

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MARTIN SALINAS — PETITIONER
(Your Name)

vs.

BRYAN COLLIER — RESPONDENT(S)
DIRECTOR: TEXAS DEPARTMENT OF
CRIMINAL JUSTICE
ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

MARTIN SALINAS PRO-SE
(Your Name)

2101 FM 369 N.
(Address)

IOWA PARK TEXAS. 76367
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

IS IT ABUSE OF DISCRETION WHEN PLEA OFFER IS NOT AUTHORIZED BY LAW.
 IS IT ABUSE OF DISCRETION WHEN HABEAS CORPUS COURT DOES NOT FOLLOW APPELLATE PROCEDURES AND THE DUE COURSE OF LAW OF JUDICIAL PROCESS.
 IS IT ABUSE OF DISCRETION WHEN HABEAS CORPUS COURT "DO NOT" DISCLOSE A FINDINGS OF RELEVANT FACTORS, IF ITS ORDER TO DO SO, BY PETITIONER COURT.
 IS IT A FIFTH AMENDMENT VIOLATION IF PLEA BARGAIN IS ENHANCED WITHOUT JUSTIFICATION, NO NOTICE TO ENHANCE?

IS IT A SIXTH AMENDMENT VIOLATION WHEN A PLEA OFFER IS NOT COMMUNICATE TO PETITIONER DURING TRIAL, AND FAILURE TO INVESTIGATE OR OBJECT TO PRIOR CONVICTIONS, (INEFFECTIVE ASSISTANCE OF COUNSEL) THAT WERE NOT IN JUDGMENT.

IS IT A EIGHTH AMENDMENT VIOLATION WHEN PLEA BARGAIN OFFER IS WELL ABOVE RAILROAD SET FORTH BY LEGISLATURE AND THE STATUTORY RANGE OF PUNISHMENT FOR CHARGE OFFENSE, AND NOT AUTHORIZED BY LAW. (CRUEL AND UNUSUAL PUNISHMENT)

IS IT A FOURTEENTH AMENDMENT VIOLATION IF TRIAL HABEAS COURT VIOLATES THE FUNDAMENTAL FAIRNESS OF DUE PROCESS AND EQUAL PROTECTION RIGHTS, AND THE HABEAS COURT DOES NOT FOLLOW THE DUE COURSE OF LAW IN JUDICIAL PROCEEDINGS.

IS IT PROSECUTION MISCONDUCT WHEN THERE IS NO MOTION TO WITHDRAW TO ENHANCE AND ENTER EVIDENCE OF PEN-PACK WHILE ASKING JURY TO STEP OUT OF COURT ROOM WHILE JUDGE SEIZES DOCUMENT AFTER PETITIONER'S TRIAL.

IS IT A MISFEASANCE OF JUSTICE, NEGLIGENCE, THE LEGAL AND ETHICAL RESPONSIBILITIES TO UPHOLD THE LAW, WHEN THE HABEAS JUDGE ALLOWS ANOTHER PERSON TO ADDRESS THE REMEDY TO CURE A VIOLATION OF JUDICIAL STANDARDS COST ITATION WHEN THAT PERSON DOES NOT HAVE AUTHORITY TO DO SO.

IS IT ABUSE OF DISCRETION, AND UNFAIRLY PREJUDICED BY "JOZNER" OF OFFENSE AND ENHANCEMENT IN RE-STATEMENT OF PLEA OFFER TO CURE A SIXTH AMENDMENT VIOLATION, USED FOR REMEDY.

IS IT CONCEPT, WHEN HABEAS COURT DO NOT COMPLY WITH ORDER, IS IT UNCONSTITUTIONAL IF THE REMEDY IS NOT AUTHORIZED BY LAW OR STATUTES.

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: *ATTORNEY FOR RESPONDENT.*

*KEN PAXTON
ATTORNEY GENERAL
OF TEXAS*

*P.O. Box 12548
AUSTIN, TX. 78711*

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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 _____ 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**: *SUBSEQUENT-11.07 HABEAS CORPUS APPLICATION.*

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- ☐ reported at EX PARTE SALINAS, WR-73-707-01, 2010 TEX. CRIM. APP. LEXIS 245, AT 2-3; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished. WR-73-707-08

The opinion of the COURT OF CRIMINAL APPEAL OF TEXAS court appears at Appendix B to the petition and is *SUBSEQUENT 11.07 APPLICATION*

- ☐ 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 JAN. ? 2014.

☒ 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).

JUDGMENTS ARE SOUGHT TO BE REVIEWED ON A WRIT OF CERTIORARI TO THE SAME COURT, THEY INVOLVE "IDENTICAL" RELATED QUESTION, OF THESE 4 CASE'S NO. WR-73-707-01, WR-73-707-04, WR-73-707-06, WR-73-707-08, TO ORIGINAL 11.07 APPLICATION.

RULE 12.4

☒ For cases from **state courts**:

The date on which the highest state court decided my case was SEPT. 29, 2010,
A copy of that decision appears at Appendix C. SUBSEQUENT
MARCH 7, 2018

☒ A timely petition for rehearing was thereafter denied on the following date: APRIL 30, 2018, and a copy of the order denying rehearing appears at Appendix D.

☐ 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).

FINAL JUDGMENT RENDERED BY THE HIGHEST COURT OF A STATE IN A DECISION COULD BE HAD, MAY BE REVIEWED BY THE SUPREME, A STATUTE OF UNITED STATES IS DRAWN IN QUESTION. THE HABEAS COURT "DID NOT" DISCLOSE THE CONSTITUTION VIOLATION IN THE FINDING & CONCLUSION, FOR THE HIGHEST COURT OF THE STATE TO REVIEW, AND PETITIONER WAS PREJUDICE BY THE HABEAS TRIAL COURT NOT FOLLOWING THE DUE COURSE OF LAW, AND FAILURE TO UPHOLD THERE LEGAL RESPONSIBILITIES.

NOTE: THEY INVOLVE "IDENTICAL" RELATED QUESTIONS OF THESE 4 CASE FOR REVIEW
No. WR-73-707-01, WR-73-707-04 2. WR-73-707-06, WR-73-707-08 RULE-12, 6ff

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

ABUSE OF DISCRETION BY TRIAL HABEAS COURT, FAILURE TO COMPLY WITH
STATUTORY APPELLATE PROCEDURE, NEGLECTED ITS RESPONSIBILITY IN TAKING
ACTION IN VIOLATION OF JUDICIAL PROCEDURE TO UPHOLD THE LAW;
IMPROPER REMEDY - NOT AUTHORIZED BY LAW;
DEPRIVED OF FUNDAMENTAL FAIRNESS AT THE HEART OF DUE PROCESS AND
EQUAL PROTECTION RIGHTS AT TRIAL HABEAS COURT PROCEEDINGS;

FIFTH AMENDMENT (CONSTITUTION - ISSUES RAISED BY THE CHARGE "NO MOTION TO ENHANCE
CONVICTION")

SIXTH AMENDMENT - VIOLATION - INEFFECTIVE ASSISTANCE OF COUNSEL - TRIAL

ATTORNEY NOT INVESTIGATING ENHANCE PLEA BARGAIN OFFER
AND NOT COMMUNICATING A PLEA OFFER DURING TRIAL, FAILURE
TO PRESENT EVIDENCE, FAILURE TO CALL WITNESSES, AND VIOLATED
PETITIONERS RIGHT TO TESTIFY, AND INTER ALIA, FAILURE TO OBJECT
TO PRIOR CONVICTIONS;

EIGHTH AMENDMENT - VIOLATION OF EQUAL AND UNUSUAL PUNISHMENT - STATE

ENHANCE PLEA BARGAIN OFFER, THERE WERE NO PRIOR CONVICTIONS
NOR WAS THERE ANY PARAGRAPH FOR ENHANCEMENT IN PETITIONERS
INDICTMENT, THE TRIAL HABEAS COURT ALLOWED PETITIONERS APPELLATE
ATTORNEY TO REQUEST AND REJECT A PLEA THAT WAS NOT AUTHORIZED
BY LAW FOR THE CHARGE CAME ON INDICTMENT. (IMPROPER REMEDY)

FOURTEENTH AMENDMENT - VIOLATION OF DUE PROCESS - HABEAS TRIAL COURT;

STATUTORY — PLEA BARGAIN SENTENCING FACTORS - ILLEGAL PLEA OFFER;

ARTICLE - 11(2) - NOR SHALL A HEAVIER PENALTY BE IMPOSED THAN THE ONE THAT
WAS APPLICABLE AT THE TIME OF THE PLEA OFFER; WAS COMM-
ITTED;

DISCRETION - THE POWER OF AUTHORITY OF A LEGAL BODY, SUCH AS A
COURT OR JUDGE, TO ACT OR DECIDE A SITUATION ONE WAY
OR THE OTHER WHERE THE LAW DOES NOT DICTATE THE
DECISION;

FEDERAL HABEAS CORPUS RELIEF, HOWEVER, IS AVAILABLE ONLY WHEN THE PETITIONER
DEMONSTRATES HE IS IN CUSTODY IN VIOLATION OF HIS CONSTITUTIONAL OR OTHER
FEDERAL RIGHTS. 28 U.S.C. § 2254, 2255;
§ 4.10.34 ILLEGAL SENTENCE

ARTICLE - 28, 10 (A) UNTIMELY NOTICE OF ITS INTENT TO ENHANCE;

§ 4.10.3 - IMPROPER SENTENCES AND THEIR REMEDIES;
§ 4.10.3.4 - HARMLESS ERROR AND ILLEGAL SENTENCE;

STATEMENT OF THE CASE

PETITIONER SALINAS WAS CALLED BY HIS EX-BLACKFRIEND FOR HELP AND TO GO PICK HER UP BECAUSE HER BOYFRIEND WAS BEING ABUSIVE AGAIN WHEN PETITIONER GOT TO HER HOUSE THE BOYFRIEND CAME OUT, ONE THING LEAD TO ANOTHER AND A KNIFE FIGHT BROKE OUT. PETITIONER WAS INJURED AND CHARGED WITH AGGRAVATED ASSAULT WITH DEADLY WEAPON, UNDER TEXAS LAW WHICH CARRIES A MAXIMUM OF (2-TO 20) YEARS. PETITIONER HAD NO CHOICE BUT TO GO TO TRIAL AS STATES ONLY PLEA BARGAIN OFFER WAS WELL ABOVE RANGE SET FORTH BY LEGISLATURE AND THE STATUTORY RANGE OF PUNISHMENT FOR THE OFFENSE ON PETITIONER'S INDICTMENT (25 YEAR MAX).

THERE WAS NO PRIOR CONVICTION NOR WAS THERE ANY ENHANCEMENT PARAGRAPHS ALLEGED IN PETITIONER'S INDICTMENT (SEE APPENDIX-1E), FURTHER MORE STATE DID NOT FILE NOTICE OR MOTION OF ITS INTENT TO ENHANCE THE SENTENCE. THE STATE FOR THE FIRST TIME PRESENTED THE INTENT TO ENHANCE AFTER THE JURY FOUND PETITIONER GUILTY, DURING THE PENALTY TRIAL THE STATE ASK THE JURY TO STEP OUT OF THE COURT ROOM AND AT THAT TIME (SEE APPENDIX-1B) ENTER THE NOTICE OF INTENT TO ENHANCE. (SEE ALSO APPENDIX-1G) STIPULATION OF EVIDENCE THAT THE JURY JUDGE STATED WHILE THE JURY WAS ASK TO STEP OUT FOR 5 MINUTES, WAS PRESENTED OF PETITIONER'S PRIOR CONVICTION OF A FEDERAL OFFENSE. (SEE APPENDIX-1G).

PETITIONER WAS FOUND GUILTY BY THE JURY, DURING THE PUNISHMENT PHASE OF TRIAL JURY FOUND TRUE TO THE ENHANCEMENT OF FEDERAL CONVICTION AND SENTENCE PETITIONER TO SIXTY(60) YEARS IN TEXAS DEPARTMENT OF CRIMINAL JUSTICE.

PETITIONER FILED 11.07 HABEAS CORPUS APPLICATION ON FEB. 28, 2010, THE COURT OF CRIMINAL APPEALS REMANDED HIS APPLICATION TO THE TRIAL COURT TO ADDRESS THE CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL. ON SEPT. 29, 2010 THE COURT OF CRIMINAL APPEALS DENIED PETITIONER'S APPLICATION ON THE FINDINGS OF THE TRIAL COURT, ALSO PETITIONER FILED 2254 HABEAS CORPUS APPLICATION IN THE WESTERN DISTRICT OF TEX. AS THIS FEDERAL 2254 APPLICATION WAS DENIED. AFTER PETITIONER'S COA WAS DENIED HE FILED A PETITION FOR WRIT OF HABEAS CORPUS 11.07 ON THE ORIGINAL GROUND OF INEFFECTIVE ASSISTANCE OF COUNSEL AND ABUSE OF DISCRETION BY THE TRIAL HABEAS COURT APPLIED INCORRECT LEGAL STANDARD IN FAILURE TO COMPLY WITH REQUIREMENTS OF CODE OF CRIMINAL PROCEDURE IN BREACH OF ITS LEGAL AND ETHICAL RESPONSIBILITIES. THE FAILURE OF HABEAS TRIAL JUDGE TO FOLLOW THE DUE PROCESS OF LAW. IN THIS CASE, THE CONSTITUTIONAL PROTECTIONS OF SURPASSING IMPORTANCE, THE PROSECUTION OF ANY DEPRIVATION OF LIBERTY WITHOUT DUE PROCESS OF LAW, CONST. AMEND. 14, IF A DEFENDANT FACES PUNISHMENT BEYOND THE PROVIDED BY STATUTE WHEN AN OFFENSE IS COMMITTED UNDER CIRCUMSTANCES BUT NOT OTHERS, IT IS OBVIOUS THAT BOTH THE LOSS OF LIBERTY

MISSOURI-V-FAYE, 132 S. CT. 1399, 1408 (2012).

AND THE STIGMA ATTACHING TO THE OFFENSE ARE HEIGHTENED. IT NECESS-
ARILY FOLLOWS THAT THE DEFENDANT SHOULD-NOT AT THE MOMENT THE STATE IS PUT
TO PROOF OF THOSE CIRCUMSTANCES-BE (DEPRIVED OF PROTECTIONS THAT HAVE UNTIL
THE POINT UNQUESTIONABLY ATTACHED). LEE-V. UNITED STATES, 137 S. CT 1958 (2017).

ALL THOUGH PETITIONER'S CASE (SEE APPENDIX-A) WHEN REMANDIED BY THE COURT OF
CRIMINAL APPEALS DIDNOT INVOLVE A PLEA BARGAIN ISSUE, THE CASE WAS REMANDIED
FOR THE CLAIM ON PETITIONER'S ORIGINIAL MOT HARRIS CORPUS APPLICANT HIS COUNSEL
RENDERED INEFFECTIVE ASSISTANCE BECAUSE, "ENTER ALTA" THE TRIAL COURT SHALL ALSO
MAKE ANY OTHER FINDINGS OF FACT AND CONCLUSION OF LAW THAT IT DEEMS RELEVANT
AND APPROPRIATE TO THE DISPOSITION OF APPLICANT'S CLAIMS FOR HARRIS CORPUS RELIEF.
IT DID INVOLVE INEFFECTIVE ASSISTANCE OF COUNSEL WHERE CONSTITUTIONAL RIGHT TO
EFFECTIVE ASSISTANCE OF COUNSEL WAS VIOLATED IN THAT ATTORNEY'S OWN OMISSION (SEE
NEXT PAGE THAT ATTORNEY'S LETTER) THAT SHE "DIDNOT" COMMUNICATE A PLEA OFFER TO HAZEM
BY THE PROSECUTOR DURING TRIAL. A CRIMINAL DEFENDANT IS ENTITLED TO EFFECTIVE
ASSISTANCE OF COUNSEL UNDER SUPREME COURT LAW'S. FAYE, 566 U.S. / HILL, 1474 U.S. AT
370. STEADLAND-V-WASHINGTON, 104 S. CT 2052 (1984).

