

NO. 18-5523

IN THE
SUPREME COURT OF THE UNITED STATES

CHRIS SANCHEZ - PETITIONER

VS.

LORIE DAVIS - RESPONDENT(S)
ON PETITION FOR A WRIT OF CERTIORARI TO
5TH CIRCUIT COURT OF APPEALS
PETITION FOR REHEARING

CHRIS SANCHEZ #1702978

3060 FM 3514

BEAUMONT, TEXAS 77705

STILES UNIT

QUESTION(S) PRESENTED "GROUND"

"INADEQUATE OR INEFFECTIVE" IN WHICH THE PETITIONERS SANCHEZ CANNOT, FOR WHATEVER REASON, UTILIZE § 2254, AND IN WHICH THE FAILURE TO ALLOW FOR COLLATERAL REVIEW WOULD RAISE SERIOUS CONSTITUTIONAL QUESTION.

IT REMAINS TO BE DETERMINED WHETHER THE FAILURE TO ALLOW FOR COLLATERAL REVIEW IN SANCHEZ CASE WOULD RAISE SUFFICIENTLY SERIOUS CONSTITUTIONAL QUESTIONS SUCH THAT § 2241 SHOULD BE DEEMED AVAILABLE TO HIM. SANCHEZ ARGUES ON PETITION FOR REHEARING ON PETITION FOR A WRIT OF CERTIORARI TO 5TH CIRCUIT COURT OF APPEALS THAT IF § 2254 FORECLOSES ALL JUDICIAL REVIEW IN "A CASE IN WHICH A STATE PRISONER CLAIMS THAT ON THE RECORD, HE IS INNOCENT OF THE CRIME OF WHICH HE STANDS CONVICTED A MISCARriage OF JUSTICE WOULD OCCUR - IN CIRCUMSTANCES IN WHICH THAT CLAIM COULD NOT HAVE BEEN PRESENTED WITHOUT THE AVAILABILITY OF AN INCIDENT ACTIVITY SUMMARY FOR #8671 POLICE EVENT (11/11/08), LAS PALMAS MEDICAL CENTER EMERGENCY PHYSICIAN RECORD (11/11/08), AFFIDAVIT FOR MEDICAL RECORDS - THE CITY OF EL PASO - FIRE DEPARTMENT, FIRE MEDICAL SERVICE INCIDENT THAT OCCURRED (11/11/08) EVIDENCE EARLIER, WRONGFULLY EXCLUDED EVIDENCE BECAUSE OF INEFFECTIVE ASSISTANCE OF COUNSEL (IAC) ISSUES AND A CLAIM OF THAT SANCHEZ IS ACTUALLY INNOCENT BECAUSE THE PROSECUTOR KNOWINGLY USED THE PERJURED TESTIMONY OF EL PASO POLICE DEPARTMENT OFFICERS ARTURO SINCLAIR AND SEAN SHELTON, IT IS UNCONSTITUTIONAL TO THAT EXTENT. SPECIFICALLY, SANCHEZ ARGUES THAT THE AEDPA WOULD VIOLATE BOTH THE SUSPENSION CLAUSE AND THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT WITHOUT DETERMINING WHETHER THIS CASE PRESENTS A SIGNIFICANT SUSPENSION CLAUSE QUESTION AND, OF COURSE, WITH-

OUT EXPRESSING AN OPINION AS TO THE MERITS OF ANY OF HIS CLAIMED ISSUES. SANCHEZ ARGUES THAT A SERIOUS EIGHTH AMENDMENT AND DUE PROCESS QUESTION IS WOULD ARISE WITH RESPECT TO THE AEDPA. IF WERE TO CONCLUDE THAT, BY AMENDING § 2254, CONGRESS HAD DENIED SANCHEZ THE RIGHT TO COLLATERAL REVIEW IN THIS CASE [C]ONCERN ABOUT THE INJUSTICE THAT RESULTS FROM THE CONVICTION OF AN INNOCENT PERSON, IT IS CERTAINLY ARGUABLE, THEREFORE, THAT THE CONTINUED IMPRISONMENT OF AN ACTUALLY INNOCENT PERSON WOULD VIOLATE JUST SUCH A FUNDAMENTAL PRINCIPLE WHERE THE ALLEGED ERROR "HAS PROBABLY RESULTED IN THE CONVICTION OF ONE WHO IS ACTUALLY INNOCENT."

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:

CHRISTIAN SANCHEZ - PETITIONER

VS.

LORIE DAVIS - RESPONDENT

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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 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 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

☒ 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 _____.
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).

