENT OF THE CASE .....	4
REASONS FOR GRANTING THE WRIT .....	5
CONCLUSION.....	6

## INDEX TO APPENDICES

APPENDIX A- DECISION OF STATE COURT OF APPEALS

APPENDIX B- DECISION OF COURT OF CRIMINAL APPEALS DENYING REVIEW

APPENDIX C- DECISION OF COURT OF CRIMINAL APPEALS DENYING S11.07

APPENDIX D- DECISION OF UNITED STATES DISTRICT COURT

APPENDIX E- DECISION OF FIFTH CIRCUIT COURT OF APPEALS

APPENDIX F- FIFTH CIRCUIT MOTION FOR RECONSIDERATION DENIED

## TABLE OF AUTHORITIES CITED

### CASES

CASES	PAGE NUMBER
BULLARD v STATE, 331 SW2d 222, 223 (TX App 1960)	5f
DRETKET v HALTY, 124 SGT 1847 (2004)	5
FRENCH v ESTELLE, 692 F2d 1021 (5TH CIR 1992)	5b
HALTY v COCKRELL, 306 F3d 257 (5TH CIR 2002)	5
HALTY v DRETKET, 376 F3d 316 (5TH CIR 2004)	5
OYLTR v BOLTS, 368 US 448 (1962)	5g
RODRIGUEZ v STATT, 852 SW2d 516 (TX Crim App 1993)	5f
SCHAFFER v STATT, 590 SW2d 490 (TX Crim App 1979)	5f
U.S. v MANSIKAR, 557 F3d 219 (5TH CIR 2009)	5f

### STATUTES AND RULES

### OTHER

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

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

**OPINIONS BELOW**

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

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

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

The opinion of the United States district court appears at Appendix \_\_\_\_\_ 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 A to the petition and is

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

The opinion of the COURT OF CRIMINAL APPEALS court appears at Appendix B to the petition and is

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

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

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: FEBRUARY 15, 2018, and a copy of the order denying rehearing appears at Appendix F.

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 JUNE 9, 2011. A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: OCTOBER 12, 2011, and a copy of the order denying rehearing appears at Appendix B.

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

### UNITED STATES CONSTITUTION - FOURTEENTH AMENDMENT

ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES, AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR ~~SHALL~~ DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS.

SIXTH AMENDMENT - IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT... TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE.

### STATEMENT OF THE CASE

THIS IS A CASE IN WHICH OATMAN WAS TRIED AND SENTENCED AS AN HABITUAL OFFENDER, AND IN WHICH HIS PUNISHMENT WAS ENHANCED BECAUSE OF HIS HABITUAL OFFENDER STATUS. BUT OATMAN IS ACTUALLY INNOCENT OF BEING AN HABITUAL OFFENDER BECAUSE HIS PRIOR FELONY CONVICTIONS DO NOT MEET TEXAS' STATUTORIAL REQUIREMENTS TO SUBJECT HIM TO AN ENHANCED PUNISHMENT AS AN HABITUAL OFFENDER.

OATMAN WAS SUBJECTED TO THREE TRIALS FOR THE SAME CHARGE DURING THE COURSE OF THIS PROSECUTION. THE FIRST TWO ENDED IN MISTRIALS. TEXAS REQUIRES PRIOR NOTICE TO BE GIVEN WHEN THE STATE INTENDS TO SEEK ENHANCED PUNISHMENT UNDER THE HABITUAL OFFENDER STATUTE. NOTICE WAS GIVEN AT THE FIRST TRIAL, BUT THE SUBSEQUENT MISTRIALS RENDERED NUGATORY ALL PRIOR PROCEEDINGS. THE STATE DID NOT GIVE THE REQUIRED NOTICE IN OATMAN'S THIRD AND FINAL TRIAL UNTIL MERE SECONDS BEFORE OATMAN'S SENTENCE AS AN HABITUAL OFFENDER. THE STATE'S TIMING DID NOT ALLOW OATMAN A MEANINGFUL OPPORTUNITY TO MOUNT A DEFENSE TO HABITUAL ENHANCEMENT.

THE FEDERAL QUESTIONS SOUGHT TO BE REVIEWED WERE PRESENTED TO THE STATE COURT IN HABEAS PROCEEDINGS. THE TEXAS COURT OF CRIMINAL APPEALS DENIED OATMAN'S WRIT WITHOUT A WRITTEN ORDER. THE SAME FEDERAL QUESTIONS WERE PRESENTED TO THE FEDERAL DISTRICT COURT AND THE FIFTH CIRCUIT COURT OF APPEALS PROPERLY AND IN A TIMELY MANNER.