PETITIONER'S CASE INVOLVES EXTRAORDINARY ISSUES OF IMPORTANCE BEYOND
THE PARTICULAR FACTS, PRESUDICED BY THE DENIAL OF JUDICIAL PROCEEDINGS,
AND NOT ONLY THE TRIAL COURT, BUT ABUSE OF DISCRETION IN THE HARRIS TRIAL
PROCEEDING, PETITIONER WAS DEPRIVED OF FUNDAMENTAL FAIRNESS AT THE HEART OF DUE
PROCESS IN VIOLATION OF THE FIFTH, SEVENTH EIGHTH AND FOURTEENTH AMENDMENT TO THE
UNITED STATES CONSTITUTION. PETITIONER FEELS THIS SUBSEQUENT PETITION FOR WRIT
OF CERTIORARI, IN THE UNCONSTITUTIONAL JUDICIAL PROCEEDINGS THAT TOOK PLACE
AT THE POST-CONVICTION HEARING THAT IS IN CONFLICT WITH FUNCTION OF THE
SUPREME COURT OF UNITED STATES, AND THE DUE PROCESS OF LAW, AND DUE COURSE OF LAW.

THE EVIDENCE UPON WHICH A PETITIONER WOULD CHALLENGE A STATE COURT
FACT FINDING MUST HAVE BEEN PRESENTED TO THE STATE COURT, BECAUSE A FEDERAL
HARRIS COURT IS PROHIBITED FROM GRANTING RELIEF UNLESS A DECISION WAS BASED
ON "AN UNREASONABLE DETERMINATION OF THE FACTS IN LIGHT OF THE EVIDENCE
PRESENTED IN THE STATE COURT PROCEEDING" WILLIAMS, 529 U.S. AT 406.
"INDEED, THIS IS THE 'ONLY' QUESTION THAT MATTERS UNDER § 2254 (d) (2)."

THE COURT OF CRIMINAL APPEALS REMANDIED ORDER (SEE APPENDIX-A) SHALL
MAKE FINDINGS OF FACT AS TO WHETHER "ENTER ALTA" THE PERFORMANCE OF APP-
LICANT'S ATTORNEY WAS DEFICIENT AND, IF SO, WHETHER THE DEFICIENT PER-
FORMANCE PREJUDICED APPLICANT. UNDER STEADLAND-V-WASHINGTON, 104 S. CT 2052, 80 L. ED 2D 674 (1984).

EXTRAORDINARY REVELATIONS THAT CAME TO LIGHT DURING THE
EVIDENTIARY HEARING PROCEEDINGS, THAT WERE NOT DISCLOSED IN THE
TRIAL HARRIS COURT FINDINGS AND CONCLUSION OF LAW. PRESUDICED PETITIONER,
(SEE APPENDIX-B).

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February 12, 2017

Martin #1438660
Allred Unit
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Iowa Park, TX 76367

RE: Correspondence

Dear Martin:

As always, good to hear from you and apologizing for responding so slowly. I will answer your questions to the best of my ability and honestly, as I have always done.

I'm unclear about the question in regards to the plea offer. At the original trial, I was too inexperienced to understand I needed to convey the 25 year offer once the trial had started. It was my understanding that you would not take any offer. Then when you were brought back and Mr. Steadman represented you, the district attorney offered you the same 25 years when they found out I had not conveyed it to you. Mr. Steadman relayed that offer to you and you declined it. You could have taken it then and replaced the 60 year sentence. I did everything I knew to do when you were brought back.

I wish I could fully answer the question on the enhancement notice. Martin, it's been a very long time ago for me and I simply can not remember all of our conversations and every step I took. I've represented a lot of clients since then. I feel like I would have discussed this with you, but I just can't remember.

Again, I feel as though I have been up front with all parties in your hearings and told the truth as I remember it. I will answer any questions to the best of my ability if you have any others. Take care and God Bless.

Respectfully,



Lucy S. Pearson

MISSOURI V. FRYE 566 U.S. 134 S.Ct. 1399, 182 L.Ed.2d 379 (2012) AND
LAFER V. COOPER, 566 U.S. 156, 132 S.Ct. 1376, 182 L.Ed.2d 398 (2012). THESE
CASES INVOLVED DEFENDANTS WHO ALLEGED THAT, BUT FOR THEIR ATTORNEY'S
INCOMPETENCE, THEY WOULD HAVE ACCEPTED PLEA DEAL.

IN THE HABEAS JUDICIAL PROCEEDING A JUDGE IS AN OFFICER OF THE
COURT AND HAS SWORN TO UPHOLD THE LAW TO THE BEST OF HIS ABILITY AND
THE INTEREST OF JUSTICE AND THE DUE PROCESS UNDER THE DUE COURSE
OF LAW. WHEN JUDICIAL NOTICE (SEE NEXT PAGE) WAS REVEALED TO THE HABEAS
COURT THAT PETITIONER'S TRIAL ATTORNEY DID NOT COMMUNICATE A PLEA OFFER IT
WAS THE HABEAS JUDGE'S RESPONSIBILITY TO ADDRESS THE COURT IN HIS OWN WORDS AND
THE CRIMINAL PROCEDURE OF LAW REQUESTS THE COURT TO UPHOLD "ITS DUTY
IN ADDRESSING A VIOLATION AND TO DETERMINE THE CORRECT MEANS OR LAW BY
WHICH TO ADDRESS A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL, SEE HILL, WTY US 370
AND WHAT REMEDY'S ARE CONSIDERED OR AVAILABLE" TO CURE SUCH STATE AFFIRMATION
VIOLATION, IT WAS UNREASONABLE FOR THE HABEAS COURT TO BE SILENT AND NOT
TAKE ACTION, SO LACKING IN JUSTIFICATION THAT THERE WAS AN ERROR WELL
UNDERSTOOD (SEE NEXT PAGE) AND COMPREHENDED IN EXISTING LAW BEYOND ANY
POSSIBILITY FOR FARMER (SEE NEXT PAGE) FOR PETITIONER'S HABEAS COUNSEL TO
INCORRECT AND OBSTINATELY UNREASONABLE "FOR PETITIONER'S HABEAS COUNSEL TO
DO THE TALKING FOR THE HABEAS COURT (SEE NEXT PAGE), DETERMINE WHAT THE
REMEDY WOULD BE TO CURE THE STATE AFFIRMATION VIOLATION OF JUDICIAL
NOTICE THAT PETITIONER'S TRIAL ATTORNEY NOT COMMUNICATED A PLEA OFFER DURING
TRIAL. WHEN THE HABEAS COURT ALLOWED PETITIONER'S HABEAS COUNSEL TO ADDRESS THE
DETERMINATION OF THE REMEDY IT OFFERED AN UNCONSTITUTIONAL PLEA OFFER
THAT WAS NOT AUTHORIZED" BY LAW FOR THE CHARGE CRIME PETITIONER WAS ON
DUE PROCESS. U.S.C.A. CONST. AMEND. 14, EVZ (ENTIRELY VERBATIM) (BRI PAGE 128)
MR. STADMAN PETITIONER HABEAS COUNSEL: THE COURT WAS SUFFICIENT WITH -- THE COURT YES,
I'M SATISFIED. THE HABEAS TRIAL COURT JUST STATED (3 WORDS) WHEN ADDRESSED.

PETITIONER WAS RE-OFFERED AND RE-INSTATED THE ONLY AND ORZAMAL PLEA
BARLAHAN OF 25 YEARS. WHEN PETITIONER'S TRIAL ATTORNEY WAS FIRST APPOINTED
TO REPRESENT HIM, SHE TOLD PETITIONER THE PROSECUTION OFFER A PLEA BARLAHAN
OF 25 YEAR FOR LITZLY PLEA AT THAT TIME PETITIONER TOLD AND ADVISE FOR HIS
TRIAL ATTORNEY TO LOOK INTO THE PLEA OFFER BECAUSE IT DID NOT CONSTITUTE FOR
THE OFFENSE FOR WHAT WAS CHARGED WITH, THAT IS WHY PETITIONER HAD NO CHOICE
BUT TO TAKE HIS CASE TO TRIAL, THERE WAS NO PLEA CONVECTIONS NOR ANY ENHANCE
CEMENT PARAGRAPHS ALLEGED IN THE INDICTMENT, PETITIONER REJECTED THE PLEA
BARLAHAN OFFER BECAUSE IT WAS WELL ABOVE RANGE SET FORTH BY LEGISLATURE AND
THE STATUTORY RANGE FOR AGGRAVATED ASSAULT THAT CARRIES (2-TO 20) MAXIMUM, HE
HAD BETTER CHANCE IF JURY WOULD FIND HIM GUILTY, OR GOING TO TRIAL THAN

1 (Brief lunch recess.)

2 MR. STEADMAN: There is one issue that I
3 thought we needed to address.

4 THE REPORTER: You want this on the
5 record?

6 THE COURT: Yes, I guess so. Yes. Go
7 ahead. The hearing will resume. Counsel.

8 MR. STEADMAN: Yes, sir. When I first
9 got appointed to this about a month ago I went over
10 and talked to Mr. Curry about certain issues which
11 were coming up. In one of the conversations I had
12 with Mrs. Pearson she relayed to me that a plea offer
13 had been made but that it was during trial and while
14 the jury was out deliberating that she didn't
15 communicate it to Mr. Salinas because she said he
16 wouldn't accept it. Now Mr. Curry told me that Mrs.
17 Pearson told him the same thing. Based upon that I
18 think Mr. Curry -- And that's why Mrs. Wilke -- She's
19 available to testify. And to make a long story
20 short, I think it is a moot point. But there is a
21 difference of opinion as to whether or not that
22 actually occurred at trial. Mr. Curry and I both
23 agreed that even though it's not part -- specifically
24 the application process because it really wasn't
25 known at the time it -- it goes into whether --

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(8)

1 because --

2 THE COURT: Excuse me, it wasn't known by
3 whom?

4 MR. STEADMAN: It wasn't known by -- my
5 client didn't realize until after speaking with Mrs.
6 Pearson after getting back here that issue had come
7 up. And -- But it is a moot issue. I can put my
8 client on for that brief purpose because the State
9 through Mr. Gray re-offered. Because the remedy in
10 that case is an offer -- if a plea offer is not
11 communicated to the Defendant the remedy is to
12 reverse the case and reinstate the plea offer. Mr.
13 Gray spoke to Mr. Curry and actually reinstated the
14 plea offer before we started these proceedings. I
15 spoke to Mr. Salinas about it and he informed me that
16 he was not going to accept the 25 years. And even if
17 it had been communicated to him at trial he would not
18 have accepted it.

19 THE COURT: All right. Okay.

20 MR. STEADMAN: So I don't believe it's
21 necessary to put on testimony as to that, but -- And,
22 Guy, correct me if I'm wrong, that's pretty much the
23 status of that.

24 MR. GRAY: That is correct, Your Honor.

25 MR. STEADMAN: And, Mr. Salinas, do you

1 MR. STEADMAN: And, in fact, you told me
2 that even if the State -- even if Mrs. Pearson had
3 communicated that plea offer to you during trial at
4 that point in time you would have rejected it; is
5 that correct?

6 MR. SALINAS: Yes, sir, I did.

7 THE COURT: Okay. Very good. Thank you.
8 You may be seated.

9 (Bench Discussion Concluded.)

10 THE COURT: Does Applicant have further
11 examination of Mrs. Pearson?

12 MR. STEADMAN: Not -- No, Your Honor, not
13 if the Court is satisfied with the previous
14 explanation that we gave as to the issue regarding
15 the plea offer being made.

16 THE COURT: All right.

17 MR. STEADMAN: The Court was satisfied
18 with --

19 THE COURT: Yes, I'm satisfied.

20 MR. STEADMAN: Then we pass the witness.

21 THE COURT: The State may examine.
22
23
24

25 CROSS-EXAMINATION

CONSTITUTIONAL LAW - 4579.
(C.A. 5TH TEX. 1991) TO CONVICT SOMEONE OF A CRIME ON THE BASIS OF CONDUCT THAT DOES NOT CONSTITUTE THE CRIME, OFFENDS THE BASES NOTIONS OF JUSTICE AND FAIR PLAY EMBODIED IN THE CONSTITUTION. U.S.C.A. 5. U.S.-BR 2665, 939 F.2d.222, APPEAL AFTER REMAND 965 F.2d.10.

THE ONLY PLEA BARGAIN OFFER THAT CAME FROM THE PROSECUTION, PETIZIONEER'S HABEAS ATTORNEY ADVISE PETIZIONEER TO FOLLOW HIS LEAD BECAUSE TRIAL COUNSEL TESTIFIED THAT SHE DID NOT INSPECT THE STATE EVIDENCE (HABEAS TRANSCRIPT ID AT 44-45) AND SHE DID NOT CALL WITNESS (ID AT 45-46) TRIAL ATTORNEY DID NOT KNOW HOW TO LAY A PROPER PRELIMINARY TO INTRODUCE EVIDENCE OR HOW TO PROPERLY OBJECT AT TRIAL (ID AT 53) THAT SHE WAS INEFFECTIVE AND THAT HER INEFFECTIVENESS MAY HAVE AFFECTED THE OUTCOME OF TRIAL (ID AT 54) THAT SHE DID NOT OBJECT TO THE LATE NOTICE TO INTRODUCE EXTRANEOUS MATTERS (ID AT 55) SHE ALSO TESTIFIED (ID AT 56) SHE HAD NOT INVESTIGATED PETIZIONEER FROM CONVICTIONS (ID AT 56) THAT SHE DID NOT SUBPOENA 911 CALLS THAT THE SUBJECTS WERE CALL FOR FAMILY VIOLENCE AND THAT SHE TESTIFIED (ID AT 57) SHE HAD NOT INVESTIGATED PETIZIONEER FROM CONVICTIONS (ID AT 57) THAT SHE TESTIFIED (ID AT 58-72) AND THAT SHE HOW TO MAKE PROPER OBJECTIONS OR ASK FOR LIMIT INSTRUCTIONS (ID AT 68-72) AND THAT SHE VIOLATED PETIZIONEER'S RIGHT TO TESTIFY (ID AT 114-118). PETIZIONEER'S HABEAS ATTORNEY SAID FOLLOW MY LEAD BECAUSE ALL THIS SHE TESTIFIED TO IS ALREADY INEFFECTIVE ASSISTANCE OF COUNSEL, AND HABEAS COUNSEL TOLD ME THE COURT IS GOING TO RE-INSTATE YOUR PLEA OFFER BECAUSE YOUR TRIAL ATTORNEY TOLD THE DISTRICT ATTORNEY AND ME THAT SHE DID NOT INFORM YOU OF A PLEA OFFER DURING TRIAL, AT THAT TIME PETIZIONEER TOLD HIS HABEAS COUNSEL THAT THE 25 PLEA BARGAIN OFFER WAS ILLEGAL AND DISPROPORTIONATE FOR THE CHARGE CRIME ON THE INDICTMENT, AND THAT I HAD TOLD MY TRIAL ATTORNEY THE SAME THING THAT I HAD A BETTER CHANCE GOING TO TRIAL AND IF I WAS FOUND GUILTY I WAS BETTER OFF WITH THE 20 YEAR MAXIMUM, THAN THE PLEA BARGAIN OFFER OF 25 YEARS. PETIZIONEER TOLD HIS HABEAS ATTORNEY TO LOOK INTO THE FINANCE PLEA OFFER THAT IT WAS ILLEGAL, HABEAS COUNSEL IN HIS OWN WORDS SAID IT DID NOT MATTER BECAUSE THE ISSUE WAS "MOT" AND IT WAS NOT IN MY 1107 APPLICATION. (SEE PAGE-8-9) HABEAS COUNSEL STATED TO THE COURT IT'S A MOT ISSUE.