STATEMENT OF THE CASE

DAVIS HAS CUSTODY OF SANCHEZ PURSUANT TO A JUDGMENT AND SENTENCE OF THE 41ST JUDICIAL DISTRICT COURT OF EL PASO COUNTY, TEXAS. IN CAUSE NUMBER 20090101202. A GRAND JURY INDICTED SANCHEZ FOR MURDER WITH A DEADLY WEAPON, WITH TWO PRIOR FELONY CONVICTIONS ALLEGED FOR THE ENHANCEMENT OF HIS PUNISHMENT ON JANUARY 27, 2011. A JURY FOUND SANCHEZ GUILTY AS CHARGED AND SENTENCED HIM TO LIFE IMPRISONMENT. THE TEXAS EIGHTH COURT OF APPEALS AFFIRMED SANCHEZ'S CONVICTION ON MARCH 16, 2013. SANCHEZ FILED AN EXTENSION OF TIME TO FILE A PETITION FOR DISCRETIONARY REVIEW ("PDR"), WHICH THE TEXAS COURT OF CRIMINAL APPEALS ("TCCA") GRANTED, GIVING HIM UNTIL JUNE, 2013, TO TIMELY FILE HIS PDR. THE TCCA DID NOT ACT ON SANCHEZ'S PDR, HOWEVER, BECAUSE THE TCCA DID NOT RECEIVE IT UNTIL SEPTEMBER 2013. AFTER THE EIGHTH COURT OF APPEALS MANDATE ISSUED, SANCHEZ FILED AN APPLICATION FOR STATE WRIT OF HABEAS CORPUS CHALLENGING HIS CONVICTION ON APRIL 8, 2014. THE TCCA DENIED THE APPLICATION WITHOUT WRITTEN ORDER ON MAY 28, 2014. SANCHEZ FILED A SECOND STATE WRIT APPLICATION ON APRIL 12, 2016. THE TCCA DISMISSED IT AS AN ABUSE OF THE WRIT ON MAY 18, 2016. SANCHEZ FILED THE INSTANT FEDERAL PETITION SEPTEMBER 22, 2016 ON HIS FEDERAL WRIT. SANCHEZ CLAIMS HE IS ACTUALLY INNOCENT BECAUSE THE PROSECUTOR KNOWINGLY USED THE PERJURED TESTIMONY OF EL PASO POLICE DEPARTMENT OFFICERS ARTURO SINCLAIR AND SEAN SHEITON. SANCHEZ CLAIMS THE OFFICERS FAILED TO REPORT THAT LEGGETT HAD "STARTED GOING CRAZY"

STATEMENT OF THE CASE

"BITTEN HIM ON BOTH HAND" AND THREATENED TO SHOOT HIM. THIS EVIDENCE WAS AVAILABLE TO SANCHEZ DURING HIS TRIAL FOR MURDER WITH A DEADLY WEAPON IN JANUARY OF 2011. THUS, IT IS NOT "NEW", AND SANCHEZ CANNOT MEET THE THRESHOLD REQUIREMENT TO SHOW HE IS ACTUALLY INNOCENT IN ORDER TO GET HIM PAST THE EXPIRATION OF THE STATUTE OF LIMITATION. SANCHEZ'S PETITION IS TIME BARRED. THEREFORE, HE IS NOT ENTITLED TO § 2254 RELIEF, AND THE COURT WILL NOT ADDRESS THE MERITS OF HIS CLAIMS. SIGNED ORDER 27TH DAY OF APRIL 2017.

UNITED STATES COURT OF APPEALS (FIFTH CIRCUIT) SANCHEZ APPLIED FOR A CERTIFICATE OF APPEALABILITY (COA) TO APPEAL THE DISTRICT COURT'S DISMISSAL OF HIS 28 U.S.C. § 2254 PETITION AS TIME BARRED. SANCHEZ'S § 2254 PETITION CHALLENGED HIS TEXAS MURDER CONVICTION. SANCHEZ ARGUES THE LIMITATION PERIOD UNDER 28 U.S.C. § 2244 (d) ACCORDING TO SANCHEZ, HIS ACTUAL INNOCENCE OVERCOMES THE LIMITATION'S PERIOD. SANCHEZ CONTENDS THAT HE IS ACTUALLY INNOCENT GIVEN THAT THE STATE PRESENTED FALSE EVIDENCE AT TRIAL, NAMELY PERJURED TESTIMONY FROM LAW ENFORCEMENT OFFICERS, WHEREAS HERE, THE DISTRICT COURT HAS DENIED § 2254 RELIEF ON PROCEDURAL GROUNDS WITHOUT REACHING THE UNDERLYING CONSTITUTIONAL CLAIMS. SANCHEZ HAS NOT MADE THE REQUIRED SHOWING. ACCORDINGLY HIS COA MOTION IS DENIED. THE JUDGMENT ISSUED AS THE MANDATE MAY 07, 2018. DON R. WILLETT, UNITED STATES CIRCUIT JUDGE.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

