19-5612

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Steven W. Isbel — PETITIONER
(Your Name)

vs.

Lorie Davis — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

5th Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Steven W. Isbel TDC # 01859521
(Your Name)

815 12th Street
(Address)

Huntsville, Tx. 77348
(City, State, Zip Code)

N/A
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

Question One: Whether the district Court and the 5th Circuit was correct that Isbel did not properly preserve and exhaust his ineffective assistance of trial counsel claim in State court?; whether if either court should have issued a COA on this claim? whether if the district court should have applied Trevino V. Thaler, 133 S.Ct. 1911 (2013) to this claim if they believed it to be unexhausted?

Question Two: Whether Isbel has a due process right to documents the state filed with its answer and referenced in its answer?
whether the district court abused its discretion when it denied Isbels motion to compel production of documents?
whether Isbel has a due process right to the Record on Appeal filed in the 5TH Circuit?
Whether the 5TH Circuit abused its discretion when it denied Isbel's Motion for a copy of the Record on Appeal.?

Questions Presented

Question Three: Whether in Texas if a non-capital prose inmate has had a full and fair opportunity to litigate his ineffective assistance of trial counsel claims? and

Whether Isbel's ineffective assistance of trial counsel claims should be revieived de novo rather than under the doubly deferential review that applies to a Strickland claim evaluated under 28 U.S.C. 2254(d)(1) and Harrington v. Richter, 562 U.S. 86 (2011)?

Questions Presented

Question Four: Whether stolen identifying documents found on the seat of a car where a passenger was sitting would be sufficient to satisfy the specific intent element of intent to harm or defraud?

Whether the Texas 14th Court of Appeals and the district courts decision rejecting this claim was based on an unreasonable determination of facts 28 U.S.C. 2254 (d)(2); and,

Whether its finding of an intent to harm or defraud based on identifying documents found on the seat of a car was itself an unreasonable application of Jackson v. Virginia, 443 U.S. 307 (1979)?

Whether the district court or the 5th Circuit should have issued a COA?

Questions Presented

Question Five: When Isbel's trial attorney preserved the issue of the jury charge not tracking the indictment, was Isbel's appellate attorney ineffective for failing to brief the following issues on appeal, whether What are really separate offenses that are a violation of the same statute may be submitted to the jury disjunctively?
Whether Isbel was denied specificity of the jury charge by the joining of two offenses?
Whether Isbel was convicted under jury instructions that did not require the jury to agree which offense Isbel committed?
Whether a COA should have been issued for this claim?

Questions Presented

Question Six: Whether 28 U.S.C. § 2254(d)(1) vidates the equal protection Clause of the 14th Amendment?

Qvestion Seven: Whether when Congress passed 28 U.S.C. § 2254 (d)(1), Congress violated Separation of powers principle of the Constitution?

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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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 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 United States district court appears at Appendix B 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 June 12, 2019.

[✓] 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).

Isbel has made the required notification required by Rule 29.4(b) Questioning an act of congress.

[ ] 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

United States Constitution Amendment VI

United States Constitution Amendment XIV

28 U.S.C. § 2254

Federal Rules of Civil Procedure Rule 5

5th Circuit Local Rule Rule 25.2.5

Texas Constitution Article I Section I

Texas Penal Code 32.51
Fraudulent Possession of Identifying Information

STATEMENT OF THE CASE

In the 184Th district Court of Harris County, Texas a jury found Isbel guilty of the felony offense of fraudulent possession of identifying information. (Cause No. 1322305 01010). Isbel pleaded true to the enhancement paragraphs relating to prior convictions.

On May 22, 2013 the court Sentenced Isbel to forty (40) years imprisonment.

On May 15, 2014 the 14Th Court of Appeals of Texas affirmed Isbel's Conviction.

On October 1, 2014 The Texas Court of Criminal Appeals of Texas refused Isbel's petition for discretionary review.

On July 24, 2015 Isbel filed his first State application for habeas relief. Ex Parte Isbel WR-85,356-01.

