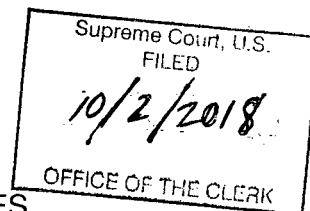


18-9198 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



John Naasz — PETITIONER
(Your Name)

vs.

The State of Texas — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Texas Court of Criminal Appeals of Austin, Texas
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

John Naasz
(Your Name)

9601 Spur 591 William Clements Unit
(Address)

Amarillo, Texas 79107-9606
(City, State, Zip Code)

Unknown
(Phone Number)

QUESTION(S) PRESENTED

1. Whether a Texas prisoner has a right to effective counsel in collateral review proceedings which provide the first occasion to raise a claim of ineffective assistance of counsel.
2. Whether the 14th Amendment is violated when a Texas habeas applicant is denied habeas relief in a manner that is not authorized by the Texas Constitution.
3. Whether Petitioner's plea of guilty was unknowingly and involuntarily as it was tendered as a result of ineffective assistance of counsel when his trial counsel misrepresented the degree of the offense Petitioner was pleading guilty to.
4. Whether Petitioner was denied the effective assistance of counsel as guaranteed by the Sixth Amendment when trial counsel failed to interview and present the testimony of Anna Naasz which would have supported Petitioner's defense of sudden passion.

9.

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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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
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STATUTES AND RULES

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☐ is unpublished.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 _____ 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 _____ 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 8/1/18.
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

SIXTH AMENDMENT

Right to a speedy criminal trial; Right to a public criminal trial; Right to a jury in criminal cases; Right to be informed of the nature and grounds of a criminal accusation; Right to the assistance of counsel in criminal cases.

FIFTH AND FOURTEENTH AMENDMENT

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 of law, nor deny to any person within its jurisdiction the equal protection of laws.

STATEMENT OF THE CASE

Petitioner, John Naasz was appointed public defender, Douglas Schopmeyer, to defend him. It should be noted to this Court that John Naasz, prior to this charge, had absolutely no criminal record whatsoever, John Naasz had no familiarity with the criminal justice system.

John Naasz was charged by indictment with the murder of his wife, Selena Naasz. It should also be noted for this Court that although he and Selena had separated, they were still married and, the offense occurred in the parking lot as she was leaving her boyfriend's apartment. Trial counsel requested from the court that a forensic psychiatrist be made available to the defense, the request was granted. Dr. James Grigson, a well known psychiatrist examined John Naasz and his analysis determined that John Naasz committed this offense, and caused the death of Selena Naasz while under the immediate influence of sudden passion arising from an adequate cause that rendered John Naasz incapable of cool reflection. Dr. Grigson stated to John Naasz, that he would testify on his behalf that this was a "sudden passion" case, and not murder.

However, and the crux of Petitioner's argument is the fact that after meeting with Dr. Grigson, trial counsel Schopmeyer never explained the law in relation to the facts of Naasz' case. John Naasz did not understand the law in relation to the facts of the case and was totally confused about the law. John Naasz, with no familiarity with the criminal justice system, believed after meeting with Dr. Grigson, that he was only guilty of "sudden passion" and not murder and his trial counsel failed to help Naasz under-

STATEMENT OF THE CASE (CONTINUED)

stand the law.

John Naasz was advised by trial counsel Schopmeyer to plead guilty, and, that the punishment was that of a second degree felony carrying 2-20 years in prison. It was Naasz' understanding, as his testimony demonstrates without question, that he was pleading to the lesser charge of sudden passion. There is no way to misconstrue this issue. The following is included completely in the attached appendix for this Court's review but it only takes a brief moment to recognize that Petitioner Naasz believed he was pleading guilty to the lesser offense only:

John Naasz being questioned while on the stand during trial by the prosecutor.

Q. Now you are pleading guilty to murdering Selena Naasz, correct? Look over here at me. You don't have to look at your attorney. You are pleading guilty to murdering Selena Naasz, are you not?

A. Yes, to the lesser charge.

Q. To the lesser charge only...

This exchange demonstrates without a doubt, as Petitioner claims in his attached argument, that he truly thought he was pleading guilty to the lesser included offense of manslaughter. This clearly supports Naasz' ineffective assistance of counsel claim yet the Texas courts refuse to recognize this meritorious Strickland claim.

