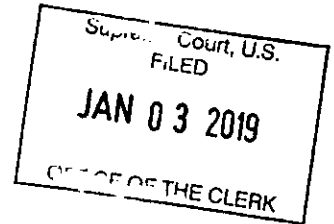


18-8242 ORIGINAL

No. _____



IN THE
SUPREME COURT OF THE UNITED STATES

Jody F McCree — PETITIONER
(Your Name)

VS.

____ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES Court of
Appeal Fifth Circuit

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

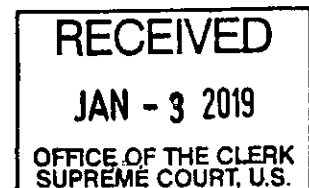
PETITION FOR WRIT OF CERTIORARI

Jody Ford McCree
(Your Name)

Polunsky Unit 3872 FM 3505
(Address)

Livingston Tx 77351
(City, State, Zip Code)

(Phone Number)



QUESTION PRESENTED

page 1

Did The United STATE COURT OF APPEAL Fifth Circuit Abuse its discretion of Denying a Certificate of Appealability OF denial of the Sixth Amendment of the United State Constitution. and did not apply The New Law. Modified the unqualified statement in case law that an attorney's ignorance or inadvertence in a postconviction proceeding does not qualify as cause to excuse a ~~procedural~~ procedural default. When a state formally limits the adjudication of Claim of ineffective assistance of Trial Counsel to Collateral review a prisoner may establish Cause for procedural default if (1) the state court did not appoint Counsel in ~~that proceeding~~ the initial review Collateral Proceeding or ~~appoint-~~ ~~ed~~

QUESTION PRESENTED

~~PAGE~~ PAGE 2

Appointed Counsel in that proceeding
was ineffective under the Strickland
standards and 2 the underlying claim
is a substantial one which is to
say that the claim has some
merits? see Buck v. Lorie Davis Director
of Texas 137 S.Ct 759, 197 LEd. 2d. (2017)
And Martinez v. Ryan 566 U.S. 1. 132
S.Ct 1309 182. L.Ed 2d 272
Trevino v. Thaler 569. U.S 133 S.Ct 1911
185 LEd 2d. 1044

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:

1. Jody Ford McCreary, T.P.C.T. NO 1694118
Polunsky Prison Unit 3872 F.M. 350 S
Livingston Tx

2. Lorie DAVIS Director Texas Department
of Criminal Justice Correctional Institution
Division.

3. IN The United State Court of Appeal
For the Fifth Circuit

Before Smith, Hibbingson and
Duncan Circuit Judges.

Appeal NO 17-40770

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
1: Buck v. Lorie Davis Director of Texas 137 S.Ct. 259, 197 L.Ed. 2d 2017	28 pages
2: Martinez v. Ryan 566 U.S. 132 S.Ct. 1309, 182 L.Ed. 2d 272	27 pages
3: Trevino v. Thaler 569 U.S. 133 S.Ct. 1911, 185 L.Ed. 2d 1044	15 pages

STATUTES AND RULES

✓ 28. USC 2254 Habeas Corpus
petition And A Motion Rule 60 & 6

OTHER

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APPENDIX B	no 17-40720. Denied a C.O.A. by the United State of Appeal 5th Circuit
APPENDIX C	Memorandum Adopting Report and Recommendation United State Court in case no 6:18 cv. 282
APPENDIX D	Order by the United State District Court striking n60 66.
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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 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 United States district court appears at Appendix C 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 _____ court appears at Appendix D 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 Sep 16 1988 26232-07188

☐ 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: 11-16-2018, and a copy of the order denying rehearing appears at Appendix A.

☐ 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 _____
A copy of that decision appears at Appendix _____

☐ 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).

[illegible]

STATEMENT OF THE CASE
PAGE 1

Petitioner Jody Ford McCleary Was convicted of A Tampering With evidence On January 13-2011. Petitioner file a 28. USC 2254 habeas Corpus of Denial of the sixth Amendment of the United State Constitution of effective Assistance of Counsel. That his Court Appointed Attorney Was ineffective for not filing Motion to suppress the evidence and A Motion to dismiss the defective indictment

The United State Court for the Eastern District ~~At~~ Court ORDER The State Attorneys to Respond to the 28. U.S.C 2254. ~~has~~ habeas Corpus. The State Attorneys General respond to the Petition 28. U.S.C. 2254. habeas Corpus

STATEMENT OF THE CASE
PAGE 2

AND STATED THAT McCreary ineffective assistance of Counsel are waived because McCreary plea guilty. On January-13-11 the state Attorney did not ~~show~~ show any evidence of the Respond of the answer of the 28. U.S.C 2254. That McCreary plea guilty, On January-13-2011 the ~~the~~ state Attorney did not present no transcripts of McCreary guilty plea of January-13-2011. The United State Court for the Eastern District of Tyler Division dismiss the 28. U.S.C. 2254 habeas Corpus with prejudice ~~and~~ and denied the Petition A Certificate of Appealability. (C.O.A)
AFTER The United ~~the~~ State Court for

STATEMENT OF THE CASE
PAGE 3.