ART I § SECTION 9. THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS SHALL NOT BE SUSPENDED, UNLESS WHEN IN CASES OF REBELLION OR INVASION THE PUBLIC SAFETY MAY REQUIRE IT.

AMEND. ARTICLE [VI] NO PERSON SHALL BE HELD TO ANSWER FOR A CAPITAL, OR OTHERWISE INFAMOUS CRIME, UNLESS ON A PRESENTMENT OR INDICTMENT OF A GRAND JURY, EXCEPT IN CASES, ARISING IN THE LAND OR NAVAL FORCES, OR IN THE MILITIA, WHEN IN ACTUAL SERVICE IN TIME OF WAR OR PUBLIC DANGER; NOR SHALL ANY PERSON BE SUBJECT FOR THE SAME OFFENCE TO BE TWICE PUT IN JEOPARDY OF LIFE OR LIMB; NOR SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF; NOR BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY BE TAKEN FOR PUBLIC USE, WITHOUT JUST COMPENSATION.

AMEND ARTICLE [VIII] EXCESSIVE BAIL SHALL NOT BE REQUIRED; NOR EXCESSIVE FINES IMPOSED; NOR CRUEL AND UNUSUAL PUNISHMENTS INFLICTED.

AMEND ARTICLE XIV SECTION 1. 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 DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAW.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

28 U.S.C.A. § 2241 POWER TO GRANT WRIT (a)(c)(3)

(a) WRITS OF HABEAS CORPUS MAY BE GRANTED BY THE SUPREME COURT, ANY JUSTICE THEREOF, THE DISTRICT COURTS AND ANY CIRCUIT JUDGE WITHIN THEIR RESPECTIVE JURISDICTIONS. THE ORDER OF A CIRCUIT JUDGE SHALL BE ENTERED IN THE RECORDS OF THE DISTRICT COURT OF THE DISTRICT WHEREIN THE RESTRAINT COMPLAINED OF IS HAD.

(c) THE WRIT OF HABEAS CORPUS SHALL NOT EXTEND TO A PRISONER UNLESS—

(3) HE IS IN CUSTODY IN VIOLATION OF THE CONSTITUTION OR LAWS OR TREATIES OF THE UNITED STATES;

28 U.S.C.A. § 2244 FINALITY OF DETERMINATION (b)(2)(B)

(b)(2) A CLAIM PRESENTED IN A SECOND OR SUCCESSIVE HABEAS CORPUS APPLICATION UNDER SECTION 2254 THAT WAS NOT PRESENTED IN A PRIOR APPLICATION SHALL BE DISMISSED UNLESS—

(B) A MOTION IN THE COURT OF APPEALS FOR AN ORDER AUTHORIZING THE DISTRICT COURT TO CONSIDER A SECOND OR SUCCESSIVE APPLICATION SHALL BE DETERMINED BY A THREE JUDGE PANEL OF THE COURT OF APPEALS

28 U.S.C.A. § 2244 (b)(3)(E) FINALITY OF DETERMINATION

(b)(1) A CLAIM PRESENTED IN A SECOND OR SUCCESSIVE HABEAS CORPUS APPLICATION UNDER SECTION 2254 THAT WAS PRESENTED IN A PRIOR APPLICATION SHALL BE DISMISSED

(3)(E) THE GRANT OR DENIAL OF AN AUTHORIZATION BY A COURT OF APPEALS TO FILE A SECOND OR SUCCESSIVE APPLICATION SHALL NOT BE APPEALABLE AND SHALL NOT BE THE SUBJECT OF A PETITION FOR REHEARING OR FOR A WRIT OF CERTIORARI.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED
28 U.S.C. § 2254 STATE CUSTODY; REMEDIES IN FEDERAL COURTS

(a) THE SUPREME COURT, A JUSTICE THEREOF, A CIRCUIT JUDGE, OR A DISTRICT COURT SHALL ENTERTAIN AN APPLICATION FOR A WRIT OF HABEAS CORPUS IN BEHALF OF A PERSON IN CUSTODY PURSUANT TO THE JUDGMENT OF A STATE COURT ONLY ON THE GROUND THAT HE IS IN CUSTODY IN VIOLATION OF THE CONSTITUTION OR LAWS OR TREATIES OF THE UNITED STATES.

