

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DARRELL DARCELL DARBY — PETITIONER
(Your Name)

vs.

THE STATE OF TEXAS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

DARRELL DARCELL DARBY
(Your Name)
TDCJ - ID NO. 1147569
COFFIELD UNIT
2661 FM 2054
(Address)

TENNESSEE COLONY, TEXAS 75884
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS(S) PRESENTED

[2]. WAS PETITIONER WHO IS A ILLITERATE MENTALLY ILL OFFENDER
SEE APPENDIX D] WHO IS UNABLE HIMSELF, WITH
REASONABLE ABILITY TO PREPARE HIS OWN FIRST STATE
HABEAS CORPUS POSTCONVICTION PETITION TO THE COURT
CONSTITUTIONAL RIGHT TO HELP BY ANOTHER INMATE
"RIGHT WRITER - JAILHOUSE LAWYER" ESTABLISHED BY THIS
COURT IN JOHNSON U. AVERY, 393 U.S. 483, 89 S.Ct. 747,
21 L.Ed.2d. 718 (1969), VIOLATED AND ABUSED WHEN THIS
FRICTIONOUS STATE POSTCONVICTION PETITION WITH THE
COURTS ON PETITIONER'S BEHALF WHICH CAUSED SUCH TO
BE DENIED AND RUINED PETITIONER'S "ONE SHOT CHANCE"
AT TEXAS'S STATE POSTCONVICTION RELIEF UNDER TEX.
CODE CRIM. PROC. ART. 11.07, SEC. 4(a), TO PRESENT
PETITIONER'S MERITFUL GROUNDS THAT HIS DUE PROCESS
RIGHT TO A FAIR TRIAL WAS VIOLATED WHEN THE TRIAL
COURT FAILED TO CONDUCT A HEARING ON HIS COMPETENCY
TO STAND TRIAL SEE APPENDIX D AS REQUIRED BY
PATE U. ROBINSON, 383 U.S. 375, 86 S.Ct. 836, 15 L.Ed.2d.
815 (1966) AND DROPE U. MISSOURI, 420 U.S. 162, 95 S.Ct.
896, 43 L.Ed.2d. 103 (1975).;

[2]. DID THE COURT OF CRIMINAL APPEALS OF TEXAS (CCA) VIOLATE
PETITIONER'S EIGHTH AND FOURTEENTH AMENDMENT U.S.
CONSTITUTIONAL RIGHTS BY DENYING HIS SUGGESTION
FOR RECONSIDERATION /REHEARING OF THE CCA'S DENIAL OF
STATE POSTCONVICTION RELIEF WHICH RAISED THE ISSUES
ABOVE UNDER "QUESTIONS(S) PRESENTED [2]", AND DID THE
CCA IMPROPERLY FAIL TO CONSIDER THIS PROBLEM WITH
UNSCRUPULOUS INMATE WRITERS WHO USE THEIR
SUPERIOR PERSONAL POWER AND INTELLIGENCE TO TAKE
ADVANTAGE OF LESSER ENDOWED INMATES AS THIS COURT
NOTED WOULD HAPPEN IN JOHNSON U. AVERY, 393 U.S. AT 488,
89 S.Ct. AT 750 AND PROCLAIMER U. MARTINEZ, 416 U.S.
396 AT 421-422, 94 S.Ct. 1800 AT 1815 (1974).?

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	4-5
REASONS FOR GRANTING THE WRIT	6-11
CONCLUSION.....	12

INDEX TO APPENDICES

APPENDIX A - DENIAL ORDER OF POSTCONVICTION RELIEF BY THE HIGHEST STATE COURT OF CRIMINAL APPEALS OF TEXAS. (CCA).

APPENDIX B - STATES PROPOSED MEMORANDUM, FINDINGS OF FACT AND CONCLUSIONS OF LAW ADOPTED BY THE TRIAL COURT ORDER.

APPENDIX C - DENIAL ORDER OF REHEARING/RECONSIDERATION REQUEST BY THE COURT OF CRIMINAL APPEALS OF TEXAS.

APPENDIX D - PSYCHIATRIST LETTER TO THE TRIAL COURT JUDGE FILED CONCERNING PETITIONER'S MENTAL ILLNESS AND REQUEST FOR COMPETENCY HEARING.

APPENDIX E - LETTERS WRITTEN ON SCRAP PAPER BY THE UNSCRUPULOUS INMATE "WRIT WRITER - JAILHOUSE LAWYER" TO THE PETITIONER WHO FILED THE TOTALY FRIUOLOUS STATE POSTCONVICTION PETITION ON PETITIONER'S BEHALF.