THE REASON PETIZIONEER RE-TESTIFIED THE RE-INSTATE PLEA OFFER, WAS THE SAME REASON PETIZIONEER WENT TO TRIAL, THE PLEA OFFER IS DISPROPORTIONATE FOR THE CHARGE OFFENSE OF AGGRAVATED ASSAULT THAT ONLY CARRIES (2-20) YEARS MAXIMUM, PETIZIONEER WAS PRETENDING BY NOT REAL OFFER THE LEGAL SENTENCE OF PLEA OFFER THAT CONSTITUTES FOR THE CHARGE CRIME ON THE INDICTMENT, WHEN THE FACTS SHOW THERE WAS NO PRIOR CONVICTION NOR ANY ENHANCEMENT PARAGRAPHS TO JUSTIFY THE PLEA OFFER TO BE WELL BEYOND THE PRESUMED STATUTORY MAXIMUM FOR THE CHARGE OFFENSE. PETIZIONEER WAS FORCED TO GO TO TRIAL ON BECAUSE TRIAL COUNSEL WAS INEFFECTIVE IN NOT INVESTIGATING THE FINANCE PLEA BARGAIN OFFER FROM THE BEGINNING, WITNESS WAS APPOINTED TO REPRESENT PETIZIONEER. (LOVER V. UNITED STATES, 531 U.S. 198, 203 (2001)).

FEDERAL OFFENSE OF TRANSPORTATION AND RECEIPT AND ABILITY SET FOR USE TRANSPORTATION
ILLUSTRATION IS NOT AN ACT (DENOUNCED) BY THE LAWS OF TEXAS AND THEREFORE CONVICTION
OF SUCH FEDERAL OFFENSE COULD NOT BE USE FOR ENHANCEMENT OF PUNISHMENT IN TEXAS
STATE COURT. - VERNON'S ANN. P.C. ART. 63, PETITIONER'S FEDERAL CONVICTION WAS (TRANSPORT
ATION OF AN ALIEN) NOT AN ACT DENOUNCED BY THE LAWS OF TEXAS. (SEE APPENDIX - G).
TEX. CRIM. APP. 1978
PRIOR FEDERAL CONVICTION USED FOR ENHANCEMENT OF PUNISHMENT ALTHOUGH CLEARLY A FELONY
UNDER FEDERAL LAW, MUST ALSO BE AN OFFENSE WHICH IS DENOUNCED BY THE LAWS OF TEXAS AS
A FELONY. V. T.C.A. PENAL CODE § 12.42 (a)

MONTGOMERY V. STATE, 571 SW2d 181

C.A. 5, TEX. 1984

IN USUAL FEDERAL CONVICTION FOR ENHANCEMENT PURPOSES UNDER TEXAS STATES MANDATORY
LIFE IMPRISONMENT FOR REAR CONVICTION OF A FELONY LESS THAN CAPITAL, APPROPRIATE
INQUIRY IS NOT WHETHER ELEMENTS OF PRIOR FEDERAL CONVICTION PRECISELY CORRESPOND
TO A TEXAS STATE, BUT WHETHER CONDUCT NECESSARY TO ESTABLISH PRIOR FEDERAL CONVICTION
COULD ALSO ESTABLISH VIOLATION OF TEXAS LAW. VERNON'S ANN. P.C. ART. (63) (REPEALED)
REPEALED. BROWN V. ESTATE, 721 F.2d 1037.

(CRIMINAL LAW - 641, 641.3(1))

(GUARANTEE OF EFFECTIVE ASSISTANCE OF COUNSEL DOES NOT BELONG SOLELY TO THE
INNOCENT AND DOES NOT ATTACK ONLY TO MATTERS AFFECTING DETERMINATION OF ACT
WILL BEHOLD. U.S. CA. CONST. AMEND. 6).

RIGHT TO COUNSEL IS A FUNDAMENTAL RIGHT OF CRIMINAL DEFENDANT. IT
ASSURES FAIRNESS, AND THIS LEGITIMACY OF ADVERSARY PROCESS.
U.S. CA. CONST. AMEND. 6.

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322 - SENTENCE & PUNISHMENT

IT IS UNCONSTITUTIONAL FOR LEGISLATURE TO REMOVE FROM JURY THE ASS-
ESSEMENT OF FACTS OTHER THAN THE FACT OF PRIOR CONVICTION, THAT INCREASE
PROSECUTOR RATHER OF PENALTIES TO WHICH CRIMINAL DEFENDANT IS EXPOSED, AND
SUCH FACTS MUST BE ESTABLISHED BY PROOF BEYOND REASONABLE DOUBT.
U.S. CA. CONST. AMEND. 14.

APPENDIX - V - NEW JERSEY, 120 S. CT. 2348 (2000).

568 - CRIMINAL LAW

RELEVANT INQUIRY IN DETERMINING WHETHER FEDERAL IS ESSENTIAL ELEMENT OF
OFFENSE, WHICH MUST BE DECIDED BY JURY BEYOND REASONABLE DOUBT AS ONE NOT
OF FORM, BUT OF EFFECT, NAMELY WHETHER FEDERAL EXPOSES DEFENDANT
TO GREATER PUNISHMENT THAN THAT AUTHORIZED BY JURY'S GUILTY VERDICT.

INADEQUATE INVESTIGATION

THAT COUNSEL MS. PEARSON ADMITTED UNDER OATH, THAT HER PERFORMANCE AS TRIAL COUNSEL WAS DEFICIENT BECAUSE PETITIONERS WOUNDS WERE DEFENSIVE IN NATURE AND THE MEDICAL PERSONAL COULD HAVE TESTIFIED TO THAT EFFECT AND FAILURE TO INTERVIEW AND CALL POTENTIAL WITNESSES, AND PRESENT EVIDENCE SHE FAIL TO DO. ALSO SHE TESTIFIED THAT AT THE TIME OF PETITIONERS TRIAL SHE DID NOT KNOW HOW TO LAY A PROPER PRELIMINARY TO INTRODUCE EVIDENCE OR HOW TO PROPERLY OBJECT AT TRIAL (ED AT 53). FURTHER MORE SHE WAS NOT PREPARED (ED AT 61-68) OR ASK FOR LIMINAL INSTRUCTION (ED AT 69). SHE TESTIFIED IN RECALL (SYTON, WITNESS), THAT SHE OPEN THE DOOR TO EXAMINATIONS MATTERS. (ED AT 71-72).

MRS. PEARSON STATED HER PERFORMANCE WAS DEFICIENT IN ADEQUATELY REPRESENTING PETITIONER DURING TRIAL AND PRESENTING AN EFFECTIVE DEFENSE SUCH THAT A JURY INSTRUCTION ON SELF-DEFENSE OR DEFENSE OF THIRD PERSON COULD BE REQUESTED AND BE GIVEN IN ORDER TO REQUEST AND BE GIVEN A JURY INSTRUCTION ON SELF-DEFENSE. (ED AT 73-76).

THE SUPREME COURT DEFINES "MATERIALITY" IN TERMS OF A "REASONABLE PROBABILITY" OF A DIFFERENT OUTCOME. KYLES-V-WHITLEY, 514 U.S. 419, 434 (1995), SUCH A REASONABLE PROBABILITY RESULTS WHEN NONDISCLOSURE PLACES THE CASE IN A DIFFERENT LIGHT SO AS TO UNDERMINE CONFIDENCE IN THE VERDICT. THE RELEVANT INQUIRY EXAMINES THE CHALLENGED EVIDENCE COLLECTIVELY NOT ON AN ITEM-BY-ITEM BASIS. "TO SAY THAT AN ERROR 'DID NOT' CONTRIBUTE TO THE VERDICT IS RATHER TO FIND THAT ERROR UNIMPORTANT IN RELATION TO EVERYTHING ELSE" (CONSIDERED) ON THE ISSUE IN QUESTION AS REVEALED BY THE RECORD. "YATES-V-EVART, 500 U.S. 391, 403 (1991).

RATHER THEN APPLYING STOCKLAND, THE STATE COURT SIMPLY FOUND THAT THE OMISSION THAT PETITIONERS TRIAL ATTORNEY ADMITTED TO THE DEFECT ATTORNEY AND HARRIS COUNSEL ADDRESSED THE COURT THAT SHE DID NOT "COMMUNICATE A PLEA OFFER AT TRIAL, THIS OMISSION HAD NO EFFECT AT THE POST-CONVICTION HEARING, WHEN THE PROSECUTOR WAS FOUND OUT IT THERE WAS ANY EVIDENCE TO PETITIONERS CLAIM OF INADEQUATE ASSISTANCE OF COUNSEL. THE TRIAL HARRIS COURT (DID NOT) NOT ADMIT OR EVEN ACKNOWLEDGE OF THE LEGAL PRINCIPLE THIS EVIDENCE SUPPORTED THE CLAIM HOWEVER THE HARRIS COURT NOT TAKING ACTION, IS NOT THE CORRECT MEANS BY WHICH TO ADDRESS A CLAIM OF INADEQUATE ASSISTANCE OF COUNSEL (SEE HILL, 474 U.S. 473) AND (NOT) APPLYING STOCKLAND TO ASSESS A CLAIM OF INADEQUATE ASSISTANCE OF COUNSEL ARISING OUT OF THE PLEA NEGOTIATION PROCESS). AFTER THE IN-CORRECT STAND AND MOREOVER, THE HARRIS COURT THEN MADE IRRELEVANT OBSERVATION AND ALLOWED PETITIONERS HARRIS COUNSEL TO MOVE FORWARD) AND OFFER A PLEA THAT WAS NOT AUTHORIZED) BY LAW. THE HARRIS COURT'S ADDITION WAS CONTRARY TO CLEARLY ESTABLISHED FEDERAL LAW. PANEITZ-V-QUARTERMAN, 551 U.S. 930, 948 (2007).

REASONS FOR GRANTING THE PETITION

THE UNITED STATES SUPREME COURT HAS JURISDICTION UNDER 28 U.S.C. § 2254-
(d) THE ADJUDICATION OF THE RELEVANT CONSTITUTIONAL CLAIM BY THE STATE COURT
(1) "WAS CONTRARY TO FEDERAL LAW THEN CLEARLY ESTABLISHED," IN THE HOLDINGS OF THE
SUPREME COURT, OR (2) "INVOLVED AN UNREASONABLE APPLICATION OF 'CLEARLY ESTABLISHED'
SUPREME COURT PRECEDENT," OR (3) "WAS BASED ON AN UNREASONABLE DETERMINATION OF THE
FACTS, IN LIGHT OF THE RECORD BEFORE THE STATE COURT." HARRINGTON V. RECHTER, 131
S.Ct. 770, 785 (2001) (quoting WILLIAMS V. TAYLOR, 529 U.S. 362, 412 (2000)).

IN COMPLY WITH § 2254(e)(2), THE EVIDENCE UPON WHICH A PETITIONER WOULD CHALLENGE
A STATE COURT FACT FINDING MUST HAVE BEEN PRESENTED TO THE HABEAS STATE COURT.

STATE PROSECUTION PRECLUDE PETITIONER REGARDING THE ONLY OFFER OF A PLEA
BARGAIN OF 25 YEARS FOR A GUILTY PLEA. THIS 25 YEAR PLEA WAS DISPROPORTIONATE WHEN THERE
WERE "NO" PRIOR CONVICTIONS NOR (SEE APPENDIX-E) WAS THERE ANY ENHANCEMENT PARAGRAPH
IN PETITIONER'S CHARGE INDICTMENT. STATE FAILURE TO COMPLY WITH REQUIREMENTS
OF CODE OF CRIMINAL PROCEDURE, WHEN PETITIONER WAS ONLY CHARGE WITH A SECOND
DEGREE FELONY THAT CARRIES 20 YEARS MAXIMUM, NO PRINCIPLE OF PROPORTIONAL DUE
PROCESS IS MORE CLEARLY ESTABLISHED THAN THAT NOTICE OF SPECIFIC CHARGE
AND CHARGE TO BE HEARD IN TRIAL OF ISSUES RAISED BY THAT CHARGE ARE AMONG
CONSTITUTIONAL RIGHTS OF EVERY ACCUSED. U.S.C.A. CONST. AMEND. 5, 14.
PLUNKETT V. ESTELLE, 709 F.2d 1004 / MCKASKLE V. PLUNKETT, 104 S.Ct. 1000 (C.A.5 (1983))

(1) CONSTITUTIONAL LIMITS EXIST TO STATES AUTHORITY TO DEFINE A WAY FACTS
NECESSARY TO CONSTITUTE A CRIMINAL OFFENSE, 477 U.S. AT 85-88 106 S.Ct. 2241.
(2) A STATE SCHEME THAT KEEPS FROM THE JURY FACTS EXPOSING DEFENDANTS TO GREATER
OR ADDITIONAL PUNISHMENT MAY RAISE SERIOUS CONSTITUTIONAL CONCERNS. 106 S.Ct. 2241.

THE EIGHTH AMENDMENT GUARANTEES INDIVIDUALS THE RIGHT NOT TO BE SUBJECTED
TO EXCESSIVE SANCTIONS. THE RIGHT FLOWS FROM BASIC "PRINCIPLE OF JUSTICE THAT
PUNISHMENT FOR CRIME SHOULD BE GRADUATED AND PROPORTIONATE TO [THE] OFFENSE.

ABUSE OF DISCRETION BY THE TRIAL HABEAS COURT, IN THE JUDICIAL PROCEEDINGS
WHERE THE RECORD SHOWS THE STATE HABEAS COURT FAILURE TO COMPLY WITH STATUTORY
APPELLATE PROCEDURE, SPECIFICALLY (SEE PAGE 84) WHEN PETITIONER'S HABEAS COUNSEL WAS, AND
REASONABLE FUNDINGS TO THE COURT, AND WHEN THESE FUNDINGS CAME TO LIGHT THE HABEAS
TRIAL COURT STAYED SENT AND TOOK NO ACTION IN VIOLATION OF JUDICIAL PROCEDURE A
JUDGE IS AN OFFICER OF THE COURT AND HAS SWORN TO UPHOLD THE LAW TO THE BEST
OF HIS ABILITY AND THE INTEREST OF JUSTICE, THE HABEAS TRIAL COURT VIOLATED THE
DUE PROCESS UNDER COURSE OF LAW. THE STATES REQUESTS A JUDGE TO ACT

AND ADDRESS THE COURT IN HIS OWN AUTHORITIES, AND BRING AN OFFICER OF THE COURT
HE WAS REQUIRED TO COMPLY WITH LEGAL AND ETHICAL RESPONSIBILITIES, WHEN IT WAS
A PLEA OFFER TO HIM DURING TRIAL, IT WAS THE TRIAL HARBAS COURT TO DETERMINE WHAT
ACTION TO TAKE AND WHAT LAW WAS VIOLATED IF ANY. IT WAS OBJECTIVELY UNREASONABLE
FOR THE HARBAS COURT TO STAY SILENT AND NOT ACT, FURTHER MORE THE COURT NOT FOLLOWING
THE DUE PROCESS OF LAW AND LITIGANT HARBAS COUNSEL DO THE TALKING FOR
THE STATE. (BECAUSE THE REMEDY IN THAT CASE IS AN OFFER -- (SEE: 196-89) IF A PLEA
OFFER IS NOT COMMUNICATED TO THE DEFENDANT, THE REMEDY IS TO REVERSE
THE CASE AND RE-INSTATE THE PLEA OFFER. THE ONLY PERSON THAT HAD AUTHORITY WAS
THE TRIAL HARBAS COURT TO REVERSE THE CASE, AND RE-INSTATE THE PLEA OFFER. THE WAY
JUDICIAL PROCEDURE WAS HANDLED WAS NOT THE LEGAL AN CORRECT WAY, THE DUE COU-
RSSE OF LAW, AND BECAUSE OF THIS PETITIONER WAS DEPRIVED OF FUNDAMENTAL INTERESTS
AT THE HEART OF DUE PROCESS AND EQUAL PROTECTION RIGHTS. THE 25 YEARS
RE-INSTATE PLEA OFFER WAS GROSSLY DISPROPORTIONATE FOR THE CHARGE CRIME ON PETITIO-
NERS INDICTMENT. DUE PROCESS PROHIBITS OFFENSE OF CRIME TO BE ENHANCED, WITHOUT
JUSTIFICATION.

LAW REQUIRES BY THE CONSTITUTION THAT ANY FACT THAT INCREASES THE PENALTY
FOR A CRIME BEYOND THE PRESCRIBED STATUTORY MAXIMUM, OTHER THAN THE FACT
OF A PRIOR CONVICTION, MUST BE SUBMITTED TO A JURY AND PROVED BEYOND A REAS-
ONABLE DOUBT U.S.C.A. CONST. AMEND. 14.

