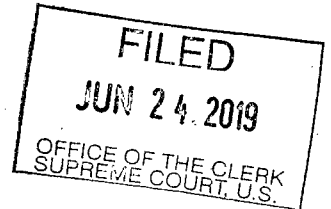


19-5379

ORIGINAL

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES



Michael Boyd Crowley — PETITIONER
(Your Name)

VS.

The State of Texas — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Texas Court Of Criminal Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

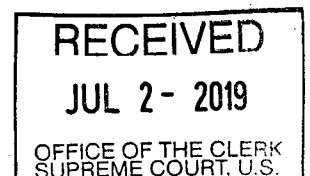
PETITION FOR WRIT OF CERTIORARI

Michael Boyd Crowley #2064312
(Your Name)

3899 Hwy. 98
(Address)

New Boston, Texas 75570
(City, State, Zip Code)

N/A
(Phone Number)



QUESTION(S) PRESENTED

1. Was the information given by Dr.Dunham sufficient to warn the defendant of the danger of self incrimination ?

2. Did the prosecution violate the defendant's right to counsel when they failed to warn defense that they intended to use the results of the exam in the guilt/ innocence or punishment phase of the trial ?

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:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5
CONCLUSION.....	8

INDEX TO APPENDICES

APPENDIX A	Memorandum Opinion District 11	(9)
APPENDIX B	Court of Criminal Appeals PDR Refusal	(10)
APPENDIX C	Court of Criminal Appeals Rehearing Refusal	(11)
APPENDIX D		
APPENDIX E		
APPENDIX F		

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Estelle V. Smith 101 SCT 1866 -----

5,7

Miranda V. Arizona 384 US 436 -----

7

STATUTES AND RULES

5TH Amendment -----

4,6

6TH Amendment -----

6

TEX. C.C.P. 46B.007 -----

4,5

Supreme Court Rule -----

7

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 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 _____ 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 2-13-2019.
A copy of that decision appears at Appendix B.

☒ A timely petition for rehearing was thereafter denied on the following date: 3-27-2019, and a copy of the order denying rehearing appears at Appendix D.

☐ 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

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI

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 assistance of counsel for his defence.

ARTICLE 46B.007 TEXAS CODE OF CRIMINAL PROCEDURE

A statement made by a defendant during an examination or trial on the defendant's incompetency, the testimony of an expert based on that statement, and evidence obtained as a result of that statement may not be admitted in evidence against the defendant in any criminal proceeding, other than at:

- (1) A trial on the defendant's incompetency; or
- (2) Any proceeding at which the defendant first introduces into evidence a statement, testimony or evidence described by this article.

STATEMENT OF THE CASE

Mr. Crowley was indicted in May of 2014. Taylor County, Texas, grand jury charged the defendant with intentional murder. The trial resulted in a conviction for murder and a sentence of (80) eighty years confinement. The trial court employed the services of Dr. Jason Dunham for the supposed purpose of determining Mr. Crowley's sanity. Against the objection of the defense, Dr. Dunham was allowed to testify as to his opinions and to recount statements that Mr. Crowley supposedly made during his pretrial exam. The testimony severely hurt Mr. Crowley's defensive strategy. The psychiatrist did not tell Crowley that his statements could be used as evidence against him. The defense, believing that the exam was a neutral, was prevented from preparing for an adversarial session of questioning by an agent of the prosecutor. The testimony of the defendant was supposedly protected by Texas C.C.P Art. 46B.007. This statute was instituted to protect a criminal defendant from statements by a psychiatrist. The instant case proceeded to the appellate level of review. The defendant's complaint of his 5TH amendment violation of self incrimination protection was ignored. Mr. Crowley then filed for review from Texas Court of Criminal Appeals. The court refused his request for review.

REASONS FOR GRANTING THE PETITION

The instant case is very similar to the situation presented in the Estelle V. Smith case. The defendant in Estelle V. Smith 101 SCT. 1866, was deemed to have been egregiously harmed by the unconstitutional admission of testimony by a psychiatrist at the punishment phase of his trial in a Texas Court. Smith was not properly warned that his statements would be used against him at trial. The Supreme Court found in Smith's favor. Mr. Crowley was presented with a situation where the trial court appointed their expert to examine him in regards to his sanity at the time of the altercation. Crowley was forced to accept Dr. Dunham because he could not afford his own expert. The defense counsel sternly objected to letting Dr. Dunham testify. The sanity examination was not supposed to be admissible in the criminal proceedings unless the defendant opened the door. See: Texas Code of Criminal Procedure Article 46B.007 in Statute section. The defendant never expressed any plans to use a sanity defense or did he ever give the prosecution legal right to use the contents of the sanity examination. Mr. Crowley believes that the trial court and the appellate courts both allowed the prosecution to use incriminating statements against him in violation of his guarantee against being compelled to convict himself by his own testimony. The complained of testimony was extremely inflammatory. It served to heighten the emotional feelings of the jurors. The testimony also directly opposed the defense's claim of manslaughter and self defense. The conclusions of Dr. Dunham about anger and intoxication went specifically to intent and motive. These were both crucial issues and Dunham's testimony very favorable to the prosecution's case.

REASONS FOR GRANTING THE PETITION

The defendant was also adversely affected when he changed his decision to forego giving testimony. This decision was made because Crowley felt he had to refute false reports of his statements made by Dr. Dunham.

The inflammatory conclusions of Dr. Dunham and his alleged false statements also caused egregious harm during the penalty phase of the trial. In addition to the already mentioned statements the prosecution also was able to put in another disclosure about anger management classes. The State continued to profit by the admission of incriminating statements given to Dr. Dunham. See: appellant's brief page (22). The reviewing court's characterization of the damage as being only slight, or non-existent is not logical. The jury gave Mr. Crowley a punishment at the very extreme high range.

There is also the fact that the prosecution denied Crowley assistance of counsel at a critical stage of the proceedings. This is true because trial counsel was not advised that the State intended to use the results of the examination in the criminal trial. The defendant did not have counsel to protect his interests. The critical decision of whether to submit to the exam was paramount in this case. By way of deceptively eliciting incriminating statements in a supposedly neutral sanity examination the prosecution denied Mr. Crowley assistance of counsel.

The State violated Mr. Crowley's 5TH amendment rights. The considerations calling for the accused to be warned prior to custodial interrogation apply with no less force to the pretrial examination done in this defendant's case. The decision made in the Estelle V. Smith case clearly shows that Dr. Dunham's 'warning' was not suff-

REASONS FOR GRANTING THE PETITION

icient to determine that Mr. Crowley understood the severity and potential harm involved. He did not waive his constitutional rights. The State suggests that it is the intention of the Legislature that pretrial examinations of this nature can be used even if the defendant does not bring an insanity issue. This is completely illogical. This would put a defendant in a situation where if he found mentally culpable by the expert everything he told the psychologist could be used against him. The Texas Legislature intended that these types of exams be neutral unless the defendant opens the door.

For the reasons stated Mr. Crowley has been convicted illegally. The State courts have ruled on an important Federal question in a way that conflicts with relevant decisions of the Supreme Court. Specifically in both Estelle V. Smith 101 SCT. 1866 and, Miranda V. Arizona 384 US 436 the State courts have decided issues in this case which are in opposition to the Supreme Court's decisions. Pursuant to Rule 10C this court should rule on these issues.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: June 24, 2019