No. 18-7299 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

LEON TONY PARKER, JR. - PETITIONER

VS.

THE STATE OF TEXAS - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS AT AUSTIN, TEXAS.

PETITION FOR WRIT OF CERTIORARI

LEON TONY PARKER, Jr.

TDCJ-CID #01940151 - COFFIELD

2661 FM 2054

TENNESSEE COLONY, TEXAS 75884

PRO SE

NO PHONE

QUESTIONS PRESENTED

Question One (Page 11):

The Petitioner sought to withdraw counsel because of a legitimate conflict in counsel's representation; and then, two months later, sought to substitute counsel Lavalle for Counsel of choice—Mr. Villalon. No motion for continuance was ever filed, and Mr. Villalon was ready on the day of trial. The trial court overruled the motion to withdraw because it was Petitioner's second counsel, and denied him motion for substitution because Petitioner sought to delay the court's calendar proceeding. The highest state court agreed and denied Petitioner relief. The United States Supreme Court guarantees a presumption in favor of his right to counsel of choice. Therefore, under the circumstances, does the highest state court's decision conflict with the United States Supreme Court's preceding guarantee to be represented by counsel of one's own choice?

Question Two (Page 15):

In the Alternative, if this Honorable Court determines that the trial court never ruled on Petitioner's motion for substitution of counsel, than being in the interest of the public, and since a trial court is obligated to inquire into the motion, does a trial court's deliberate silence to Petitioner's motion for substitution of counsel constitute a denial of that motion?

Question Three (Page 16):

In the interest of the public and applying the previous questions, should a member of the public be entitled for a trial

QUESTIONS PRESENTED

court to make sure it addresses every motion, and place on the record its decision, before forcing the member of public to jury trial with counsel who tried to withdraw himself off the case, due to major conflicts between them?

LIST OF PARTIES

[X] 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: N/A.

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Appendix D: The Ninth District Court of Appeals at Beaumont, Judgment filed on March 23, 2016.

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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 N/A to the petition and is

[ ] reported at N/A; 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 N/A to the petition and is

[ ] reported at N/A; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

[X] For cases from state courts:

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

[ ] reported at N/A; or,

[ ] has been designated for publication but is not yet reported; or,

[X] is unpublished.

The opinion of the Ninth District Court of Appeals at Beaumont appears at Appendix D to the petition and is

[ ] reported at N/A; or,

[ ] has been designated for publication but is not yet reported; or,

[X] is unpublished.

JURISDICTION

[ ] For cases from federal courts:

The date on the United States Court of Appeals decided my case was N/A.

[ ] 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: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

[ ] An extention of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

[X] For cases from state courts:

The date on which the highest state court decided my case was October 10, 2018. A copy of that decision appears at Appendix G .

[ ] A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying

rehearing appears at Appendix N/A.

[ ] An extention of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Article VI, Clause 2:

> This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme law of the Land; and the judges in every state shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding.

United States Constitution, Amendment V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, exempt in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment VI:

> In all criminal prosecution, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor, and to have Assistance of Counsel for his defense.

United States Constitution, Amendment XIV, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process fo law, nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The Petitioner was indicted for burglary of habitation pursuant to Section 30.02(d) of the Penal Code, that was alleged on October 07, 2013. See Tex. Pen. Code § 30.02(d); Appendix C. The Petitioner plead not guilty and a jury found him guilty on June 18, 2014. Id. The Petitioner plead true to four enhancement paragraphs and the 221st District Court of Montgomery County, Texas, sentenced Petitioner to sixty-five (65) years in prison on June 18, 2014.