On August 24, 2016 The Texas Court of Criminal Appeals dismissed for failure to comply with Texas Appellate Rule 73.1. Isbels first habeas application. Ex Parte Isbel, WR-85,356-01

On September 13, 2016 Isbel filed his federal 2254 Writ of habeas Corpus with a motion to stay. Appendix J (Docket Entry Nos. 1-4) Case number 4:16-cv-02836

On September 22, 2016 Isbel filed his second state application for habeas relief. Ex Parte Isbel, WR-85,356-02.

On September 26, 2016 Isbel filed a Motion for Reconsideration in Ex Parte Isbel, WR-85,356-01

On March 1, 2017 The Texas Court of Criminal Appeals dismissed Isbel's second state habeas for failure to Comply with Texas Appellate Rule 73.1.

On April 21, 2017 Isbel filed his third State application for habeas relief. Ex Parte Isbel, WR-85,356-06

On April 25, 2017 The Texas Court of criminal Appeals grants Isbel's Motion for Reconsideration in Ex Parte Isbel, - WR,85,356-01

On April 26, 2017 The Texas Court of Criminal appeals withdrew its August 24, 2016 disposition of Ex Parte Isbel, - 85,356-01 and on its own motion and denied relief based upon an independent review of the habeas record.

On May 9, 2017 Federal district court Judge files order granting Motion to lift stay.
Appendix J (Docket Entry No. 16)

On November 1, 2017 The Texas Court of Criminal appeals denied on the merits Isbel's third application for habeas relief. Ex Parte Isbel, WR-85,356-06

On September 19, 2018 Isbel's federal habeas Corpus is denied. Appendix J (Docket Entry No. 44)

On September 27, 2018, Isbel files notice of Appeal to the 5th Circuit. Appendix JL Docket Entry No. 46)

On June 12, 2019 Isbel's motion for COA is denied by the 5th Circuit. Appendix J (Docket Entry No. 53)

On August 07, 2019 Isbel Mails his writ of certiorari to the United States Supreme Court.

REASONS FOR GRANTING THE PETITION

Reasons for granting Question One:

The Supreme Court should exercise its supervisory power and grant the writ of certiorari, vacate, and remand for the district court to take a closer look at the record and see that Isbel did properly preserve and exhaust this claim of ineffective assistance of trial counsel. It is critical that the lower courts do not make mistakes when determining if a claim has been exhausted, when the task only requires an examination of the state court record.

- On July 24, 2015 Isbel filed his state writ of habeas corpus. (WR-85,356-01 S.H.C.R. Pg. 2)
- On January 19, 2016 Isbel filed a motion to supplement his state writ of habeas corpus with a ground 19 that contained an ineffective assistance of trial counsel claim. (Appendix D pgs. 1-11, S.H.C.R. Pgs. 209-219).
- On February 8, 2016, Judge Jan Krocker granted the motion to supplement with ground 19. (Appendix D. Pg. 1, S.H.C.R. Pg. 209)
- On May 3, 2016 Judge Jan Krocker makes the following finding of fact.

> "44. The applicant fails to offer any proof, other than conclusory allegations in support of his claims presented in a supplemental application filed on January 19, 2016."

(Appendix I pg. 6, S.H.C.R. pg. 297)

- On May 3, 2016 Judge Jan Krocker signs findings of facts and recommended relief be denied by the Texas Court of Criminal Appeals. (Appendix I pg. 10, S.H. C. R. pg: 297)

- On April 26, 2017 The Texas Court of Criminal Appeals denied relief on the Merits, on Isbel's writ of habeas Corpus.

It is clear from the record that Isbel properly presented and exhausted this claim.

Isbel raised the following issues

1. When the trial Court by way of summary denial denied his motion to dismiss court appointed attorney.
2. When the trial court did not initiate an inquiry into the conflict of interest raised by the defendants timely motion to dismiss Court-appointed attorney, in which he outlined his complaints that he had filed with the office of Chief disciplinary Counsel.
3. When the trial attorney did not advise the court that a conflict of interest had arisen by defendants filing of a disciplinary proceeding against him.