### REASONS FOR GRANTING THE PETITION

QUESTION ONE  
ANSWERED

A DISTRICT COURT OR A COURT OF APPEALS ABUSES ITS DISCRETION, COMMITS CLEAR ERROR, OR BOTH BY REFUSING TO FOLLOW UNITED STATES SUPREME COURT PRECEDENT WHEN DECIDING WHETHER TO GRANT A HABEAS WRIT OR APPLICATION FOR CERTIFICATE OF APPEALABILITY. AND MORE SPECIFICALLY, THE LOWER COURTS DID SO IN OATMAN'S CASE.

QUESTION TWO  
ANSWERED

A DEFENDANT CAN BE ACTUALLY INNOCENT OF A SENTENCE IN A NON-CAPITAL CASE.

A STATE COURT OR A UNITED STATES COURT OF APPEALS HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THE UNITED STATES SUPREME COURT.

OATMAN'S ARGUMENT IS BASED PRIMARILY ON THREE CASES: HALTY V COCKRELL, 306 F3d 257 (5TH CIR 2002); DRETKE V HALTY, 124 SCT 1847 (2004); HALTY V DRETKE, 376 F3d 316 (5TH CIR 2004). MICHAEL WAYNE HALTY (HALTY) WAS NOT ELIGIBLE TO BE SENTENCED AS AN HABITUAL OFFENDER BECAUSE HIS PRIOR CONVICTIONS DID NOT BECOME FINAL IN THE PROPER CHRONOLOGICAL SEQUENCE TO SATISFY TEXAS' HABITUAL OFFENDER STATUTE. OATMAN'S CIRCUMSTANCE IS FUNDAMENTALLY EQUIVALENT TO THE CIRCUMSTANCE ADDRESSED IN MICHAEL HALTY'S CASE. HALTY WAS GRANTED RELIEF. OATMAN WAS NOT.

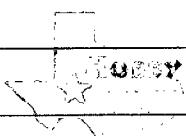
IN ORDER TO BE SENTENCED AS AN HABITUAL OFFENDER, THE TEXAS PENAL CODE (Tx PC, 12.42, d) REQUIRES THAT OATMAN MUST HAVE BEEN PREVIOUSLY CONVICTED OF TWO FELONIES, AND THAT THE SECOND PREVIOUS FELONY CONVICTION BE FOR AN OFFENSE THAT OCCURRED SUBSEQUENT TO THE FIRST PREVIOUS CONVICTION HAVING BECOME FINAL HALTY v COCKRELL, 306 F3d 257, 267 (5<sup>th</sup> Cir 2002).

HALTY COMMITTED HIS SECOND OFFENSE THREE DAYS BEFORE HIS FIRST CONVICTION BECAME FINAL DRETKE v HALTY, 124 SCT 1847, 1849 (2004). THAT IS WHY HALTY WAS NOT ELIGIBLE TO BE SENTENCED AS AN HABITUAL OFFENDER. OATMAN WAS ON PROBATION FOR HIS FIRST OFFENSE WHEN HE COMMITTED HIS SECOND OFFENSE. HE COMMITTED HIS SECOND OFFENSE BEFORE HIS FIRST OFFENSE BECAME A FINAL CONVICTION. HIS FIRST AND SECOND OFFENSES BECAME FINAL CONVICTIONS ON THE SAME DAY (FAR, Vol 5, p 1892) (FEDERAL APPELLATE RECORD - FAR). OATMAN WAS NOT ELIGIBLE FOR THE HABITUAL OFFENDER ENHANCEMENT, BUT HE WAS SENTENCED AS AN HABITUAL OFFENDER (FAR, Vol 4, p 1286, RI @ 1). LIKE HALTY, OATMAN WAS INELIGIBLE FOR THE HABITUAL OFFENDER ENHANCEMENT BASED ON THE TIMING OF HIS SECOND CONVICTION DRETKE, (IBID AT 1850).

THE FIFTH CIRCUIT HELD THAT GRANTING RELIEF IS APPROPRIATE WHERE THE STATE HAS FAILED TO PRODUCE SUFFICIENT EVIDENCE OF THE PETITIONER'S HABITUAL OFFENDER STATUS FRENCH v ESTELLE, 692 F2d 1021, 1024-25 (5th Cir 1992) (CITED IN HALTY, SUPRA AT 266). HALTY WAS ULTIMATELY GRANTED RELIEF HALTY v DRETKE, 376 F3d 316 (5th Cir 2004). BUT WHETHER THE STATE COURTS, THE FEDERAL DISTRICT COURT, NOR THE FIFTH CIRCUIT WOULD ENTERTAIN OATMAN'S CLAIMS. SO FAR, THE ILLEGALITY OF HIS SENTENCE HAS FALLEN ON DEAF EARS.

