

No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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JERRY HALEY,

*Petitioner,*

V.

BLAIR LEIBACH,  
Warden, Trousdale Turner Correctional Center,  
Correctional Institutions Division,

*Respondent.*

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ON PETITION FOR WRIT CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

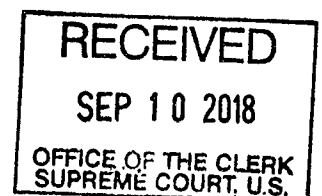
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**PETITION FOR WRIT OF CERTIORARI**

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Jerry Haley  
Prison Number #355420  
Trousdale Turner Correctional Center  
140 Macon Way  
Hartsville, Tennessee 37074

*Pro Se Litigant*



## QUESTION PRESENTED

### NONCAPITAL CASE

1. Mr. Haley, acting *pro se*, filed an appeal to the United States Court of Appeals for the Sixth Circuit, therefore, appealing the order United States District Court's, for the Western District of Tennessee Western Division, dismissing his 28 U.S.C. § 2254 Writ of Habeas Corpus Petition (“§ 2254 Petition”), raising the issue for appellate review “Whether the United States District Court decision that “Mr. Haley cannot establish cause to excuse the procedural default of his substantial claims of ineffective assistance of trial counsel raised in his § 2254 petition by showing that he received ineffective assistance of post-conviction counsel based on his post-conviction counsel's failure to raise of all of his substantial claims of ineffective assistance of trial counsel on appeal from his post-conviction evidentiary hearing to the Tennessee Court of Criminal Appeals (“TCCA”), especially since Tennessee post-conviction proceedings presented Mr. Haley the first opportunity to raise his substantial claims of ineffective assistance of trial counsel”, was rendered contrary to the Court of Appeals' ruling in *Sutton v. Carpenter*, 745 F.3d 787, 795-96 (6<sup>th</sup> Cir. 2014) (citing *Trevino v. Thaler*, 569 U.S. 413 (2013))?” The Court of Appeals refused to grant Mr. Haley's application for a certificate of appealability, finding that because “jurists of reason would not find it debatable whether the district court was correct in its procedural ruling.” This Honorable Court in 2013 in *Trevino v. Thaler*, 569 U.S. 413 (2013) reillustrating its ruling in *Martinez v. Ryan*, 566 U.S. 1 (2012), that ineffective assistance of post-conviction counsel in the very circumstance presented by Mr. Haley's case could establish cause for the default of a claim of ineffective assistance of trial counsel. These circumstances present the following question:

Whether this Honorable Court should grant certiorari, vacate the Court of Appeal's order, and remand to the Court of Appeals for consideration of Mr. Haley's argument under *Martinez v. Ryan*?

## **PARTIES TO THE PROCEEDING**

All parties appear in the caption on the cover page.

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- D. *Jerry Haley v. State of Tennessee*, 2013 Tenn. Crim. App. LEXIS 1069, No. W2013-00419-CCA-R3-PC (Tenn. Crim. App., December 5, 2013)

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**PETITION FOR WRIT OF CERTIORARI**

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Jerry Haley respectfully petitions for a writ of certiorari to review the judgment  
of the United States Court of Appeals for the Sixth Circuit in this case

**OPINIONS BELOW**

The order of the United States Court of Appeals for the Sixth Circuit affirming the district court's denial of Mr. Haley's § 2254 petition is not reported, but is included as Appendix A. The order of the United States District Court for the Western District of Tennessee denying Mr. Haley's Motion for Relief from Judgment is not reported, but is included as Appendix B. The order of the United States District Court for the Western District of Tennessee dismissing Mr. Haley's § 2254 petition is not reported, but is included as Appendix C.

## **JURISDICTION**

This Honorable Court has jurisdiction to entertain this petition for writ of certiorari pursuant to 28 U.S.C. § 1254(1). The court of appeals rendered its decision sought to be reviewed on June 8, 2018. *See* Appendix A. Mr. Haley's Motion for Relief from Judgment was denied denied by federal district court on February 12, 2018. *See* Appendix B. Mr. Haley's § 2254 petition was dismissed federal district court on September 12, 2017. *See* Appendix C.