28 U.S.C. § 2255 FEDERAL CUSTODY; REMEDIES ON MOTION ATTACKING SENTENCE

(a) A PRISONER IN CUSTODY UNDER SENTENCE OF A COURT ESTABLISHED BY ACT OF CONGRESS CLAIMING THE RIGHT TO BE RELEASED UPON THE GROUND THAT THE SENTENCE WAS IMPOSED IN VIOLATION OF THE CONSTITUTION OR LAWS OF THE UNITED STATES, OR THAT THE COURT WAS WITHOUT JURISDICTION TO IMPOSE SUCH SENTENCE, OR THAT THE SENTENCE WAS IN EXCESS OF THE MAXIMUM AUTHORIZED BY LAW, OR IS OTHERWISE SUBJECT TO COLLATERAL ATTACK, MAY MOVE THE COURT WHICH IMPOSED THE SENTENCE TO VACATE, SET ASIDE OR CORRECT THE SENTENCE.

RULES OF CIVIL PROCEDURE RULE 60 - RELIEF FROM A JUDGMENT OR ORDER

(b) GROUND FOR RELIEF FROM A FINAL JUDGMENT, ORDER, OR PROCEEDING. ON MOTION AND JUST TERMS, THE COURT MAY RELIEVE A PARTY OR ITS LEGAL REPRESENTATIVE FROM A FINAL JUDGMENT, ORDER, OR PROCEEDING FOR THE FOLLOWING REASONS:
(1) ANY OTHER REASON THAT JUSTIFIES RELIEF.
(c) BILLS AND WRITS ABOLISHED. THE FOLLOWING ARE ABOLISHED: BILLS OF REVIEW, BILLS IN THE NATURE OF BILLS OF REVIEW, AND WRITS OF CORAM NOBIS, CORAM VOBIS, AND AUDITA QUERELA,

REASON FOR GRANTING THE PETITION FOR REHEARING.

CHRIS SANCHEZ, TEXAS PRISONER #1702978, HAS APPLIED FOR A CERTIFICATE OF APPEALABILITY (COA) TO APPEAL THE DISTRICT COURT'S DISMISSAL OF HIS 28 USC § 2254 PETITION AS TIME BARRED. ACCORDING TO SANCHEZ, HIS ACTUAL INNOCENCE OVERCOMES THE LIMITATIONS PERIOD. SANCHEZ CONTENDS THAT HE IS ACTUALLY INNOCENT GIVEN THAT THE STATE PRESENTED FALSE EVIDENCE AT TRIAL, NAMELY PERJURED TESTIMONY FROM LAW ENFORCEMENT OFFICERS, AND WRONGLY EXCLUDED EVIDENCE BY SANCHEZ'S TRIAL COUNSEL NAMELY 911 CALL INCIDENT REPORT POLICE EVENTS, WHICH CONTAIN LEGGETT HAD "STARTED GOING CRAZY", "BITTEN HIM ON BOTH HANDS", AND THREATEN TO SHOOT HIM. THE DISTRICT COURT STATED THAT THIS EVIDENCE WAS SANCHEZ CANNOT MEET THE THRESHOLD REQUIREMENT TO SHOW HE ACTUALLY INNOCENT IN ORDER TO GET HIM PAST THE EXPIRATION OF THE STATUTE OF LIMITATIONS SANCHEZ'S PETITION IS TIME BARRED. HE IS NOT ENTITLED TO § 2254 RELIEF AND THE COURT WILL NOT ADDRESS THE MERITS OF HIS CLAIMS. (IN ADEQUATE OR INEFFECTIVE TO TEST THE LEGALITY OF A PETITIONER'S DETENTION). SANCHEZ ARGUES THAT IF HIS CLAIM THAT HE HAS BEEN CONVICTED AND IM PRISONED FOR MURDER WHERE A CONSTITUTIONAL VIOLATION HAS PROBABLY RESULTED IN THE CONVICTION OF ONE WHO IS ACTUALLY INNOCENT. A CLAIM OF ACTUAL INNOCENCE AND A MISCARRIAGE OF JUSTICE TO AVOID A PROCEDURAL BAR TO THE CONSIDERATION OF THE MERITS OF HIS CONSTITUTIONAL CLAIMS CANNOT BE HEARD BY THE DISTRICT COURT. THEN § 2255-2254 AS AMENDED BY THE AEDPA IS UNCONSTITUTIONAL AS A VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT OR SUSPENSION CLAUSE OF ARTICLE I, SECTION 9 CL 2 OF THE CONSTITUTION. WE'RE NO OTHER AVENUE OF JUDICIAL REVIEW AVAILABLE FOR A PARTY WHO CLAIMS THAT S/HE IS FACTUALLY OR LEGALLY INNOCENT. SANCHEZ ARGUES, HOWEVER, THAT THERE ARE A NUMBER OF OTHER AVE-