CONSTITUTIONAL LAW-4579.

A DEFENDANT IN A CRIMINAL CASE HAS FIFTH AMENDMENT DUE PROCESS RIGHT TO
BE INDICTED ONLY FOR WHICH HE IS TO BE TRIED, OR TO BE TRIED ONLY FOR THE
THE OFFENSE FOR WHICH HE IS UNDER INDICTMENT. U.S.C.A. CONST. AMEND. 5.

U.S.-V-BEARD, 436 F.2d 1084 (C.A.5TH 1971).

SUPREME COURT'S DECISION IN APPENDIX-V-NEW JERSEY, WHICH FOUND NEW JER-
SEY CRIMINAL STATUTE TO BE UNCONSTITUTIONAL (DID) INVALIDATE PETITIONER'S ENH-
ANCE RE-INSTATE PLEA OFFER SENTENCE. PETITIONER HARBAS COUNSEL ADDRESS THE HARBAS COURT
OF THE FINDINGS (TRIAL ATTORNEY (SEE: PAGE-6-8) NOT COMMUNICATED A PLEA OFFER DURING TRIAL)
THE HARBAS JUDGE WAS REQUIRED BY THE RULE OF LAW TO INFORM THE JUDICIAL 1960-
CEDED WHAT KIND OF VIOLATION OF LAW CONSTITUTED THE FINDINGS AND THE HARBAS
JUDGE WAS REQUIRED BY THE LAW TO RETURN PETITIONER'S CASE TO THE RELEVANT
AND OFFER A PLEA THAT CONSTITUTES FOR THE CRIME ONLY DUE PROCESS PROHIBITS
STATE ACTS THAT EXCEED PRISONERS SENTENCE IN AN UNEXPECTED MANNER.

U.S.C.A. CONST. AMEND. 5, 14, THOMPSON-V-COOKRELL, 263 F.3d 423 (C.A.5TH 2000).

THE HARBAS COURT ALLOWED PETITIONER'S HARBAS COUNSEL TO MOVE FORWARD AND WITH AN
APPLIED SENTENCE ENHANCEMENT IN THE RE-INSTATE PLEA OFFER, WHEN THE LAW STATES
PETITIONER CAN ONLY BE PUNISH FOR THE OFFENSE ON HIS INDICTMENT.

PETITIONER POINTS TO THE PLEA BARGAIN OFFER AT SELF 25 YEARS IS UNCONSTITUTIONAL FOR A SECOND DEGREE FELONY THATS (2-20) MAXIMUM FOR AGGRAVATED ASSAULT IN PETITIONERS INDICTMENT. TRIAL ATTORNEY WAS ALSO INSTRUCTED FOR NOT INVESTIGATING ENHANCEMENT PLEA BARGAIN THATS TWO VIOLATION IN THE EXTRAORDINARY FINDINGS

APPENDIX - V - NEW JERSEY, 120 S.Ct 2348 (2000)

THE MAXIMUM STATUTORY PENALTY FOR THE CHARGE CRIME ON PETITIONERS INDICTMENT. COUNSEL TO MOVE FORWARD IN RE-INSTANTIAL AND RE-OFFENSE A PLEA THAT WAS BEYOND A VIOLATION OF ANY KIND BUT YET THE HARRIS TRIAL COURT ALLOWED PETITIONERS HARRIS "NOT DISCLOSED" AT ALL (SEE APPENDIX-B) FOR REVIEW OR EVEN CONSIDERED TO BE. CRIMINAL APPEALS WAS DENIED TO REVIEW THESE FINDINGS, AS THEY WERE (SEE APPENDIX-B) IN THESE FINDINGS AND CONCLUSION OF LAW, THE COURT OF (DID NOT INCLUDE) THE EXTRAORDINARY FINDINGS AND THE REMEDY. PETITIONER WAS PRESENT BY THE TRIAL HARRIS COURT IN VIOLATION OF THE FOUND. REASONABLE NOT TO DISCLOSE THIS FINDINGS THAT WERE RELEVANT TO REMAND ORDER. OFFER DUAL TRIAL TO BE A FINDINGS TO BE REVIEWED AND ITS OBVIOUSLY UNDER CONSIDERATION. THE EVIDENCE OF PETITIONERS TRIAL ATTORNEY NOT COMMUNICATING A PLEA ABUSE OF DISCRETION (SEE APPENDIX-B) BY THE TRIAL HARRIS COURT IN NOT

CHILDRRESS - V - JOHNSON, 103 F.3d, 1221, Appeal After Remand, 132, F.3d, 1455

(C.A. 5th Cir. 1997)
PRIOR CONVICTIONS MUST BE ALLEGED IN INDICTMENT TO BE USED TO ENHANCE DEFENDANT SENTENCE UNDER TEXAS LAW. (SEE APPENDIX-E) THERE WERE NONE!

U.S.C.A. CONST. AMEND. 14, LEE - V. UNITED STATES, 137 S.Ct 1958 (2017)

MENT OF FACTS THAT INCREASED THE PRESUMED RANGE OF PENALTIES. IN DECIDING WHETHER TO ENHANCE A SENTENCE REMOVED FROM JURY THE ASSESS. TIES COMES INTO PLAY ONLY AFTER VERDICT OF GUILTY AND FACTORS CONSIDERED OF PUNISHMENT APPLICABLE TO PARTICULAR OFFENSE, SINCE THE ENHANCEMENT STATEMENT REFERRED TO PUNISHMENT ASSESSED THAT ON THEIR FACE, ARE NOT WITHIN THE REALM OF PUNISHMENT. STATE WAS CONSTITUTIONALLY PROHIBITED TO APPLY ENHANCEMENT PUNISHMENT BACK TO THE ORIGINAL CHARGE, AND OFFER A PLEA THAT CONSTITUTES FOR THE CHARGE. ERSED AS THE HARRIS COURT ALLOWED IN THIS CASE IT WAS RETAINED BY LAW TO GO. PETITIONER WAS ON TRIAL FOR, BY STATUTES AND CONSTITUTIONAL LAW, WHEN A CASE IS RE-REVIEWED THE STATE WAS PROHIBITED TO APPLY ANY KIND OF ENHANCEMENT TO THE OFFENSE WHICH SAME PLEA OFFER, WHEN THIS PLEA OFFER DID NOT CONSTITUTE FOR THE CHARGE CRIME. ZAL TO MOVE FORWARD) AND IT ALLOWED PETITIONERS COUNSEL TO RE-INSTATE THE COUNSEL. OBVIOUSLY UNREASONABLE WHEN THE HARRIS COURT ALLOWED THE PROCEED- THE EXTRAORDINARY FINDINGS THAT CAME TO (SEE PAGE 8-9) LIGHT IN HARRIS TRIAL COURT ON REMAND CASE EX PARTE MARTIN SALINAS NO. 03-73-707-01 BY PETITIONERS HARRIS

THAT WERE TOGETHER, IF PETITIONER'S HABEAS COUNSEL WOULD HAVE LISTEN WITH PETITIONER TOLD HIM, THAT PETITIONER WAS OFFERED BY THE STATE WAS NOT LEGAL AND THAT IT WAS UNCONSTITUTIONAL FOR THE CRIME ON PETITIONER'S INDICTMENT (SECTION 9) WE SAID IT WAS MOOD. PETITIONER REQUESTED THE PETITIONER OFFER (DUE TO DEFECTIVE LEGAL REPRESENTATION DURING POST-CONVICTION HEARING, AND THAT IS WHY HE STATED TO THE COURT HE WOULD HAVE REQUESTED IT AT TRIAL DUE TO TRIAL ATTORNEY DEFECTIVE REPRESENTATION WHEN SHE DID NOT LOOK INTO IT. LAFER-V-COOPER, 132 S.Ct. 1376 (2012).

THE SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL EXTENDS TO THE CONSIDERATION OF PLA OFFERS THAT LAPSE OR ARE REJECTED. THE RIGHT APPLIES TO "ALL CRITICAL" STAGES OF THE CRIMINAL PROCEEDINGS. "MONTGOMERY-V-LOUISIANA, 566 U.S. 778, 786; HILL-V-LOCKHART, 474 U.S. 52; STRICKLAND-V-WASHINGTON, 466 U.S. 668, 684, 687, 694 S.Ct. 2052 (1984).

THE SIXTH AMENDMENT VIOLATION IS ALL READY ESTABLISHED WHEN THE TRIAL HABEAS COURT ALLOWED PETITIONER'S HABEAS (COUNSEL MR. STADMAN) TO MOVE FORWARD AND RE-INSTATED AND RE-OFFERED THE UNCOMMUNICATED PLA OFFER AS A REMEDY TO CURE THE VIOLATION. THE PROCEEDING WAS "NOT" CARRIED OUT PROPERLY AND WAS NOT CARRIED OUT LEGALLY WHEN THE PROCESS OF THE LAW IS VIOLATED WITH AN ILLEGAL PLA OFFER. THE DUE COURSE OF LAW WAS VIOLATED BY THE HABEAS TRIAL JUDGE IN NOT ADDRESSING THE COURT AND UPHOLDING HIS RESPONSIBILITY AS THE CONSTITUTION STATUTES REQUIRES A JUDGE TO DO THE FUNDAMENTAL NECESSARILY OF JUSTICE. COLEMAN-V-THOMPSON, 501 U.S. 722, 749-50 (1999) RESULTANT IN THE PLA OFFER ITSELF. RECORD (SEE APPENDIX-E) INDICATES PETITIONER WAS ON TRIAL FOR AGGRAVATED ASSAULT A SECOND DEGREE FELONY CHARGES (2-TO 20) MAXIMUM PENALTY WAS THE IMPROPER PLA OFFER IS A VIOLATION OF THE EIGHTH AMENDMENT (CRUEL AND UNUSUAL PUNISHMENT) 25 YEAR PLA OFFER IS A MIXED QUESTION OF LAW AND FACTS, THAT DOES NOT FIT THE CHARGE OFFENSE. PETITIONER WAS ON TRIAL FOR, THE HABEAS COURT FAILURE TO TAKE ACTION, IS A FUNDAMENTAL AMENDMENT VIOLATION OF DUE PROCESS.

QUESTION OF FACT-PETITIONER APPELLATE ATTORNEY (SEE PAGE 8) RE-OFFERED THE UNCOMMUNICATED PLA FOR (THE STATE HABEAS COURT) TO CURE THE REMEDY FOR THE REMEDY IS IT A PLA OFFER WAS NOT COMMUNICATED BY AN ATTORNEY, IT IS TO OVER TURN THE CASE (REVERSE) AND RE-OFFER THE PLA. THE SAME PETITIONER OFFER THAT WAS ILLEGALLY ENHANCED BY THE PROSECUTION. U.S.-V-BROOKER, 125 S.Ct. 738 (2005).

THE INEFFECTIVE ASSISTANCE OF COUNSEL BY PETITIONER'S (APPELLATE ATTORNEY) LED NOT TO AN OFFER'S ACCEPTANCE, BUT TO ITS REJECTION, PETITIONER TOLD AND ADVISED HIS APPELLATE ATTORNEY TO INVESTIGATE THE ILLEGAL AND DISPROPORTIONATE PLA OFFER. THE RESULT OF INEFFECTIVE ASSISTANCE DURING THE RE-OFFERED PLA NEGOTIATION PROCESS, FAR FROM CURE THE ERROR, THE HABEAS COURT CAUSED THE INJURY BY ALLOWING PETITIONER'S APPELLATE ATTORNEY TO GO FORWARD WITH THE PLA OFFER THAT WAS ILLEGALLY ENHANCED BY THE STATE (PROSECUTION) WHEN SAID OFFER IT AS A PLA BARRING A VIOLATION OF THE

THE TOTAL HARDSHIP COURT WAS REQUIRED BY LAW TO COMPLY WITH REQUIREMENTS OF CODE OF CRIMINAL PROCEDURE TO RETURN PETITIONER TO THE BEGINNING OF TRIAL AND OFFER A PLAN THAT IS LEGAL AND APPROPRIATE FOR THE CHARGE CHARGES ON HIS INDICTMENT, WHEN USUAL A REMEDY TO CURE THE VIOLATION.

U.S. V. DEAR-DEAR, 327 F.3D 410 (C.A.5TH, 2003).

APPLICATION OF CURRENT SENTENTIAL GUIDELINES VIOLATES EX POST FACTO CLAUSE IF IT RESULT IN MORE ONEROUS PENALTY THAT WOULD APPLICATION OF GUIDELINES IN EFFECT AT TIME OF OFFENSE.

U.S. V. HARMS, 442 F.3D 367.

U.S.A. CONST. ART. I § 9 CL. 3, USSC § 1B1.1 ET SEQ, 18 U.S.C.A.

C.A.5TH 2006 - A SENTENCE COURT MUST APPLY THE VERSION OF THE SENTENCING GUIDELINES EFFECTIVE AT THE TIME OF SENTENCE UNLESS APPLICATION OF THAT VERSION WOULD VIOLATE THE EX POST FACTO CLAUSE OF THE CONSTITUTION. SUCH VIOLATION OCCURS WHEN APPLICATION OF A CURRENT GUIDELINES RESULTS IN A HARSHER PENALTY THAN WOULD APPLICATION OF THE GUIDELINES IN PLACE AT THE TIME OF THE OFFENSE. U.S.A. CONST. ART. I § 9 CL. 3, USSC § 1B1.1 ET SEQ, 18 U.S.C.A.

MENDEZ-V-S-STATE, 212 SW.3D 882, VERNON'S ANN TEXAS C.C.P. ART 36.01.

TEX. APP. AUGUST - 2006 - THE READINESS OF SENTENCING ENHANCEMENT ALLEGATIONS AND THE ENTRY OF THE DEFENDANT'S PLEA THUS ARE MANDATORY AND NO ISSUE IS JOINED BETWEEN THE STATE AND THE DEFENDANT WITH RESPECT TO THE DEFENDANT'S PRIOR CRIMINAL RECORD IF THIS IS NOT DONE.

SENTENCING AND PUNISHMENT - 235
UNLESS OTHERWISE PROVIDED BY STATUTE, IT IS DUTY OF COURT TO IMPOSE SENTENCE, OR MAKE SUCH OTHER DISPOSITION OF CASE AS REQUIRED BY LAW, AFTER FACT HAVE BEEN DECIDED BY JURY. POPE-V- U.S., 298 F.2D 507 (C.A.5TH, 1962).

120 S.C.T. 2348 (2000)

"BETWEEN THE SENTENCE PROVISIONS" OF THE CRIMINAL CODE. APPENDIX-V-NEW JERSEY

THE MORE FACT THAT A STATE LEGISLATURE HAS PLACED A CRIMINAL COMPONENT WITHIN THE SENTENCE PROVISIONS "OF THE CRIMINAL CODE. APPENDIX-V-NEW JERSEY" (2012).
ENSE WAS COMMITTED. LAFER-V-COOPER, 566 U.S. — (2012).
BE IMPOSED THAN THE ONE THAT WAS APPLICABLE AT THE TIME OF THE PENALTY UNDER (DECLARATION OF HUMAN RIGHTS) ARTICLE -11(2) - NOR SHALL A HEAVIER PENALTY BE IMPOSED THAN THE ONE THAT WAS APPLICABLE AT THE TIME OF THE PENALTY.
AMOUNT OF (ADDITIONAL) JAIL TIME HAS SIXTH AND EIGHTH AMENDMENT SIGNIFICANCE.
OR SENTENCE OF LESS PRISON TIME. LOVER-V-WATKINS, 531 U.S. 198, 203 (2001) (ANY
IS NECESSARY TO SHOW A REASONABLE PROBABILITY THAT THE FIND RESULT OF THE JUDICIAL PROCESS WOULD HAVE BEEN MORE FAVORABLE BY REASON OF A PLEA TO A LESSER CHARGE
EIGHTH AMENDMENT OF CONSTITUTION. TO ESTABLISH PREJUDICE IN THIS INSTANCE IT

(C.A. 5TH TEX. 1983) NO PRINCIPLE OF PROCEDURAL DUE PROCESS IS MORE CLEARLY ESTABLISHED THAN THAT NOTICE OF SPECIFIC CHARGE TO BE HEARD IN TRIAL OF ISSUES PASSED BY THAT CHARGE, ARE AMONG CONSTITUTIONAL RIGHTS OF EVERY ACCUSED. U.S.C.A. CONST. AMEND. 5, 14. PLUNKETT-V-ESTELLE, 709 F.2d 1004. MCKASKLE-V-PLUNKETT, 104 S.Ct. 1004.