## **CONSTITUTIONAL PROVISIONS INVOLVED**

The Sixth Amendment to the United States Constitution provides in relevant part:

“In all criminal prosecutions, the accused shall ... have the Assistance of Counsel in his defense.”

The Fifth Amendment to the United States Constitution provides in relevant part:

“No person shall be ... deprived of life, liberty, or property, without due process of law.”

Section 1 of the Fourteenth Amendment to the United States Constitution provides in relevant part:

No State shall ... deprive any person of life, liberty, or property, without due process of law.”

## **STATEMENT OF THE CASE**

### **A. STATEMENT OF FACTS**

The statement of facts from Mr. Haley's appeal is substantially set forth in the court of appeals' order in *Jerry Haley v. Blair Leibach, Warden*, No. 17-6182 (6<sup>th</sup> Cir. June 8, 2018), Appendix A, at 1-2.

In summary, Petitioner Jerry Haley filed an appeal to the United States Court of Appeals for the Sixth Circuit based on the issue of, “Whether the United States District Court decision that Mr. Haley cannot establish cause to excuse the procedural default of his substantial claims of ineffective assistance of trial counsel raised in his § 2254 petition by showing that he received ineffective assistance of post-conviction counsel based on his post-conviction counsel's failure to raise all of his



substantial claims of ineffective assistance of trial counsel on appeal from his post-conviction proceedings to the TCCA, especially since Tennessee post-conviction proceedings presented Mr. Haley the first opportunity to raise his substantial claims of ineffective assistance of trial counsel”, was rendered contrary to the Court of Appeals' ruling in *Sutton v. Carpenter*, 745 F.3d 787, 795-96 (6<sup>th</sup> Cir. 2014) (citing *Trevino v. Thaler*, 569 U.S. 413 (2013))?”. The Court of Appeals denied Mr. Haley's appeal, finding that “In this petition for federal habeas corpus relief, Mr. Haley claimed that his counsel was ineffective in: 1) advising him that he would probably be sentenced to at most forty years, rather than the sixty that he received, alleging that he would have otherwise taken the state's plea offer of twelve years; 2) failing to raise the issues raised on direct appeal in his motion for a new trial; and 3) failing to challenge the aggravated element of his conviction. The district court concluded that ineffective assistance of post-conviction counsel could not constitute cause to excuse the procedural default, because *Martinez v. Ryan*, 566 U.S. 1, 15 (2012), limits that method of establishing cause to the initial post-conviction proceeding. The district court dismissed the petition and denied Mr. Haley's motion for relief from judgment.... The application for a certificate of appealability is DENIED because jurists of reason would not find it debatable whether the district court was correct in its procedural ruling.” See Appendix A, at 1-2.

## **B. PROCEEDINGS BELOW**

Mr. Haley acting *pro se* filed a § 2254 petition in the United States District Court for the Western District of Tennessee, therefore, raising the claims that trial counsel was ineffective where upon: 1) advising him that he would probably be sentenced to at most forty years, rather than the sixty that he received, alleging that he would have other taken the state's plea offer of twelve years; 2) failing to raise the issues raised on direct appeal in his motion for a new trial; and 3) failing to challenge the aggravated element of his conviction. The Tennessee Attorney General Office filed a “Motion To Dismiss” requesting the federal district court to enter an order dismissing Mr. Haley's § 2254 Petition

on the basis that Mr. Haley's claims of ineffective assistance of counsel at trial were procedurally defaulted on the basis that "Mr. Haley's claims of ineffective assistance of counsel at trial were not raised on collateral appellate review.