## ACTUAL INNOCENCE

THIS COURT DECLINED TO ADDRESS HALTY'S ACTUAL INNOCENCE CLAIM, BUT IT WOULD SERVE THE NATIONAL INTEREST TO ADDRESS THIS ISSUE IN OATMAN'S CASE. THE FIFTH CIRCUIT FOUND THAT ACTUAL INNOCENCE APPLIES TO NONCAPITAL SENTENCING PROCEDURES INVOLVING AN HABITUAL FELONY OFFENDER HALTY v COCKRILL, 376 F3d 257, 264 (5th Cir 2002). BUT THE CIRCUIT COURTS ARE SPLIT ON THIS ISSUE, AND HAVE BEEN FOR MANY YEARS HALTY (IBID AT 265). THIS COURT SHOULD NOW DECIDE THIS ISSUE.



IN ANY EVENT, LIKE HALTY - THE CHRONOLOGICAL ORDER OF THE CONVICTIONS ALLEGED IN THE ENHANCEMENT PARAGRAPHS DID NOT SATISFY THE REQUIREMENTS OF THE TEXAS HABITUAL OFFENDER STATUTE. THIS RESULTED IN HALTY'S ACTUAL INNOCENCE OF HIS STATUS AS AN HABITUAL FELONY OFFENDER HALTY, (IBID AT 267), AND THE IMPROPER ENHANCEMENT OF HIS SENTENCE. OATMAN WAS SIMILARLY SITUATED TO HALTY, BUT HAS BEEN TREATED DIFFERENTLY. THE COURTS HAVE NOT BEEN FAIR TO OATMAN.

## CONCLUSION

THE FIFTH CIRCUIT OPINED THAT A CLASSIC EXAMPLE OF A FUNDAMENTAL MISCARRIAGE OF JUSTICE WOULD OCCUR IF AN INDIVIDUAL WAS REQUIRED TO CONTINUE STRIVING A SENTENCE OF WHICH HE IS IN FACT INNOCENT HALTY, (IBID AT 267). WHAT ABOUT OATMAN? THIS IS EXACTLY WHAT HAPPENED IN HIS CASE, BUT THE FIFTH CIRCUIT REFUSED TO CERTIFY APPEALABILITY.

OATMAN HAS BEEN DENIED DUE PROCESS  
BECAUSE THAT IS NO BASIS FOR HIS CONVICTION  
AS AN HABITUAL OFFENDER. AND BECAUSE THAT  
CONSTITUTIONAL ERROR RESULTED IN THE IMPOSITION  
OF AN UNAUTHORIZED SENTENCE, IT FOLLOWS THAT  
OATMAN IS THE VICTIM OF A MISCARRIAGE OF  
JUSTICE DRETKE, (SUPRA AT 1854).

BUT WHERE DOES ALL OF THIS LEAVE OATMAN?  
IN PRISON SERVING AN UNAUTHORIZED SENTENCE,  
THAT IS WHERE. THE DOCTRINE OF STARE DECISIS  
SHOULD APPLY. THE LOWER COURTS SHOULD HAVE  
FOLLOWED THE EARLIER DECISIONS OF THIS COURT  
BECAUSE THE SAME POINTS WERE RAISED BY  
OATMAN THAT HAD PREVIOUSLY BEEN RAISED BY  
HAILEY. THIS COURT SHOULD STEP IN ON OATMAN'S  
BEHALF BECAUSE THE LOWER COURTS DECIDED HIS  
CASE IN A WAY THAT CONFLICTS WITH RELEVANT  
DECISIONS OF THIS COURT.

QUESTION THREE A MISTRIAL RENDERS NUGATORY  
ANSWERED ALL PRIOR PROCEEDINGS.

QUESTION FOUR A DEFENDANT MUST BE GIVEN  
ANSWERED ADEQUATE NOTICE THAT THE  
STATE INTENDS TO SEEK AN  
ENHANCED PUNISHMENT.