(C.A. 5TH TEX. 2006) - MISFEASANCE OF JUSTICE - IF THE STATE OR GOVERNMENT FAILS TO COMPLY WITH PROCEDURAL REQUIREMENT GOVERNING NOTICE AND INFORMATION OF PROSECUTION, COURT CANNOT ENHANCE SENTENCE BEFORE ANY RULING ON ENHANCEMENT ALLEGATIONS. U.S.-V-MCDONALD, 467 F.3d 880, ON REMAND (2007) WL-470639, REMAND, 485 F.3d 290.

SENTENCING AND PUNISHMENT - 322, 329. OTHER THAN THE FACT OF PRIOR CONVICTION, ANY FACT THAT INCREASES PENALTY FOR CRIME BEYOND STATUTORY MAXIMUM MUST BE SUBMITTED TO JURY AND PROVE BEYOND REASONABLE DOUBT.

CALIFORNIA LAW - 568. RELEVANT INQUIRY IN DETERMINING WHETHER FINDING IS ESSENTIAL ELEMENT OF OFFENSE WHICH MUST BE DECIDED BY JURY BEYOND REASONABLE DOUBT IS ONE OF FORM, BUT OF EFFECT, NAMELY WHETHER REQUESTED FINDING EXPOSES DEFENDANT TO GREATER PUNISHMENT THAN THAT AUTHORIZED BY JURY VERDICT.

THE FIFTH AMENDMENT DUE PROCESS CLAUSE AND SIXTH AMENDMENT'S NOTICE AND JURY TRIAL GUARANTEES REQUIRES THAT ANY FACT OTHER THAN PRIOR CONVICTION THAT INCREASES THE MAXIMUM PENALTY FOR A CRIME MUST BE CHARGED IN AN INDICTMENT SUBMITTED TO A JURY AND PROVED BEYOND A REASONABLE DOUBT. THE FOURTEENTH AMENDMENT COMMANDS THE SAME ANSWER WHEN A STATE STATUTE IS INVOLVED.

IN MISTRALIA-V-UNITED STATES, 488 U.S. 361, 109 S.Ct. 647, 102 L.Ed.2d 714 (1989) WE POINTED OUT THAT CONGRESS CHOSE EXPLICITLY TO ADOPT A "MANDATORY" GUIDELINE SYSTEM, "RATHER THAN A SYSTEM THAT WOULD HAVE BEEN ONLY ADVISORY" AND THAT THE STATE "MAKES THE SUBSTANTIAL COMMISSIONS GUIDELINES BINDING" ON THE COURTS.

QUESTIONS PRESENTED - WITH THE (PETITIONER SALAZAR) HABEAS CORPUS ABUSE IT'S DISCRETION IN NOT FOLLOWING THE DUE COURSE OF LAW IN ITS JUDICIAL PROCEEDING AND ALLOWED PETITIONER'S HABEAS CORPUS TO RE-OFFER AND RE-INSTITUTE PLEA, GIVEN THAT IT FILED THE 20 YEARS MAXIMUM FOR THE OFFENSE CHARGE ON INDICTMENT. JONES-V-UNITED STATES, 506 U.S. 227, 119 S.Ct. 1215, 143 L.Ed.2d 311.

THE STATE DID NOT PROVIDE REASONABLE TIMELY NOTICE OF ITS INTENT TO USE PETITIONER'S PRIOR CONVICTIONS (SEE APPENDIX - F) FOR ENHANCEMENT OF PUNISHMENT GIVEN WHILE JURY WAS STANDELL IN HALLWAY, WAITING TO RETURN INTO COURT ROOM AFTER STATE ASKED THEM TO STEP OUT FOR 5 MINUTES TO HAVE TRAIL JUDGE SIGN PEN-PACK INTO EVIDENCE, WAS UNTIMELY. V.T.C.A. PENAL CODE §§ 12.34 (M), 31.03 (E) (5), VERNON'S ANN. TEXAS C.P. ART 1.051 (E) (SEE APPENDIX - F, G)

(PRIOR CONVICTIONS MUST BE ALLEGED IN INDICTMENT TO BE USED TO ENHANCE DEFENDANT'S SENTENCE, UNDER TEXAS LAW. CHILDRSS-V-JOHNSON 103 F.3d 1221, APPEAL AFTER REMAND, 132 F.3d 1455 (CA. STA. 1997). (SEE APPENDIX - E)

THE QUESTION WHETHER PETITIONER HAD A CONSTITUTIONAL RIGHT TO HAVE A JURY FIND THEM TO THE ENHANCEMENT BEFORE THE PLEA BARBARA OFFER WAS INCURRED BEYOND THE MAXIMUM RAISE AUTHORIZED BY LAW FOR THE CHARGE CRIME, WHEN THE EVIDENCE (SEE APPENDIX - E) SHOWS THERE WERE NO PRIOR CONVICTIONS NOR WERE THERE ANY ENHANCEMENT PARAGRAPHS IN HIS INDICTMENT, FURTHER MORE "FORCE" AND UNCONSTITUTIONAL PLEA OFFER THAT WAS "NOT AUTHORIZED" BY LAW TO CURE A SIXTH AMENDMENT VIOLATION. PETITIONER RE-STATE THE RE-STATE PLEA OFFER FOR THE SAME REASON HE WAS FORGONE AND HAD NO CHOICE BUT GO TO TRIAL, TRIAL ATTORNEY DID NOT INVESTIGATE THE EVIDENCE PLEA BARBARA OFFER, WHEN PETITIONER ADVISE HE-ER THAT THE PLEA OFFER DID NOT FIT THE CRIME, AND WHEN BROUGHT TO THE ATTORNEY OF PETITIONER HAD AS COUNSEL HE (SEE PAGE 8) STATED IT WAS MOST "ISSUE, PETITIONER ADVISED HIS HAD AS ATTORNEY THE PLEA IS NOT AUTHORIZED BY LAW FOR THE CHARGE CRIME HAD AS COUNSEL WAS UNTIMELY FOR NOT HAVING KNOWLEDGE OF LEGAL PRINCIPLES THAT WOULD HAVE SUPPORT PETITIONER'S CLAIM OF UNTIMELY ASSISTANCE OF COUNSEL STRICKLAND-V-WASHINGTON, 466 U.S. 668, 104 S.Ct. 2052 (1984).

TEX. CRIM. APP. 2000
FAILURE OF DEFENSE COUNSEL TO INFORM A CO-MINOR DEFENDANT OF A PLEA OFFER MADE BY THE STATE IS AN OMMISSION THAT FALLS BELOW AN OBJECTIVE STANDARD OF PROFESSIONAL REASONABLENESS ESTABLISHED FIRST ELEMENT OF UNTIMELY ASSISTANCE OF COUNSEL. U.S.C.A. CONST. AMEND. 6.
EX PARTE LEWKE, 13 S.W.3d 791, MISSOURI-V-FRYE, 566 U.S. 2013, 2013.

FACT FINDER IN DECIDING THE APPROPRIATE PLEA BARBARA SENTENCE ZAN PARTICULAR CASE WHEN THE JURY ASSESSES PUNISHMENT, VIOLATED DEFENDANT'S RIGHTS TO JURY PROCESS OR DUE COURSE OF LAW, UNDER SEVENTH STATE, EXT. REVE PROSECUTE CAN LEAD TO AN UNFAIR PLEA BARBARA OFFER, WHEN THE PLEA BARBARA OFFER IS DISPROPORTIONATE FOR THE CHARGE CRIME. (SEE APPENDIX - E)
DUREN-V-DUMETERMAN, N.D. TEX. (2009) 656, F. SUPP. 2d. 615, U.S.-V-BERND, 436 F.2d 1084.

SENTENCING AND PUNISHMENT - 34.

(C.A. 5th Tex. 2003)

SENTENCE THAT EXCEEDS STATUTORY MAXIMUM IS AN ILLEGAL SENTENCE AND THEREFORE CONSTITUTES PLEA ERROR. U.S.-V. CONLEY, 349 F.3d 837.

(C.A. 5th Tex. 1994)

SENTENCE MAY NOT EXCEED MAXIMUM STATUTORY LIMIT. U.S.-V. COLLINS, 140 F.3d 95, (AFFIRMED EN BANC), CERTIORARI DENIED, 115 S.Ct. 1986.

(TEX. CRIM. APP. 2006) NEITHER THE STATE NOR THE TRIAL COURT HAS THE AUTHORITY TO ENSURE COMPLIANCE WITH A SENTENCE ENTERED PURSUANT TO A PLEA AGREEMENT THAT SO GREATLY EXCEEDS THE STATUTORY RANGE OF PUNISHMENT EX PRATE RZL, 194 SW 3d 508.

(TEX. CRIM. APP. 2003) A SENTENCE THAT IS OUTSIDE THE MAXIMUM OR MINIMUM RANGE OF PUNISHMENT IS UNAUTHORIZED BY LAW AND THEREFORE ILLEGAL. MITZEL-V. STATE, 119 S.W.3d 804.

(TEX. CRIM. APP. 1991) IF PUNISHMENT IS NOT AUTHORIZED BY LAW, PORTION OF SENTENCE IMPOSIBLE THAT PUNISHMENT IS VOID. HEATH-V. STATE, 807 SW.2d 335, SENTENCES NOT AUTHORIZED BY LAW ARE VOID (PER BACUS), WITH THOSE JUDGES CONCURRENT AND TWO JUDGES CONCURRING IN RESULT).

(C.A. 5th TEX 2007) THE MORE A SENTENCE VARIES FROM THE APPLICABLE GUIDELINES RANGE, THE MORE COMPELLING THE JUSTIFICATION BASED ON STATUTORY FACTORS FOR IMPOSING SENTENCE MUST BE. ALTHOUGH DISTRICT COURT NEED NOT MECHANISTICALLY DISCUSS EACH STATUTORY FACTOR, COURTS STATEMENT OF REASON MUST ENABLE COURT OF APPEALS TO DETERMINE WHETHER AS A MATTER OF SUBSTANCE, THE SENTENCE FACTORS IN STATE SUPPORT THE SENTENCE. U.S.-V. SANCHEZ, 484 F.3d 803.

(TEX. CRIM. APP. 2006) A DISTRICT THAT REINDERS A SENTENCE VOID MAY BE RAISED AT ANY TIME. EX PRATE RZL, 194 SW 3d 508, A VOID OR ILLEGAL SENTENCE IS ONE THAT IS NOT AUTHORIZED BY LAW.

TO BE ADEQUATE NOTICE OF THE STATES INTENT TO PROVE SENTENCE ENHANCEMENT ALLEGATIONS DURING THE PUNISHMENT PHASE OF TRIAL MUST BE REASONABLE. U.S.-V. ARNOLD, 467 F.3d 880, ON REMAND 2007 / 485 F.3d 290.

AN ACCUSED IS ENTITLED TO PROPER NOTICE OF PRIOR CONVICTIONS ALLEGED FOR ENHANCEMENT OF PUNISHMENT. VERNON'S ANN. TEXAS C.C.P. ART. 28.10 (A).

THE PURPOSE OF STATUTE PROVIDING FOR NOTICE OF INVOLVEMENT OF STATE PROSECUTOR FOR INCREASED SENTENCING FOR DANGEROUS SPECIAL OFFENDER WAS TO ASSURE THAT THE FAILURE OF NOTICE WILL NOT PREJUDICE THE DUTY OR COURT AGAINST THE DEFENDANT BEFORE THE DETERMINATION OF HIS GUILT OR INNOCENCE. 18 U.S.C.A. § 3575 (a) U.S. v. HAT 397, F.Supp. 1392 (N.D. Cal. 1982), AFFIRMED IN PART, VACATED IN PART, U.S. v. BARTLEY, 537 F.2d 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

(SEE APPENDIX C - PETITIONERS' INDICEMENT.)

PETITIONERS' CLAIMS REGARDING BOTH TOTAL AND HABEAS APPELLATE COUNSEL ARE GOVERNED BY THE SUPREME COURT'S CLEARLY ESTABLISHED STANDARD IN STOCKLAND - V. WASHINGTON, 466 U.S. 668 (1984). SEE AMADOR-V. QUATERMAN, 458 F.3d 411 (5th Cir. 2006) (RECOGNIZING THAT STOCKLAND APPLIES TO INEFFECTIVE ASSISTANCE OF COUNSEL AND OF APPELLATE COUNSEL CLAIMS). TO ESTABLISH DEFICIENT PERFORMANCE, PETITIONERS MUST SHOW THAT COUNSEL'S REPRESENTATION "FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS," TO ESTABLISH PREJUDICE PETITIONERS MUST SHOW THAT HIS COUNSEL'S DEFICIENT PERFORMANCE THAT, BUT FOR HIS COUNSEL'S DEFICIENT PERFORMANCE, THERE IS A REASONABLE PROBABILITY THAT THE OUTCOME OF THE HABEAS APPELLATE HEARING WOULD HAVE BEEN DIFFERENT. PETITIONERS WERE DENIED DUE PROCESS OF LAW BY NOT BEING OFFERED THE LOCAL AND PROPER PLAN, AT TOTAL AND AT THE APPELLATE COURT. NONE OF THE ATTORNEYS TOTAL NOR APPELLATE COUNSEL LOOKED AT THE UNCONSTITUTIONAL PLAN, WITH PETITIONERS INFORM BOTH ATTORNEYS THAT THE PLAN OFFER WAS DISPROPORTIONATE FOR THE CHANGE CLAIMS ON HIS INDICEMENT.

MR. STOCKMAN APPELLATE COUNSEL DID NOT PRESENT THE CONSTITUTIONAL ERROR THAT THE REINSTATED PLAN OFFER WAS ILLEGAL ENHANCED AND NOT A PROPER PLAN OFFER FOR THE OFFENSE PETITIONERS WAS ON TOTAL FOR THOSE FOR PREJUDICE DEFENDANT IN VIOLATION OF HIS DUE PROCESS RIGHTS AND WITH APPELLATE COUNSEL (2) THE SERVES FOR THE STATE HABEAS COURT, AND RE-OFFERED THE SAME PLAN OFFER WAS EACH AMENDMENT VIOLATION, THE 25 YEARS PLAN THAT WAS NOT COMMUNICATED DURING TOTAL WAS IN VIOLATION OF APPENDIX, 530 U.S. AT 444, 120 S.Ct. 2348, VIOLATION ON PUNISHMENT BEYOND THE STATUTORY MAXIMUM APPLIES REGARDLESS OF WHETHER THE FACT IS CONSIDERED AN ELEMENT OR A SENTENCING FACTOR. THE ONLY REMEDY WHICH COULD CURE THE CONSTITUTIONAL ERROR WAS TO RETURN THE REQUEST TO THE POINT IN THE PROCEEDING WHEN THE INEFFECTIVE ASSISTANCE OF COUNSEL CAUSED THE PREVIOUS ERROR IN VIOLATION OF CONSTITUTIONAL RIGHTS. FAYE, 566 U.S. 2012, HELL, 474 U.S. AT 370.

CONSTITUTIONAL LAW - 1030 (1)

BUT ONE FEDERAL APPELLATE COURT CAN CORRECT AN ERROR NOT RAISED AT TOTAL, THERE MUST BE (2) ERROR (2) THAT IS PLAN AND (3) THAT AFFECTS SUBSTANTIAL RIGHTS, IF ALL THESE CONDITIONS ARE MET APPELLATE COURT MAY EXERCISE ITS DISCRETION TO NOTICE (CORRECTED) ERROR, BUT ONLY IF (4) ERROR SERIOUSLY AFFECTS FAIRNESS, INTEGRITY, OR PUBLIC REPUTATION OF JUDICIAL PROCESS.