• NUES FOR RELIEF, AND PROVIDES IN ADDITION TO WRIT OF HABEAS CORPUS AVAILABLE UNDER 28 USC § 2241, THE WRIT OF ERROR CORAM NOBIS, THE WRIT OF AUDITA QUERELA AND RULE 60(b) OF THE FEDERAL RULES OF CIVIL PROCEDURE. IN RE DORSAINVILLE, 119 F3d 245 (3rd CIR 1997) AT 248 - SECTION 2241 STATES THAT: "[W]RITS OF HABEAS CORPUS MAY BE GRANTED BY THE SUPREME COURT, ANY JUSTICE THERE OF, THE DISTRICT COURT AND ANY CIRCUIT JUDGE WITHIN THEIR RESPECTIVE JURISDICTION 'TO PRISONER' IN CUSTODY IN VIOLATION OF THE CONSTITUTION OR LAWS OR TREATIES OF THE UNITED STATES "28 USC § 2241 (a)(c)(3). IN FELKER V TURPIN, — US — 116 SCT 2333, 135 LEd 2d 827 (1996), A CASE INVOLVING A STATE PRISONER, THE SUPREME COURT CONSIDERED THE EXTENT TO WHICH THE AEDPA CIRCUMSCRIBED ITS OWN POWER TO ISSUE WRITS OF HABEAS CORPUS. THE COURT HELD THAT ALTHOUGH SECTION 106 (b)(3)(E) OF THE AEDPA, LOCATED IN 28 USC § 2244(b)(3)(E) PRECLUDES THE SUPREME COURT FROM REVIEWING BY APPEAL OR PETITION FOR CERTIORARI A JUDGMENT ON ANY APPLICATION FOR LEAVE TO FILE A SECOND HABEAS PETITION IN DISTRICT COURT THE ACT DOES NOT AFFECT THE SUPREME COURT'S AUTHORITY TO HEAR HABEAS PETITIONS FILED AS ORIGINAL MATTERS IN THAT 3d AT 116 SCT AT 2339. REVIEWING THE HISTORY OF THE PREDECESSORS OF § 2241, THE COURT OBSERVED THAT IN THE 1996 ACT CONGRESS HAD NOT ENTERTAIN A PETITION FOR HABEAS CORPUS, AND STATED THAT "[R]EPEALS BY IMPLICATION ARE NOT FAVORED 3d AT 116 SCT AT 2338-39.

SANCHEZ FILED THE INSTANT FEDERAL PETITION ON SEPTEMBER 22, 2010. (MINDFUL OF PETITION'S PRO SE STATUS SEE ERICKSON V PARDO, 551 US 89, 94 (2007)).

PETITIONER CLAIMS ACTUAL INNOCENCE PROSECUTORIAL MISCONDUCT "KNOWINGLY USING] PERJURED TESTIMONY AT TRIAL OR ALLOWING] ON-

TRUE TESTIMONY TO BE UNCORRECTED" AND GIVING FALSE IMPRESSION AND SEVERAL INEFFECTIVE ASSISTANCE OF COUNSEL VIOLATIONS AND BY EXCLUSION OF EVIDENCE NOT PRESENTED AT TRIAL FOR JUROR'S ASSESSMENT THAT COULD HAVE INFLUENCE THE JURY IN FAVOR OF PETITIONER'S SELF-DEFENSE CLAIM AND BROUGHT ABOUT AN ACQUITTAL.

ACTUAL INNOCENCE EXCLUSION OF FACTS AND EVIDENCE.

