18-9843

No.

IN THE

Supreme Court of the United States

FREDDIE FOUNTAIN,
Petitioner

v.

LORIE DAVIS, DIRECTOR TDCJ-CID,
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE
TEXAS COURT OF CRIMINAL APPEALS

PETITION FOR WRIT OF CERTIORARI

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ED
JN 25 2019
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Questions Presented

A United States citizen accused of crime upon American soil retained no constitutional rights or procedural protections of any value during the criminal investigation, trial, appellate and habeas processes on the sole account of his indigency and ignorance of the law, which in turn resulted in an unconstitutional conviction, and a decade of unlawful confinement.

At what point does the absence of government protection breach the limits of constitutional boundary?

If the indigent layman is afforded no meaningful protections of the law amidst the criminal processes by either the government or his appointed protectors (attorneys), is it not as if he held no procedural or constitutional rights to begin with?

LIST OF PARTIES

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

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STATUTES

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is unpublished to Petitioner's knowledge.

JURISDICTION

The date on which the highest state court decided this case was April 3, 2019. A copy of that decision appears at Appendix A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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STATEMENT OF CASE

The State of Texas is operating an invalid, false-fronted criminal justice system in which hundreds of thousands of poverty class criminal defendants over the course of the last two decades alone have been unconstitutionally convicted and confined. The State is running a freedom-for-hire scheme whereby only those defendants who are financially able to hire counsel on their own have their procedural and constitutional rights recognized and upheld by the State.

Indigents such as the Petitioner have no such rights in the eyes of the State and routinely sustain actual harm by the State's failure to recognize their every right under the United States Constitution, the Texas Constitution, and Texas statutory laws with respect to the criminal process, specifically, the concrete injury of unlawful confinement.

Petitioner's case is but one example of countless others across the U.S. in which the individual was fraudulently convicted and sent to prison only as a result of his or her poverty and subsequent inability to access the very procedural and constitutional rights that are due to him free of charge. No privately acquired attorney equals no rights.

Freddie Lee Fountain ("Fountain"), Petitioner, was born into poverty in the State of Texas, a status that he continued to identify with at the time of his 2009 arrest in this case, along with extensive ignorance of his own procedural and constitutional rights.

At around 10 p.m. on the night of October 14, 2009, Fountain entered a public roadway in his personal vehicle en route to a friend's house three miles away for the night. Exhausted from the day's work, he inadvertently failed to immediately turn on the car's headlights, when after only ten seconds or so of being on the roadway, police officer Ann McLemore ("McLemore") passed in the opposite direction and spotted his vehicle.

A delay in turning on headlights is a common event on roads across America even in unimpaired drivers. For this reason, police often flash their own headlights at motorists to alert them to the error without executing a stop. A delay in turning on headlights alone is not evidence of driver intoxication. Indeed, McLemore first flashed her headlights, though due to congestion on the highway Fountain did not

see it. McLemore then executed a stop. McLemore's patrol unit was equipped with a dashboard camera and audio recording capability. She had recorded all of the events of that night and those recordings were placed with the original court records in this case. These recordings verify the facts as they are presented herein.

Upon nearing Fountain's vehicle, McLemore alleged to have detected the smell of alcohol. Fountain agreed to a field sobriety test on camera. During the test he was easily able to track with his eyes, touch his finger to his nose, and recite the alphabet. He performed each test remarkably well, with the exception of the one-leg stand due to a lower back injury that was later verified by prison authorities. A reasonable fact finder reviewing that video would conclude that he had passed the test and was in sufficient control of his motor skills that night.

However, wanting the unnecessary arrest anyway, McLemore administered a retina rebound test, which she concluded he had failed, and placed him under arrest for felony driving while intoxicated ("DWI"). The officers searched his vehicle but found no open containers or open alcohol. Alcohol was found, but it was new and unopened, which suggested the very opposite of intoxication.

McLemore sought Fountain's consent for a blood test or a breathalyzer test and he refused. This is verified in the original audio recordings. In response, McLemore placed Fountain in her patrol car and transported him to a hospital located only five minutes away. She possessed ample communications equipment but made no attempt to contact a judge for a warrant.

During the trip McLemore informed Fountain that his blood would be extracted by force, putting him under intense duress. Once inside the hospital he was confronted by a four or five-man team of armed police officers who were about to take his blood by force and harm him if he did not acquiesce. Presented with no choice in the matter, the blood sample was drawn.