Id. The Petitioner appealed his conviction and sentence to the Ninth District Court of Appeals at Beaumont under case No. 09-14-00312-CR. Appendix D. The Ninth District Court of Appeals at Beaumont affirmed the trial court's conviction on March 23, 2016. Id. On December 23, 2017 (stamped date on December 12, 2017), the Petitioner filed his first application for a writ of habeas corpus pursuant to article 11.07 of the Texas Code of Criminal Procedure in cause no. 13-10-10781-CR-(1). Tex. Code Crim. Proc., art. 11.07. On October 10, 2018, the Court of Criminal Appeals denied Petitioner habeas relief. Appendix G. The Petitioner presents the following facts pertaining to his questions for relief:

The Petitioner ultimately argues (as he did on his state habeas application) that a defendant in a criminal prosecution who does not require appointed counsel, the Sixth Amendment of the United States Constitution included the right to choose the attorney who will represent him. U.S. Const., Amend. VI. If a defendant is wrongfully deprived of counsel of choice, the error is structural, does not require a showing of prejudice, and automatically requires a reversal. Therefore, the Highest State Court's decision conflicts with the United States Supreme Court holdings, and this issue is of importance to the public, as seen below.

A Grand Jury returned an indictment against the Petitioner for burglary of habitation, filed on December 19, 2013. Appendix C. On April 10, 2014, retained Counsel named Paul Lavalle filed a motion to withdraw because of a disagreement with his contract of employment. Appendix A. In his affidavit, Counsel further explain-

ed that Petitioner's unwillingness to corporate, failure to accept Counsel's advise, hostile attitude towards Counsel; for example, threatened counsel from jail, attempted to file two SBOT grievances against Counsel, and claimed Petitioner will sue Counsel to get back his $400.00. Appendix F. Although the state tried to deny it, Counsel explained this to the trial court, and the trial court was well aware of this situation. Appendices A & B. On June 16, 2014, Reginaldo P. Villalon (Counsel of Petitioner's choice) filed an agreed motion for substitution of counsel, that was signed by Mr. Villalon and Mr. Lavalle. Appendix B. This highest state court speculated whether the trial judge seen the motion. Appendix E, Pg. 2. Truly, the trial court was also aware of this motion and denied it by proceeding to trial. Appendix C. The highest state court held that the trial court denied the motion to withdraw counsel because it was his second counsel. Id. The highest state court explained that counsel repeatedly advised Petitioner to hire new counsel, but refused to do so. Id. Contrarily, the Petitioner did hire new counsel. Appendix B. The state court did not order, nor obtained, an affidavit from Mr. Villalon even though the record is clear that Mr. Villalon was ready on the day of trial. The highest state court ultimately decided that the motion to substitute counsel would have sought to delay the proceedings. Id. This conclusion is not true because there was never a motion for a continuance ever filed with the court. See Clerk's Record. Axiomly stated, Counsel Villalon was ready to proceed with trial on the docketed day. Appendix B. Evidence of this is visible when

Villalon personally handwritten the motion and presented to the Court on June 16, 2018. Appendix B.

Taken together, the record is clear that both Mr. Lavalle and Petitioner did not wish for Lavalle to be Petitioner's Counsel. The record is also clear that Petitioner wanted Mr. Villalon to proceed as Counsel during his trial. The record is further clear that Petitioner was denied his qualified right to counsel of his choice. Finally, Petitioner petitions to this Honorable Court because the highest state court's decision conflicts with the United States Supreme Court holding. The Court of Criminal Appeals ultimately forced Mr. Lavalle to proceed as counsel, when Petitioner had legitimate reasons why substitution of counsel should have been granted. Therefore, this Honorable Court should granted Petitioner's writ of certiorari because this issue is also of great importance to the public, as explained in his reasons for granting the petition.

REASONS FOR GRANTING THE PETITION

The Petitioner understands this Court's authority as follows: The Sixth Amendment to the United States Constitution guarantees that "[I]n all criminal prosecutions, the accused shall enjoy the right ... to have the assistance of counsel for his defense." See U.S. Const., Amend. VI; United States v. Morrison, 449 U.S. 361, 364, 101 S.Ct. 665 (1981). In United States v. Gonzalez-Lopez, this Honorable Court has previously held that an element of this right is the right of a defendant who does not require appointed counsel to choose who will represent him. Id., 126 S.Ct. 2557,

2561 (2006)(citing Wheat v. United States, 486 U.S. 153, 159, 108 S.Ct. 1692 (1988)).