Isbel raised these issues in State Court.
(Appendix D pgs: 1-11; S.H.C.R. pgs 209-219)

Isbel raised these same issues in federal court in his 2254 federal habeas corpus, as ground 14. (Docket Entry No. 1 pg. 17)

Isbel raised these same issues in his COA to the 5TH Circuit.
(Motion for COA pgs. 11-12)

Isbel has shown that the district court ruling that Isbel failed to exhaust this claim was wrong. Jurist of reason would

find it debatable whether the district court was correct in its procedural ruling that Isbel did not exhaust this claim.

Isbel raised an ineffective assistance of trial counsel claim when the trial court by way of summary denial denied his motion to dismiss court appointed attorney; when the trial court did not initiate an inquiry into the conflict of interest raised by the defendants timely motion to dismiss court appointed attorney; when his attorney did not advise the court that a conflict of interest had arisen by Isbel filing a disciplinary proceeding against him.

Isbel cites to the trial record of a motion to dismiss his trial attorney that he filed before trial. (C.R. Vol. 1 pgs. 27-35) (Appendix D pgs: 10-11)

"As all circuits agree courts cannot properly resolve substitution motions without probing why a defendant wants a new lawyer." See Martel v. Clair, 132 S.Ct. 1276, 1288 (2012) ("It is hornbook law that '[W]hen an indigent defendant makes a timely and good faith motion requesting that appointed counsel be discharged and new counsel appointed, the trial court clearly has a responsibility to determine the reasons for defendants dissatisfaction." Citing United States V. Iles, 906 F.2d 1122, 1130 (CA 6 1990).

Jurists of reason would find it debatable whether Isbel

States a valid claim of the denial of a Constitutional claim. Isbel has met the threshold inquiry that the district Court and the 5th Circuit should have issued a COA.

If the district court found that this ineffective assistance of trial counsel claim was defaulted it should have applied Trevino v. Thaler to this claim to excuse Isbel's default. Isbel has been proceeding Pro se in all of his post-conviction proceedings and this claim of Ineffective assistance of trial counsel is a substantial claim that has some merit.

Reasons for Granting Question Two

The Supreme Court should grant certiorari on this issue because the lower courts have departed from the accepted and usual course of following the rules of civil procedure and Federal Rules of Appellate procedure as it regards to service on parties of all documents filed in a case.

> "The Federal Rules of civil procedure are designed to further the due process of law that the Constitution guarantees." Nelson V. Adams USA Inc., 529 U.S. 460, 465 (2000)

- On September 13, 2016 Isbel filed his writ of habeas corpus in federal court.

- On June 1, 2017 District Judge Vanessa Gilmore issued an order for respondent Lorie Davis to respond. (Appendix E pg. 1) (Docket Entry No. 19)
- On page 3 Item no 7 of the Judges order it states:

"7. Each party shall serve the other party, or counsel, with a copy of every pleading letter or other document submitted for consideration by the Court." (Appendix E pg. 3) (Docket Entry No. 19)

- On September 15, 2017 the State filed its motion for summary Judgement and referenced the record that it filed with its Motion for summary Judgement. (Appendix J pg. 4)(Docket Entry Nos. 24-27)

Davis did not comply with the Judges order.
Davis should have served Isbel with all the documents it also submitted to the Court.

Davis also did not comply with the Federal Rules of civil Procedure 5(a)(1)(A) and 5(a)(1)(B). These Rule states

Rule 5
(a) Service: When required.
(1) In General. Unless these rules provide otherwise, each of the following papers must be served on every party.
(A) An order stating that service is required;
(B) A pleading filed after the original Complaint unless the Court orders otherwise under Rule 5(c) because there are numerous defendants.
(Appendix L pg. 3)

Davis also did not comply with U.S. district Court, Southern district of Texas Administrative procedures for electronic filing in civil and criminal cases, which state:

"9. Service of documents be electronic means.