These police officers had acted under the sole authority of Texas Transportation Code §724.012, which mandated the sample. They gave no consideration to Fountain's superseding rights to be free of unreasonable search and seizure under the Fourth Amendment of the United States Constitution.

Fountain was jailed for third degree DWI that carried a potential penalty of two to ten years imprisonment. Because he was indigent, the trial court ap pointed attorney Brent Wilder to represent him. When Fountain asked Wilder if they

officers had violated his rights with the blood draw, Wilder stated, "No, they can do that." He misled fountain to believe that the blood alcohol results were admissible evidence, when in fact they were not. Richard Kennedy was one of the State prosecutors in the case. During pretrial, Kennedy sent word to Fountain through Wilder that he was invoking additional penalty enhancement laws (despite it being only a second felony, and only a first felony DWI for Fountain) so that Fountain was then facing two to twenty years. Kennedy informed Fountain through Wilder that he had the irrefutable blood alcohol results that proved him over the limit, that he was offering a ten-year plea deal, and if he didn't take it Kennedy would show the blood alcohol results to the jury, which, according to him, would guarantee a conviction. Kennedy indicated that he would then push for the full twenty years (as punishment for Fountain not accepting his offer). Kennedy also misled Fountain to believe the blood alcohol results were lawful evidence and then coerced him with it.

Feeling that he could not beat those blood alcohol results, Fountain waived his right to a jury trial, pled guilty to both the offence and enhancement, called witness Lynn Wallace to provide incriminating testimony against him, and even testified against himself.

Kennedy offered the inadmissible blood alcohol results into State's evidence without objection from Wilder, and the court accepted and considered that damning evidence against Fountain in the case. The trial judge found Fountain guilty to both counts and sentenced him to twelve years imprisonment.

At the conclusion of trial Wilder's representation ended and the trial court appointed attorney Ebb Mobley to represent Fountain on direct appeal. At no point did Mobley meet with or try to go over the case with Fountain. Mobley even went so far as to ignore Fountain's letters to him requesting a conference. Mobley filed the appeal citing non-relevant, frivolous points of error with no mention of any of the harmful and substantial errors that had occurred. The Court of Appeals affirmed the conviction and Mobley's representation terminated. Fountain was left to defend himself in the State and federal courts in the habeas context with no attorney, no knowledge of law or his own rights, and no chance at justice. The entire process had been rigged against him simply because he could not afford a competent attorney who would represent his true interests.

REASONS FOR GRANTING THE PETITION

At no point in this case did the State acknowledge or uphold Fountain's procedural or constitutional rights. This has resulted in continued unlawful confinement today. It is simply unacceptable that people from lower socio-economic classes who are naturally more vulnerable than others, are afforded no rights or protections at all during criminal justice processes.

Because a delay in turning on headlights is such a common mistake made by even non-impaired motorists, the initial absence of headlights in Petitioner's case could not be construed as evidence of intoxication. At the time of the arrest in this case the laws of Texas allowed motorists a certain level of alcohol in their systems while operating a vehicle on a public roadway. Officer McLemore's detection of the smell of alcohol alone was therefore not evidence to suggest that Fountain was over the limit. His vehicle was searched by officers and no open containers of alcohol were found or present in the vehicle. While some alcohol was found, the fact that it was unopened suggested the very opposite of over the limit intoxication.

Fountain was coherent and respectful with officers up until the point when they began threatening him. He was easily able to stand and walk without swaying or falling. He passed all aspects of the normal field sobriety test on camera other than the one-leg stand, due to verified lower back injuries. Texas trooper Stephen Gresham was a recognized expert who in *Bagget v. State,* 367 S.W.3d 525,527 No. 5 and 6 (Tex. App. 6 Dist. 2012) stated that individuals with lower back injuries are not ideal candidates for the test.

The retina rebound test used by McLemore was inconclusive and unreliable and directly contradicted Fountain's performance in all other motor skills tests. Its unreliability is proven by the nationwide primary reliance upon all other types of tests. Or in other words, if the retina rebound was a reliable and dependable test, law enforcement everywhere would have dispensed with motor skills, breathalyzers and blood tests altogether long ago. If it were reliable, for example, McLemore would have had no need for a sample of Petitioner's blood afterwards.