Thereafter, the federal district court dismissed Mr. Haley's § 2254 Petition, finding that "Mr. Haley attempts to demonstrate cause and prejudice for his default by arguing that post-conviction counsel provided ineffective assistance by failing to raise on appeal all issues from the post-conviction petition. (Reply, ECF no. 37 at PageID 838). Ineffective assistance of state post-conviction counsel can establish cause to excuse a Tennessee prisoner's procedural default of a substantial federal habeas claim that his trial counsel was constitutionally ineffective. *Sutton*, 745 F.3d at 787. To qualify as "substantial" under *Martinez*, a claim must have "some merit" based on the controlling standard for ineffective assistance of counsel. *Martinez*, 132 S. Ct. at 1318-19. *Martinez and Trevino* cannot excuse Mr. Haley's default of these claims of ineffective assistance. *Martinez* does not encompass claims that post-conviction appellate counsel was ineffective. *See Martinez*, 132 S. Ct. at 1319 ("*Coleman* held that an attorney's negligence in a post-conviction proceeding does not establish cause, and this remains true except as to initial-review collateral proceedings for claims of ineffective assistance of counsel at trial.") The procedural default of these claims of ineffective assistance occurred when post-conviction counsel exercised his discretion to limit the brief to the TCCA to the strongest arguments. Counsel has no duty to raise frivolous issues and may exercise his discretion to limit a brief to the TCCA to the strongest argument. The claims are barred by procedural default and are DENIED. The issues raised in this petition are barred by procedural default. The petition is DISMISSED WITH PREJUDICE. Judgment shall be entered for Respondent." *See Appendix B*, at 14-15; *Appendix D*. at 9-11.

Mr. Haley acting, *pro se*, filed a “Motion for Relief from Judgment” pursuant to Rule 60(b), of the Federal Rule of Civil Procedure (“Fed. R. Civ. P.”), arguing that “(1) the federal district court mistakenly found that his claims was procedurally defaulted, and (2) newly discovered evidence was not previously available to him.”

The federal district court denied Mr. Haley's “Motion for Relief from Judgment”, finding that “Fed. R. Civ. Rule 60(b)(1) permits a court to relieve a party from a final judgment for “mistake, inadvertence, surprise, or excusable neglect.” Fed. R. Civ. P. 60(b)(1). Mr. Haley contends that the Court made a mistake in finding that the first claim in his habeas petition—that his trial counsel provided ineffective assistance by failing to have knowledge about his sentencing guidelines—was procedurally defaulted. In support of this contention, Mr. Haley points to the “Statement of Facts” portion of his TCCA brief, which states the “Appellant asserts that Mr. Stockton did not adequately explain to him the range of punishment he would be facing if he went to trial. As a result of this, Appellant argues that he was unable to make a reasonable, informed decision with regard to his defense.” (ECF No. 45-1 at PageID 878.) The “Brief and Argument” section of Mr. Haley's TCCA brief, however, asserts only two claims: (1) Mr. Haley's counsel was ineffective because he did not meet with Mr. Haley enough prior to trial; and (2) Mr. Haley's counsel was ineffective for waiving Mr. Haley's appearance at the motion for a new trial without permission. (*See* ECF No. 33 at 755.). “[I]t is a settled appellate rule that issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived.” *United States v. Elder*, 90 F.3d 1110, 1118 (6<sup>th</sup> Cir. 1996) (internal quotation marks and citations omitted). As the Court stated in its order denying Mr. Haley's § 2254 petition, the procedural default of Mr. Haley's first claim “occurred when post-conviction counsel exercised his discretion to limit the brief to the TCCA to the strongest arguments.” (ECF No. 41 at PageID 866.) ... For the foregoing reasons, Mr. Haley is not entitled to relief from the Court's September 12, 2017 Judgment. His Motion for Relief from Judgment is DENIED.” *See*

Appendix C, at 1-3.