A. ... parties who are not filing users must be served with a paper copy of any electronically filed document in accordance with the federal rules of civil and Criminal procedure, and the local rules of this Court."
(Appendix L pg. 5)

Davis is an electronic filing user.
Isbel is not an electronic filing user.
Davis should have served Isbel with a paper copy of any electronically filed document.

Isbel filed a motion to compel production of documents that the state filed with its motion for summary judgement. (Appendix J Docket Entry 38).

The district court denied Isbel's motion because of

"A review of petitioner's pleadings indicates that he has access to some of the records he seeks."
(Appendix F Docket Entry 41 Pg. 1)

The district court abused its discretion in denying Isbel's motion to compel production of the documents.

"Specific pleading requirements are mandated by the Federal Rules of Civil Procedure, and not, as a general rule through case-by-case determinations of the federal Courts." Hill V. McDonough, 126 S.Ct. 2096, 2103 (2006)

On September 19, 2018 Isbel's habeas Corpus was denied in district Court.

Isbel filed a notice of Appeal with the 5TH Circuit. Case no. 18-20665. (Docket Entry No. 46)

On October 18, 2018 the electronic record on appeal was filed in the 5TH Circuit.

Isbel did not receive the electronic record on appeal. The district court did not comply with the local rules of the 5TH Circuit Rule 25.2.5 when it filed the record on appeal.

5TH Circuit Rule 25.2.5 States:

"25.2.5 Service of Documents by Electronic Means. ... Parties who are not filing users must be served with a copy of any document filed electronically in accordance with the Fed. R. App. P. 25 and 5TH Cir. R. 25." (Appendix L pg. 4)

Isbel has been denied service of documents that have been filed electronically by the Attorney General of Texas, and by the clerk of the U.S. District Court. These documents are vital to Isbel, who is wishing to brief the following issues of prejudice, exhaustion, and procedural default. The Suprem Court should Grant, Vacate, and

Remand to the district court so that Isbel may prepare a brief when he has access to the record.

Reasons for granting Question Three

The Supreme Court Should Grant, Vacate and Remand to the district court to review Isbel's ineffective assistance of trial counsel claims denovo, because whether if a State prisoner has had a full and fair opportunity to Litigate his ineffective assistance of trial counsel Claims, should determine the scope of federal habeas review. The Supreme Court should also review this Claim because the State of Texas procedural framework for presenting ineffective assistance of trial counsel Claims are inadequate as applied to a class of non-capital pro se inmates.

In Texas a non-capital pro se inmate has not had a full and fair opportunity to Litigate his ineffective assistance of trial counsel claims. (I.A.T.C.) Isbels I.A.T.C. Strickland claims should be reviewed

de novo, because "circumstances exist that render the appellate process and the habeas process ineffective to protect the rights of the applicant." 28 U.S.C. 2254 (b)(1)(ii).

In Texas neither direct appeal nor a writ of habeas corpus provides a meaningful opportunity for a pro se non-capital applicant to present a Strickland claim. See Trevino v. Thaler, 133 S.Ct. 1911, 1921 (2013) "We believe that the Texas procedural System-as a matter of its structure, design, and operation - does not offer most defendants a meaningful opportunity to present a claim of ineffective assistance of trial Counsel on direct appeal.". See also Irving Magana Garcia, 486 S.W.3d 565, 567 (Tex.Crim.App.2016) dissent by Judge Alcala which recognizes both direct appeal and habeas review ineffective to protect the rights of pro se applicants. "Similarly, on habeas review, which is a point in time at which an indigent applicant has no right to appointed Counsel, an ineffectiveness claim will almost always fail because the pro se applicant

is unaware of the legal standard and evidentiary requirements necessary to establish his claim. Because neither direct appeal nor habeas review currently provides an adequate vehicle for raising an ineffectiveness challenge, Texas's scheme fails to ensure that the 'bedrock principle' of effective assistance of counsel is fulfilled for all criminal defendants." Garcia, 486 S.W.3d at 565. In Trevino v. Thaler which was a capital case in which Trevino did have an attorney appointed to him for collateral relief the Supreme Court implies that counsel is needed to present Strickland claims on collateral review. "The right involved - adequate assistance of trial counsel -- is similarly and critically important. In both instances practicle considerations - the need for a new lawyer, the need to expand the trial court record, and the need for sufficient time to develop the claim -- argue strongly for initial consideration of the claim during collateral, not on direct review."