PETITIONER ALLEGES HIS ACTUAL INNOCENCE WAS PRECLUDED BY THE EXCLUSION OF CRITICAL EVIDENCE NOT PRESENTED AT TRIAL FOR JUROR'S ASSESSMENT. WHERE THE PETITIONER SHOWS AS A FACTUAL MATTER, THAT HE DID NOT COMMIT THE CRIME OF CONVICTION, TO ESTABLISH THE REQUISITE PROBABILITY THAT HE WAS ACTUALLY INNOCENT THE PETITIONER SUPPORT HIS ALLEGATIONS WITH NEW RELIABLE EVIDENCE THAT WAS NOT PRESENTED AT TRIAL (1) INCIDENT SUMMARY POLICE REPORT OF EVENTS 11/11/08 SEE EXHIBIT # 2 (2) LAS PALMAS MEDICAL CENTER EMERGENCY PHYSICIAN RECORD SEE EXHIBIT # 1 (3) THE CITY OF EL PASO FIRE DEPARTMENT - FIRE MEDICAL SERVICE SEE EXHIBIT # 3 IF SAID EVIDENCE WOULD HAVE BEEN PRESENTED "MORE LIKELY THAN NOT THAT NO REASONABLE JUROR WOULD HAVE CONVICTED HIM IN LIGHT OF THE NEW EVIDENCE AND WHERE THERE IS NOT "ANY JUROR WHO ACTING REASONABLY WOULD HAVE FOUND THE PETITIONER GUILTY BEYOND A REASONABLE DOUBT (HAD EVIDENCE OF CERTAIN PHYSICAL INJURIES AND AGGRESSIVE ACTIONS BEEN PRESENT FOR JUROR'S ASSESSMENT THERE WAS A FAIR PROBABILITY UNDER SELF-DEFENSE CLAIM UNDER THE TEX. PENAL CODE 9.32(a)(2)(B) PETITIONER CLAIMED ACCIDENT / SELF DEFENSE AND THAT THE DECEASED WAS THE AGGRESSOR SEE SX 3. NOW, THE EXCLUSION OF THE SAID EVIDENCE COULD HAVE AFFECTED THE JUDGMENT OF THE JURY. PETITIONER WAS ALSO PRECLUDED FROM HAVING A COMPLETE JURY CHARGE INSTR-

1
ACTION READ TO JURORS UNDER 9.32(2)(2)(B) TEX PENAL CODE. SINCE PETITIONER MUST HAVE REASON GROUND TO APPREHEND A DESIGN ON THE PART OF THE VICTIM TO KILL HIM OR TO DO HIM SOME GREAT BODILY HARM, AND IN ADDITION TO THIS HE MUST HAVE REASONABLE GROUND TO APPREHEND THAT THERE IS IMMINENT DANGER OF SUCH DESIGN BEING ACCOMPLISHED, IT IS FOR JURY TO DETERMINE THE REASONABLENESS OF THE GROUND UPON WHICH THE PETITIONER ACTS. PETITIONER ALSO ARGUES THAT THESE AND 14th AMEND DUE PROCESS VIOLATION AND 6th AMENDMENT VIOLATIONS THESE CONSTITUTIONAL VIOLATIONS CAUSED PREJUDICE TO THE CASE AND THE EXCLUSION OF TRUE FACTS THAT COULD HAVE ESTABLISHED SELF-DEFENSE AND UNDERMINED THE PETITIONERS ABILITY TO BE ACQUITTED UNDER SELF-DEFENSE PETITIONER ALSO ARGUES HIS CONVICTION WOULD BE A MISCARRIAGE OF JUSTICE UNLESS HIS CONVICTION WAS THE PRODUCT OF A FAIR TRIAL AND DENIED HIM THE FULL PANOPLY OF PROTECTION'S AFFORDED TO CRIMINAL DEFENDANT BY THE CONSTITUTIONS SEE LOWE V STATE, 612 SW2d 579 (TX 1981); BEECHAM V STATE, 580 SW2d 588 (TEX CR APP 1979); DEMPSEY V STATE, 59 TEX CRIM 602 266 SW2d 875 (1954); HENRY V STATE, 151 TEX CRIM 207 SW2d 761 (1947); MEEK V STATE, 135 TEX CRIM 170, 117 SW2d 541 (1938)

MCQUIGGIN V PERKINS, 185 LEd2d 1019, 133 S Ct 1924 (2013)

(HABEAS CORPUS; ACTUAL INNOCENCE, IF PROVED, HELD TO BE GATEWAY THROUGH WHICH STATE PRISONER PETITIONING FOR FEDERAL HABEAS CORPUS RELIEF MIGHT PASS, REGARDLESS OF WHETHER IMPEDED BY PROCEDURAL BAR OR EXPIRATION OF 28 USC § 2244(d)(1)'S LIMITATION PERIOD).

