

Court

No. 18-5499

IN THE SUPREME COURT OF THE UNITED STATES

HILARIO SANCHEZ,

Petitioner,

v.

LORIE DAVIS, DIRECTOR
TEXAS DEPARTMENT OF CRIMINAL JUSTICE
CORRECTIONAL INSTITUTIONAL DIVISION

Respondent,

ON PETITION FOR WRIT OF CERTIORARI TO
THE FIFTH CIRCUIT COURT OF APPEALS

PETITION FOR REHEARING

HILARIO SANCHEZ
TDCJ# 1682415/Eastham
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Lovelady, Texas 75851

Pro Se

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PETITION FOR REHEARING

COMES NOW Petitioner, Hilario Sanchez, Pro Se, and prays this Court to grant Rehearing pursuant to Rule 44, and therefore, grant him a writ of certiorari to review the opinion of the Fifth Circuit Court of Appeals. In support of petition, Mr. Sanchez states the following.

STATEMENT OF FACTS

Petitioner Hilario Sanchez, is in custody pursuant to a judgment and sentence from the 19th Judicial District Court of McLennan County, Texas acting as a Juvenile Court in Cause No. 98-203, Ex Parte Sanchez, App. No. 81-091-01. Petitioner stipulated to the evidence against him and plead guilty to murder. The stipulation of evidence provided in part:

"I hereby stipulate and understand that the Assistant District Attorney will recommend to this Court a disposition of twenty-five years confinement, to be served at the Texas Youth Commission with a possible transfer, upon hearing, to the Texas Department of Criminal Justice at any time after the sixteenth birthday, to serve the remainder of the term of the confinement."

This is how Petitioner was (Admonished) that there was a possible transfer upon hearing, to the Texas Department of Criminal Justice, at anytime after his sixteenth birthday. This is what Petitioner plea to, and to fail to comply with this is a violation of Due process and (Breach of Contract). See, Bokin V. Alabama, 89 S.Ct. 1709 (1969).

On February 9, 1998, the McLennan County District Court committed Petitioner into the custody of the Texas Youth Commission (TYC) for a term of twenty-five-years.

As part of the plea, Petitioner waived his right to a direct appeal. Thus, he did not know that he had to file an appeal. Petitioner had the expectation that before he could be transferred, to the Texas Department of Criminal Justice at anytime after his sixteenth birthday, he had to have a (Hearing) before the Texas Department of Criminal Justice or the Board of Pardons and Parole could have jurisdiction to receive a (Child) on the charge of murder, cause No. 98-20J. This is how Petitioner had been admonished.

On October 22, 2002, Petitioner was paroled from the custody of the (TYC) and transferred to the "Custody of the (TDCJ's) Parole Division to remain in legal custody of the State but amenable to the order and conditions of the Board of Pardons and Paroles." On December 22, 2010, Petitioner was placed in the custody of the (TDCJ-CID) following a conviction for possession of a controlled substance. On August 10, 2011, the Texas Board of Pardons and Paroles (BPP) revoked Petitioner's Parole. On January 21, 2014, Petitioner filed a State Application of Writ of Habeas Corpus. On April 2, 2014, the Texas Court of Criminal Appeals denied the application without a written order.

Petitioner filed his Federal Habeas Corpus Application on May 15, 2014, asserting the following grounds for relief;

- (1) Petitioner is actually innocent in connection with the transfer of his murder conviction in cause No. 98-20J, to (TDCJ-CID) or (Board of Pardons and Parole).

(2) Petitioner involuntarily and unintelligently waived his rights and entered into a stipulation in connection with his guilty plea, that he, "Was never informed of the fact that he could be transferred to the authority and jurisdiction of the (TDCJ-CID) and/or it's Board of Pardons and Paroles without a hearing, with an attorney to represent him at such a hearing."

Respondent moved to dismiss on the grounds that Petitioner's claims are unexhausted, procedurally barred, and that Petitioner's Application is time-barred.

Judge Smith, found that Petitioner successfully exhausted his claims in ground number two. Judge Smith concluded that Petitioner did not present his actual innocence claim in ground one to the Texas Court of Criminal Appeals.