TEXAS Rule of Appellate Procedure

Article - 101.01

EXCEPTION FOR CONSTITUTIONAL OR STATUTORY PROVISIONS OR OTHER RULES
DESPITE THESE RULES A COURT MUST ADMIT OR EXCLUDE EVIDENCE IF REQUIRED
TO DO SO BY THE UNITED STATES OR TEXAS CONSTITUTION, A FEDERAL OR TEXAS STA-
TUTE OR A RULE PRESCRIBED BY THE UNITED STATES OR TEXAS SUPREME COURT
OR THE TEXAS COURT OF CRIMINAL APPEALS, IF POSSIBLE, A COURT SHOULD RESOL-
VE BY REASONABLE CONSTRUCTION ANY INCONSISTENCY BETWEEN THESE RULES AND
APPLICABLE CONSTITUTIONAL OR STATUTORY PROVISIONS OR OTHER RULES.

HABEAS CORPUS - 76.01

WHILE THE CLEAR ERROR DOCTRINE HAS MOST OFTEN BEEN APPLIED TO FACTUAL
DETERMINATIONS, ITS IS APPLICABLE TO HABEAS REVIEW OF LEGAL DETERMINATIONS
AS WELL

UNDER A.E.D. P.A. WE MUST REVERSE A STATE COURT'S DECISION AS INVOLVING
AN "UNREASONABLE APPLICATION" OF CLEARLY ESTABLISHED FEDERAL LAW WHEN
OUR INDEPENDENT REVIEW OF THE LEGAL QUESTION DOES NOT MERELY ALLOW
US ULTIMATELY TO CONCLUDE THAT THE PETITIONER HAS THE BETTER OF TWO
REASONABLE LEGAL ARGUMENTS BUT RATHER LEAVES US WITH A FEELING OF
THAT ONE ANSWER, THE ONE REJECTED BY THE COURT, WAS CORRECT AND THE OTHER,
THE APPLICATION OF THE FEDERAL LAW THAT THE COURT ADOPTED, WAS ERRON-
EOUS - IN OTHER WORDS THAT CLEAR ERROR OCCURRED.

"IT CAN NOT BE MOOT" IF YOU HAVE BEEN DENIED YOUR CONSTITUTIONAL RIGHTS
WHEN ILLEGAL ACTION HAS BEEN TAKEN AN ISSUE OF FUNDAMENTS SHOULD NOT BE
DISMISSED AS "MOOT". BECAUSE IT IS CAPABLE OF RE-PETITION WHEN THE REAL
HABEAS COURT USE AN UNCONSTITUTIONALLY PLEN OFFER THAT IS NOT STATUTORY FOR
THE CLEAR ERROR DOCTRINE ON PETITIONER'S ENDORSEMENT. UNITED STATES SUPREME COURT
THAT "VOLUNTARY CESSATION OF ALLEGEDLY ILLEGAL CONDUCT DOES NOT DEPRIVE
THE TRIBUNAL OF POWER TO HEAR AND DETERMINE THE CASE."
LOS ANGELES COUNTY V. DAVES, 446 U.S. 625 - 631

(C.A.S. TEX. 2008)

STATE COURT'S APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAWS "UNREA-
SONABLE" PERMISSIBLE FEDERAL RULES UNDER AN ERROR DOCTRINE AND EFFECTIVE
DEATH PENALTY AT (A.E.D. P.A.) WHEN STATE COURT CORRECTLY IDENTIFIES GOV-
ERNMENT PRINCIPLE BUT APPLIES IT TO FACTS OF CASE IN OBJECTIVELY UN-
REASONABLE MANNER. ALSO UNREASONABLE APPLICATION MAY OCCUR IF STATE COURT
ESTABLISH UNREASONABLE EXTENDS LEGAL PRINCIPLE FROM SUPREME COURT
PRECEDENT TO NEW CONTEXT WHILE IT SHOULD NOT APPLY OR UNREASONABLY
REFUSES TO EXTEND THAT PRINCIPLE TO NEW CONTEXT WHILE IT SHOULD APPLY.

GOODRUM V. QUARTERMAN, 547 F.3d 249, 129 S.Ct. 1612.
23.

EVIDENTIARY HEARING STATEMENT OF FACTS FINDINGS

THE STATE HAS AS TRIAL COURT HELD A HEARING ON JUNE 22, 2010 PURSUANT TO THE ORDER OF THE COURT OF CRIMINAL APPEALS TO DETERMINE FACTS UNDERLYING APPLICANT'S CLAIM THAT BOTH HIS TRIAL AND APPEAL ATTORNEYS WERE INEFFECTIVE!

RICHARD ELLISON TESTIFIED THAT HE TALKED WITH APPLICANT ABOUT TESTIFYING AT TRIAL. (Id at 12). APPLICANT WANTED TO TESTIFY BUT ELLISON RECOMMENDED THAT HE NOT, TELLING APPLICANT THAT HIS PRIOR CRIMINAL HISTORY AND CONNECTIONS WITH THE MEXICAN MAFIA WOULD COME UP DURING HIS TESTIMONY. (Id at 12-13) ELLISON SAID THAT HE TOLD APPLICANT, "IT'S YOUR DECISION. YOU GOT TO MAKE THE DECISION. BUT I'M TELLING YOU I WOULDN'T DO IT."

ELLISON ADMITTED THAT HE KNEW NOTHING ABOUT TRIAL ATTORNEY PEARSON'S PRETRIAL INVESTIGATION. (Id at 20-21). MR ELLISON TESTIFIED THE COURT MADE IT VERY CLEAR THEY WEREN'T GOING TO ALLOW HIM TO PARTICIPATE. (Id at 29).

PATRICK MCGUIRE TESTIFIED THAT HE WAS APPLICANT'S APPELLATE ATTORNEY. (Id at 33). HE ACKNOWLEDGED THAT HE DID NOT CHALLENGE THE TRIAL COURT'S RULING DENYING APPLICANT'S REQUEST FOR A JURY INSTRUCTION ON SELF-DEFENSE AND DEFENSE OF OTHERS. (Id at 34). HE ALSO SAID, THOUGH, THAT HE DID NOT BELIEVE THAT THE ISSUE HAD BEEN PRESERVED ON APPEAL BECAUSE HE COULD NOT SEE ELLISON HAD MADE THE PROPOSED INSTRUCTION PART OF THE RECORD BY SUBMITTING THE INSTRUCTION IN WRITING TO THE TRIAL COURT. (Id at 36). HE SAID THAT HE NOTICED THAT THE TRANSCRIPT HAD INDICATED THAT ELLISON HAD SUBMITTED A PROPOSED WRITTEN JURY CHARGE BUT THAT THE CLERK COULD NOT PROVIDE HIM A COPY. (Id at 35-36). MCGUIRE SAID HE FOUND OUT THAT ELLISON HAD IN FACT OFFERED A PROPOSED WRITTEN JURY INSTRUCTION WHEN APPLICANT FILE HIS STATE WRIT APPLICATION. (Id at 37-38).

TRIAL ATTORNEY LUCY PEARSON TESTIFIED THAT SHE WAS APPOINTED TO REPRESENT APPLICANT THAT IT WAS HER FIRST JURY TRIAL, AND THAT SHE HAD BEEN PRACTICING ONLY A COUPLE OF MONTHS WHEN SHE RECEIVED THE APPOINTMENT. (Id at 42-43). SHE SAID THAT SHE HAD AN INVESTIGATOR HELP HER WITH THE CASE. (Id at 43). SHE SAID, THOUGH, THAT SHE DID NOT KNOW WHETHER HER INVESTIGATOR HAD VISITED THE CRIME SCENE. (Id at 44). SHE SAID THAT SHE DID NOT VISIT THE CRIME SCENE OR INSPECT THE STATES EVIDENCE INCLUDING THE KNIVES USED IN THE TRIAL (Id at 44-45). SHE TESTIFIED THAT SHE DID NOT SUBMIT APPLICANT'S MEDICAL RECORDS, WHICH INDICATED THAT HIS WOUNDS WERE DEFENSIVE IN NATURE, THAT SHE DID NOT SPEAK WITH ANY OF THE MEDICAL PROFESSIONALS WHO TREATED APPLICANT, AND THAT SHE DID NOT SEEK A COURT-APPOINTED EXPERT TO HELP HER INVESTIGATE THE KNIVES AND APPLICANT WOUNDS. (Id at 45-46). EX PARTE DUTCHOVER, 779 S.W. 2d, 76 (Tex. Crim. App. 1989).

SHE TESTIFIED THAT AT THE TIME OF APPLICANTS TRIAL SHE DID NOT KNOW HOW TO LAY A PROPER PREDICATE TO INTRODUCE EVIDENCE OR HOW TO PROPERLY OBJECT AT TRIAL (Id at 53). SHE SAID (BELIEVED) THAT SHE WAS INEFFECTIVE AND THAT HER INEFFECTIVENESS MAY HAVE AFFECTED THE OUTCOME OF THE TRIAL. Id. SHE AGREED THAT IF SHE "HAD MORE EXPERIENCE," "HAD MADE THE APPROPRIATE OBJECTIONS," AND "BEEN ABLE TO INTRODUCE EVIDENCE PROPERLY," "THAT THE OUTCOME OF THE TRIAL COULD HAVE BEEN DIFFERENT." (Id at 54). SHE ACKNOWLEDGED THAT SHE RECEIVED THE STATE'S NOTICES CONCERNING APPLICANTS' EXTRANEOUS MATTERS SIX DAYS BEFORE TRIAL AND THAT SHE DID NOT MOVE FOR A CONTINUANCE DUE TO THE LATE NOTICE OR OBJECT TO THE NOTICES. (Id at 55). SHE ALSO ADMITTED THAT SHE HAD NOT INVESTIGATED APPLICANTS' PRIOR CONVICTIONS AND THAT SHE DID NOT MAKE A RULE 404b OBJECTION WHEN THE STATE ATTEMPTED TO INTRODUCE APPLICANTS' EXTRANEOUS - OFFENSE TESTIMONY AT TRIAL (Id at 56). SHE ADMITTED THAT SHE STRUGGLED (GETTING THE 911 TAPE INTO EVIDENCE AND THAT SHE HAD NOT ATTEMPTED TO SUBPOENA SUTTON'S OTHER 911 CALLS, WHICH PEARSON THOUGHT WERE CRUCIAL AND WERE MADE ON THE TWO DAYS PRECEDING THE STRAUB AND WHICH SHOWED THAT SUTTON HAD CALLED POLICE COMPLAINT ABOUT (JESSIE ALVARA VICTIM) THAT ON ONE OCCASION SHERIFF DEPUTIES PICKED SUTTON UP AT ALVARA'S HOUSE AND TRANSPORTED HER TO APPLICANTS' HOUSE. (Id at 59)(64).

AS FOR THE INTRODUCTION OF EVIDENCE THAT APPLICANT WAS A MEMBER OF THE MEXICAN MARTA, PEARSON SAID THAT SHE WAS NOT PREPARED TO MAKE THE PROPER OBJECTIONS OR ASK FOR A LIMITING INSTRUCTION. (Id at 68-72). SHE SAID THAT IN RECALLING SUTTON THAT SHE OPEN THE DOOR TO EXTRANEOUS MATTERS. (Id at 72). PEARSON ACKNOWLEDGED THAT SHE BEGAN INVESTIGATION AFTER TRIAL WHEN SUTTON HAD MADE TWO 911 CALLS COMPLAINT ABOUT ALVARA, EVEN THOUGH SHE KNEW PRIOR TO TRIAL THAT THE CALLS HAD BEEN MADE. (Id at 73-74). ACKNOWLEDGING THAT SHE HAD FILED A MOTION TO HAVE THE EVIDENCE EXAMINED AND TESTED, PEARSON AGREED THAT HER THOUGHTFUL PRIOR TO TRIAL WAS THAT THE STATE WOULD HAVE HAD THE KNIVES TESTED SINCE THEY WERE IN THE STATES POSSESSION. (Id). SHE ALSO TESTIFIED THAT SHE SHOULD HAVE HAD THE KNIVES EXAMINED BY AN EXPERT. (Id at 74-75). AND THAT IT WOULD HAVE BEEN HELPED HER SELF-DEFENSE THEORY TO HAVE INTRODUCED PHOTOGRAPHS OF APPLICANTS' KNIFE WOUNDS. (Id. AT 75-76).

PEARSON TESTIFIED, DURING TRIAL SHE NEVER DISCUSSED APPLICANTS' RIGHT TO TESTIFY. (Id at 114-116). SHE ALSO WAS ASK BY THE TRIAL JUDGE, "DID YOU REFUSE TO LET THE DEFENDANT TESTIFY?" AND I THINK YOU ANSWERED THAT AFFIRMATIVELY. SHE WAS ALSO ASK BY THE TRIAL JUDGE, "I THINK YOU WERE ASKED SUBSEQUENTLY WHETHER YOU "PROHIBITED" THE DEFENDANT FROM TESTIFYING, AND I THINK YOU ANSWERED AFFIRMATIVELY. BUT AGAIN I NEED TO KNOW, SHE ADMITTED, "I DID NOT CALL HIM TO THE STAND" I'M THE ONLY ONE THAT COULD HAVE DONE THAT, THEN I DID PROHIBIT HIM FROM TESTIFYING. (Id at 180-181).

APPLICANT TESTIFIED, THAT HE WAS PREPARED TO TESTIFY, AND THAT HIS RESULTS TO TESTIFY WERE VARYING. (Id at 188-189).

CRIMINAL LAW-120307-PRIOR CONVICTIONS MUST BE ALLEGED IN INDICTMENT TO BE USED TO ENHANCE DEFENDANT'S SENTENCE UNDER TEXAS LAW. (SEE: REVENUE-2)

485, F.3d 290, CHAZIDRESS-V. JOHNSON, 103, F.3d 1221 (5th Cir. 1997).
U.S.-V. ARNOLD, 467 F.3d 880, ON REMAND, (2007) WL-470639, REMANDED
CONVICTION, A DISTRICT COURT "CANNOT" ENHANCE A DEFENDANT'S SENTENCE.
REQUIREMENT GOVERNING NOTICE AND (SEE: REVENUE-2) INFORMATION OF PRIOR
(C.A. 5th Cir. 2006) IF THE GOVERNMENT FAILS TO COMPLY WITH PROCEDURAL

121, Fed. 2d 4, ON REMAND, 989, F.2d 757.
F.2d 170, REVENUE (DENIED), CERTIORARI GRANTED, VACATED 113, S.Ct. 30, 506, U.S. 802,
F.2d AMENDMENT RIGHTS AND CONSTITUTIONAL, PLAIN ERROR, U.S.-V. MURDOX, 947,
THE ANY PARAGRAPHS OF ALLEGED ENHANCEMENT THEREFORE VIOLATED PETITIONER'S
AS THE (SEE: REVENUE-2) EVIDENCE SHOWS THERE WAS NO PRIOR CONVICTIONS MORE WAS THE
FOR THE CHANGE OFFENSE OF SECOND DEGREE FELONY THAT CARRIES (2-TO-20) MAXIMUM
PREJUDICE AS THE RE-INSTATED PLEA OFFER OF 25 YEARS WAS DISPROPORTIONATE
OF COUNSEL UNDER STRICKLAND-V. WASHINGTON 104 S.Ct. 2052-(1984). AND
TRIAL, WHICH IS A SIXTH AMENDMENT VIOLATION OF INITIATIVE ASSISTANCE
TRIAL ATTORNEY ADMITTED SHE "DOES NOT" COMMUNICATE THE PLEA OFFER DURING
RULING, WHEN THE EVIDENCE SHOWS THE PLEA WAS RE-OFFERED (BECAUSE ITS
FEDERAL LAW, SEE: MISSOURI-V. FRYE 566 U.S. (2012) SUPREME COURT
UNDER A.E.D.P.A. UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FED-
THAT THERE HAD BEEN NO DEFICIENT PERFORMANCE, TO PROVIDE RELIEF
PREJUDICE OR RATHER THE HABAS TOTAL COURT'S FACTUAL DETERMINATION

MEANT IN PASSING THEM.
WITH THE PURPOSE AND INTENTION WITH THE LEGISLATURE HAD IN
OR "IN THIS NATURE AND MUST BE STRICTLY CONSTRUED IN (KEY) ING
PROVISIONS AND UNLAWFUL THE ENHANCEMENT STATUTES ARE "REFORMAT-
RE-INSTANTMENT OF 25 YEARS WAS CONTRARY TO LEGISLATIVE APPROPRIATE
PROHIBITIONS TO ENHANCE A PLEA WITH OUT SUSTAINABLE. PETITIONER PLEA
INSTATED PLEA OFFER WAS UNCONSTITUTIONALLY APPLIED. THE CONSTITUTION
EQUAL PROTECTION AND DUE PROCESS OF LAW COMEST S. 14 AMEND. THE RE-
MOVE FORWARD) AND RE-INSTATE THE PLEA OF 25 YEARS, (DENIED) PETITIONER
WHEN TRIAL HABAS COURT ALLOWED PETITIONER'S HABAS ATTORNEY TO

OFFENSE OF CONVICTION, V.T.C.A. PENAL CODE § 607.(A) (22).
INDICTED) (CRIME, WITHOUT CHARGING THE OFFENSE OR THE (DEGREE OF THE
MENT RANGE TO A CERTAIN RANGE ABOVE THAT ORIGINALLY (RESERVED) FOR THE
OF PUNISHMENT AS RELATED TO THEM, WITH THE ENHANCEMENT INCREASED THE PUNISH-
SHOW THE PERSISTENCE OF THE ACCUSED AND THE FUTILITY OF ORDINARY MEASURES
ELEMENT OF THE PRIMARY OFFENSE, AND INSTEAD IT IS AN HISTORICAL FACT TO
A PRIOR CONVICTION ALLEGED FOR ENHANCEMENT IS NOT REALLY A COMPONENT

§ 4.10.3 - IMPROPER SENTENCES AND THEIR REMEDIES:

THE THREE SENTENCING ISSUES ABOUT WHICH OFFENDERS MOST OFTEN INQUIRE ARE (1) SENTENCE WHICH ARE NOT ALLOWED BY STATUTES (2) SENTENCES WHICH WERE IMPROPERLY "STACKED" OR (3) ENHANCEMENT AND DEADLY WEAPON FINDINGS. THE REMEDY WHICH THE COURT MAY GRANT FOR IMPROPER SENTENCE DEFENDS ON THE NATURE OF THE CLAIM. SEE - COLLINS-V-STATE, 240 SW.3D 925, 928 (TEX. CRIM. APP. 2007); BLANTON-V-STATE, 369 SW.3D 899; JONES-V-STATE, 792 SW.2D 189, 200 (TEX. CRIM. APP. 1990).