No other evidence existed in the case other than the blood results to suggest that the amount of alcohol in Fountain's system that night was in excess of the limit allowed by State law. All of the violations related to those blood analysis results were each therefore harmful errors. *United States v. Ahmed,* 324 F.3d 368, 374 (5th Cir. 2003).

The officers relied solely upon the invalid authority, a State Statute, Tex. Trans. Code § 724.012, in attempts to take Petitioner's blood by force after he clearly refused consent. In doing so, the officers wholly ignored Fountain's superseding right to be free of unreasonable search and seizure under the Fourth Amendment that under the precise circumstances of this case would have required a warrant for the blood sample. *Schmerber v. California,* 86 S.Ct. 1826 (1966).

Faced with the threat of serious physical injury from the four or five officers who confronted him at the hospital, Fountain had no choice but to acquiesce to the blood draw, even though it was not the result of his own free will and choice but rather the product of unlawful coercion on the officers' part. It occurred in harmful violation of Petitioner's Fifth and Fourteenth Amendment rights *U.S. v. Sanders,* 343 F.3d 511, 528 (5th Cir. 2003); *Blackburn v. Alabama,* 80 S.Ct. 274, 279 (1960). The fact that the officers obtained Fountain's signature on a consent form after the blood was drawn did nothing to diminish the severity of the violations.

Petitioner was entitled to the effective, 104 S.Ct. 2052 (1984); *Lafler v. Cooper,* 132 S.Ct. 1376 (2012). When Wilder told Fountain that no rights violations had occurred with the blood draw, he misled Petitioner to believe that the damning blood alcohol results were admissible as State's evidence. Because those blood alcohol results alone would have guaranteed a conviction, Fountain had no choice but to (1) plead guilty to the offense, (2) plead guilty to the sentence enhancement, (3) waive his right to a jury trial, (4) take the stand to testify against himself, and (5) call witness Lynn Wallace to provide incriminating testimony.

Fountain would not have made these five outcome-effecting decisions if Wilder and Kennedy had not misled him to believe the blood alcohol results were admissible evidence. Instead, Fountain would have chosen a jury trial, would not have pled guilty to either count, would not have called witness Lynn Wallace at all, and would not have testified at trial. And in absence of those unlawful blood alcohol results, the lack of evidence would have reasonably resulted in an acquittal or verdict of not guilty.

Wilder's actions constituted a harmful lack of effective assistance of counsel. Id. Those five decisions made by Fountain were induced by misrepresentations of evidence, and were the equivalent of a coerced confession. *Brady v. United States,* 90 S.Ct. 1463, 1472 (1970).

Even if Kennedy and Wilder were to deny their misrepresentation of those blood alcohol results, the mere fact that it was the only viable evidence in thecase to prove the material fact of "over-the-limit intoxication," along with the original trial record that shows that Kennedy did offer those results into State's evidence at trial, the

court accepted them, and wilder made no objections to it, supports the fact that both Wilder and Kennedy had in fact misrepresented them to Fountain as admissible and damning evidence. Id. Or, in other words, the original trial records themselves support Fountain's allegations that the violations did occur as described.

Fountain was wrongfully convicted and sentenced to twelve years hard time. The State legislature had statutorily enhanced the punishment from a misdemeanor to a felony on the basis of two prior misdemeanor DWI convictions. See Texas Penal Code §49.09 (b)(2). The original enhanced penalty was 2-10 years. The State prosecutor, however, then invoked a discretionary additional enhancement law that elevated the penalty range to two to twenty years, and then pressed for the full twenty-year sentence when Fountain didn't submit to Kennedy's plea offer, all for only a second total felony conviction. Indeed, the first felony was for robbery, a crime that fountain was legally innocent of that the State is today refusing to acknowledge. See *State v. Fountain*, No. 114-0907-06, 114th Dist.-Tex. (habeas application received by the court on January 28, 2019, not responded to by the trial judge and D.A.); only a first felony DWI; with no accident or injury involved; and Fountain had passed the field sobriety test on camera.

Under the circumstances, the State's second enhancement of the penalty in this case was completely unreasonable and invalid. Fountain avers that the yet unidentified State statute that was invoked by the prosecutor to create the two to twenty year range was repugnant to the due process clause under the Fourteenth Amendment "as applied" to this case. 28 US.C. §1257(a).

Both the conviction and sentence were unconstitutional.