HELD: ACTUAL INNOCENCE, IF PROVED, SERVES AS A GATEWAY THROUGH WHICH A PETITIONER MAY PASS WHETHER THE IMPEDIMENT IS PROCEDURAL BAR, AS IT WAS IN SCHLUP V DELO, 513 US 298, AND HOUSE V BELL, 547 US 518 OR EXPIRATION OF THE AEDPA STATUTE OF LIMIT-

TATIONS, AS IN THIS CASE PP 185 LEd 2d AT 1030-1034. (2) PERKINS, WHO WAITED NEARLY SIX YEARS FROM THE DATE OF THE 2002 AFFIDAVIT TO FILE HIS PETITION, MAINTAINS THAT AN ACTUAL-INNOCENCE PLEA CAN OVERCOME AED PA'S ONE YEAR LIMITATION PERIOD. THIS COURT'S DECISION SUPPORT HIS VIEW. THE COURT HAS APPLIED THIS "FUNDAMENTAL MISCARRIAGE OF JUSTICE EXCEPTION" TO OVERCOME VARIOUS PROCEDURAL DEFAULTS, INCLUDING, AS MOST RELEVANT HERE, FAILURE TO OBSERVE STATE PROCEDURAL RULES, SUCH AS FILING DEADLINES SEE COLEMAN V THOMPSON, 501 US 722, 750 PP 185 LEd 2d AT 1030-1031.

(D) THE STATE URGES THAT RECOGNITION OF A MISCARRIAGE OF JUSTICE EXCEPTION WOULD RENDER 2244 (d) (1) (D) SUPERFLUOUS. THAT IS NOT SO FOR AED PA'S TIME LIMITATIONS APPLY TO THE TYPICAL CASE IN WHICH NO ACTUAL-INNOCENCE CLAIM IS MADE, WHILE THE EXCEPTION APPLIES TO A SEVERELY CONFINED CATEGORY: CASE IN WHICH NEW EVIDENCE SHOWS "ITS MORE LIKELY THAN NOT THAT 'NO REASONABLE JUROR' WOULD HAVE CONVICTED [THE PETITIONER]"; SCHUP, 513 US, AT 329 PP 185 LEd 2d, AT 1032-1034. UNDER SCHUP'S DEMANDING STANDARD, THE GATEWAY SHOULD OPEN ONLY WHEN A PETITION PRESENTS "EVIDENCE OF INNOCENCE SO STRONG THAT A COURT CANNOT HAVE CONFIDENCE IN THE OUTCOME OF THE TRIAL UNLESS THE COURT IS ALSO SATISFIED THAT THE TRIAL WAS FREE OF NON HARMLESS CONSTITUTIONAL ERROR", 513 US, AT 316 PP 185 LEd 2d AT 1035-1036.

TEXAS PENAL CODE § 9.32: DEADLY FORCE IN DEFENSE OF PERSON

(A) A PERSON IS JUSTIFIED IN USING DEADLY FORCE AGAINST ANOTHER
(1) IF THE ACTOR WOULD BE JUSTIFIED IN USING AGAINST THE OTHER UNDER SECTION 9.31; AND

(2) WHEN AND TO THE DEGREE THE ACTOR REASONABLY BELIEVES THE DEADLY FORCE IS IMMEDIATELY NECESSARY;

(A) TO PROTECT THE ACTOR AGAINST THE OTHER'S USE OR ATTEMPTED USE OF UNLAWFUL DEADLY FORCE; OR

(B) TO PREVENT THE OTHER'S IMMEDIATE COMMISSION OF AGGRAVATED KIDNAPPING, MURDER, SEXUAL ASSAULT, AGGRAVATED SEXUAL ASSAULT, ROBBERY, OR AGGRAVATED ROBBERY.