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
DARBY V. STATE, 145 S.W.3d 714 (TEX. APP.-FT. WORTH 2004)	4
JOHNSON V. AUERY, 393 U.S. 483, 488-89, 502 (1969)	6, 8
PROUNIER V. MARTINEZ, 416 U.S. 396, 421-22 (1974)	6, 8
ROSS V. MOFFITT, 417 U.S. 600, 616 (1974)	7
EX PARTE EMMONS, 660 S.W.2d. 106, 110-112 (TEX. CRIM. APP. 1983)	9
EX PARTE WHITESIDE -12 S.W.3d. 819 (TEX. CRIM. APP. 2000)	9
EX PARTE TORRES, 943 S.W.2d. 469, 474 (TEX. CRIM. APP. 1997)	9
PATE V. ROBINSON, 383 U.S. 375 (1966)	10
DROPE V. MISSOURI, 420 U.S. 162 (1975)	10, 11
DUSKY V. UNITED STATES, 362 U.S. 402 (1960)	10
MOORE V. TEXAS, 137 S. CT. 1039 (2017)	10

STATUTES AND RULES

28 U.S.C. § 1257 (a)	2
EIGHTH AMEND. U.S. CONSTITUTION	3, 9
FOURTEENTH AMEND. U.S. CONSTITUTION	3, 9, 10
ARTICLE 11.07 TEX. CODE CRIM. PROC.	5, 7
ARTICLE 11.07, SEC. 4 (a) TEX. CODE CRIM. PROC.	9
ARTICLE 46.02, SEC 2 (a) (2001 ED.) TEX. CODE CRIM. PROC.	10
CHAPTER 46B TEX. CODE CRIM. PROC.	10
28 U.S.C. § 2244 (d)(1)(A)	5
28 U.S.C. § 2254	5

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 396TH JUDICIAL DISTRICT COURT OF TARRANT CO., TX 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: _____, 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 7-18-2018. A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: Aug. 10, 2018, and a copy of the order denying rehearing appears at Appendix C.

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

THE CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED
IN THIS CASE ARE THE EIGHTH & FOURTEENTH AMENDMENTS
OF THE U.S. CONSTITUTION.

STATEMENT OF THE CASE

PETITIONER WAS CHARGED AND INDICTED FOR THE OFFENSE OF CAPITAL MURDER IN TARRANT COUNTY, TEXAS IN MAY 2001.

BEFORE TRIAL, PETITIONER WAS EVALUATED ON AUG. 22, 2001 BY DR. KENNETH B. DEKLE, M.D. OF THE MENTAL HEALTH MENTAL RETARDATION OF TARRANT COUNTY, TEXAS, WHO ISSUED A REPORT TO THE TRIAL COURT DISTRICT JUDGE THAT THE PETITIONER WAS MENTALLY ILL AND AS A RESULT OF THIS ILLNESS, MAY LACK THE CAPACITY TO UNDERSTAND THE PROCEEDINGS AND /OR ASSIST IN HIS DEFENSE AND RECOMMENDED THAT THE SAID JUDGE TO CONSIDER A COMPETENCY EXAMINATION. SEE APPENDIX D.

NO COMPETENCY HEARING WAS HELD, HOWEVER PETITIONER'S APPOINTED COUNSEL FILED A MOTION TO SUPPRESS THE CONFESSION AND STATEMENTS AND OBTAINED A HEARING ON NOV. 4, 2002 IN WHICH COUNSEL BROUGHT UP PETITIONER'S MENTAL ILLNESS. [3 RR 4, 109-110].

PETITIONER WAS CONVICTED BY A JURY OF CAPITAL MURDER ON JAN. 17, 2003 IN CAUSE NO. 0807929D IN THE 396TH JUDICIAL DISTRICT COURT OF TARRANT COUNTY, TEXAS AND SENTENCED TO LIFE.

PETITIONER'S APPELLATE APPOINTED COUNSEL ON DIRECT APPEAL DID NOT RAISE THIS "COMPETENCY ISSUE" AND INSTEAD ARGUED THAT THE TRIAL COURT ERRED IN FAILING TO SUPPRESS SEARCH AND ARREST WARRANTS AND THAT THE EVIDENCE WAS LEGALLY AND FACTUALLY INSUFFICIENT TO SUPPORT THE GUILTY VERDICT. THE TRIAL COURT JUDGMENT AND CONVICTION WAS AFFIRMED IN A PUBLISHED DECISION. SEE DARBY V. STATE, 145 S.W.3d 714 (TEX. APP. - FORT WORTH 2004).