At the conclusion of the trial, Wilder's representation ended and the court appointed Ebb Mobley to represent Petitioner in the direct ap peal. Under the Sixth Amendment, Mobley was required to pursue the protection of Fountain's procedural and constitutional rights. *Evitts v. Lucey,* 105 S.Ct. 830, 834 (1985). This would have included Mobley's duty to confer with Fountain prior to the direct appeal so as to actually investigate the issues of the case in order that all errors could be known and presented in the appeal. Mobley could not reasonably assume that all violations that had actually occurred would appear in the record. Speaking with the client ahead of time is, at a minimal, part of the investigative processes that all attorneys must perform in order to retrieve any hidden facts unseen in the record that may be vital to one's defense.

Mobley did not attempt to speak with Petitioner at any point. He sent fountain one letter saying he didn't know what grounds Fountain may have for an appeal. In

turn, Fountain had sent Mobley two different letters asking for a conference that Mobley coldly ignored. A copy of the second letter appears at Appendix B.

Instead of the many actual harmful errors being presented, Mobley merely presented others that were unrelated and frivolous. And of course the Court of Appeals affirmed the unlawful conviction. Mobley had sabotaged the direct appeal and had in essence completely deprived Fountain of that process altogether. Id.

Mobley's representation then terminated and Fountain, as an unschooled, ignorant man, was left to defend himself in the case thereafter.

The accused cannot be lawfully entitled to the effective assistance of counsel, while indigent and ignorant of his own rights, only to be completely deprived of that right all the way through the case, and the representation end leaving him with an invalid conviction to defend himself in the habeas processes. This strips him of all constitutional protections and gives his rights no meaning.

Although both state and federal habeas corpus processes are made available to indigents and non-indigents alike, the legislative and judicial branches of both the federal and state governments render habeas corpus processes a viable solution only for non-indigents whose private counsel is able to plead the case properly, while precluding the same for the indigent class who have neither a knowledgeable attorney pleading for them, nor do they possess the knowledge themselves.

Almost all elected officials and judges on both the State and federal levels were once attorneys. They obtained an undergraduate degree and attended law school, altogether accounting for six to eight years of higher education. There, they each had ample access to law books and other materials. They had teachers, professors and mentors to answer questions and instruct them.

Legislators and judges would clearly know and understand that incarcerated individuals who are uneducated in law are afforded no teachers, professors, or instructors. They have no higher general education, so most have difficulty spelling or understanding complex words or language. And they are typically afforded only pertinent statutes and case law to learn from.

In the prison complex, some individuals are placed in isolation where their access to the prison law library becomes so limited as to equate no access at all. The Petitioner, for example, has been in isolation since 2011.

Although aware that it would take the average, non-isolated individual who is in prison a minimum of six to ten years to become self-educated in law well enough

to adequately and effectively plead their case in court pro se, the United States Congress enacted a grossly inadequate one-year statute of limitations period for federal habeas petitions under 28 U.S.C., Section 2244.

While congress could have enacted 28 U.S.C. §2254(h) to read "shall appoint," instead of "may appoint," it deliberately did not do so as to promote the same goal. Federal judges in turn almost never exercise their "discretion" to appoint counsel, and when adjudicating pro se cases pretend as if the pleadings are sufficient to protect the individual's rights.

This is exactly what occurred in Fountain's case almost a decade ago. See *Fountain v. Director,* No. 6:11cv 1152, U.S.D.C., E.D. Tex.-Tyler Div.

Congress further sealed these individuals' fates by having enacted the State remedies exhaustion clause in 28 U.S.C. §2254(b)(1)(A). What this does is force pro se defendants to prematurely utilize their one and only original State habeas opportunity almost immediately after the direct appeal while still ignorant of law or their own rights in order to access the federal courts at all. Scared for their lives, these pro se defendants believe the chances of the State calling the State wrong are non-existent. They therefore assume that their only chance at a fair hearing will be in the federal forum, so they rush through the state habeas processes in vane with inadequate pleadings in order to access the federal courts.

The states then enacted statutory laws such as Texas Code of Criminal Procedure, article 11.07 §4(a)(1) and (2) that require the individual to demonstrate newly-discovered facts or evidence in order for a subsequent habeas application to be filed or considered by the state courts, even though this almost never occurs and the defendant did not receive an adequate or fair hearing with the first application. By the time the individual has learned law well enough to plead his case adequately, because he is unable to demonstrate new facts or evidence he is stopped by the successive writ laws and not allowed to plead his case at all. That is exactly what occurred in this case. And it is therefore the State of Texas' subsequent writ statute that Fountain argues is unconstitutional.

