ORIGINAL

No. 19-5290

IN THE

SUPREME COURT OF THE UNITED STATES

RYAN KEITH MASON — PETITIONER
(Your Name)

vs.

LORIE DAVIS-DIRECTOR TDCJ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Ryan K. Mason
(Your Name) Ryan Keith Mason

2101 FM 369 N.
(Address)

Iowa Park, TX 76367
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Where deference is the only issue singled out by a Court of Appeals as the only question as to debatability, and that specific deference goes directly to a trial court's factual finding that requires a credibility determination concerning an attorney's provision of a favorable plea offer, does a court of appeals err by finding the said deference not debatable when there is cold, hard and uncontroverted evidence that would make the attorney's credibilty, or any deference to it, not only unreasonable and debatable, but completely impossible in this space and time continuum?

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:

TABLE OF CONTENTS

INDEX OF APPENDICES

TABLE OF AUTHORITIES CITED

CASES — PAGE NUMBER

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

[X] 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,
[X] is unpublished.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[ ] is unpublished.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[ ] is unpublished.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

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was May 8, 2019.

[X] 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 _____. 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION

In all criminal prosecutions, 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 witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

STATEMENT OF THE CASE

Because the Fifth Circuit Court of Appeals ORDER, dated May 8, 2019, sufficiently demonstrates and sets out the procedural and relevant trial court, Texas Court of Criminal Appeals and U.S. District Court's actions in this case, and in the interest of brevity, (see Appx. A), I will respectfully adopt that rendition without unecessairly lengenthing this statement. The only contest to the ORDER would be to point out that the claim of ineffective assistance of counsel is not counsel's failure to communicate to Petitioner "the correct terms of a plea bargain offer by the State for 25 years on the charge of possession with intent to deliver and dismissal of two other charges." More perfectly stated, the claim is that the attorney never communicated this plea offer at all. Only the plea offer of 25 years on all three charges was conveyed. The record shows both offers were made at different times and only one was ever offered and refused. Both offers can be considered correct but the most favorable was never offered. In short, this ORDER shows that the claim of ineffective assistance of counsel, a Sixth Amendment violation, was properly raised in the trial, T.C.C.A, U.S. District, and U.S. Court of Appeals.

The Fifth Circuit ORDER not only sufficiently establishes the exhaustion and constitutional provisions that vest the Court with jurisdiction from start to finish, it also shows and boils down the issue that is material to the consideration of the question presented. By that, Petitioner avers that the Fifth Circuit properly rolls back this case to the habeas trial court's Fact Finding and Conclusions of Law where the trial court Judge, the same Judge who presided at trial, ...

... found the trial attorney's affidavit credible. The State's Highest Court, by white denial agreed, and the United States District Court and its Magistrate deferred to that finding that resulted in the Fifth Circuit pointing out that.."deference"..was the only question going to debatability among reasonable jurists.

Based on this ORDER alone there can be no reasonable argument that this substantial and egregious constitutional violation has been properly presented throughout. Construction is not an issue to be resolved with the limited mentioned correctness of the plea offered above stated.

Therefore, the only issue, boiled down, is then the habeas trial court's credibility determination of the trial attorney's affidavit, ordered only after the T.C.C.A had remanded the case to the trial court. That specific trial court Fact Finding and Conclusions is now(APPX. B). Specifically, finding of fact #14 at p.2 with a very important date **January 16th, 2013.** This finding of fact is clearly and obviously made strictly based upon the trial attorney's affidavit.(APPX. C) Where at p.1 paragraph 2 Mark D.Griffith **swore** he had received the"requested videos and went down to the jail to discuss the evidence and the plea bargain offer with Defendant on **January 16th, 2013."** At page 2 Paragraph "2" the **January 16th,2013** date was again used to swear that.."[a]fter receiving videos that had not yet been produced."**All evidence** was reviewed at a jail visit on that **date."** Appendix-D, as offered by Petitioner in rebuttal to this erroneous and impossible find and credibility determination in the State habeas proceedings and offered to the Fifth Circuit in the Appendix of the COA Motion, absolutely proves the complete impossiblity of the truthfulness of this affidavit that all below court's have deferred to when the trial habeas court found it credible