CONTINUED →

CONTINUED
STATEMENT OF THE CASE

IN MAY 2018 ANOTHER INMATE "WRIT WRITER - JAIL HOUSE LAWYER" KNOWN AS "GREEN EYES" WROTE PETITIONER LETTERS ON SCRAP PAPER WHICH PETITIONER SAVED AND ARE ANNEXED TO THIS PETITION IN APPENDIX E IN WHICH GREEN EYES MENTIONED RAISING THE MENTAL INCOMPETENCE ISSUE IN A POSTCONVICTION PETITION KNOWN AS AN "11.07" HOWEVER GREEN EYES NEVER RAISED THIS MENTAL INCOMPETENCE ISSUE AND INSTEAD RAISED TWO TOTALY FRIVOLOUS GROUNDS THAT:

1. TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO FILE A MOTION TO SUPPRESS PETITIONER'S CONFESSION; AND
2. APPELLATE COUNSEL FILED A FRAUDULENT PETITION FOR DISCRETIONARY REVIEW WITH THE CCA WITHOUT PETITIONER'S CONSENT;

THE STATE RESPONDED BY FILING A REPLY & A STATE'S PROPOSED MEMORANDUM, FINDINGS OF FACT AND CONCLUSIONS OF LAW AND PROPOSED TRIAL COURT ORDER FILED JUNE 6, 2018. SEE APPENDIX B.

THE PETITIONER NEVER RECEIVED A SIGNED COPY OF THE STATE'S PROPOSED TRIAL COURT ORDER. HE ONLY RECEIVED THE UNSIGNED COPY IN APPENDIX B.

ON JULY 18, 2018, THE CCA DENIED WITHOUT WRITTEN ORDER THE APPLICATION FOR WRIT OF HABEAS CORPUS ON THE FINDINGS OF THE TRIAL COURT WITHOUT A HEARING. SEE APPENDIX A.

PETITIONER FOUND A NEW INMATE WRIT WRITER WHO FILED A SUGGESTION FOR THE CCA TO RECONSIDER ITS DENIAL OF HABEAS RELIEF ON THE CCA'S OWN INITIATIVE RAISING THE ISSUES PRESENTED IN THE "QUESTIONS PRESENTED [1]" OF THIS PETITION. THE CCA ON AUG. 10, 2018 DENIED SUCH RECONSIDERATION. SEE APPENDIX C.

PETITIONER IS TIME-BARRED FROM SEEKING FEDERAL POSTCONVICTION RELIEF UNDER 28 U.S.C. § 2244(d), (1)(A) & § 2254 AND HAS NEVER SOUGHT SUCH AND NOW PETITIONER HAS ONLY THIS LAST FINAL REMEDY OF REQUESTING CERTIORARI FROM THIS COURT WHICH HE HAS NEVER SOUGHT.

REASONS FOR GRANTING THE PETITION

I.

THE ISSUES RAISED IN THE "QUESTIONS PRESENTED [1].[2]" ARE OF NATIONAL IMPORTANCE OF HAVING THIS COURT DECIDE SAID QUESTIONS INVOLVED.

THIS COURT HAS NEVER DECIDED THE ADVERSE COLLATERAL CONSEQUENCES OF ITS JOHNSON V. AUERY, 393 U.S. 483 (1969) DECISION WHICH HELD THAT INMATES HAVE A CONSTITUTIONAL RIGHT TO HELP WITH PREPARING HABEAS PETITIONS, etc. BY OTHER INMATE "WRIT WRITERS - JAILHOUSE LAWYERS".

THIS COURT NOTED IN ITS JOHNSON V. AUERY, 393 U.S. AT 488 AND PROCUNIER V. MARTINEZ, 416 U.S. AT 421-422 DECISIONS THAT THE JOHNSON DECISION WOULD BRING OUT THE UNSCRUPULOUS INMATE WRIT WRITERS. *Id.*

PETITIONER AS SHOWN IS A VICTIM OF A UNSCRUPULOUS INMATE WRIT WRITER AS WELL AS NUMEROUS OTHER INMATES NATIONWIDE AND THIS COURT HAS NEVER ADDRESSED OR DECIDED THE DUE PROCESS VIOLATIONS CAUSED BY UNSCRUPULOUS INMATE WRIT WRITERS UPON INMATES LIKE THE PETITIONER WHO WAS HARMED BY A UNSCRUPULOUS INMATE WRIT WRITER WHO RUINED PETITIONER'S ONE CHANCE AT FILING A POSTCONVICTION PETITION BY RAISING TWO TOTALY FRIVOLOUS GROUNDS FOR RELIEF WHICH WERE DENIED WHICH PREVENTS PETITIONER FROM EVER RAISING HIS MERITFUL GROUNDS THAT THE TRIAL COURT FAILED TO CONDUCT A COMPETENCY HEARING & HE WAS INCOMPETENT TO STAND TRIAL.