Stated in simpler terms, when the individual has elected, as many do, to pursue a federal habeas action, and after a six to ten year self-education period, the individual's successive pro se State habeas application becomes the very "first" such application that he was capable of properly and adequately presenting. The State's laws, however, do not authorize or mandate any judicial redress to it at all, or full and complete redress to it as if it were a first original application, unless he demonstrates factors such as newly discovered facts or evidence or legal basis that he can typically never demonstrate and should not be required to demonstrate in an

application where his arguments were adequately pled for the first time. Under current laws, any errors that were presented in the first State habeas application (i.e. the one inadequately pled) are deemed not adjudicable in the successive application as well.

The judiciary's liberal construction of pro se pleadings does nothing to correct the claim of preclusional effects of errors in these cases.

Liberal construction could never compensate for the total absence of individual error presentation. In Fountain's first State habeas application in this case, for example, there was an absence of presentation to many of the actual harmful errors that had occurred, because his lack of education in law at the time precluded his awareness of those errors.

In addition, Fountain challenges the entire appellate and habeas statutory laws and judicial practices in the State of Texas and all other State' laws and processes that operate in the same or similar manner as being in harmful violation of indigent defendants' First Amendment right to redress the government of grievance, and fourteenth Amendment rights to due process and equal protection of the law under the United States Constitution.

The State of Texas has an obligation to recognize that it takes six to ten years of study under its current in-prison law library system for an uneducated indigent to become familiar enough with law and his own rights to be able to present adequate pro se pleadings in Court. As such, the State must either revise its current laws so as to allow for additional direct appeals, for example: one allowed every two years up until the 15th anniversary of the conviction with no special requirements that cannot be overcome; or allow the filing and adjudication of successive habeas applications that do not require demonstration of newly-discovered facts or evidence, in a manner of one allowable every one to two years. To the extent that the States' current statutory laws, constitutional provisions and real-time practices do not afford either, the class' First and fourteenth Amendment rights are being harmfully violated because they are suffering the concrete injury of unlawful confinement as a result thereof.

In the State of Texas applications for writ of habeas corpus are currently under the jurisdiction of the Texas Court of Criminal Appeals. See Texas Government Code §22.001, and Texas Constitution, Article V, Section 3.

In non-indigent represented habeas cases, the Texas Court of Criminal Appeals ("TCCA") hears and considers those cases on the merits. The TCCA orders trial courts, attorneys, and prosecutors to respond. Evidentiary hearings are ordered.

The TCCA shows recognition towards the procedural and constitutional rights of the accused, and upholds those rights by issuing written decisions vacating unlawful convictions, ordering new trials, and the like.

In indigent pro se habeas actions, however, the TCCA does not engage in any of that and instead arbitrarily denies the application without written decision, otherwise known as the TCCA "white card" practice.

Each year ten thousand or more pro se applicants receive a white card from the TCCA, without any real consideration or action shown towards their cases. In the present case, for example, a total of four separate habeas applications were filed by Fountain from 2011 to 2019 in the TCCA and all f our were white carded. See e.g. Appendix A.

Although it is unsaid by the TCCA as to what authority it invokes to authorize the foregoing practice, it is assumed that the authority relied up on Texas Gov. Code §22.001. Petitioner avers, however, that be it that statute, other State statute, or Texas constitution, whichever authority is being relied upon by the TCCA to uphold this practice, is in direct conflict with the pro se applicants' First and Fourteenth Amendment rights under the United States Constitution. Indigent pro se cases should be heard and afforded the same process and treatment as represented cases.

The State of Texas is operating a fraudulent and unconstitutional criminal justice process with respect to large numbers of indigent defendants that wholly defies every right held by the individual, one that could be summarized as follows:

Sham Court Appointed Representation

- law enforcement, prosecutors and judges do not acknowledge or uphold the defendants' procedural or constitutional rights, resulting in harmful errors;
- state appointed defense and appellate attorneys sabotage cases and do not actually defend clients or raise errors;
- unlawful convictions result;
- convictions are wrongfully affirmed on direct appeal.