### REASON FOR GRANTING THE WRIT

- A. THE HONORABLE COURT SHOULD GRANT CERTIORARI TO ALLOW THE LOWER COURTS TO REVIEW THE FINDING OF PROCEDURAL DEFAULT OF PETITIONER'S *STRICKLAND* CLAIM IN LIGHT OF ITS DECISION IN *MARTINEZ v. RYAN*

In *Martinez v. Ryan*, 566 U.S. 1 (2012), this Honorable Court recognized a narrow exception to the holding in *Coleman v. Thompson*, 501 U.S. 772 (1991) such that inadequate assistance of counsel at initial-review collateral proceedings may establish cause to excuse a prisoner's procedural default of a claim of ineffective assistance of counsel at trial. This is not a constitutional right, but an exception in equity applicable in situations in which a State requires a prisoner to raise an ineffective assistance of trial counsel claim a collateral proceeding. Even then, it is available only where the State did not appoint counsel in the initial-review collateral proceedings, or where appointed counsel in such a proceeding in which such a claim should have been raised, was ineffective under the standards of *Strickland v. Washington*, 466 U.S. 668 (1984). Still, to overcome the default, the prisoner must establish that the claim has some merit.

1. IN PRACTICE, CLAIMS OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL IN A TENNESSEE NONCAPITAL CASE CAN ONLY EFFECTIVE BE RAISE ON INITIAL-COLLATERAL REVIEW

The Tennessee Court of Criminal Appeals effectively and consistently defers consideration of the vast majority of ineffective assistance of trial counsel claims to initial state post-conviction proceedings, because virtually every such claim relies upon facts outside the trial record. *See Adkins v. State*, 911 S.W.2d 334, 347 (Tenn. Crim. App. 1994); *Cooper v. State*, 847 S.W.2d 521, 528 (Tenn. Crim. App. 1992); *Brooks v. State*, 756 S.W.2d 288, 289 (Tenn. Crim. App. 1988).

matter to the attention of Sixth Circuit, reminded the Court of Appeals that United States District Court for the Western District of Tennessee had dismissed Mr. Haley's § 2254 petition, therefore, ruling that Mr. Haley could not establish to cause to overcome the procedural default claims of ineffective assistance of trial counsel for failure to Mr. Haley's post-conviction counsel to raises on claims of ineffective assistance of trial counsel

In wake of both *Trevino v. Thaler*, 569 U.S. 413 (2013) and *Martinez v. Ryan*, 566 U.S. 1 (2012), Mr. Haley should have the opportunity to demonstrate that state post-conviction counsel was ineffective in failing to raise all of Mr. Haley's substantial claims of ineffective assistance of trial counsel on appeal from the denial of post-conviction proceedings to the TCCA, and present the substantial *Strickland* claims that he was able to present in the post-conviction proceedings. He already demonstrated a *prima facie* case of post-conviction counsel's ineffectiveness by only raising a single claim of ineffective assistance of trial counsel in the TCCA, based on the federal district court's own acknowledgment in its order denying Mr. Haley's Motion for Relief from Judgment that, “As the Court stated in its order denying Mr. Haley's § 2254 petition, the procedural default of Mr. Haley's first claim “occurred when post-conviction counsel exercised his discretion to limit the brief to the TCCA to the strongest arguments.” (ECF No. 41 at PageID 866.) ... For the foregoing reasons, Mr. Haley is not entitled to relief from the Court's September 12, 2017 Judgment. His Motion for Relief from Judgment is DENIED.” *See* Appendix C, at 1-3.

For all the reasons set out herein, Mr. Haley urges this Honorable Court to grant certiorari and remanding his case so the Sixth Circuit Court of Appeals can examine his claim of ineffectiveness of state post-conviction counsel in light of *Trevino v. Thaler* and *Martinez v. Ryan*, as this Honorable Court has done in a similarly-situated case.<sup>1</sup>

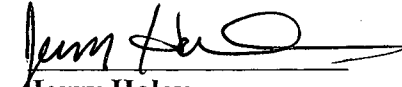
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<sup>1</sup> No. 12-390, *Smith v. Colson*

### **CONCLUSION AND PRAYER FOR RELIEF**

For the foregoing reasons, Jerry Haley respectfully requests this Honorable Court grant the petition for writ of certiorari, and accept this case for review. Alternatively, Mr. Haley requests that his be granted, and his case be remanded.

**Respectfully submitted,**

  
**Jerry Haley**

Prison Number #355420  
Trousdale Turner Correctional Center  
140 Macon Way  
Hartsville, Tennessee 37074

***Pro Se Litigant***