CONTINUED →

CONTINUED
REASONS FOR GRANTING THE PETITION

II.

PETITIONER WHILE SERVING HIS LIFE SENTENCE FOR CAPITAL MURDER IN THIS CASE IN THE TEXAS DEPT. OF CRIMINAL JUSTICE - COFFIELD UNIT EARLIER THIS YEAR (2018) WAS ON THE SAME WING AS A INMATE WRIT WRITER KNOWN AS "GREEN EYES" WHO PETITIONER LET SEE ALL OF HIS "COURT PAPERWORK" AND ALLOWED HIM TO FILE ON PETITIONER'S BEHALF A "11.07" WHICH IS A POSTCONVICTION APPLICATION FOR WRIT OF HABEAS CORPUS UNDER TEX. CODE CRIM. PROC. ART. 11.07.

GREEN EYES WROTE PETITIONER NOTES ON SCRAP PAPER (PETITIONER IS KNOWN AS "BOBO") IN WHICH PETITIONER UNDERSTOOD THAT GREEN EYES WOULD RAISE THE ISSUE OF PETITIONER'S INCOMPETENCE TO STAND TRIAL AND THE TRIAL COURTS FAILURE TO HOLD A HEARING, etc... PETITIONER CAN BARELY READ OR WRITE AND IT TAKES HIM FOREVER TO TRY TO UNDERSTAND WHAT IS WRITTEN. HOWEVER PETITIONER UNDERSTOOD FROM GREEN EYES NOTES TO HIM THAT THE ISSUE REGARDING INCOMPETENCE WOULD BE RAISED IN A "11.07". SEE NOTES IN APPENDIX E.

GREEN EYES FILED THE 11.07 ON PETITIONER'S BEHALF RAISING TWO TOTALY FRIVOLOUS GROUNDS THAT TRIAL COUNSEL WAS INEFFECTIVE FOR NOT FILING A MOTION TO SUPPRESS CONFESION BASED ON PETITIONER'S MENTAL ILLNESS AND THAT APPELLATE COUNSEL WAS INEFFECTIVE FOR FILING A PETITION FOR DISCRETIONARY REVIEW WITH THE CCA WITHOUT PETITIONER'S CONSENT.

THESE TWO POSTCONVICTION GROUNDS WERE TOTALY FRIVOLOUS BECAUSE TRIAL COUNSEL DID FILE A SUPPRESSION MOTION AND PETITIONER HAS NO RIGHT TO COMPLAIN ABOUT A APPOINTED APPELLATE COUNSEL ACTION ON A PDR BECAUSE HE HAS NO RIGHT TO APPOINTED COUNSEL TO FILE A PDR TO A STATE HIGH COURT PER ROSS V. MOFFITT, 417 U.S. 600 AT 616, 94 S.C.T. 2437 AT 2446, 41 L.Ed. 2d. 341 (1974).

CONTINUED →

CONTINUED
REASONS FOR GRANTING THE PETITION

GREEN EYES NEVER RAISED PETITIONER'S MENTAL INCOMPETENCE ISSUE THAT HE SAID IN HIS APPENDIX E NOTES WAS SUCH A "GOOD GROUND OF ERROR".

III.

SINCE THIS COURTS DECISION IN JOHNSON V. AVERY, 393 U.S. 483 (1969), PRISON INMATES HAVE HAD A CONSTITUTIONALLY PROTECTED RIGHT TO RECEIVE LEGAL ADVICE AND SERVICES FROM INMATE WRIT WRITERS.

BEFORE PETITIONERS TRIAL, A "COMPETENCY LETTER" BY DR. KENNETH DEKLEUA, M.D. OF THE MENTAL HEALTH MENTAL RETARDATION (CMHR) WAS FILED WITH THE TRIAL COURT JUDGE THAT CONCLUDED THE PETITIONER WAS MENTALLY ILL AND AS A RESULT OF THIS ILLNESS, MAY LACK THE CAPACITY TO UNDERSTAND THE PROCEEDINGS AND /OR ASSIST IN HIS DEFENSE AND LISTED PETITIONER'S IQ AT 69 AND LISTING THAT PETITIONER COULD NOT READ OR WRITE AND INSIGHT AND JUDGMENT WERE IMPAIRED. SEE APPENDIX D.