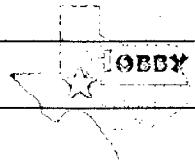
A STATE COURT OR A UNITED STATES COURT  
OF APPEALS HAS DECIDED AN IMPORTANT FEDERAL QUESTION  
IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF  
THIS COURT.

THE COURT SHOULD DECIDE THIS ISSUE BECAUSE  
IT IS AN OPPORTUNITY TO CLARIFY FOR THE LOWER COURTS  
THE EFFECT A MISTRIAL HAS ON PRIOR PROCEEDINGS, AND TO  
FURTHER DEFINE WHAT CONSTITUTES ADEQUATE NOTICE AS  
IT RELATES TO A STATE'S INTENT TO SEEK AN ENHANCED  
PUNISHMENT.

THIS IS A FAIRLY SIMPLE CASE. THE STATE  
GAVE OATMAN NOTICE THAT IT WOULD SEEK AN ENHANCED  
PUNISHMENT UNDER THE HABITUAL OFFENDER STATUTE.  
NOTICE WAS GIVEN ON OCTOBER 9, 2008 (FAR, VOL 4, P 1299, P 2122)

ELVEN DAYS BEFORE HIS TRIAL BEGAN ON OCTOBER 20, 2008 (FAR, VOL 4, P 1298, P 22). THIS WAS HIS FIRST TRIAL, AND IT WAS DECLARED A MISTRIAL (FAR, VOL 2, P 489). THE JUDGE DECLARED A SECOND MISTRIAL ABOUT SIX MONTHS LATER ON APRIL 27, 2009 (FAR, VOL 2, P 497). THE THIRD TRIAL BEGAN ALMOST A YEAR AFTER THE FIRST MISTRIAL. AND THE FIRST TIME ENHANCEMENT WAS MENTIONED AFTER THE FIRST MISTRIAL, WAS MERE SECONDS BEFORE OATMAN WAS SENTENCED IN HIS THIRD TRIAL (FAR, VOL 5, P 1891).

A MISTRIAL PUTS THE DEFENDANT ON NOTICE OF NOTHING. IN FACT, A MISTRIAL DOES NOT EVEN PLACE THE DEFENDANT ON NOTICE THAT A FUTURE TRIAL IS IMMINENT. SCHAFFER v STATE, 590 SW2d 490, 492 (Tx Crim App 1979). A MISTRIAL RENDERS NUGATORY ALL TRIAL PROCEEDINGS AS IF THERE HAD BEEN NO TRIAL AT ALL. BILLARD v STATE, 331 SW2d 222, 223 (Tx App 1960); RODRIGUEZ v STATE, 852 SW2d 516, 518-20 (Tx Crim App 1993); U.S. v MAVSKAR, 557 F3d 219, 225 (5<sup>th</sup> Cir 2009). SO, A MISTRIAL ERASES EVERYTHING THAT TRANSPiRTED IN THE PROCEEDINGS IN WHICH A MISTRIAL IS DECLARED. ONCE THE MISTRIAL WAS DECLARED IN OATMAN'S FIRST TRIAL, THE ENHANCEMENT NOTICE IS RENDERED OF NO EFFECT - AS THOUGH IT HAD NEVER BEEN PRESENTED AT ALL.



WHEN OATMAN WAS NEXT PRESENTED WITH THE STATE'S INTENT TO ENHANCE HIS SENTENCE, IT WAS VERBALLY AND MORE SECONDS BEFORE PUNISHMENT WAS ASSESSED (FAR, VOL 5, p1891). IF OATMAN HAD BEEN GIVEN A MEANINGFUL OPPORTUNITY AT A MEANINGFUL TIME TO DEFEND AGAINST THE ENHANCEMENT, HE WOULD HAVE BEEN ABLE TO DEFEND AGAINST IT BECAUSE HE WAS NOT STATUTORIALLY ELIGIBLE TO RECEIVE AN ENHANCED SENTENCE UNDER THE HABITUAL STATUTE. BUT THE STATE'S TIMING DEPRIVED HIM OF THE OPPORTUNITY TO MOUNT A DEFENSE.

A DEFENDANT MUST RECEIVE REASONABLE NOTICE AND AN OPPORTUNITY TO BE HEARD RELATIVE TO THE RECIDIVIST CHARGE Oylbr v Bolts, 369 US 449, 452 (1962). AND NOTICE GIVEN ONLY SECONDS BEFORE OATMAN'S PUNISHMENT WAS ASSESSED DOES NOT COMPORT WITH DUE PROCESS. THE COURTS HOLDING DIFFERENTLY CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Harry Catman

Date: May 14, 2019