Judge Smith, considered whether Petitioner's Application is barred by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") one-year statute of limitations for Federal Habeas Corpus petitions brought pursuant to §2254. Judge Smith, concluded that, in this case, the McLennen County District Court convicted Petitioner of murder on February 9, 1998. His judgment of conviction became final on March 11, 1998, due to Petitioner's failure to file a notice of appeal. Thus, Judge Smith, concluded, that the one-year limitation period would expire on March 11, 1999, unless a later date served to trigger the limitation period.

Petitioner argued that a later date controlled with respect to triggering the one-year limitations period. Petitioner asserted he was not aware of and could not have discovered through the exercise of due diligence

the factual predicate of his claims until September 9, 2013.

Judge Smith's order summarized Petitioner's allegations with evidence in support;

- (1) On October 22, 2002, Petitioner was paroled from his 1998 juvenile murder conviction and discharged from (TYC);
- (2) On October 26, 2010, Petitioner was convicted of possession of a controlled substance and sentenced to five years in the (TDCJ-CID);
- (3) On May 11, 2011, Petitioner received notification from the State Counsel for Offenders that his (TDCJ-CID) records had been changed to reflect that his parole from the 1998 juvenile conviction was not revoked and that he was only confined at the (TDCJ-CID) based on the 2010 drug possession conviction; and
- (4) By Commitment Inquiry dated September 9, 2013, However, Petitioner learned that he was being confined at the (TDCJ-CID) based solely on his 1998 juvenile conviction.

Based on the evidence, Judge Smith, concluded that Petitioner did not learn of his transfer into (TDCJ-CID) custody based on his 1998 juvenile conviction until September 9, 2013.

Furthermore, Judge Smith, reasoned that, before being paroled from his 1999 juvenile conviction on October 22, 2002, Petitioner had been in the custody of (TYC), thus Petitioner could not have discovered with due diligence the factual predicate of his claims in ground two until September 9, 2013, when he learned about his transfer into (TDCJ-CID) custody based solely on his 1998 juvenile conviction. Thus, Judge Smith, held that, for purpose of Petitioner's claims in ground two, the one-year limitations period commenced on September 9, 2013, making the instant Federal Application, filed May 7, 2015, timely.

On May 7, 2015, the Western District Court of Texas Waco Division ruled that Petitioner's claim as to the (Time-Barred) was not barred by limitations. The Court subsequent order issued on June 2, 2015, did not authorize the (Resondent) to revisit the (Timelines) of this claim.

On September 4, 2015, Respondent filed a supplemental response arguing Petitioner was not entitled to a hearing upon release to parole and, further, that Petitioner's application should be dismissed as time-barred. On November 20, 2015, Petitioner filed a reply. Petitioner asserts that the (AEDPA) does not apply because Petitioner is not confined pursuant to a judgment of a State Court. In order for the one-year statute to apply to Petitioner's case, there must be a judgment of a State Court "Authorizing" Petitioner's confinement in the Texas Department of Criminal Justice Correctional Institutional Division.

On the 31st day of May 2017, the District Court issued its opinion in (Document-31)(Attached To Original Petition); In this case, reasonable jurists could not debate the dismissal or denial of the Petitioner's section 2254 petition on substantives or procedural grounds, nor find that the issues presented are adequate to deserve encouragement to proceed. See, Miller-El V. Cockrell, 537 U.S. 322, 327 (2003) (citing Slack, 529 U.S. at 484). ACCORDINGLY, the Court shall not issue a certificate of appealability. IT IS THEREFORE ORDERED, that Petitioner's Application for Writ of Habeas Corpus is Dismissed with Prejudice as Time-Barred, (Original Petition at Appendix-A).

REASONS MERITING REHEARING

1. The Fifth Circuit's decision is clearly in conflict with Haley (Dretke V. Haley, 541 U.S. 386, 124 S.Ct 1847, 1851-52 (2004)),

emphasizing that in determining [a] Procedural Default, which, like the exhaustion doctrine, is grounded in principles of comity, federalism, and judicial efficiency (Drtke V. Haley, 124 S.Ct at 1851-52), normally will preclude a federal court from reaching the merits of a habeas claim when either (1) that claim was presented to the state courts and the state court ruling against the petitioner rests on adequate and independent state-law procedural grounds, or (2) the claim was not presented to the state court and it is clear that those courts would now hold the claims procedurally barred; See, Coleman V. Thompson, 501 U.S. 722, 111 S.Ct 2546,2557 & n.1 (1991). Thus, when the habeas petitioner has failed to fairly present to the state court the claim on which he seeks relief in federal court and the opportunity to raise that claim has passed, the petitioner has procedurally defaulted that claim, Boerckel, 526 U.S. at 853-54, 119 S.Ct at 1736.