THEREFORE, IT IS OBVIOUS THAT PETITIONER IS ILLITERATE AND DUE TO HIS MENTAL ILLNESS WAS UNABLE HIMSELF, WITH REASONABLY ADEQUACY, TO PREPARE HIS OWN STATE POSTCONVICTION PETITION. IN JOHNSON V. AVERY, SUPRA, THIS COURT RECOGNIZED THAT THEIR WERE INMATES LIKE PETITIONER AND HELD THAT INMATES HAD A "CONSTITUTIONAL RIGHT TO HELP" BY OTHER LITERATE INMATES. JOHNSON, 393 U.S. AT 489, 502, 89 S.C.T. AT 750, 757. UNFORTUNALTY, THIS COURTS JOHNSON V. AVERY DECISION BROUGHT OUT THE UNSCRUPULOUS JAILHOUSE LAWYERS. 393 U.S. AT 488, 89 S.C.T. AT 750; SEE ALSO PROCONIER V. MARTINEZ, 416 U.S. 396 AT 421-422, 94 S.C.T. 1800 AT 1815.

CONTINUED —→

CONTINUED
REASONS FOR GRANTING THE PETITION

PETITIONER WAS TAKEN ADVANTAGE OF BY THIS UNSCRUPULOUS AND IRRESPONSIBLE INMATE WRIT WRITER "GREEN EYES", WHOSE ONLY CLAIM TO FAME APPEARS TO BE THAT TO OTHER INMATES GREEN EYES IS ARTICULATE IN THE FIELD OF CRIMINAL LAW AND PROCEDURE, WHEN HE REALLY ISN'T. TEXAS HAS HAD THIS PROBLEM BEFORE WITH UNSCRUPULOUS INMATE WRIT WRITERS WHO USE THEIR SUPERIOR INTELLIGENCE TO TAKE ADVANTAGE OF LESSER ENDOWED INMATES. SEE EX PARTE EMMONS, 660 S.W.2d. 106 AT 110-112 (TEX. CRIM. APP. 1983).

THE CCA VIOLATED PETITIONER'S EIGHTH AND FOURTEENTH AMENDMENT U.S. CONSTITUTIONAL RIGHT BY DENYING RECONSIDERATION. APPENDIX C WHICH RAISED THIS ISSUE ABOVE OUTLINED IN "QUESTION(S) PRESENTED [1]".

GREEN EYES FRIVOLOUS POSTCONVICTION PETITION WAS PETITIONER'S "ONE SHOT" AT SEEKING HABEAS RELIEF. TEXAS HAS A STRICT ONE POSTCONVICTION STATUTE. SEE TEX. CODE CRIM. PROC. ARTICLE 11.07, SEC. 4(a); SEE EX PARTE WHITESIDE, 12 S.W.3d. 819 (TEX. CRIM. APP. 2000); EX PARTE TORRES, 943 S.W.2d. 469 AT 474 (TEX. CRIM. APP. 1997) [LIMITING A CONVICTED PERSON TO "ONE BITE AT THE APPLE"].

PETITIONER IS CURRENTLY BARRED BY TEX. CODE CRIM. PROC. ART. 11.07, SEC. 4(a) FROM RAISING HIS MERITFUL GROUNDS THAT THE TRIAL COURT FAILED TO CONDUCT A COMPETENCY HEARING WHICH VIOLATED HIS RIGHT TO A FAIR TRIAL BECAUSE SUCH WAS NOT RAISED BY THE UNSCRUPULOUS INMATE WRIT WRITER IN THE FIRST POSTCONVICTION PETITION.