Unrepresented

- defendant ignorant of the law and unable to adequately plead his case during habeas corpus process;

- State, Congress and Judiciary uses the individual's ignorance against him and creates habeas processes that set the individual up for failure and preclude an adequate hearing;
- indigents unable to access meaningful redress or obtain relief;
- permanently instilled unlawful conviction and confinement results.

What does this say for the safety and well-being of the American people? If one state can openly disavow the rights of the poor, then all other states will follow suit.

To the extent that the practices of Texas law enforcement, prosecutors and judges; the fraudulent and illusary practices of court-appointed defense and appellate attorneys; the applicable rules and provisions of the Texas Code of Criminal Procedure, Articles 4 and 11.07; Texas Government Code, Section 22; and all other unidentified Texas rules and statutes of suspect nature, each independently and collectively allow for and/or create all of the dishonest, unfair and deceitful criminal justice system processes, or absence of processes described in this case. Those laws and rules are unconstitutional on the basis that they are repugnant to the indigent defendants' First Amendment right to redress; Sixth Amendment right to a fair trial, and Fourteenth Amendment rights to due process and equal protection under the United States Constitution. Moreover, certiorari would properly issue to the TCCA in this case to effect all necessary changes and corrections with the criminal justice system in Texas.

The TCCA retains supervisory powers over all Texas Prosecutors, district courts, court-appointed attorneys, and the several Texas Courts of Appeal.

The Texas Congress is obligated to make any necessary amendments or changes with statutory laws as well as to assist the TCCA with carrying out all system corrections ordered by this Court.

The specific changes needed in order to acknowledge and protect the procedural and constitutional rights retained by the Petitioner and all others similarly situated, would include ordering all court-appointed defense and appellate attorneys to begin actually defending their indigent clients' rights throughout all stages of the case; order prosecutors todiscontinue coercive plea practices, discontinue their non-recognition practices of defendants' federal constitutional rights, and cease from invoking additional penalty enhancement laws in cases of undue cause or low severity crime; order Texas district judges to better supervise the actions of prosecutors and appointed attorneys during the pre-trial and trial processes so as to reduce and eliminate all of those types of errors that were demonstrated in this case; order the TCCA and its subordinate

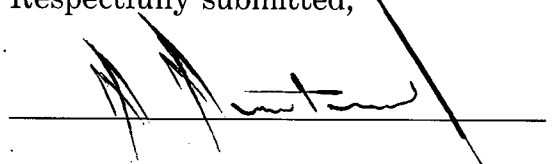
Courts of Appeal to recognize and acknowledge that unlawful convictions to occur, that indigent defendants of whom are imprisoned are typically unfamiliar with the law or their own rights and require six to ten years to self-educate well enough to present meaningful and adequate pleadings in court, the individuals' right to access the federal habeas processes, the one-year statute of limitations period and state remedies exhaustion requirement under the AEDPA; order the Texas Courts of appeal to amend all necessary statutes, rules and procedures of the Court so as to being affording pro se indigent appellants the opportunity to file successive direct appeals in their cases without attaching time restrictions for filing periods or a bar on errors previously presented in prior appeals, with an allowance of up to two successive direct appeals allowed; and order the Texas Court of Criminal Appeals to begin recognizing and upholding the procedural and constitutional rights of all indigent pro se habeas applicants during the adjudication their applications, eliminate its "white card" practices relating to those applicants, and begin adjudicating all subsequent or successive pro se habeas applications, with full consideration and redress provided towards all errors presented without application of a bar on errors previously presented in a prior application or time restrictions for filing periods, that the current requirements under section four of article 11.07 mandating that applicants demonstrate a newly-discovered legal basis, newly discovered facts or evidence before a subsequent application can be adjudicated, be eliminated and those obstacles removed.

And in doing so, with those corrections applied to the present case, the Texas Court of Criminal Appeals should vacate petitioner's conviction, order the blood alcohol analysis evidence and related portions only of the audio and video recordings vacated or suppressed as unconstitutional, order the second sentence enhancement paragraph that was invoked by the Prosecutor vacated as unjust in this case, order the testimony of Freddie Fountain and Lynn Wallace vacated or suppressed, order Petitioner's right to a trial by jury reinstated, Petitioner's invalid pleas of guilt vacated, and Petitioner afforded a new jury trial in this case.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 6-21-19