

No. 18-7182

ORIGINAL

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SUPREME COURT, U.S.

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

ROY DEAN GATES — PETITIONER  
(Your Name)

VS.

THE STATE OF TEXAS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

ROY DEAN GATES #1570440  
(Your Name)

HUNTSVILLE UNIT: 815 12th St.  
(Address)

HUNTSVILLE, TEXAS 77348  
(City, State, Zip Code)

N/A  
(Phone Number)

## QUESTION(S) PRESENTED

1. DOES THE TEXAS COURT OF CRIMINAL APPEALS HAVE THE AUTHORITY OR THE JURISDICTION TO OVERRULE AN ORDER BY THE TEXAS SUPREME COURT?
2. IS THE RULING AND ORDER BY THE COURT OF APPEALS FOR THE SEVENTH DISTRICT OF TEXAS VOID FOR LACK OF JURISDICTION?
3. WAS GATES DENIED HIS UNITED STATES CONSTITUTION AMENDMENT FOURTEEN RIGHT TO DUE PROCESS OF LAW DUE TO THE LACK OF JURISDICTION?

## LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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## OTHER

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☒ For cases from **state courts**:

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

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the SEVENTH DISTRICT COURT OF APPEALS 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☒ is unpublished.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 9/19/2018.  
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

UNITED STATES CONSTITUTION AMENDMENT FOURTEEN

TEXAS CODE OF CRIMINAL PROCEDURE ARTICLE 11.07

TEXAS RULES OF APPELLATE PROCEDURE RULE 25.2(c)



## STATEMENT OF THE CASE

Roy Dean Gates was convicted of Aggravated Assault with a Deadly Weapon and sentenced to 22 years in TDCJ by a jury in the 299th Judicial District Court of Travis County, Texas On April 30, 2009.

A Motion for New Trial was filed claiming that the trial court "committed an error material to the defense and injurious to the rights of the Defendant," and "the verdict is contrary to the law and evidence in the case." Apparently, the Motion for New Trial was denied.

The trial attorney filed the Motion for New Trial and the same attorney was assigned to file a direct appeal in the case. Contrary to the issues claimed in the Motion for New Trial, the attorney filed an Ander's Brief in the Court of Appeals for the Third District of Texas. The case was transferred to the Seventh District Court of Appeals and they approved the Ander's Brief in their Opinion.

Gates filed a T.C.C.P. Article 11:07 habeas corpus writ with brief in support claiming several constitutional errors of the following:

- 1.) The Seventh Court of Appeals Lacked Jurisdiction.
- 2.) Ineffective Assistance of Appellate Counsel for Failing to Claim Obvious Errors.
- 3.) The Evidence is Legally and Factually Insufficient to Sustain a Conviction.
- 4.) Jury Charge Errors and an Ununanimous Verdict, and
- 5.) Ineffective Assistance of Counsel.

The Texas Court of Criminal Appeals denied relief without written order. No Response was made by the State and no Facts, Findings, and Conclusions of Law were made by the trial court. No evidentiary hearing. No documents and no habeas record were produced or ordered to produce to determine jurisdiction.

Gates now requests this Honorable Court to reverse and remand the case due to the lack of jurisdiction of the Seventh District Court of Appeals as shown by the following arguments and documents.

## REASONS FOR GRANTING THE PETITION

### SUMMARY OF THE ARGUMENT

Gates was denied due process of law when the Seventh District Court of Appeals of Texas denied relief when they lacked jurisdiction.

Gates was denied due process of law when the Texas Court of Criminal Appeals denied relief when they lacked jurisdiction to overrule an ORDER of the Supreme Court of Texas.

### JURISDICTION OF THE LOWER APPELLATE COURT

Gates was always suspicious of why his case was transferred from the Third District Court of Appeals to the Seventh District Court of Appeals. The appellate attorney was also the trial attorney and he filed a Motion for New Trial (App. D) before filing an Ander's Brief in the appellate court. This fact is conflicting and Gates began investigating and preparing a habeas corpus writ as he has meritorious claims.

Gates sent a letter (App. E) to the Seventh District Court of Appeals inquiring why they ruled on his case. The Court sent the ORDER from the Supreme Court of Texas (App.C) that transferred certain cases filed on or after a certain date to another appellate court. For the purpose of Gates's case, section II applies and authorizes transfer of cases filed on or after June 10, 2009 to the Seventh District from the Third District Court of Appeals.

Gates sent another letter (App.F) to the Third District Court of Appeals making the same inquiry and they responded with a letter (App.G) stating that Gates's Notice of Appeal was "filed June 6, 2009." Gates returned to the ORDER of the Supreme Court of Texas. See section V on p.2 where "filed" is clarified:

"For purposes of determining the **effective date** of transfers pursuant to this order, "filed" in a court of appeals means the **receipt of notice of appeal** by the court of appeals. [emphasis added]

Further specificity is given through the Texas Rules of Appellate Procedure Rule 25.2(c) FORM AND SUFFICIENCY OF NOTICE:

(1) Notice must be given in writing and filed with the trial court clerk. If the notice of appeal is received in the court of appeals, the clerk of that court **shall immediately record on the notice the date it was received** and send the notice to the trial court clerk.

