

5.

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

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_

ZACHARY DAVID WARNELL — PETITIONER  
(Your Name)

vs.

THE STATE OF TEXAS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

TEXAS COURT OF CRIMINAL APPEALS  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ZACHARY DAVID WARNELL  
(Your Name)

9601 SPUR 591  
(Address)

AMARILLO, TEXAS 79107-9606  
(City, State, Zip Code)

N/A

(Phone Number)

**QUESTION(S) PRESENTED**

CAN A STATE, SUCH AS THE STATE OF TEXAS, WHICH HAS AN ESTABLISHED SYSTEM OF APPEAL WITH THE CONSTITUTIONAL GUARANTEE OF APPELLATE COUNSEL WITH AN ADEQUATE RECORD FOREGO THIS REQUIREMENT AND FORCE THE PETITIONER TO PROCEED, PRO SE ON HIS ONE AND ONLY DIRECT APPEAL?

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**GROUND PETITIONER ARGUED TO THE TEXAS COURT OF CRIMINAL**

**APPEALS WHICH WAS DENIED WITHOUT WRITTEN ORDER**

APPLICANT IS ILLEGALLY RESTRAINED HAVING BEEN DENIED THE CONSTITUTIONAL RIGHT TO APPEAL WITH THE EFFECTIVE ASSISTANCE OF COUNSEL. THIS VIOLATED APPLICANT'S RIGHT TO COUNSEL, AND DUE PROCESS OF LAW, AS GUARANTEED BY AMENDMENTS 6 AND 14 TO THE UNITED STATES CONSTITUTION. See Douglas v California, 372 U.S. 353 (1963); Evitts v Lucey, 105 S.Ct. 830 (1985).

## 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:

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## 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☐ is unpublished.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☐ is unpublished.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 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**

☐ 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: \_\_\_\_\_, 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 4/18/18.  
A copy of that decision appears at Appendix A.

☐ 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**

### **Amendment VI**

In all criminal prosecutions, the accused shall enjoy the right to a speedy public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the Assistance of Counsel for his defence.

### **Amendment XIV**

All persons born or naturalized in the United States, and to the jurisdiction thereof, are citizens of the United States and 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 deny to any person within its jurisdiction the equal protection of the laws.

### STATEMENT OF THE CASE

Petitioner was tried and convicted by a jury for the offenses of aggravated sexual assault of a child in approximately March of 2011. Petitioner was appointed public defender, attorney Doyle Weaver. Trial counsel Weaver and Petitioner butted heads throughout Petitioner's trial, and, trial counsel Weaver knew that Petitioner wished to have a different attorney appointed on appeal. In this regard, attorney Weaver performed his duty to a tee according to Texas case law of Jones v State, 98 S.W.3d 700 (Tex.Crim.App.2003) to ensure Petitioner's right to appeal as follows:

(1) Notice of Appeal signed by Petitioner Zachary David Warnell was prepared by trial counsel Weaver and presented pro se and file stamped on April 6th, 2011.

(2) Motion for free Reporter's Record on Appeal with attached Affidavit signed by Zachary David Warnell, Pro Se and the Order was granted by the trial court on April 7th, 2011. Motion filed with district clerk on April 6th, 2011, order dated April 7th, 2011 with the district clerk's office.

(3) Request for preparation of Reporter's Record and designation of matters to be included filed by Zachary David Warnell on April 6th, 2011 with the district clerk's office.

(4) Motion to Withdraw filed on March 22nd, 2011 and attached ORDER granted by the trial court on April 5th, 2011. (It should also be noted that trial counsel Weaver filed a Motion for New Trial and Motion for Arrest of Judgment on March 22nd, 2011).

On April 7th, 2011, the trial court judge certified Petitioner's Right Of Appeal under Texas Rules of Appellate Procedure, Rule 25.2(d).

STATEMENT OF THE CASE CONTINUED

The law in Texas under Rule 25.2(d) states that if the defendant is the appellant, the record must include the trial court's certification of the defendant's right to appeal under Rule 25.2(d)(2). The certification shall include a notice that the defendant has been informed of his rights concerning an appeal, as well as any right to file a pro se petition for discretionary review. This notification shall be signed by the defendant, with a copy given him.

Petitioner requests that this Court take judicial notice that noticeably absent from the trial court's certification is Petitioner's signature. This exhibit is attached in Appendix B which is the writ of habeas corpus filed with all the attached exhibits.

Petitioner was forced to proceed pro se by the trial court failing in its mandatory, ministerial duty, to appoint appellate counsel in this case.

The Case Summary which is attached as EXHIBIT #3 to the writ of habeas corpus best demonstrates the events following the trial court's certification of Petitioner's right to appeal and are important for this Court's assessment of this meritorious claim as follows:

The following facts led to Petitioner being forced to proceed pro se on direct appeal. As evidenced by the Case Summary after the Notice of Appeal filed on 4/06/2011, and the Certification of Defendant's Right of Appeal filed on 4/07/2011, Petitioner was then transferred the very next day (4/08/2011) to the Texas Department

STATEMENT OF THE CASE CONTINUED

of Criminal Justice Garza West Unit.

