

No. 19-5423

IN THE SUPREME COURT
OF THE UNITED STATES

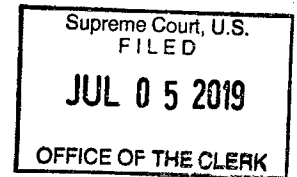
 TERM 2019

ORIGINAL

ANTONIO RASHAWNE CARR

VS.

LORIE DAVIS TDCJ DIRECTOR
OF THE TEX. CRIM. JUST. CORR. INST. DIV.



PETITION FOR WRIT OF CERTIORARI
FROM THE 5th DISTRICT COURT OF APPEALS
OF DALLAS TEXAS

PETITION FOR WRIT OF CERTIORARI
TO THE TEXAS COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS

RESPECTFULLY SUBMITTED

x Antonio Carr
Antonio Rashawne Carr TDC# 02165207
Connally Unnit
899 F.M. 632
Kenedy, Texas 78119

ISSUES FOR REVIEW

ISSUE NUMBER ONE: Appeal Counsel only raised one point of error. It was a question regarding the Complainant. That she had been nearly raped by someone else two months prior to the incident.

ISSUE NUMBER TWO: Appeal Counsel would not raise a claim of Ineffective Assistance of Trial Counsel on Direct Appeal. Because this was an actual arraignment hearing trial. And that Appeal Counsel should have raised that this was an actual arraignment trial/Indicting proceeding.

ISSUE NUMBER THREE: The Court of Appeals modified the trial courts judgment in the effects of enhancements that proved that this was only an arraignment trial hearing.

ISSUE NUMBER FOUR: The court of appeals affirms that a Grandjury found the Petitioner guilty at the actual arraignment/Grandjury that is a Indictment Proceeding and have just now Indicted the Petitioner of Aggravated Sexual Assault of a Child as what was actually read in the Indictment from this actual Grandjury.

NAME OF THE PARTIES

Petitioner

Antonio Rashawne Carr
TDCJ Id # 02165207
Connally Unit
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Kenedy, Texas 78119

Respndant

Ken Paxton
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No. _____

IN THE SUPREME COURT
OF THE UNITED STATES

_____ TERM 2019

ANTONIO RASHAWNE CARR

VS.

LORIE DAVIS

DIRECTOR OF TDCJ ID

ON PETITION FOR WRIT OF CERTIORARI
FOR REVIEW OF THE FIFTH DISTRICT COURT OF APPEALS
OF DALLAS TEXAS

PETITION FOR WRIT OF CERTIORARI TO THE
TEXAS COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS

TO THE HONORABLE JUSTICES OF SAID COURT:

Comes Now a Private Man Antonio Rashawne Carr, and the Petitioners legal fiction named ANTONIO RASHAWNE CARR. In the above styled numbered cause and proceeding Pro se. Informa Pauperis. And would present this Petition for Writ of Ceritorari and is seeking a review of the Fifth District Court of Appeals of Dallas Texas. And the refusal of Petitioners PDR from the Texas Court of Criminal Appeals in Austin, Texas for the alleged conviction that was obtained in Violations of his Constitutional Rights.

OPINION

On Appeal from the 195th Judicial District Court of Dallas Texas. No. F-1624697-N. Trial Court Number and Fifth District Court of Appeals Number 05-17-01264-CR.

And the Petition for Discretionary Review PD-0018-19 denied on 5/1/2019 motion for rehearing denied on 5/14/2019

JURISDICTION

The Court of Appeals Fifth District of Texas at Dallas made an Memorandum Opinion No. 05-17-01264-CR Dated October 4, 2018. Petitioner filed for an Extension of time to file his PDR and was granted that motion Petitioner filed his Petition for Discretionary Review on March 5, 2019 and his Petition for Discretionary Review was denied on 5/1/2019. Petitioner then filed a motion for rehearing, which also denied on 5/14/2019.

The Petitioner has 90 days from the date of the last refusal for rehearing to submit his Writ of Certiorari to the Supreme Court of the United States. And therefore, this Petition for Writ of Certiorari is timely filed. Thus the Supreme Courts Jurisdiction is Properly Invoked under Title 28 USC 1251.