See Trevino v. Thaler, 133 S.Ct. 1911, 1921 (2013)

In Martinez v. Ryan the Supreme Court implies that Counsel is needed to present Strickland claims on Collateral Review and recognizes that a pro se applicant will have difficulties presenting a Strickland claim "without adequate representation in an initial-review collateral proceeding, a prisoner will have similar difficulties vindicating a substantial ineffective-assistance-at-trial claim." Martinez v. Ryan, at 1312. Martinez v. Ryan, 132 S.Ct. 1309 (2012)

AEDPA directs federal Courts to respect the finality of State convictions. But the two elements that determine finality are Missing when a prisoner in Texas:

- Cannot present his ineffective assistance of trial Counsel claim on direct appeal;
- Which denies him a chance to receive a merits review of his ineffective assistance of trial counsel claims by petitioning for a Writ of Certiorari from his direct appeal to the Supreme Court.

"Finality occurs when direct State appeals have been exhausted and a petition for a Writ of Certiorari

from this Court has become time barred or has been disposed of.". Greene v. Trice, 132 S.Ct. 38, 44(2011)

AEDPA is a relitigation bar and since Isbel has not had a full and fair opportunity to litigate his ineffective assistance of trial counsel claims review of them should be denovo. "if a State desires to remove from the process of direct appellate review a claim or category of claims, the Fourteenth Amendment binds the State to ensure that the defendant has effective assistance of counsel for the entirety of the procedure where the removed claims may be raised." Dissent Coleman v. Thompson, 501 U.S. 722, 773-774, (1991). Since Isbel has not had a full and fair opportunity to vindicate his ineffective assistance of counsel claims the "State which is responsible for the denial as a Constitutional matter, must bear the cost of any harm to State interest that federal habeas review entails.". Coleman v. Thompson, at 754.

For these reasons Isbels ineffective assistance of trial counsel claims should be reviewed de novo, rather them the deference that is required by 28 U.S.C. 2254(d)(1) and Harrington v. Richter, 562 U.S. 86 (2011)

Reasons For Granting

Question Four: The Supreme Court should review this claim because the Texas 14th Court of Appeals decision was based on an unreasonable determination of facts. In its opinion the Texas 14th Court of Appeals based its decision that Isbel acted with an intent to harm or defraud because of

"When approached by police officers appellant did not initially cooperate instead he attempted to hide his wallet and Johnson's passport by sitting on them."

(Appendix C page 6)

There is no testimony that appellant did not cooperate, or that he attempted to hide his wallet when officers approached. The testimony of officer Bruce is as follows:

"Q. So, it was just sitting underneath him?"

"A. Underneath him, yes, sir."

"Q. Okay. Why do you think --- I mean, do you know how they got there; or did you see how they got there."

"A. No, sir."

(Appendix G Page 2) (R.R. Vol. 4 pg. 47 lines 11-16)

officer Bruce further testified:

"Q. Did you see him stuff anything under him?"

"A. No, sir."

(Appendix G Page 3) (R.R. Vol. 4 pg. 93 lines 6-7)

The Texas Court of Criminal Appeals decision was based on an unreasonable determination of facts.

The finding of an intent to harm or defraud based on identifying documents on a car seat where a passenger is seating is itself an unreasonable application of Jackson V. Virginia, 443 U.S. 307 (1979).

The Texas 14th Court of Appeals decision was an unreasonable application of Jackson V. Virginia, because even viewing the evidence in the light most favorable to the prosecution, with respect to the wallet sitting on the seat where the defendant was sitting and the inferences that could be drawn from that fact proven would not allow any rational trier of fact to find that the possession was done with the specific intent to harm or defraud.