In Luis v. United States, this Honorable Court also explained that, "Given the necessarily close working relationship between lawyer and client, the need for confidence, and the critical importance of trust, neither is it surprising that the court had held that the Sixth Amendment grants a defendant "a fair opportunity to secure counsel of his own choice." Id., 136 S.Ct. 1089 (2016)(citations omitted); See also, Powell v. Alabama, 287 U.S. 45, 53, 53 S.Ct. 55 (1932)("It is hardly necessary to say that, the right to counsel being conceded, a defendant should be afforded a fair opportunity to secure counsel of his own choice."); Chandler v. Fretag, 348 U.S. 3, 10, 75 S.Ct. 1, 5 (1954)("[A] defendant must be given a reasonable opportunity to employ and consult with Counsel; otherwise, the right to be heard by counsel would be of little worth."); Glasser v. United States, 395 U.S. 60, 75, 62 S.Ct. 457, 467 (1942)("Glasser wished the benefit of the undivided assistance of counsel of his own choice, we think that such a desire on the part of an accused should be respected.")

However, this right to counsel of one's own choice is not absolute. Wheat v. United States, 486 U.S. 153, 159, 108 S.Ct. 1692 (1988). In United States v. Gharbi, the Fifth Circuit Court of Appeals acknowledged that, "the essential aim of the [Sixth] Amendment is to guarantee an effective advocate for each criminal defendant rather than to ensure that a defendant will inexorably be represented by the lawyer whom he prefers." Id., 510 F.3d 550, 553 (5th Cir. 2007)(quoting Wheat v. United States, 486 U.S. at

159, 108 S.Ct. 1692)). Axiomly, the Fifth Circuit's interpretation of this statement is: "there is a presumption in favor of a defendant's counsel of choice, but that presumption may be overcome by an actual conflict of interest, or by a showing of a serious potential for conflict." Id., (quoting Wheat v. United States, 486 U.S. at 164, 108 S.Ct. 1692).

Likewise, in Caplin & Drysdale, Chartered v. United States, this Honorable Court reasoned that, "Not only are decisions crucial to the defendant's liberty placed in Counsel's hands, See Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525 (1975), but the defendant's perception of the fairness of the process, and his willingness to acquiesce in its results, depend upon his confidence in his Counsel's dedication, loyalty, and ability. Cf. Joint Anti-Fascit Refugee Committee v. McGrath, 341 U.S. 123, 171-72, 71 S.Ct. 624, 648-49 (1951)(Frank Furter, J., Concurring). When the Government insists upon the right to choose the defendant's Counsel for him, that relationship of trust is undermined. Counsel is too readily perceived as the Government's agent rather than his own. Indeed, when the Court in Faretta held that the Sixth Amendment prohibits a court from imposing counsel on a defendant who prefers to represent himself, its decision was predicated on the insight that "[t]o force a lawyer on a defendant can only lead him to believe that the law contrives against him." Id., 109 S.Ct. 2667, 2673, 491 U.S. 617, 645-46 (1989)(quoting Faretta, 422 U.S. at 834, 95 S.Ct. at 2540).

For this reason, this Court held in Mickens, Jr. v. Taylor,

that "A judge who knows or should know that counsel for a criminal defendant facing, or engaged in, trial has a potential conflict of interest is obligated to inquire into the potential conflict and assess its threat to the fairness of the proceeding." Id., 535 U.S. 162, 189, 122 S.Ct. 1237, 1253 (2002)(citing, Wheat v. United States, 486 U.S. 153, 160, 108 S.Ct. 1692 (1988); Wood v. Georgia, 450 U.S. 261, 272, 101 S.Ct. 1097 (1981); Cuyler v. Sullivan, 446 U.S. 335, 347, 100 S.Ct. 1708 (1980); Cf. Holloway v. Arkansas, 435 U.S. 475, 484, 98 S.Ct. 1173 (1978)). In simple terms, this Honorable Court have "recognized a trial court's wide latitude in balancing the right to counsel of choice against the needs of fairness, Wheat, Supra, 486 U.S. at 163-64, 108 S.Ct. 1692, and against the demands of its calendar." United States v. Gonzalez-Lopez, 126 S.Ct. 2557, 2565-66 (2006)(citing, Morris v. Slappy, 461 U.S. 1, 11-12, 103 S.Ct. 1610 (1983)("Consequently, broad discretion must be granted to trial courts on matters of continuances; only an unreasoning and arbitrary "insistence upon expeditiousness in the face of a justifiable request for delay" violates the right to the assistance of counsel.")).