CONSTITUTIONAL AND STATUTORY

PROVISION INVOLVED

UNITED STATES CONSTITUTION

SIXTH AMENDMENT

FOURTEENTH AMENDMENT

TEXAS CONSTITUTION

ARTICLE 1 SECTION 10

ARTICLE 5 SECTION 12(b)

TEXAS RULES OF EVIDENCE

Rule 401, 402 , and 403

TEXAS RULE OF APPELLATE PROCEDURE

44.2(a)

STATEMENT OF THE CASE

On October 2, 2016 Petitioner was accused of Aggravated Sexual Assault of a Child, the charging instrument was an Informational Indictment from the Prosecutor. Petitioner pleaded NOT Guilty to the charged offense and/or the Informational Indictment by the Prosecution in Trial court 195th Judicial District Court of Dallas Texas. Trial cause number F-1624697-N

The Trial Court of the 195th, empaneled a actual Grandjury for the Trial by jury of the Petitioner. on or about the 27th day of October 2017. Where the Petitioner has pleaded NOT Guilty to the Charged Offense before this actual Grandjury in the jury

Rashawne Carr.

Petitioner was appointed the Appeal Attorney Tara Cunningham as the Appeal Attorney for this case. Petitioner has not sent the brief that she filed in the case. Petitioner has not received any other files from Tara Cunningham his appointed appeal counsel FOR THE Fictional Person ANTONIO RASHAWNE CARR. The State's Attorney of Appeal had filed a response to appeal counsel Tara Cunningham's brief. Petitioner has never received a copy of that document or for that matter any other documents that would assist the Petitioner in continuing the legal process that the court have started against the Private man Antonio

Attorney filed a brief on March 12, 2018. of Appeals in Dallas Texas Cause No. 05-17-01264-CR. Petitioner's filed and the Appeal was assigned to the Fifth District Court have the trial Court's actual ruling. Motion for Appeal was District Attorney filed a response. However, Petitioner doesn't new trial on December 6, 2017. And on December 14th Assistant court on November 6, 2017. He then filed a Amended Motion for Fishburn filed a motion for New Trial and which filed in the was alleged to have been found guilty Petitioners Attorney Allen On that day of October 27, 2017. Right after the Petitioner to 36 years in the Texas Department of Criminal Justice Division. on October 27, 2017 and then subsequently sentenced the Petitioner Sexual Assault of a Child. The Trial Court entered a judgment the offense charged that he was on trial for which is Aggravated trial that has alleged to have found the Petitioner guilty of

On October 4, 2018, the Fifth District Court of Appeals of Dallas Texas had given their Opinion in a Memorandum opinion that was filed by Justice Stoodard. Petitioner then filed for an Extension of time so that he could get his records and pursue a Petition for Discretionary Review and was subsequently granted the extension of time to file and Petitioner had filed his PDR on March 5, 2019. Which was then refused by the Court of criminal appeals in Austin Texas. Petitioner then quickly put together a Motion for rehearing and sent it off which was received and subsequently refused also.

REASONS FOR GRANTING THE WRIT

REASON ONE FOR GRANTING THE WRIT: Appellate counsel only raised the one point of error as a means to show defense theory that someone else committed the crime. Stating that the Trial Court erred when it did not allow the Petitioner to Question the witnesses regarding the Complainant's allegations that she was nearly raped just two months prior to the incident in question. Which was just prior to Petitioners involvement with the complainant and could have confused the issue at hand.

Relevant evidence is generally admissible and presumed to be more probative than prejudicial. See Tex. R. Evid. 402, FLETCHER V. STATE 852 S.W.2d 271, 277 (Tex. App. Dallas 1993) The excluded evidence that she had nearly been raped by someone else goes to show that the victim could have easily confused the Petitioner with the person two months prior to the one that Petitioner is on trial for. That she was nearly raped by her mother's Baby's Daddy to the incident all because the Petitioner had drove up

in a car of the same make and model as the one of her Mother's Baby's Daddy.

The United States Constitution Provides in part. That "In all Criminal Prosecutions the accused shall enjoy the right to be confronted with the witnesses against him." U.S. Constitution 6th and 14th Amendments to the United States Constitution and makes the right to confrontation applicable to the State of Texas. *POINTER V. TEXAS* 85 S.Ct. 1065(1965). The very Confrontation clause that ensures "the reliability of the evidence against a criminal defendant by subjecting it to rigorous testing in the context of the trier of facts." See *MARYLAND V. CRAIG* 110 S.Ct. 3157(1990). It is to cross examining an adverse party that allows the jury to assess a witnesses credibility and to expose the facts which the jury may use in its assessment. See *CARROLL V. STATE* 916 S.W.2d. 494,497(Tex.Crim. App. 1996). And While the Sixth and Fourteenth Amendment protects an accused's rights to cross examine any witnesses, it does not prevent a Trial Judge's limiting cross examination of concerns about among other things, harassment, prejudice confusion of the issue and the witnesses safety by interrogation that is repetitive or only marginally relevant." *DELAWARE V. VAN ARSBALL* 106 S.Ct. 1431(1986).