Therefore, as stated in the reasons for granting review, it is Petitioner's only request for this Court to review his State Court pleadings and decide whether Petitioner has demonstrated that he was totally misled by trial counsel as to the degree of felony in which he plead guilty.

REASONS FOR GRANTING THE PETITION

[1] Whether a Texas prisoner has a right to effective counsel in collateral proceedings which provide the first occasion to raise a claim of ineffective assistance at trial?

This case seeks to vindicate the Constitutional Right to Habeas Counsel in the initial-review collateral proceedings.

This case calls for an answer to the question expressly "left open" in Coleman v Thompson, 111 S.Ct. 2546 (1990), and touched on by Martinez v Ryan, 132 S.Ct. 1309 (2012), and Trevino v Thaler, 133 S.Ct. 1911 (2013).

The Texas Court of Criminal Appeals has decided an important question of federal law that has not been, but should be, settled by this Court. Although the Supreme Court has never resolved the question at hand, the Texas Court of Criminal Appeals has essentially held that a State prisoner does NOT have a Constitutionally protected right to habeas counsel in an initial-review collateral proceedings. See Ex parte Graves, 70 S.W.3d 103 (Tex.Crim.App.2002) [holding that: "there is no constitutional right to effective assistance of counsel on a writ of habeas corpus"]. Ex parte Sledge, 391 S.W.3d 104 (Tex.Crim.App.2013).

Petitioner contends that the Court of Criminal Appeals holding is contrary to the Supreme Court precedents of Douglas v California, 83 S.Ct. 814 (1963); Evitts v Lucey, 105 S.Ct. 830 (1983); Halbert v Michigan, 125 S.Ct. 2582 (2005); and the rationales of Martinez and Trevino.

Although the holding in Martinez was equitable and applied only to federal courts, the rationale highlighted a significant risk of

REASONS FOR GRANTING THE PETITION (CONTINUED)

injustice when a prisoner is not afforded counsel in an initial-review collateral proceeding.

After the scathing criticism in Trevino v Thaler, supra, the State of Texas has refused to correct the clear flaws in its procedural system. This has created a violation of constitutional magnitude which affects every indigent prisoner in Texas. All indigent Texas prisoners will continue to receive inadequate habeas review in violation of the Fourteenth Amendment until the Supreme Court answers this question.

Therefore, the question presented is of great public importance.

[2] Whether the 14th Amendment is violated when a Texas Habeas Corpus Applicant is denied habeas relief in a manner that is unauthorized by the Texas Constitution?

The Texas Court of Criminal Appeals has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power.

The Texas Constitution governs the manner in which the Texas Court of Criminal Appeals must convene to decide its cases. It mandates that a quorum of judges decide whether habeas relief should be denied/granted- either a panel of three judges or by the court, sitting en banc. See Texas Constitution Article V, §4.

However, as exposed in Ex parte Dawson, 2016 Tex.Crim.App. Lexis 1440, by a member of that Court, the Texas Court of Criminal Appeals' internal administrative procedures effectively act as a standing

REASONS FOR GRANTING THE PETITION (CONTINUED)

order permitting an individual judge to act as a proxy for a quorum of the judges on the court on the basis of a pre-vote on a category of cases that are never actually seen by any judge other than the proxy judge.

There is no doubt this violates the plain text of the Texas Constitution, but there is also the greater question as to whether it violates the Federal Constitution's guarantee of Due process and Equal Protection.

If this question goes unanswered thousands of Texas prisoners will continue to have their habeas corpus applications denied in a manner that is clearly unauthorized by the Texas Constitution.

It is clear by the white card denial of this Petitioner's initial habeas corpus application that it was denied by a single judge. For this reason, Petitioner has included his original habeas application for this Court's review, which upon review, this Honorable Court will be persuaded beyond all doubt that this Petitioner was clearly misled about the degree of felony that he was pleading guilty to.

Petitioner will not needlessly burden this Court with an additional memorandum of law as the two attached petitions (Appendices A & B) are more than adequate for this Court to agree that Petitioner was denied effective assistance of counsel.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


JOHN NAASE

Date: SEPTEMBER 12 2018