In Wilson v. Mintzes, the Sixth Circuit sheds light on a trial court's broad discretion in its decision on whether to grant a motion for continuance. Id., 761 F.2d 275, 281 (1985). The Sixth circuit explained that depending on the facts and circumstances of that case, a trial judge may consider "the length of delay, previous continuances, inconvenience to litigants, witnesses, counsel and the court, whether the delay is purposely or is caused

by the accused, the availability of other competent counsel, the complexity lead to identifiable prejudice." Id. The Sixth Circuit, however, concluded that "a trial court, acting in the name of calendar control, cannot arbitrarily and unreasonably interfere with a client's right to be represented by the attorney he has selected." Id. (citing Linton v. Perini, 656 F.2d 207, 209 (6th Cir. 1981, cert. denied, 454 U.S. 1162, 102 S.Ct. 1036 (1982)(right to counsel of one's choice is guaranteed by due process as well as Sixth Amendment)). Therefore, because this Honorable Court has squarely held that deprivation of the right to choice of counsel is not subject to harmless error review, a new trial with counsel of choice is required. See Gonzalez-Lopez, supra, 548 U.S. at 148-50 (holding that "erroneous deprivation of the right to counsel of choice ... qualifies as [a] structural error." which is not subject to review for harmlessness)(internal quotation marks omitted). Taken together, this Honorable Court should, in the interest of the public and justice, grant certiorari as argued below.

QUESTION ONE RESTATED

The Petitioner sought to withdraw counsel because of a legitimate conflict in counsel's representation; and then, two months later, sought to substitute counsel Lavalle for Counsel of choice —Mr. Villalon. No motion for continuance was ever filed, and Mr. Villalon was ready on the day of trial. The trial court overruled the motion to withdraw because it was Petitioner's second counsel, and denied his motion for substitution because Petitioner sought to delay the court's calendar proceeding. The highest state court

agreed and denied Petitioner relief. The United States Supreme Court guarantees a presumption in favor of his right to counsel of choice. Therefore, under the circumstances, does the highest state court's decision conflict with the United States Supreme Court's preceding guarantee to be represented by counsel of one's own choice?

· The Petitioner's Position on his Habeas Corpus:

The Petitioner argued in his state habeas corpus that the trial court abused its discretion for dening both motions to withdraw Counsel and for substitution of Counsel. The Petitioner was ultimately denied his qualified right to counsel of one's own choice, as guaranteed by the Sixth Amendment of the Constitution. The Petitioner uses the following facts to support his position: On December 19, 2013, a Grand Jury returned an indictment against the Petitioner for burglary of habitation. Appendix C. On April 10, 2014, retained Counsel Mr. Paul Lavalle filed a motion to withdraw because of a disagreement with the contract of his employment. Appendix A. In his affidavit, Counsel further explained that Petitioner's unwillingness to corporate, the failure to accept Counsel's advise, hostile attitude towards counsel; for example, threatened counsel from jail, attempted to file two SBOT grievances against counsel, and claimed Petitioner will sue Counsel to get back his $400.00. Appendix F. It is properly infered that Counsel explained this to the trial judge when the judge addressed the motion to withdraw counsel. On June 16, 2014, Reginaldo P. Villalon (counsel of Petitioner's choice) filed an agreed motion for substitution of counsel, that was signed by both

Mr. Villalon and Mr. Lavalle. Appendix B.

No motion for continuance bas ever been filed with the clerk on the behalf of the defense. See Clerk's Record. Truly, Mr. Villalon, Counsel of Petitioner's choice, was in the courtroom on the day of trial and ready to proceed without any delay. Appendix B.