REASON TWO FOR GRANTING THE WRIT: Appeal Counsel would not raise a claim of ineffective assistance of trial counsel on direct appeal because this was an actual arraignment trial Indicting proceeding. And the accused is guaranteed the right to be informed of the nature and cause of the accusations against him in all criminal actions. U.S. CONSTITUTION 6, and 14th Amend-

ment Texas Constitution Article 1 Section 10 and Article 5 Section 12(b) The accused is not required to look beyond the face of the indictment for the notice of the nature and cause of the accusations. But was not given an actual True bill of Indictment. RINEY V. STATE 28 S.W.3d. 561 (Tex.Crim.App.2000).

The Appellate counsel is deemed to know the law and all of its legal proceedings and to have read up on the files concerning the Petitioners case. Thus counsel is suppose to know that even though Petitioner had challenged or tried to challenge his indictment before the actual arraignment/indictment proceeding hearing That this was also a point of error that counsel had refused to or failed to make to the Appeals court for the fifth District of Dallas Texas. Which coincides with the facts that Petitioner believed that the Indictment/information was not a True-bill that was presented to him and was not of that of an actual grand jury. And that he had tried to make it known to the court. That a Charging instrument must charge a person with the commission of an actual offense against the laws of Texas. (Tex Constitution Article 5 Section 12(b) and Article 1 Section 10.

REASON THREE FOR GRANTING THE WRIT: the fact that Petitioner was accused of Aggravated Sexual Assault of a Child in cause number F-1624697-N. The Petitioner was pleading NOT guilty to the charged offense. However, the fact that Petitioner was already a convicted Felon by admission of the States Notice of State's Special Plea of Enhancements, Paragraphs. That was filed the

day of the Verdict of the cause of action against the accused.

ENHANCEMENTS ARE AS FOLLOWS:

04-26-07 6th Judicial Circuit Court, Pinellas Co. Fl. Cause
No. 09-25584CFANO Offense Child Abuse.

08-10-10 6th Judicial Circuit Court, Pinellas Co. Fl. Cause
No. 09-25584CFANO Offense UPF-Felon

08-10-10 6th Judicial Circuit Court, Pinellas Co. Fl. Cause
No. 2009-026604 Offense AA/DW

08-10-10 6th Judicial Circuit Court, Pinellas Co. Fl. Cause
No. 09-25585CFANO Offense Domestic Battery-Strangulation

08-10-10 6th Judicial Circuit Court, Pinellas Co. Fl. Cause
10-12955CFANO Offense Failure to Appear

08-10-10 6th Judicial Circuit Court, Pinellas Co. Fl. Cause
No. 09-25585CFANO Offense Contempt of Court

When the District Attorney had filed this Enhancements the actual day of trial for the alleged conviction alleged by the court. The Petitioner was denied his constitutional rights 6th and the 14th amendments of the right to be informed of the charges against him. This is a error that falls under the preview of Texas Rules of Appellate procedure 44.2(a). If the appellate record in a criminal case reveals constitutional errors that is subject to harmless error review. The Court of appeals must reverse a judgment of alleged conviction or the punishment unless the court determines beyond a reasonable doubt. That the error did not contribute to the alleged conviction or punishment. See JASPER V. STATE 61 S.W.3d. 413,423(Tex.Crim.App.2001). Stating that in the case of Constitutional error. A Defendant's conviction need not be reversed if it determines that the error was harmless beyond a reasonable doubt. And in this case it was not.

REASON FOUR FOR GRANTING THE WRIT: Court of Appeals affirms that a jury found Petitioner guilty at the Arraignment Indictment trial/grandjury hearing of Aggravated Sexual Assault of a Child. The fact was that when Petitioner refused to plead guilty to the Aggravated Sexual Assault of a Child in the Prosecutors indictment cause number F-1624697-N the case then proceeded to trial for the actual Indictment and Petitioner was now actually before the Actual Grandjury that was now actually enpaneled in the 195th Court where a actual arraignment then occurred before the actual Grandjury. And where defense counsel represented Thre Legal Fiction ANTONIO RASHAWNE CARR INand not the Private man Antonio Rashawne Carr. in which the State alleged a Indictment has already been given to the Petitioner and was now in trial for but the fact that this Grandjury hearing had just returned an Indictment because it had alleged that Petitioner was guilty of the charged offense of Aggravated Sexual Assault of a Child.