The procedural default doctrine does not impose an absolute bar to federal relief, however, "It provides only a ⁺ strong prudential reason, grounded in considerations of comity and concerns for the orderly administration of justice, not to pass upon a defaulted constitutional claim presented for federal habeas corpus review." Haley, 124 S.Ct. at 1852. The doctrine is therefore subject to equitable exceptions. Id. A procedural default will bar a federal court from granting relief on a habeas claim unless the petitioner demonstrates cause for the default and prejudice resulting therefrom,

Wainwright V. Sykes, 433 U.S. 72 87-88, 97 S.Ct 2497 (1977), or, alternatively, he convinces the court that a miscarriage of justice would result if his claim were not entertained on the merits. Murray V. Carrier, 477 U.S. 478,495-96, 106 S.Ct 2639 (1986).See also, Edwards V. Carpenter,529 U.S.446,451, 120 S.Ct 1587 (2000). In which, the Fifth Circuit Court of Appeals failed to apply the "**Standard of Cause and Prejudice**" to petitioner's habeas corpus,as alleged in Petitioner's Original Petition For Writ of Certiorari.

The Petitioner established cause for his default by the external impediment blocked him from asserting his claim in federal and state court because he did not become aware of the claim until September 9,2013, and could not have discovered through the exercise of due diligence the factual predicate of his claim. *Carrier*477 U.S. at 488,492,106 S.Ct at 2645,2648. (See,Petitioner's Original Writ of Certiorari.id).

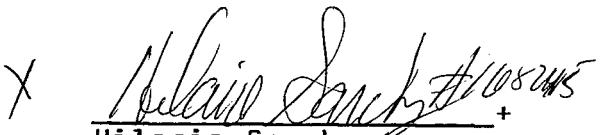
The Petitioner established prejudice when he shouldered the burden of showing that the (Failure) of the State to up-hold it's agreement made in the (Stipulation) was clearly Unconstitutional.Because Petitioner plead guilty involuntarily to a plea bargain agreement that was broken. *Blackledge V.Allison*, 431 U.S.63,97 S.Ct 1621 (1977).Petitioner plead guilty without understanding the charges against him or without understanding the penalties for pleading guilty.See. *Marshall V.United States*, *Lonberger*, 459 U.S.422,436,103 S.Ct 843,852 (1983).Also see, *Fontaine V. United States*,411 U.S.213,93 S.Ct 1461 (1973),that Violated Petitioner's Due Process Rights.

This Court has an ethical duty by the United States Constitution to establish the law of the land and assure the Citizens of the United States of America that the lower Courts apply that law. When they do not, **it is this Court's obligation to HOLD THAT COURT ACCOUNTABLE and see to it that justice is administered fairly.** This Court **MUST** hear this case and hold the Fifth Circuit accountable for failing to properly allude the law of this Court and relief where relief is due.

CONCLUSION

For the reasons stated, this Court **MUST** grant The Petitioner's request for Rehearing of it's judgment entered on October 9, 2018, and issue a Writ of Certiorari to hold the Fifth Circuit accountable for failing to properly apply the law of this Court and grant Mr. Sanchez relief. Should Sanchez's cry for justice not be heard and denied relief; may this Court also cry and not be heard "For whoever shut their ears to the cry of the poor will also cry themselves and not be heard." Proverbs 21:13. A Evidentiary Hearing Must Be Granted To The Fifth Circuit Court Of Appeals.

Respectfully submitted,

X 
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Pro Se

APPENDIX

SUPREME COURT ORDER DENYING
PETITION FOR A WRIT OF CERTIORARI

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

(A)

Scott S. Harris
Clerk of the Court
(202) 479-3011

October 9, 2018

Mr. Hilario Sanchez
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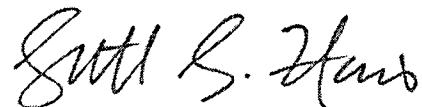
Re: Hilario Sanchez
v. Lorie Davis, Director, Texas Department of Criminal Justice,
Correctional Institutions Division
No. 18-5499

Dear Mr. Sanchez:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,



Scott S. Harris, Clerk