TEXAS PENAL CODE § 9.32(a)(2)(B) - THE JURORS WERE NOT TOLD THAT THEY HAD A CHOICE, OR THAT THEY MIGHT INFER THAT CONCLUSION, THEY WERE TOLD ONLY 9.32(a)(2)(A) IT IS CLEAR THAT A REASONABLE JUROR COULD EASILY HAVE VIEWED SUCH AN INSTRUCTION AS MANDATORY. THAT THE OMISSION OF AN INSTRUCTION ON 9.32(a)(2)(B) CREATED THE DANGER THAT THE JURORS FAILED TO MAKE AN ESSENTIAL FACTUAL DETERMINATION AS REQUIRED BY WINSHIP; OR (2) ASSUMING THAT THEY DID REACH THE GUILTY VERDICT OF MURDER QUESTION, THEY DID SO WITHOUT ADEQUATE GUIDANCE AND MIGHT HAVE RENDERED A DIFFERENT VERDICT UNDER PROPER INSTRUCTIONS. THE COURT HAS HELD "THAT THE DUE PROCESS CLAUSE PROTECTS THE ACCUSED AGAINST CONVICTION EXCEPT UPON PROOF BEYOND A REASONABLE DOUBT OF EVERY FACT NECESSARY TO CONSTITUTE THE CRIME WITH WHICH HE IS CHARGED" IN RE WINSHIP, SUPRA, AT 364, 25 LEd 2d 368, 90 SCT 1108. THE QUESTION IN SUCH A COLLATERAL PROCEEDING IS "WHETHER THE AILING INSTRUCTION BY ITSELF SO INFECTED THE ENTIRE TRIAL THAT THE RESULTING CONVICTION VIOLATES DUE PROCESS" CUPPV NAUGHTEN, 414 US, AT 147, 38 LEd 2d 368, 94 SCT 396, NOT MERE-
LY WHETHER "THE INSTRUCTION IS UNDERTAKABLE, ERRONEOUS, OR EVEN UNIVERSALLY CONDEMNED", Id 146, 38 LEd 2d 368, 94 SCT 396 IN SANDSTROM "WHETHER THE CHALLENGED JURY INSTRUCTION

...
* HAD THE EFFECT OF RELIEVING THE STATE OF THE BURDEN OF PROOF ENUNCIATED IN WINSHIP ON THE CRITICAL QUESTION OF ".... STATE OF MIND"; 442 US AT 521, 61 L ED 2D 39, 99 SCT 2450. BY CREATING A MANDATORY PRESUMPTION OF INTENT UPON PROOF BY THE STATE OF OTHER ELEMENTS OF OFFENSE MANDATORY PRESUMPTIONS MUST BE MEASURED AGAINST THE STANDARDS OF WINSHIP AS ELUCIDATED IN SANDSTROM SUCH PRESUMPTIONS VIOLATE THE DUE PROCESS CLAUSE IF THEY RELIEVE THE STATE OF THE BURDEN OF PERSUASION ON AN ELEMENT OF AN OFFENSE PATTERSON V NEW YORK SUPRA, AT 218, 53 L ED 2D 281, 97 SCT 2319 ("[A] STATE MUST PROVE EVERY INGREDIENT OF AN OFFENSE BEYOND A REASONABLE DOUBT AND MAY NOT SHIFT THE BURDEN OF PROOF TO THE DEFENDANT BY PRESUMING THE INGREDIENT UPON PROOF OF THE OTHER ELEMENTS OF THE OFFENSE") SEE ALSO SANDSTROM SUPRA, AT 520, 524, 61 L ED 2D 39, 99 SCT 2450; MULLANEY V WILBOR, SUPRA, AT 698-701, 44 95 SCT 1881.

PETITIONER CONTENDS THAT HAD THE JURY BEEN GIVEN THE COMPLETE DEFINITION ON SELF DEFENSE INCLUDING SECTION 9.32 (a)(2)(B) THEY COULD HAVE FOUND THAT PETITIONER WAS JUSTIFIED IN USING DEADLY FORCE. IF THEY FOUND THAT PETITIONER REASONABLY BELIEVED THAT LEGGETT WAS TRYING TO KILL HIM IMMINENTLY, SINCE THE WRONGLY EXCLUDED EVIDENCE PROVED AGGRESSION ON PART OF THE VICTIM BY HER THREATS, INJURIES AND BY STATING SHE WOULD SHOOT SANCHEZ AND OTHER AGGRESSIVE ACTIONS THAT LEGGETT SHOWED. THIS CREATED THE DANGER THAT THE JURORS FAILED TO MAKE AN ESSENTIAL FACTUAL DETERMINATION AS REQUIRED BY WINSHIP.

PETITIONER HUMBLU PRAYS THAT THIS HONORABLE
UNITED STATES SUPREME COURT GRANT THIS PETI-
TION FOR REHEARING OF A PETITION FOR WRIT
OF HABEAS AD TO AVOID A GRAVE INJUSTICE
OF ACTUAL INNOCENCE AND A MISCARRIAGE
OF JUSTICE WOULD OCCUR.

CONCLUSION

THE PETITION FOR REHEARING SHOULD BE GRANTED

RESPECTFULLY SUBMITTED,

Chris Sanchez

CHRIS SANCHEZ

TDCT-30#1702978

PRO SE

DATE: OCT-29-2018