§ 4.10.3.1 - ILLEGAL SENTENCE:

THE TEXAS PENAL CODE DESIGNATES SPECIFIC RANGE OF PUNISHMENT FOR DIFFERENT CRIME WITH SOME BEING EXPLICITLY LIMITED IN RANGE, WHILE THE PUNISHMENT ASSESSED EXCEEDS THE SCOPE OF THE PUNISHMENT ALLOWED BY STATUTE, THE COURT OF CRIMINAL APPEALS WILL GRANT RELIEF SUBJECT VARIOUS PROCEDURAL REQUIREMENT WHICH MUST BE MET. EX PARTE WALKER, 599 SW.2D 332 (TEX. CRIM. APP. 1980). EX PARTE JORDEN, 659 SW.2D 827 (TEX. CRIM. APP. 1983). EX PARTE PARROTT, 396 SW.3D 531, 534 (TEX. CRIM. APP. 2013).

§ 4.10.3.4 - HARMLESS ERROR AND ILLEGAL SENTENCE:

AN APPLICANT FOR HABEAS CORPUS BASED ON AN ILLEGAL SENTENCE MUST SHOW BOTH (1) A COGNIZABLE IRRREGULARITY IN THE SENTENCE AND (2) HARM FOR RELIEF TO BE GRANTED. SEE - EX PARTE PARROTT, 396 SW.3D 531, 534 (TEX. CRIM. APP. 2013). HE OR SHE MUST SHOW BY A PREPONDERANCE OF THE EVIDENCE THAT THE SENTENCING ERROR CONTRIBUTES TO HIS OR HER CONVICTION OR PUNISHMENT, BASED UPON EVIDENCE BEYOND THE APPELLATE RECORD IF ANY. IF AS PARROTT, AN APPLICANT CLAIM THAT HIS OR HER ENHANCEMENT IS INVALID. EX PARTE KATZ, 401 SW.3D 60 (TEX. CRIM. APP. 2013). EX PARTE REZ, 194 SW.3D 508 (TEX. CRIM. APP. 2006).

SENTENCING AND PUNISHMENT:

LESS THAN 2 FULL BUSINESS DAYS' NOTICE OF STATE'S (SEE - APPENDIX-F) INTENT TO OFFER EVIDENCE (SEE - APPENDIX-G) OF DEFENDANT'S PRIOR CONVICTION AS ENHANCEMENT DURING SENTENCING FOR AGGRAVATED ASSAULT WAS INADEQUATE AND DENIED (PATZONER (THE PROCESS RIGHTS) U.S.C.A. CONST. 6, 14; § 18, U.S.C.A. § 3575(A); HARSTROM-V-U.S., 97, S.Ct. 264).

on losses are estimated at \$2...

Supreme Court: Lawyers must adequately help on plea deals

■ **Scalia: It's no longer a 'necessary evil'**

By Isaac L. Hoffman
Associated Press

WASHINGTON — Plea bargain negotiations between criminals and prosecutors will now come under constitutional scrutiny because a divided Supreme Court ruled Wednesday that convictions can be overturned if defense lawyers don't adequately assist clients in deciding whether to accept such offers.

The court's decision could affect nearly every criminal case in the United States, where more than 9 in 10 convictions come by guilty pleas.

In a rare move justices use to underscore their objections, Justice Antonin Scalia read his dissent aloud from the bench. He said the court's decision "upends decades of our cases ... and opens a whole new boutique of constitutional jurisprudence" — plea bargaining law — even though there

is no legal right to be offered a plea bargain.

"In the United States we have plea bargaining aplenty, but until today, it has been regarded as a necessary evil," said Scalia, who was on the losing side of two 5-4 decisions on the issue.

"Today, however, the Supreme Court elevates plea bargaining from a necessary evil to a constitutional entitlement. It is no longer a somewhat embarrassing adjunct to our criminal justice system; rather as the court announces ... 'it is the criminal justice system.'"

The two majority opinions, both written by Justice Anthony Kennedy, have potentially broad impact because 97 percent of federal convictions and 94 percent of state convictions in 2009 were obtained by a guilty plea, according to the Justice Department.

The rulings crafted by Kennedy mean that criminal defense lawyers are now required to inform their clients of plea bargain offers, regardless of whether they think the client should ac-

cept them, and must give their clients good advice on whether to accept a plea bargain at all stages of prosecution. If they don't, Kennedy said, they will run afoul of the Sixth Amendment guarantee that criminal defendants have a right to assistance of counsel.

"The right to counsel is the right to effective assistance of counsel," Kennedy said.

In one case decided by the court, Galin Edward Frye was never told by his lawyer about plea bargain offers from Missouri prosecutors before he pleaded guilty, before trial, to driving with a revoked license.

In the second case, Anthony Cooper rejected a plea offer after getting incorrect legal advice from his lawyer, and then was convicted by a jury in Michigan of assault with intent to murder and other charges and sentenced.

In both cases, Kennedy said the defense lawyers' actions violated their client's constitutional rights. The rulings sent the cases back to lower courts.

MY CASE

Illegal
no
Plea offer
MY CASE

THE TOTAL HABEAS COURT ABUSED IT DISCRETION NOT DISCLOSURE OF
DAMAGING RELATIONS OF PETITIONERS. THAT ATTORNEY MS. PETERSON'S ESTIMONY
THE NON DISCLOSURE OF FACTS THAT ARE ~~CONTRADICTORY~~ TO THE FINDINGS AND CONCLUS-
ION. THE TOTAL HABEAS COURT'S ULTIMATE DECISION "THAT IS TO BE TESTED FOR
UNREASONABLENESS OF THE RELEVANT FACTS, AND FAILING TO APPLY STRAIKLAND-
V-WASHINGTON, 404 U.S. 2054 (1984), AND GRANT PETITIONER RULING ON HIS ORZ6-
ZNAL 1107 HABEAS CORPUS APPLICATION. U.S.C.A. § 2254 (D) (4)

THE LEGAL IMPLICATIONS IN RES JUDICA IN THE TOTAL HABEAS COURT IN
THAT FINDING AND CONCLUSION OF LAW. THAT AN ATTORNEY WITH GREAT EXPERIENCE
ASSISTED PETITIONER'S TOTAL ATTORNEY. THE HABEAS COURT MADE OR RULE AN INJUN-
CTION THAT MR. ELLISON WAS NOT PETITIONER'S ATTORNEY. 2d AT 138 & 215).

THE TOTAL HABEAS FINDINGS AND CONCLUSION IN CASE EX PARTE MARTIN SALINAS - NO.
WR-73-707-01. (SEE-APPENDIX-B) THERE WERE NO CONSTRUCTIVE NOTICE FROM
THE RECORD OR BURDEN OF PROOF, NOR RATIO DECIDENDI OF ANY RECORDING
LAWS TO JUSTIFY OR VERIFICATION TO SUPPORT THE HABEAS TOTAL FINDINGS.
WHAT THE (SEE-APPENDIX-B) THE EVIDENCE SHOWS, THE ABUSE OF DISCRETION BY
THE TOTAL HABEAS COURT NON DISCLOSURE OF THE FINDINGS IN WHICH THE COURT
ALLOWED PETITIONER'S HABEAS COUNSEL TO RE-STATE AND RE-OFFER THE 25 YEARS
FOR A SEX THE AMENDMENT VIOLATION THAT WAS DESPROPORTIONATE FOR THE
CHANGE OFFENSE ON PETITIONER'S INDETERMINATE SECOND DEGREE FELONY IN WHICH CARRIES
20 MAXIMUM. BY THE HABEAS TOTAL COURT "NON DISCLOSURE" OF THESE FINDINGS
PRO DUE: THE OUT COME OF PETITIONER'S JUDICIAL PROCEDURE'S (ORLIFE)
BY COURT OF CRIMINAL APPEALS, FURTHER MORE THE COURT (COURT OF CRIMINAL
APPEALS) NOT TAKEN INTO CONSIDERATION THE FACT THAT THE TOTAL HABEAS COURT
PREJUDICE PETITIONER IN NOT DISCLOSURE THE FINDINGS, THE DUE DUTY AND THE
RESPONSIBILITIES OF THE TOTAL HABEAS COURT WAS TO IDENTIFIED CONSTITUTIONAL
ERROR AND TO REPORT IT IN THE FINDINGS AND CONCLUSION OF LAW.

CONSIDER THE MERITS OF THE INSTANT APPLICATION, FACTS LEGAL REASSE
TO THE CLAIMS MADE IN ORIGINAL APPLICATION COULD NOT HAVE BEEN PRES-
ENTED IN INITIAL APPLICATION BECAUSE THEY WERE NOT ASCERTAINABLE ~~THROUGH~~
THE EXERCISE OF REASONABLE DILIGENCE ON OR BEFORE THE DATE INITIAL
1107 APPLICATION AND NO FACT OF PETITIONER. 2d AT 1107 (A)(1)(2).

THE TOTAL HABEAS COURT "INTENTIONALLY AND KNOWLEDGELY" WITH HELD THE FINDINGS
THAT TOOK PLACE AT THE POST-CONVICTION, KNOWLEDGELY THAT PETITIONER WOULD
BE BAR FROM FILING A SUBSEQUENT APPLICATION FOR A WRIT OF HABEAS CORPUS
UNDER ACT. 1107, SEC. (A)-(C) FOR THE SAME CONVICTION, MISMANAGEMENT OF JUSTICE.
COLEMAN-V-THOMPSON, 501 U.S. 722, 748-50 (1991).

UNDER AEDPA, PETITIONER MUST SHOW THAT THE STATE COURTS DETERMINATION WAS AN UNREASONABLE APPLICATION OF STICKLAND. SEE SCHAEZLE V. COLKLELL, 343 F.3d 440, 444 (5th Cir. 2003). (ALSO-APPENDIX-B).

UNREASONABLE APPLICATION OF STICKLAND, BY WAY OF EXAMPLE, PETITIONER REFERENCE TO THE EVIDENTIARY HEARING STATEMENT OF FINDING & CONCLUSION. (SEE APPENDIX-B)

THE LEGAL IMPLICATION IN RES JUDICATA IN TRIAL HABEAS COURT FINDINGS AND CONCLUSION OF LAW, THAT AN ATTORNEY WITH GREATER EXPERIENCE ASSISTED APPLICANT'S TRIAL ATTORNEY.

THE TRIAL COURT DID NOT APPOINT MR. ELLISON, THE HABEAS COURT RULE AN IN JUNCTION THAT MR. ELLISON WAS NOT PETITIONER'S ATTORNEY. (Id. at 138 & 215), MS. LUCY PEARSON TRIAL COUNSEL TESTIFY THAT SHE DOES NOT REMEMBER TALKING TO MR. ELLISON, AND DOES NOT REMEMBER A CONVERSATION WHEREIN MR. ELLISON DISCUSSED WITH PETITIONER WHETHER OR NOT HE SHOULD TO TESTIFY ON HIS OWN BEHALF. PETITIONER WOULD ASSERT (Id. at 114) THAT THE HABEAS COURT HAS PLACED MORE WEIGHT ON MR. ELLISON (THAT WAS NOT APPOINTED) BY TRIAL COURT) TESTIMONY AS TO HIS RECOLLECTION OF THE CONVERSATION WHICH TOOK PLACE AS OPPOSED TO TRIAL ATTORNEY MS. PEARSON NOT RECALLING THE CONVERSATION OCCURRED.

THE TRIAL COURT WASN'T LEFT MR. ELLISON FULLY PROTECTOR (Id. at 29) IN PETITIONER'S TRIAL. HE WAS ONLY THERE JUST FOR MORAL SUPPORT.

PREVENTING PETITIONER FROM TESTIFYING:

RICHARD ELLISON TALKED TO APPLICANT ABOUT TESTIFYING (ELLISON TESTIFYED THAT APPLICANT WANTED TO TESTIFY) (Id. at 12-13).

TRIAL ATTORNEY PEARSON, PETITIONER WANTED TO TESTIFY (WITHOUT A DOUBT). (Id. at 115). FURTHER MORE THE HABEAS JUDGE'S QUESTIONS TO MS. PEARSON, YOU ANSWERED AFFIRMATIVELY, AND WHAT I NEEDED TO KNOW IS WHETHER THE USE OF THE WORD "REFUSE" IS ACCURATE, JUST WHAT DID YOU TELL HIM, MS. PEARSON STATED I DID NOT WANT HIM TO TESTIFY, AND I DID NOT CHOOSE TO PUT HIM ON THE STAND. (Id. at 180-181). BECAUSE I "DID NOT" CALL HIM TO THE STAND, IN THE ONLY ONE THAT COULD HAVE DONE THAT THEN I "DID" PROHIBIT HIM FROM TESTIFYING, HE COULD NOT HAVE GOTTEN UP THERE ANY OTHER WAY. (Id. at 181).

THE TRIAL HABEAS COURT DOES AS TO UPHOLD THE LAW AND INTERPRET THE LAW, CONGRESS ENACTED AN DECIDE WHETHER IT IS CONSISTENT WITH THE CONSTITUTION.

HABERS COURT FINDINGS

(A) A. INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL;

(EVIDENCE IN RECORD CONTRADICTS HABERS COURT'S FINDINGS.)

THERE WAS NEVER ANOTHER ATTORNEY APPOINTED BY THE TRIAL COURT TO ASSIST PETITIONER'S TRIAL ATTORNEY. (Id at 29). TRIAL COURT WASN'T LATENT MR. ELLISON FULLY PARTICIPATE IN THE TRIAL PROCEEDING. HE (ELLISON) WAS JUST THERE FOR MORAL SUPPORT. JUDICIAL NOTICE WAS GIVEN BY HABERS COURT THAT MR. ELLISON WAS "NOT" PETITIONER'S ATTORNEY. (Id at 116, 138, 215).