- **The State's Position on His Habeas Corpus That Uses Highly Distinguishable Authority.**

The Prosecution first argued that the trial court denied the motion to withdraw Counsel because it was already Petitioner's second counsel. See State's Answer, Pgs. 6-8. Then, the state argued that the trial court never ruled on the motion to substitute counsel. Id. Finally, the Prosecution argued that the trial court did not abuse its discretion because Petitioner simply sought to delay the proceedings. Id.

The Prosecution's argument uses Powell and Wheat to deny Petitioner relief on the ground that Petitioner sought to delay the proceedings. See Powell v. Alabama, 287 U.S. 45, 53, 1932); and Wheat v. United States, 486 U.S. 153, 159 (1988). However, Petitioner never sought to delay the proceeding because Counsel Villalon was ready to proceed, and was present on the docketed day of trial. Additionally, the highest state court authority is highly distinguishable from Petitioner's case.

In Gonzalez, the trial court granted the prosecution's motion to withdraw counsel because of counsel's dual role to be a state witness and defense counsel. See Gonzalez v. State, 117 S.W.3d 831, 835-36 (Tex. Crim. App. 2003). Nevertheless, the authority

in Gonzalez has nothing to do with a person trying to delay a court proceeding. Id. If anything, the state habeas court, in Petitioner's case, should have used this ruling to overrule the trial court's denial of Petitioner's motion to withdraw counsel. Id.

In Green, the trial court already appointed two different counsel to assist Green. See Green v. State, 840 S.W.2d 394, 408 (Tex. Crim. App. 1992), abrogated on other grounds by Trevino v. State, 991 S.W.2d 849 (Tex. Crim. App. 1999). Thus, the trial court in Green also reset the original trial date from September to January. Id. In Petitioner's case, his first counsel was court-appointed and the only reason why Mr. Lavalle came into play is due to Petitioner hiring Lacalle with his own money. Also, the trial court never reset any trial date as a result of the Petitioner's hand. Furthermore, the Petitioner was not seeking to delay his trial, instead to substitute counsel. Again, Mr. Villalon (Counsel of choice) was ready on the day of trial and was present in the courtroom. Appendix B.

Finally, in Ex Parte Windham, Windham strickly filed a motion for continuance in order to delay the court proceeding. See Ex Parte Windham, 634 S.W.2d 718, 720 (Tex. Crim. App. 1982). Petitioner, on the other hand, never filed a motion for coninuance and never sought to delay his trial proceeding. The trial court agreed and adopted the Prosecution's position. Appendix E. The Highest State Court agreed, adopted the trial court's findings, and denied the Petitioner habeas relief. Appendix G. The Petitioner, there-

fore, implores this Honorable Court to intervene and consider this writ of certiorari.

· Intervening Circumstances Implored.

Taken together, should the trial court be allowed to deny Petitioner's right to counsel of choice on a rationale that he was seeking to delay the trial proceeding, when the desired counsel of choice was ready and present on the day of trial; without filing a motion for continuance? No. The trial court should not be allowed to do so because this Court's holding does not mandate it nor allow it. This Honorable Court should, therefore, grant certiorari because the Highest State Court's decision conflicts with the holdings of this Court.

QUESTION NUMBER TWO

Including the argument of question one, Petitioner presents his second question for consideration: [Question Two Restated]:

In the Alternative, if this Honorable Court determines that the trial court never ruled on Petitioner's motion for substitution of counsel, than being in the interest of the public, and since a trial court is obligated to inquire into the motion, does a trial court's deliberate silence to Petitioner's motion for substitution of counsel constitute a denial of that motion?