rts have deferred to. Petitioner's bold statement here, that an attorney's sworn affidavit is false, nor Petitioner's description in his QUESTION PRESENTED concerning space and time continuum,are not made lightly or with any intent to disrespect this Honorable Court or any of the below Court's. However, these descriptions are the only plausible descriptions available to this pro se defendant that he feels fully explains the gravity of this clearly erroneous deference. (APPX.D) Is an E-mail, obtained from Attorney Griffith's own attorney client file. This E-mail, like many others in this file, is from Attorney Griffith to the District Attorney and likewise from the District Attorney to him. (APPX.D) absolutely proves Attorney Griffith's statements in his sworn affidavit to be false, whether intentional or not, absent some type of explanation of how time could be turned back from January 24, 2013 where (APPX.D) clearly shows this attorney not in possession of **ALL evidence** to even have a meaningful discussion. Juxtaposition of this (APPX.D) and (APPX.C) Mr.Griffith's sworn affidavit, are in direct conflict to the point of impossibility of both being true. (APPX.C p.1 para.#2, Page 2 para#2)both have the January 16th,2013 date where Mr.Griffith stated he went over ALL the evidence, when on January 24th, 2013 and thereafter, he still did not possess what he says he did in this false affidavit. The habeas trial court's credibility determination and any deference to it,(APPX.B p.2 #14-15),absent some ability to turn back time, is plain and clear error. At the very least, this evidence presents a debate that reasonable jurists could credibly have in this ineffective assistance of counsel claim. Thus far, only blind deference has resulted.

REASONS FOR GRANTING THE PETITION

Petitioner has reviewed S.Ct.R.10 and admits there is no specific reason under rule 10 to frame his reasons for granting this writ of certiorari. Petitioner also understands that the closing paragraph of Rule 10 in the booklet provided to pro se defendants expressly informs the reader of the rarity of the granting of this great writ based upon an asserted error that consists of erroneous factual findings... However, Petitioner avers that the single claim asserted here,and the evidence presented to support it, demands redress. The error asserted is an erroneous and false finding of fact at the state habeas court level, after remand from the T.C.C.A., that has blindly been deferred to at every stage of exhaustion thereafter. The factual finding in question, if left to stand, based on the cold,hard and undisputed evidence of falsity, would not only serve a severe injustice to Petitioner, but would also encourage a future prosecutor or contested trial attorney to present false affidavits or testimony to cure an ineffective assistance of counsel claim without fear of reprisal so long as they could convince a trial habeas judge to make a credibility determination and finding of fact based on it. If the fault cannot be placed directly on the state or attorney under fire, then the fault must be imputed to the habeas court, who fully understand the deference to his findings of fact, especially when they turn on the credibility of a witness, and the presumption of correctness afforded them. Petitioner and others similarly situated, are rarely afforded even certiorari review and especially so in erroneous finding of fact scenarios, according to the Rule 10 closing paragraph-a fact habeas judges are

accutely aware of. A habeas court judge and an attorney being aware of the likelihood of federal or Supreme Court review of their affidavits and findings based upon them, occasionally and probably even rarely, results in a situation where the integrity of the process is brought into question. Therefore, even erroneous factual issues are not precluded from this Court's review in the rarest and pure circumstance, and petitioners are left with some hope of Supreme Court review however rare. That slight hope for justice is what Petitioner finishes the race with today.

This Honorable Court, the highest court in the land, is faced today with an erroneous factual finding-based on a false affidavit-(APPX.B then C) on one hand. On the other hand (APPX.D)where the e-mail evidence between the trial attorney and the Assistant District Attorney cannot be reconciled based on the January 16th, 2013 and January 24th, 2013 dates. The affidavit and E-Mail are from the same mouth, attorney Mark Griffith. Both the affidavit and the e-mail to the Asst.D.A. cannot be true under the current time and space continuum we are obligated to operate under.

At this time, based on the Fifth Circuit's ORDER (APPX.A), deference is the only question as to debatability. They specifically found the answer to that question by the below court's not debatable and thereby deferred as well.

It is certain that this habeas judge,on remand from the Texas Court of Criminal Appeals, fully understood the deference the above courts of review would afford his finding of fact. Why? Simply because it is the settled law. However, when deference goes awry, the high courts of this land are vested with the power of the United States Constitution to correct findings of fact that are gross dep-

partures from the truth. This is the purpose of the great writ. The public and even guilty defendants depend on the truth finding function of the Criminal Justice System in America. More perfectly, the Sixth Amendment protects them in the pursuit of liberty and justice for all. If the public truly had a forum in which they could actually view and have personal knowledge of the deference afforded to the habeas court Judge's credibility determination, that is based on the attorney's false affidavit in this case, there is no doubt the public's confidence in the justice system would be eviserated. This is especially so where the correction of the Sixth Amendment violation of ineffective assistance of counsel would not result in the overturning of a conviction. The correction, based upon Supreme Court law, would only result in Petitioner receiving the 25 year sentence offered by the State of Texas that they felt was prudent and felt the trial Judge would accept along with the dismissal of the two most serious drug-free zone infractions. The two drug-free infractions were subsequently dropped after trial in this present case. The public and defendants have the right to rely on what a District Attorney, or its represenative, offers a defendant in order to avoid trial and to prudently punish one for his actions. Petitioner, in this case, has a supreme interest in being informed of the plea offer of 25 years and dismissal of the two most serious charges.(APPX.E). That difference specifically has to be measured by the difference between a 68 year sentence and a 25 year sentence-43 years. The public has an interest to assume that a fair and just sentence, when offered to a defendant, is passed on to a defendant in their best effort to avoid senseless and unecessary trials where their tax dollars are wasted and continued to be wasted on the incarceration extended