TESTIFYING

MR. ELLISON (Id at 12) A- IT WAS DUBIOUS THE TRIAL, AND WHAT I --- WHO'S WHAT I --- WELL, I WILL TELL YOU WHAT --- WHAT WE TALKED ABOUT, FIRST, HE WANTED TO TESTIFY. I TOLD HIM THAT I DID NOT ADVISE HIM TO DO THAT.

MS. PEARSON PETITIONERS TRIAL ATTORNEY (Id at 115) - (Q) - SO WHEN THE APPELLANT, MR. HABERS, STATES IN HIS --- IN HIS PETITION THAT --- IN HIS APPLICATION THAT COUNSEL REFUSED TO LET PETITIONER TO TESTIFY ON HIS OWN BEHALF, WHEN IN FACT HE TOLD YOU THAT HE WANTED TO BECAUSE IT WOULD PROVE HIS INNOCENCE, THAT YOU REFUSED TO ALLOW HIM TO TESTIFY. DO YOU AGREE OR DISAGREE WITH THAT STATEMENT?

(A) I CAN TELL YOU THAT MR. HABERS WANTED TO TESTIFY, THAT WITHOUT A DOUBT.

(Q) (Id at 116) - Okay. DO YOU FEEL -- DO YOU AGREE (BASED ON YOUR INFORMATION ALONE THAT YOU REFUSED) TO LET HIM TESTIFY AS HE STATES IN HIS APPLICATION?

(A) - BY MY INFORMATION ALONE?

(Q) - YES

(A) YES!

MR. PEARSON ANSWERED: AFFIRMATIVELY; TO THE QUESTION OF DENYING PETITIONERS RIGHT TO TESTIFY. (Id at 180, 181).

PETITIONER TESTIFY THAT HIS RIGHTS WERE VIOLATED, BECAUSE HE WAS DENIED THE RIGHT TO TESTIFY. (Id at 188, 215)

MR. PEARSON TESTIFIED THAT SHE DID NOT SUSPECT THE STATE EVIDENCE (Id at 44-45) SHE DID NOT CALL WITNESSES (Id at 45-46), SHE DID NOT KNOW HOW TO LAY A PROPER (P.R.) EVIDENCE TO IN- TRODUCE EVIDENCE OR HOW TO PROPERLY OBJECT AT TRIAL (Id at 53) THAT SHE WAS AWE- FUL AND HER INEFFECTIVENESS MAY HAVE EFFECTED THE OUTCOME OF THE TRIAL (Id at 54)

STRAZDLAND V - WASHINGTON 104 S. CT. 2052 (1984)

HERE THE QUESTION IS WHETHER DEFENSE COUNSEL HAS THE DUTY TO COMMUNICATE THE TERMS OF A FORMAL OFFER TO ACCEPT A PLEA ON TERMS AND CONDITIONS THAT RESULT IN A FELONY SENTENCE THAT WAS NOT AUTHORIZED BY LAW FOR THE CHARGE CRIME, AS A GENERAL RULE, DEFENSE COUNSEL HAS THE DUTY TO COMMUNICATE FORMAL OFFERS FROM THE PROSECUTOR TO ACCEPT A PLEA ON TERMS AND CONDITIONS THAT MAY BE FAVORABLE TO THE ACCUSED, WHEN DEFENSE COUNSEL ALLOWED THE OFFER TO EXP. THE WITHOUT ADVISE THE DEFENDANT OR ALLOW HIM TO CONSIDER IT (DEFENSE COUNSEL DID NOT RENDER THE EFFECTIVE ASSISTANCE THE CONSTITUTION REQUIRES.

THEIR EVIDENCE IN THE POST-CONVICTION HEARING ALL THE EVIDENCE ON THE RECORD CONTRADICTS THE TRIAL JUDGE'S ~~CONV~~ FINDING AND CONCLUSION OF LAW AND THE NONDISCLOSURE OF RELEVANT FACTORS AND VIOLENTION THAT THE TRIAL JUDGE COURT NEGLECTED ITS RESPONSIBILITY TO HOLD A FAIR AND DUE PROCESS SUB-ECTAL PROCEEDING, WHEN THE TRIAL COURT ALLOWED THE TRIAL JUDGE TO ACT IN PLACE OF THE KNOWLEDGE OF LEGAL PRINCIPLES THAT HE HAD NO AUTHORITY TO DO, THE TRIAL JUDGE'S COURT ARE DISJUNCTIVELY UNREASONABLE IN "ONLY CONSIDERING" TESTIMONY FROM AN ATTORNEY THAT WAS NOT APPOINTED BY THE TRIAL COURT. Id at (12, 116, 138, 215) THAT IS IN VIOLATION OF THE DUE COURSE OF LAW. ARIZONA V. PALMISTE, 499 U.S. 279, 111 S.Ct 1246 (1991).

(THIS WORD "WIDE STANDARD" DOES NOT STATE THAT RECOGNIZED "ACTIVITY") THE ABOVE NOT TO TESTIFY.

IN Black Book Dict. - The word UNDERSTAND - TO APPREHEND THE MEANING OF - TO KNOW

QUESTION OF LAW.

THE TRIAL HARRIS COURT REFUSED TO TAKE OR EVEN CONSIDER TOTAL ATTORNEY'S MS. REARSON TESTIMONY, THE ATTORNEY THAT WAS THE ONLY ONE APPOINTED TO REPRESENT THE DEFENDANT AT TRIAL.

THAT SHE DIDNOT OBJECT TO THE LATE NOTICE TO INTRODUCE EXTRANEOUS MATTERS (Id AT 55) THAT SHE DIDNOT SUBPOENA 911 CALLS THAT THE SHEARER WERE CALL FOR FAMILY USE. NCE, AND THAT SHEARER TRANSFERRED) (Id AT 59-64) SHE DIDNOT KNOW HOW TO MAKE PLEAER OBTAIN OR ASK FOR PLEAER INSTRUCTIONS (Id AT 68-72) AND THAT SHE VOLUNTARILY PLEAERED RIGHT TO PLEAER (114-118).

THE COURT HAS DISMISSED WITHOUT WRITTEN ORDER THIS SUBSEQUENT APPLICATION FOR A WRIT OF HABEAS CORPUS. TEX. CODE CRIM. PROC. ART. 11.07 SEC. 4(A)-(C), EX PARTE MARTIN SALINAS-WR-73-707.01 & WR-73-707.08

(A) IF A SUBSEQUENT APPLICATION FOR WRIT OF HABEAS CORPUS IS FILED AFTER FINAL DISPOSITION OF AN INITIAL APPLICATION CHALLENGING THE SAME CONVICTION, A COURT MAY NOT CONSIDER THE MERITS OF OR GRANT RELIEF BASED ON THE SUBSEQUENT APPLICATION UNLESS THE APPLICATION CONTAINS SPECIFIC FACTS ESTABLISHING THAT:

(1) THE CURRENT CLAIMS AND ISSUES HAVE NOT BEEN AND COULD NOT HAVE BEEN PRESENTED PREVIOUSLY IN AN ORIGINAL APPLICATION OR IN A PREVIOUSLY CONSIDERED APPLICATION FILED UNDER THIS ARTICLE BECAUSE THE FACTUAL OR LEGAL BASIS FOR THE CLAIM WAS UNAVAILABLE ON THE DATE THE APPLICATION FILED THE PREVIOUS APPLICATION OR

(2) BY A PREPONDERANCE OF THE EVIDENCE, BUT FOR A VIOLATION OF THE UNITED STATES CONSTITUTION NO RATIONAL JUROR COULD HAVE FOUND THE APPLICANT GUILTY BEYOND A REASONABLE DOUBT

(B) FOR PURPOSES OF SUBSECTION (A)(1), A LEGAL BASIS OF A CLAIM IS UNAVAILABLE ON OR BEFORE A DATE DESCRIBED BY SUBSECTION (A)(1) IF THE LEGAL BASIS WAS NOT RECOGNIZED BY AND COULD NOT HAVE BEEN REASONABLY FORMULATED FROM A FINAL DECISION OF THE UNITED STATES SUPREME COURT, A COURT OF APPEALS OF THE UNITED STATES OR A COURT OF APPEALATE JURISDICTION OF THIS STATE ON OR BEFORE THAT DATE;

(C) FOR PURPOSES OF SUBSECTION (A)(2), A FACTUAL BASIS OF A CLAIM IS UNAVAILABLE ON OR BEFORE A DATE DESCRIBED BY SUBSECTION (A)(1) IF THE FACTUAL BASIS WAS NOT ASCERTAINABLE THROUGH THE EXERCISE OF REASONABLE DILIGENCE ON OR BEFORE THAT DATE;

PETITOWER RECEIVED A TRIAL THAT WAS NOT FREE OF IDENTIFIABLE CONSTITUTIONAL ERROR THAT THE HABEAS TRIAL COURT DID NOT NAMED IN RESULT, THERE IS BASIS FOR CONCLUDING PETITOWER SUFFERED PREJUDICE BY THE LOSS OF OPPORTUNITY THAT WAS NOT DISCLOSED, THEREFORE ESCHEWS THE ONLY LOGICAL REMEDY IS FOR THE SUPREME COURT TO EXERCISE SOUND DISCRETION IN DETERMINING WHAT IS TO BE DONE, MISSOURI-V-FRYE, 566 U.S. _____ 2012, IN THIS CASE.

PETITIONER WAS DEPRIVED OF FUNDAMENTAL RIGHTS AND IS IN CUSTODY IN VIOLATION OF THE FIFTH, SIXTH AND FOURTEENTH AMENDMENT CONSTITUTION OF THE UNITED STATES.

FIRST - STATE ENHANCE PLEA BARGAIN OFFER WITHOUT JUSTIFICATION, THERE WAS NO PRIOR CONVICTION, NOR WAS THERE ANY ENHANCEMENT PROBLEMS IN PETITIONER'S INDICTMENT. THERE WAS NO MOTION FILE BY THE STATE FOR INTENT TO ENHANCE. (SEE APPENDIX E, F, G)

SECOND - TOTAL ATTORNEY FAILURE TO INVESTIGATE THE ENHANCED PLEA BARGAIN OFFER, THAT WAS NOT AUTHORIZED BY LAW: STRICKLAND-V. WASHINGTON, 104 S. CT 2052 (1984).

THIRD - PETITIONER WAS PRECLUDED BY THE TOTAL HABEAS COURT IN ALLOWING PETITIONER'S HABEAS COUNSEL TO MOVE FORWARD IN RE-INSTATE A PLEA THAT WAS DISPROPORTIONATE FOR THE SECOND DEGREE FELONY PETITIONER WAS INDICTED FOR AND OBJECTIVELY UNREASONABLE FOR THE TOTAL HABEAS JUDGE NOT TO DISCLOSE THESE FACTORS IN THEIR FINDINGS AND CONCLUSIONS REPORT.

FOURTH - PETITIONER IN FORM HAS HABEAS COUNSEL, THAT THE PLEA OFFER WAS NOT AUTHORIZED BY LAW, FOR (HIM) TO LOOK INTO IT. HABEAS COUNSEL'S RESPONSES WERE (SEE PAGE 8-9) IT DID NOT MATTER, ITS MOOT ISSUE, BECAUSE IT WAS NOT IN YOUR LOT APPLICATION.

FIFTH - THE RE-INSTATE PLEA OFFER WAS REJECTED DUE TO DEFECTIVE LEGAL REPRESENTATION BY HABEAS COUNSEL AT THE POST-CONVICTION HEARING AND THAT COUNSEL DURING TRIAL, TOTAL ATTORNEY DID NOT INVESTIGATE ENHANCE PLEA BARGAIN OFFER, HABEAS ATTORNEY NOT LOOKING OR CAPABLE TO BRING THIS ISSUE (THAT PLEA WAS NOT AUTHORIZED BY LAW) FOR CHARGE OFFENSE IN PETITIONER'S INDICTMENT, INADEQUATE ASSISTANCE OF COUNSEL, SIXTH AMENDMENT VIOLATION.

SIXTH - THE TOTAL HABEAS COURT FAILURE TO FOLLOW THE DUE COURSE OF LAW AND THE DUE PROCESS OF LAW WAS VIOLATED IN THE COURT, NOT TAKING ACTION AND ALLOWING HABEAS COUNSEL TO PERFORM THE COURT'S DUTY'S IN JUDICIAL PROCEEDING.

PETITIONER WOULD HAVE ACCEPTED A PLEA OFFER THAT CONSTITUTES FOR THE CHARGE INDICTMENT AT TRIAL BUT FOR HIS TOTAL ATTORNEY DEFECTIVE LEGAL REPRESENTATION IN NOT OBTAINING A PLEA BARGAIN THAT CONSTITUTES FOR THE CHARGE CRIME, THAT PETITIONER WAS AS LITTLE TOO BY THE CONSTITUTIONAL LAW AND THE STATUTORY PROVISIONS LAWS.

PETITIONER HAD NO CHOICE BUT TAKE HIS CASE TO TRIAL AS THE 25th PLEA BARGAIN OFFER BY STATE WAS ABOVE STATUTORY PROVISIONS FOR A SECOND DEGREE (2-20 MAXIMUM); THE UNCONSTITUTIONAL PLEA OFFER, PETITIONER REJECTED, THE PLEA WHICH IT WAS RE-OFFER AT THE HEARING FOR SAME REASON, UNCONSTITUTIONAL AND OBJECTIVELY UNREASONABLE TO CURE A SIXTH AMENDMENT VIOLATION, WHEN THE LAW REQUIRES A PLEA OFFER THAT IS AUTHORIZED BY LAW FOR THE OFFENSE ON THE INDICTMENT ONLY.

KYLES-V-WHITEY, 514 U.S. 419, 434 (1995),
YATES-V-BWATT, 500 U.S. 391, 403 (1991).

IT CAN BE ASSUMED THAT IN MOST JURISDICTIONS PROSECUTORS AND JUDGES ARE FAMILIAR WITH THE BOUNDARIES OF ACCEPTABLE PLEA BARGAINS AND SENTENCES SO IN MOST INSTANCES IT SHOULD NOT BE DIFFICULT TO MAKE OBJECTIVE ASSESSEMENT AS TO WHETHER OR NOT A PARTICULAR FACT OR INTERVENING CIRCUMSTANCE WOULD SUFFICE IN THE NORMAL COURSE TO CAUSE PROSECUTORIAL WITHDRAWAL OR JUDICIAL 'NONAPPROVAL' OF A PLEA BARGAIN OFFER. PREJUDICE IN PETITIONER'S TRIAL, THE PLEA BARGAIN OFFER WAS ILLEGAL AND DISPROPORTIONATE FOR THE OFFENSE (HE) WAS ON TRIAL FOR, THEREFORE WHEN THE TRIAL HABEAS COURT ALLOWED HIS HABEAS COUNSEL TO RE-OFFER THE PLEA OF 25 YEARS TO CURE THE SIXTH AMENDMENT VIOLATION FOR THE STATE AT THE EVIDENTIARY HEARING WAS AN IMPROPER AND UNCONSTITUTIONAL ILLEGAL PLEA TO BE USED AS A REMEDY, THIS IS THE REASON PETITIONER REJECTED THE PLEA WHEN IT WAS RE-INSTATED AND RE-OFFERED, AND THIS IS THE REASON PETITIONER HAD NO CHOICE BUT GO TO TRIAL AS THE PLEA OFFER BARGAIN WAS ABOVE RANGE FROM THE STATUTORY PROVISION FOR A SECOND DEGREE FELONY THAT JUST CARRIES 20 YEARS MAXIMUM WAS REQUIRED BY LAW IN THIS CASE. THE HABEAS TRIAL COURT VIOLATED THE DUE PROCESS AND STATUTORY REQUIREMENT OF DUE COURSE OF LAW.

CONCLUSION

PETITIONER PRESENTS CONTROVERTED PREVIOUSLY UNRESOLVED FACTUAL ISSUES, THAT ARE SUFFICIENT TO CONSTITUTE REVIEWING BY THE JUSTICE'S OF THE SUPREME COURT. THE QUESTION THEN BECOMES WHAT, IF ANY, PREJUDICE RESULTED FROM THE BREACH OF DUTY.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Martin Salinas

ACTING-PRO-SE

Date: MAY 28, 2018

RESUBMITTED DATE: July 18, 2018