A COA should have been issued by the district Court and the 5th circuit because reasonable jurists would find the district court's assessment of the constitutional claim debatable and the issues are adequate to deserve encouragement to proceed further.

Reasons For Granting

Question Five: The Supreme Court should review this claim because the district court and the 5th Circuit have denied a COA on a substantial showing of the denial of a Constitutional right.

Isbel's indictment charged him with two Offenses of the same statute of Texas Penal Code 32.51 Fraudulent possession of identifying information. (Appendix H pg. 1) (S.H.C.R. page 319). (C.R. Vol. 1 pg. 15)

In the first paragraph the indictment accused Isbel of possessing at least five but less than ten items of Gerald Field with an intent to harm or defraud.

In the Second paragraph of the indictment it accused Isbel of possessing at least five but less than ten items of Joseph Daniel Johnson with an intent to harm or defraud.

Two Separate offenses standing on their own.

The State was allowed to have the jury charge created to contain one paragraph with "and/or" between

the two individuals names, and allowing an intent to harm or defraud eltther of the two individuals. (Appendix K Jury Charge) (Docket Entry no 24-7 page: 46)

Under Texas law the existence of instructional error that was preserved by a proper objection Isbel only needed to show he suffered 'some harm' from the error. See Smith V. Texas, 127 S. Ct. 1686, 1696, 1698 (2007) Under Texas law and Constitution of Texas Isbel is entitled to a unanimous verdict. The trial Judge is obligated to submit a charge that does not allow for the possibility of a non-unanimous verdict. Texas law can be considered when determining if an appellate attorney's errors prejudiced a defendant. During trial Isbel was contesting the intent issue. The jury charge was created that did not require the jury to unanimously agree on the issue of intent on either complainant. This issue was clearly stronger than the issue raised by the appellate attorney about the trial Courts assessment of court cost was unlawful.

Jurist of reason could disagree with the district Courts denial of this claim, and jurist of reason could conclude the issues presented are adequate to deserve encouragement to proceed further.

Reasons For Granting

Question Six: The Supreme Court should grant Certiorari on this claim because 28 U.S.C. § 2254(d)(1) violates the equal protection rights of State prisoners. The writ of habeas corpus is guaranteed in the Constitution. The essence of habeas corpus is an attack by a person in custody upon the legality of that custody.

There is a distinction between state prisoners and federal prisoners and what they must show to obtain relief. This distinction violates the 14TH Amendment right to equal protection. When state prisoners and federal prisoners seek the protection of the writ they are similarly situated. "On balance we see no basis for affording federal prisoners a preferred status when they seek post-conviction relief." U. S. V. Frady, 456 U.S. 152, 166 (1982).

- To obtain relief under 28 U.S.C. § 2255 federal prisoners have to show only a constitutional violation had a substantial and injurios effect.
- Denovo review of their Constitutional Questions and Mixed Questions of law and fact.

- To obtain relief under 28 U.S.C. § 2254 (d) (1) State prisoners have to show a decision rejecting a Constitutional Violation was unreasonable.
- State prisoners have to show that a State-Courts resolution of such Questions of Constitutional law and Mixed Questions of law and fact was unreasonable.

The Standard of review before the enactment of 28 U.S.C. 2254 (d)(1) in 1996, a federal Court entertaining either a federal prisoners Motion under 28 U.S.C. 2255 or a State prisoners writ under 28 U.S.C. 2254 exercised it's independent judgement (de novo) review, deciding both Questions of Constitutional law and Mixed Constitutional Questions, or Mixed Questions. This standard still applies to federal prisoners under 28 U.S.C. 2255, but not to state prisoners under 28 U.S.C. 2254 (d)(1). Now State prisoners have to show that a State-Courts resolution of such Questions of Constitutional law or Mixed Questions was unreasonable, which gives effect to State courts incorrect application of federal Constitutional law as long as they are objectively reasonable. A statutorily created, highly deferential scheme that stops short of imposing a complete bar to federal claims litigated in state courts, and gives those decisions the benefit of the doubt. See Harrington V. Richter, 562 U.S. 86 (2011)