Gates then wrote back to the Third District Court of Appeals (App.H) and the trial court (App.I) and requested the "file stamped dated" copy of the notice of appeal. The Third District Court of Appeals backtracked on their previously stated filing date of June 6, 2009, and stated that the filing date was June 11, 2009 (App.J) and sent Gates the docket sheet (App.K) instead of the copy of the file stamped notice of appeal. Ironically, or rather, incidentally, the trial court sent Gates a copy of the docket sheet instead of the return file stamped notice of appeal that was requested. To this date no court will send him this document.

The Supreme Court of Texas ORDER was clear and unambiguous. It did not state the date of the filing of the notice of appeal in the trial court. It did not state the date of the notice of appeal on the docket sheet. It stated the date stamped on the notice of appeal as the "filing" date for transfer of cases. It is quite apparent that the Third District Court of Appeals erred when transferring cases. The date of June 6, 2009 was the honest, true date, for it is inconceivable the clerk would have mistaken the number 11 for the number 6. It is also inconceivable that it would take two weeks or more for the notice of appeal to travel to the appellate court from the trial court when they are located in the same city (Austin, Texas).

The allegation made is that the Courts have conspired to deceive Gates and deny him due process of law. The deception is **disturbing** and not made lightly. After all, why not send Gates the documents requested?

Regardless of the intent or motive of the foregoing court clerks to deceive, or regardless of whether they intended to deceive, the fact remains that the case (or cases) were prematurely transferred according to the "filing date" determined by the Supreme Court of Texas.

"A judgment of a court without active jurisdiction over person and subject matter is void and may be attacked anywhere at anytime." Reed v. State 187 sw.2d 660 (Texas Criminal Appellate 1944).

"When a court determines it has no jurisdiction to decide the merits of an appeal, the appropriate action is to dismiss." Mendez v. State 914 sw.2d 579,580 (Texas Criminal Appellate 1996).

The Seventh District Court of Appeals lacked jurisdiction to rule on the Ander's Brief filed by Gates's attorney, thereby violating his Fourteenth Amendment right to due process of law.

#### JURISDICTION OF THE TEXAS COURT OF CRIMINAL APPEALS

The ORDER of the Supreme Court of Texas directs the clerks of certain courts to transfer criminal and civil cases from one court of appeals to another. This ORDER did not in any fashion infer jurisdiction to the Texas Court of Criminal Appeals. It is an order civil in nature.

The only read that can be gleaned from the Texas Court of Criminal Appeals on any issue contained in the habeas corpus writ is that when it rules--"DENIED WITHOUT WRITTEN ORDER"--it means they have ruled on the merits of the claims. As is in this case, they have ruled on the merits of the case. Having the arguments and authorities before them, as well as the letters from Gates and the letters from the court clerks (see App.L), the criminal court effectively overruled the Supreme Court ORDER and inferred that they have jurisdiction over the ORDER.

No opinion was made by the criminal court, so the issue is one of whether the Texas Court of Criminal Appeals has jurisdiction over the

ORDER of the Supreme Court of Texas. They do not. The Texas Court of Criminal Appeals has ruled they do not have jurisdiction if the issue did not arise directly out of a criminal prosecution.

"The Texas Court of Criminal Appeals necessarily has the power to decide what constitutes a criminal law matter. Although the court has not issued a definitive statement of what constitutes a "criminal law matter," the term encompasses at a minimum, all legal issues arising directly out of a criminal proceeding. Importantly, the court has held that disputes which arise out of the enforcement of statutes governed by the Texas Code of Criminal Procedure, and which arise as a direct result or incident to a criminal prosecution, are criminal law matters." Armstrong v. The State of Texas 340 sw.3d 759 (2011).

"We necessarily have the power to decide what constitutes a criminal law matter." Langford v. Fourteenth Court of Appeals 847 sw.2d 581,583 N.3 (Texas Criminal Appellate 1993)

"The nature of the originally issued order determines whether a subsequent enforcement proceeding involves a criminal matter." Smith v. Flack 723 sw.2d 784,788-89 (Texas Criminal Appellate 1987).

Obviously, the Supreme Court of Texas ORDER was not directly arising out of or incident to a criminal proceeding, or involve a statute of the Texas Code of Criminal Procedure. Therefore, they did not have jurisdiction to overrule the ORDER of the Supreme Court of Texas, which subsequently denied Gates of due process of law.

Gates requests this Honorable Court order the case remanded to the Texas Court of Criminal Appeals with instructions to dismiss the appeal, and further order that Gates is entitled to a new appellate process which begins at the point directly after Gates was sentenced.

## RULE 10 CONSIDERATIONS

- 1.) This is a jurisdictional issue in which Gates has no other court to bring his claims. When a court has no jurisdiction it renders the judgment void. This is a structural error that should never be allowed to stand, even if the United States Supreme Court has to get involved.
- 2.) The error of misinterpreting the filing dates may have resulted in thousands of cases void for lack of jurisdiction. How long and how many cases have been errantly transferred is unknown. Gates just happened across a clerk who inadvertantly let the cat out of the bag.
- 3.) This is a case where the states highest court believes, and in fact has ruled, that it has jurisdiction over state supreme court, which is also the states highest court in civil cases, where the order of the state supreme court was directed at district court clerks, and had no criminal element where the states highest criminal court has authority.
- 4.) There is evidence that all of the courts involved have attempted to mislead Gates. All of the courts are located in Austin, Texas, where the Complainant in the case is a legal secretary and known to many in the judicial world in Austin, Texas. Gates pleaded not guilty and has never been able to defend the allegations without constitutional error.

## CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,



Roy Dean Gates

Executed on

12/12/18