another 43 years that could have been avoided. This Court has placed Sixth Amendment protections on a defendant's right to be informed of any plea offer by the state. The public's confidence can only be bolstered by a finding that Petitioner was not informed of this plea offer on January 16th, 2013, as Griffith says and the Court then so found , if the attorney didn't have any of the necessary materials to even have a meaningful discussion with Petitioner on January 24th, 2013. In fact, it is an impossibility far past debate.

Deference is abdiction,and of the most serious nature, when it results in a blind eye being turned to truth while falsity is advanced. The likelihood of re-occurrance is great absent this Court's intervention by sending a strong message to the below courts of this land that deference is not absolute, not even in credibility determination scenarios of factual issues. The granting of this writ is necessary to maintain justice and integrity in our justice system.

Honorable Justice, Judge Kennedy, gratefully wrote in Miller El V Cockrell 123 S.Ct.1029, at 1041,"Even in the context of federal habeas, deference does not imply abandonment or abdiction of judicial review. Deference does not by definition preclude relief. A federal court can disagree with a state court's credibility determination and, while guided by the AEDPA, conclude the decision was unreasonable or that the factual premise was incorrect by clear and convincing evidence." Miller El supra is the well settled standard in the certificate of appealability context and correctly relied on by the Fifth Circuit Judge Dennis in (APPX.A). The credibility determination made by the state court is clearly and convincingly wrong and the federal court should have so said based on the evidence

presented in the state court, even though it was bound by the AEDPA to afford the greatest amount of deference in credibility determinations.The premise for the erroneous factual credibility issue is incorrect at best and intentionally false at worse. Either way the evidence at least presented the Fifth Circuit with a case where a strong debate,as to the deference this factual credbility determination had received below, could be had among reasonable jurist. Reasonable jurist, based strictly on the evidence presented through out this case, could disagree with the district court's resolution that relied solely on the state court's factual credibility determination in this substantial constitutional Sixth Amendment violation. Or at least agree that this case deserves encouragement to proceed further. Miller El supra at 537 U.S. 327. There are no procedural hurdles and the standard is clear and set out at page 2 of Petitioner's Motion for Certificate of Appealability. Strickland V Washington 466 U.S. 668 being extended to the plea bargain process by way of Missouri V Frye 132 S.Ct.1399; Lafler V Cooper 132 S.Ct. 1376 as extended by Texas to Ex Parte Argent 393 SW 3d 781 is the Supreme Court and State Court standards.The standards applied are correct, however, unreasonably applied. Surely this Court's own precedent should not be reduced to an attorney being able to cure his own ineffective assistance of counsel by providing a false affidavit, intentional or not, and name specific dates and times that cannot possibly be true when he informed a petitioner of a plea offer without careful and diligent review of the truthfulness of it. Deference to such false evidence must be reasonable under 2254(D)(2) and it can never legally be. This amounts to abdiction and abridgement of this Court's own precedent as well as the AEDPA.

This Honorable Court, in the same vein as the Miller El Court and specifically Honorable Judge Kennedy, today has the rare opportunity to address the admittedly rarest exercise of its certiorari powers, in light of Frye and Cooper, to send a strong message to the lower reviewing courts of this land. The message is that deference does not mean abandonment or abdiction of judicial review. This is so in even the rarest contexts-factual findings-and credibility determinations. Deference to false evidence is no deference at all but adbiction of duty to uphold this Court's precedent and the Constitution of the United States of America thereby. This case offers a pin pointed date in a cut and dried true or false scenario. There is no gray area in this case. Either Griffith had all of the evidence on January 16th, 2013(APPX.B & C) necessary to have a meaningful discussion with this Petitioner, or he didn't as late as January 24th,2013(APPX.D). Finally in closing, Petitioner offers his sworn statement under the penalty of perjury(28 U.S.C. § 1746) that at no time, including January 16, 2013, did Attorney Mark D. Griffith ever offer him the plea stated in (APPX.E).

Deference, as the Fifth Circuit pointed out in (APPX.A), or abandonment and abdiction of judicial review, is the only question before this Honorable Court today. That question should, respectfully, be answered in the interest of the preservation of the public's trust in the integrity of the justice system and in the interest of justice to Petitioner and others similarly situated.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: 7.5.19