Federal prisoners and State prisoners are similarly Situated When they exercise their Constitutional right to habeas Corpus and they Should be treated alike. Many decisions say the deference is owed to the States under the doctrines of federalism and finality. But these policies cannot be used to defeat the policy of equal protection guaranteed by the 14th Amendment. "The confirmation that habeas corpus remains an appropiate vehicle by which federal Courts are to exercise their fourteenth amendment responsibilities is not further to increase 'friction between our federal and State Systems of justice, [or impair] the maintenance of the Constitutional balance upon which the doctrine of federalism is founded.'" Rose v. Mitchell, 443 U.S. 545, 562 (1979).

But even under these doctrines federal courts must treat State prisoners equally as the State and federal Courts interest in finality are the same and the relevant constitutional strictures apply with equal force to both jurisdictions. See U.S. v. Frady, 456 U.S. at 166.

See also Justice Scalia's Concurring in part and dissenting in part opinion in Withrow v. Williams, 507 U.S. 680, 723 (1993) "A federal court entertaining collateral attack against a

State criminal conviction should accord the same measure of respect and finality as it would to a federal conviction. As it exercises equitable discretion to determine whether the merits of constitutional claims will be reached in the one, it should exercise a similar discretion for the other." Although Justice Scalia was addressing the problem of collateral relief for federal prisoners, its rationale applies equally forcefully to federal habeas for state prisoners as well. If it is a constitutional violation for a federal prisoner in federal court it is impossible to say it is a reasonable constitutional violation for a state prisoner in that same federal court, without violating the equal protection clause.

In closing 28 U.S.C. 2254(d)(1) creates deference to state court convictions, which is not warranted to Texas when the state of Texas in its own constitution subjects itself to the United States Constitution. See Texas Constitution, Article I Section I "Texas is a free independant State subject only to the ~~United States~~ Constitution of the United States, ...". Well if Texas subjects itself to the United States constitution, it should be held to that constition with no deference.

Reasons For Granting

Question Seven: When Congress passed 28 U.S.C. 2254(d)(1), Congress violated Separation of powers principles of the United States Constitution, because it directs federal Courts to defer to a State court's resolution of Mixed Questions of law and fact. Also "Teague concerns are fully implicated 'by the application of an old rule in a manner that was not dictated by precedent.'". Wright v. West, 505 U.S. 277, 290 (1992); Citing Stringer v. Black, 503 U.S. 222, 228 (1992).

In Jackson v. Virginia, 443 U.S. 307, 323 (1979) the Supreme Court struck down a deferential standard of review to Mixed Questions of law and fact and adhered to the general rule of de novo review of Constitutional Claims on federal habeas corpus.

In Strickland v. Washington, 466 U.S. 668, 698 (1984) the Supreme Court held "[T]he principles governing ineffectiveness Claims should apply in Federal collateral proceedings as they do on direct appeal or in Motions for new trial... [N]o special standards ought to apply to ineffectiveness Claims made in habeas proceedings."

Jackson V. Virginia and Strickland V. Washington both announced a Constitutional rule that Congress May not Supersede Legislatively. See Dickerson V. U.S., 530 U.S. 428 (2000). That Jackson and Strickland annanced a Costitutional rule is demonstrated by the fact that both Cases applied the rules to Cases that Come from State courts, and the Court had consistently done so until 28 U.S.C. 2254 (d)(1) was passed.

The question on how to handle mixed questions of law and fact to State prisoners Claims relating to Sufficiency of the evidence claims and ineffective assistance of Counsel claims was answered by the Supreme Court and was the last word of the judicial department. "Thus the Constitution forbids the legislature to interfere with the courts - final judgements." Plaut V. Spendthrift Farm inc., 514 U.S. 211 (1995).

Review of Isbel's Jackson and Strickland Claims Should be de novo such as the decisions had announced when they were decided.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Steven W. Idsal

Date: August 07, 2019