It was just a few weeks later that Applicant received notice for a docketing statement which was unknown to Applicant and was possibly never replied to. Applicant then received the trial records, and a letter from the court of appeals clerk through the district clerk's office that the brief of appellant was due. Applicant notified his mother, Jaclyn Robinson, who in turn made several inquiries with the district clerk's office but was largely ignored on the question of why wasn't there another attorney involved preparing the brief that the court of appeals was requesting. It was somewhere through this time period that a clerk stated to Jaclyn Robinson that there was no attorney appointed, that the judge denied counsel on appeal and that the Court of Appeals rules required a brief be filed. A friend of the families, at that time was an aspiring congressional aide, who with Applicant, Applicant's mother, helped prepare the pro se brief and supplemental brief that was actually filed and heard in the Court of Appeals. The briefs were actually typed/prepared by this person which this Court would readily recognize that the type set is nothing that is available in TDCJ.

The State mocked the brief stating that Appellant's brief is a "model of brevity." The State and the Court of Appeals state over and over that the brief was inadequately briefed but never once questioned the pro se status. This issue is fully briefed in the writ attached as Appendix B. This Court will see that the brief filed by Petitioner consisted of mere paragraphs. The attached exhibits to the habeas corpus will demonstrate without question to

STATEMENT OF THE CASE CONTINUED

this Court that Petitioner was forced to proceed pro se in violation of his constitutional right to effective appellate counsel with an adequate record on direct appeal.

This case has been a continuing nightmare for Petitioner and his mother who has been constantly trying to right this wrong but with the inmate help that Petitioner was receiving was only making matters worse. When Jaclyn Robinson finally saved up enough money for an attorney, the attorney she hired, Angela Moore, was offered a commissioner's judge position and handed off the writ to Ross Elliott who failed to realize that Petitioner was denied appellate counsel through no fault of his own.

This Court has before it the writ of habeas corpus that the Texas Court of Criminal Appeals denied with several attached exhibits. Upon review of these documents that Court will be convinced beyond all doubt that Petitioner was denied his constitutional right to the appointment of appellate counsel on his direct appeal.

## REASONS FOR GRANTING THE PETITION

The Texas Court of Criminal Appeals has decided an important federal question in a way that conflicts with relevant, landmark decisions of this Court. Specifically, the State of Texas, which claims to have an established system of appeal with the appointment of appellate counsel with an adequate record. See e.g., Harper v State, 850 S.W.2d 736 (Tex.App.-Amarillo 1993), nonetheless, forced Petitioner to file his one and only direct appeal, pro se, in direct conflict with this Court's landmark decisions of Evitts v Lucey, 105 S.Ct. 830 (1985); Douglas v California, 372 U.S. 353 (1963); Gideon v Wainwright, 372 U.S. 339 (1963); Faretta v California, 95 S.Ct. 2525 (1975).

This Court in Evitts v Lucey, supra, held that a first appeal as of right...is not adjudicated in accord with due process of law if the appellant does not have the effective assistance of an attorney. This result is hardly novel. In short, the promise of Douglas v California, supra, that a criminal defendant has a right to counsel on appeal--like the promise of Gideon v Wainwright, supra, that a criminal defendant has a right to counsel at trial--would be futile gesture unless it comprehended the right to the effective assistance of counsel.

A State has a duty to provide an indigent defendant (which in this case, the trial court had already determined indigency and appointed trial counsel) with effective assistance of counsel through his first appeal. Douglas v California, supra. This duty is commended by the Fourteenth Amendment to the Constitution of the United States. Id., at 358. As this Court alter stated:

In bringing an appeal as of right from his conviction, a cri-

REASONS FOR GRANTING REVIEW CONTINUED

minal defendant is attempting to demonstrate that the conviction, with its consequent drastic loss of liberty, is unlawful. To prosecute the appeal, a criminal appellant must face an adversary proceeding that--like a trial--is grounded by intricate rules that to a layperson would be hopelessly forbidding. An unrepresented appellate--like an unrepresented defendant at trial--is unable to protect the trial interests at stake...A first right of appeal therefore is not adjudicated in accord with due process of law if the appellant does not have the effective assistance of an attorney.

Evitts v Lucey, 469 U.S. 387, 396 (1985). See also Penson v Ohio, 488 U.S. 75, 85 (1988)("The need for forceful advocacy does not come to an abrupt halt as the legal proceeding moves from the trial to appellate stage").

Petitioner in this case never requested to proceed pro se. He was forced into this posture due to the trial courts failure to appoint appellate counsel despite (1) the trial court certified Petitioner's right to appeal; (2) the trial court granted trial counsel, Doyle Weaver's motion to withdraw which further notified the trial court of Petitioner's desire to appeal; and (3) an actual pro se notice of appeal prepared by trial counsel Weaver and signed by Petitioner was filed.

The writ of habeas corpus application is sufficient to demonstrate to this Court everything that has transpired in Petitioner's quest to be granted his constitutional right to have an attorney adequate brief and file a direct appeal brief on Petitioner's behalf.

20.

**CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

X Jackmy David Warnell

Date: 7-11-2018