The Eastern District Tyler Division denied the 28. USC 2254 habeas Corpus.

Petitioner file Six Motion for relief From the Judgment Fed Rule Civil procedure Rule 60 b (6) Extraordinary Circumstance to Justify reopen the Judgment that Petitioner was denied A Court Appointed Attorney and the Guilty plea proceeding Were never held. And the United State Court For the Eastern District of Texas denied the Motion 60 b 6 and Stated that McGreary claim that he was not in court to plea guilty And his ineffective assistance Counsel claim procedural default barred.

And Petitioner filed six Appeal. With the United State Court of Appeal for the Fifth Circuit in cause no 12-40953 14-40341, 15-41334 16,-40689. And

STATEMENT OF THE Case
PAGE 4

17-40720. ON December 2017. Petitioner
file A Certificate of appealability
That 1. Petitioner Was denied A Court
Appointed Attorney ON January -13-2011
And the Guilty Plea Was never
held. And the State Attorney General
and the United State Court for the
Eastern District and the State District
Court committed fraud to dismiss
Petitioner 28 USC 2254 Habeas Corpus
and to obtain A Guilty Plea. and
2 Petitioner was denied to Appeal his
Tampering with evidence. Where the trial
Court used One prior felony to enhance
his Conviction to Habitual punishment
And ~~he~~ GAVE Petitioner A Void sentence
3 Petitioner Was denied A Court Appointed
Attorney.

STATEMENT OF THE
CASE Page 3

To inform Petitioner a Guilty
Plea on January-13-2011 to a Higher
Offense to a Habitual 25 to life
Texas Pen Code 12.42d.

On September-26-2018: The United
State Court of Appeal for the Fifth
Circuit in Case No. 1740220
stated that McCreary raises various
substantive challenges to his evidence
tampering conviction. To obtain a
C.O.A. an applicant must make
"a substantial showing of the denial
of a constitutional right. McCreary's
challenges to his evidence tampering
conviction are barred by 28.

STATEMENT OF THE CASE
PAGE 6

U.S.C. § 28. U.S.C. 2244(b) as his argument either attempt to relitigate his earlier 2254 Claim or raise new ones see 2244(b)(1) barring previously presented Claims (b)(2) 3. To the extent A C.O.A. is required We also Deny the C.O.A.

ON December 2017. Petition file a Motion for Rehearing. and Argue that his ineffective assistance ~~Claims~~ Counsel Claim is not barring The Supreme Court had Changed the Law. in Buck v. Lorie Davis Director of Texas 137 U.S. 759

STATEMENT OF THE
CASE PAGE 7.

197 L.Ed. 2d. (2017) Martinez v.
Ryan 566 U.S. 1. 132 S.Ct 1309
182 L.Ed. 272 (2012) and
Trevino v. Thaler 569 U.S.
133 S.Ct 1911 185 L.Ed.
2d. 104.

The Supreme Court had changed
the Law that provide an excuse
for his procedural default and
it is not barring Where a Court
denied the Petitioner Court Appointed
Attorney that proceeding is ineffective

REASONS FOR GRANTING THE PETITION

~~The stay of Texas entry in decision that
conflict with the decision of Supreme Court
of a important federal question.~~

The United State Court for the
Fifth Circuit Abuse its discretion
of denying A C.O.N. and did
not Apply the New Laws in
Petitioner case 1 Buck v Loric
PAVIS Director of Texas 137 S.Ct.
759. 197 L.Ed. 2d (2017)

Martinez v. Ryan 566 U.S. 1.
132 S.Ct 1309 182 L.Ed 2d
272 (2012) And Trevino v.
Thaler 569 U.S. 133 S.Ct 1911
185 L.Ed. 2d. 1044

52.1.

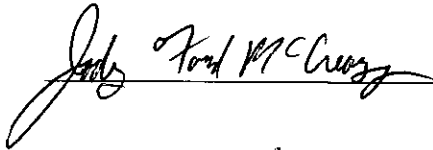
An original appellate proceeding seeking extraordinary relief - such as writ of habeas corpus mandamus prohibition ~~and~~ injunction or quo warranto - is commenced by filing a petition with the Clerk of the

- (A) Identity of parties and Co. Counsel. The petition must give a complete list of all parties, and the names and addresses
- (B) Table of Contents. The petition must include a table of Content with references to the pages of the petition. The Table of Contents must indicate the subject matter of each issue or point or group of issue or points.
- (C) Index of Authority. The petition must include an index of authorities arranged alphabetically and indicating the pages of the petition where the authorities are cited.
- d.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

 _____

Date: December - 20 - 2018