Yes. If this Court determines that the trial court never ruled on the motion, than it should also determine that the trial court's deliberate silence constitutes a denial of his motion—since the trial court knew or should have known that Petitioner was going to obtain new Counsel. See Appendix B; Mickens, Jr.,

supra, 535 U.S. at 189-90, 122 S.Ct. at 1253. Even acting in calender control, the trial court cannot simply ignore the Petitioner's agreed motion of substitution of counsel, then force Petitioner to trial with Counsel who cannot, and does not wish to work with the Petitioner. Id. In ringing terms, the trial court's deliberated silence has arbitrarily and unreasonably interfered with the Petitioner's right to counsel of his choice. Wilson, supra, 761 F.2d 275, 281 (1985); Mickens Jr., Supra, 535 U.S. at 189-90, 122 S.Ct. at 1253 (Accordingly, the trial court must see that the lawyer is replaced).

Therefore, it is properly infered that the trial court denied the agreed motion for substitution of counsel. Further, this Honorable Court should hold that the trial court's deliberate silence constitutes a denial of the agreed motion for substitution. To hold that a trial court can do what occurred in Petitioner's case is to tell the public that any trial court in Texas can (at anytime it wishes) deny the public's constitutional right to counsel of one's own choice. This Honorable Court should finally grant Petitioner's writ of certiorari.

QUESTION NUMBER THREE

Accordingly, this Honorable Court held that a defendant's right to counsel of one's own choice should be respected. See Glasser, Supra, 395 U.S. at 75, 62 S.Ct. at 467. So, Petitioner presents his last question for consideration: [Question Number Three Restated]: In the interest of the public and applying the previous questions, should a member of the public be entitled for a trial

court to make sure it addresses every motion, and place on the record its decision, before forcing the member of public to jury trial with counsel who tried to withdraw himself off the case, due to major conflicts between them?

When the Government insists upon choosing counsel for the Petitioner, the relationship of trust is undermined. Caplin & Drysdale, Supra, 491 U.S. 617, 645, 109 S.Ct at 2673. Counsel is too readily perceived as the Government's agent rather than his own. Indeed, when this Honorable Court in Faretta held that the Sixth Amendment prohibits a court from imposing counsel on a defendant who prefers to represent himself, its decision was predicated on the insight that "[t]o force a lawyer on a defendant can only lead him to believe that the law contrives against him." Caplin & Drysdale, Supra, 491 U.S. at 645-46, 109 S.Ct. at 2673 (quoting Faretta, 422 U.S. at 834, 95 S.Ct. at 2540).

Likewise, for this reason, Petitioner argues that the trial court, when faced with a motion to withdraw and (two months later) confronted with an agreed motion for substitution, is obligated to inquire into the motions, and assess its threat to the fairness of the proceeding. Cf. Mickens, Jr., supra, 535 U.S. at 189, 122 S.Ct. at 1253. In 2011, this Honorable Court rejected the Governments argument, in Bullcoming v. New Mexico, that illegitimately denying a defendant his right to counsel of choice did not violate the Sixth Amendment where "substitute counsel's performance" did not demonstrably prejudice the defendant, citing Gonzales-Lopez, 548 U.S. at 144-45, 126 S.Ct. 2557. "[T]rue enough," this Honorable

Court explained, "the purpose of the rights set forth in [the Sixth] Amendment is to ensure a fair trial; but it does not follow that the right can be disregarded so long as the trial is, on the whole, fair. Id., at 145, 126 S.Ct. 2557." Bullcoming, 131 S.Ct. 2705, 2716, 2011 U.S. Lexis 4790, * pgs. 13-14 (2011). Similarly so with Petitioner that his agreed motion for substitution of counsel cannot be disregarded by the trial court's deliberated silence, so long as the trial is, on the whole, fair. Id.

In other words, to deny certiorari is to tell the public of Texas that it is just for a trial court to deliberately disregard the United States Constitution. And, just to deliberately ignore a defendant's motion to withdraw and agreed motion for substitution, then, see if that trial court can make a fair trial out of counsel who is forced upon a defendant. Taken together, this Honorable Court should hold that a trial court must make sure each and every motion, that is filed, is ruled upon and placed on the record. Id. Further, this Honorable Court should grant certiorari becuase the trial court arbitrarily and unreasonably interferd with, and denied, Petitioner his constitutional right to counsel of his own choice.

CONCLUSION AND PRAYER FOR RELIEF

The Petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: December 28, 2018.

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