The fact is that after failing to get the Petitioner to plead guilty to the wiloly charged offense of Aggravated Sexual Assault of a Child the Government was bound to enpanel a jury for the charged offense and as statute required for actual arraignment, indicting proceedings. And for the full closure of a case. The fact was the government presented a Aggravated Sexual Assault case before the Grandjury for which Petitioner would submit is the States lead case and in which all prior enhancements paragraphs that were carried and adopted into now cause F-1624697 -N which were what the Petitioner was sente to prison for all over again.

The fact is that in this actual arraignment the jury could have infact No-billed the Petitioner of the charged offense on trial for Aggravated Sexual Assault of a Child. And the trial counsel would have prevailed on the offense on trial for. However the fact is that in the court of appellate opinion the court states that Petitioner plead not true to a second enhancement paragraph, and that the trial court found the first enhancement paragraph true. And therefore, Modifying the judgment and affirming a Thirty Six year sentence.

Therefore, Petitioner can clearly show and even demonstrate that he was entitled to a reversal and remand after direct appeal and that such has infact occurred in the appeals court, whereas the appeals court reversed any judgment Petitioner could have gotten for which is infact Null and Void at such time in the actual arraignment indicting proceeding. And the court of appeals then modified a judgment of 36 years and affirms it. A Conviction as Modified and Well the fact is the court of appeals admits that Petitioner pleaded not true to the enhancements and that the trial court found the first enhancement count not true. The Petitioner can clearly demonstrate that he is actually innocent of the Aggravated Sexual Assault of a Child. The case that was on trial for and before the jury on a NOT guilty plead. As it also shows in the Judgment sheet that Petitioner does not have to Register as a Sex Offender under the Chapter 62. And therefore, can Not be said to have been actually convicted of said offense. Whereas the Petitioner had only just been indicted for the offense that he was charged with.

Whereas also this same Judgment sheet shows that this alleged conviction is to be run currently with other sentences. Which can only be the Special Plea of Enhancements that was filed on October 27, 2017. The actual day of the Indicting proceeding of the Petitioner which also coincides with the same day of the alleged illegal Judgment of the 195th District Court of Dallas Texas.

CONCLUSION

Petitioner Antonio Rashawne Carr, requests and even prays that this court grant him the relief that the 5th District Court of Appeals of Dallas has denied him. Which is a Reversal for and a remand back to the trial court of the 195th District Court of Dallas Texas. For the right to confrontation challenge that was actually denied to the Petitioner and which is guaranteed to him by the U.S. Constitution. Also the right to be Tried on the True bill of Indictment that was handed down on October 27, 2017 the day of Petitioners actual Indictment proceeding. And not to sit in prison on this Null and Void illegal judgment of Conviction of 36 years Because the Petitioner has not actually gone to jury trial over the actual true bill of indictment as of yet. Petitioner has only been Indicted on the alleged verdict but has been imprisoned in TDCJ for 36 years on the NULL AND VOID Judgment of Conviction which entails that he is sitting in prison because of his prior conviction in the State of Florida.

Petitioner has demonstrated and shown that he is not yet actually convicted of the allegations against. Antonio Rashawne Carr is currently waiting his actual trial on the true bill of indictment Where Petitioner has shown that he has only gone to the actual Indictment proceeding And also that Petitioner has shown and demonstrated that due to his past Florida convictions he is actually sitting here in the TDCJ Prison because of his Prior conviction in the State of Florida. That they are all running concurrently with his Texas Null and Void Judgment of 36 years from the 195th Judicial District Court of Dallas Texas.

Petitioner prays that this court grant him the relief that will allow him to properly challenge his alleged sentence of Conviction.

OATH

I Antonio Rashawne Carr, the private man filing this and not the legal fiction named as ANTONIO RASHAWNE CARR do affirm that the above contents are True and Correct to the best of my knowledge..

Date 7-3-19



Antonio Rashawne Carr
TDCJ Id #02165207
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Kenedy, Texas 78119