THE CCA UNDER THE CIRCUMSTANCES RAISED IN PETITIONER'S RECONSIDERATION SUGGESTION WAS REQUIRED UNDER THE DUE PROCESS CLAUSE TO RECONSIDER ITS DENIAL OF HABEAS RELIEF AND REMAND BACK TO THE TRIAL COURT TO ALLOW PETITIONER TO AMEND HIS HABEAS APPLICATION WITH HIS ONLY MERITFUL GROUND THAT HIS DUE PROCESS RIGHT TO A FAIR TRIAL BY THE TRIAL COURT FAILING TO CONDUCT A COMPETENCY HEARING TO STAND TRIAL WHEN EVIDENCE WAS IN THE TRIAL COURT RECORD FROM MHMR THAT PETITIONER

CONTINUED →

CONTINUED
REASONS FOR GRANTING THE PETITION

WAS MENTALLY ILL. SEE APPENDIX D. THIS FILED MHMR OPINION IN APPENDIX D WAS EVIDENCE ON PETITIONER'S COMPETENCE TO STAND TRIAL AND WAS RELEVANT IN DETERMINING WHETHER FURTHER INQUIRY WAS REQUIRED IN WHICH THE TRIAL COURT FAILED TO CONDUCT UNDER FORMER TEX. CODE CRIM. PROC. ART. 46.02, SEC. 2 (a) (2001 Ed.) WHICH WAS THE STATUTE¹ THAT WAS IN EFFECT AT TIME OF PETITIONER'S OFFENSE DATE.

THIS GROUND IS MERITFUL BECAUSE THIS COURT REQUIRES TRIAL COURTS TO CONDUCT A HEARING ON A DEFENDANT'S COMPETENCY TO STAND TRIAL. SEE PATE V. ROBINSON, 383 U.S. 375, 86 S.C.T. 836, 15 L. ED. 2d. 815 (1966) AND DROPE V. MISSOURI, 420 U.S. 162, 95 S.C.T. 896, 43 L. ED. 2d. 103 (1975).

PETITIONER MET THE STANDARDS FOR INCOMPETENCY UNDER THIS COURTS DECISION IN DUSKY V. UNITED STATES, 362 U.S. 402 (1960). THE FAILURE TO OBSERVE PROCEDURES ADEQUATE TO PROTECT A DEFENDANT'S RIGHT NOT TO BE TRIED OR CONVICTED WHILE INCOMPETENT TO STAND TRIAL DEPRIVES PETITIONER OF HIS U.S. CONSTITUTION AMENDMENT XVI RIGHT TO A FAIR TRIAL. PATE V. ROBINSON, 383 U.S. AT 378.

CONTINUED →

1. A TEXAS LEGISLATIVE TASK FORCE THAT WAS CREATED TO REVIEW THE COMPETENCY EVALUATION PROCESS, CONCURRED THAT TEXAS COMPETENCY STATUTE PRIMARY SET FORTH IN ARTICLE 46.02 TEX. CODE CRIM. PROC., WERE UNDULY COMPLEX, UNWIELDY AND DIFFICULT TO INTERPRET AND USE. A FULL COPY OF THE REPORT MAY BE ACCESSED AT <http://www.tdcj.state.tx.us/publications/tcomi-SB553.pdf>.
AFTER PETITIONER'S CONVICTION, THE TEXAS LEGISLATURE COMPLETELY OVERHAULED THE STATES CRIMINAL COMPETENCY STATUTE DURING THE 2003 REGULAR LEGISLATIVE SESSION EFFECTIVE JAN. 1, 2004. SENATE BILL SB 1057 REPEALED THE FORMER COMPETENCY STATUTES SET FORTH IN ARTICLE 46.02 TEX. CODE CRIM. PROC. AND REPLACED THOSE PROVISIONS WITH A NEW COMPETENCY STATUTE IN CHAPTER 46B TEX. CODE CRIM. PROC.
DUE TO THIS COURTS 2017 DECISION IN MOORE V. TEXAS, 137 S.C.T. 1039, 197 L. ED. 2d. 416 (2017), THE TEXAS LEGISLATURE IS AGAIN GOING TO OVERHAUL TEXAS COMPETENCY STATUTE AT THE NEXT UPCOMING LEGISLATIVE SESSION.

CONTINUED
REASONS FOR GRANTING THE PETITION

"IN REVIEWING STATE COURT CRIMINAL PROCEEDINGS INVOLVING A CLAIM THAT A PETITIONER'S DUE PROCESS RIGHT TO A FAIR TRIAL HAD BEEN DENIED BY THE TRIAL COURTS REFUSAL TO ORDER A PSYCHIATRIC EXAMINATION TO DETERMINE THE PETITIONER'S COMPETENCY TO STAND TRIAL, IT IS INCUMBENT UPON THIS COURT TO ANALYZE THE FACTS IN ORDER THAT THE APPROPRIATE ENFORCEMENT OF THE FEDERAL RIGHT MAY BE ASSURED" *Id.* SEE *DROPE V. MISSOURI*, 420 U.S. 162.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Daniel D. Darby

Date: AUG. 22, 2018