

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

BILLY JACK CRUTSINGER,
Petitioner,
v.
State of Texas, Respondent.

On Petition for a Writ of Certiorari to
the Texas Court of Criminal Appeals

APPLICATION FOR STAY OF EXECUTION

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The Petitioner, BILLY JACK CRUTSINGER, requests that this Court grant him a stay of execution pending the Court's consideration and disposition of his Petition for Writ of Certiorari to the Texas Court of Criminal Appeals in *Crutsinger v. Texas*, filed on August 27, 2019. A stay is warranted for the reasons set forth below and those appearing in the Petition for Writ of Certiorari, which is incorporated by reference.

Texas is scheduled to execute Mr. Crutsinger by lethal injection after 6:00 pm on September 4, 2019. It is posed to execute him even though Mr. Crutsinger made a colorable showing in his Suggestion that the Texas Court of Criminal Appeals (TCCA) Reconsider on Its Own Motion the Initial Habeas Writ Application (Suggestion) that he has been denied his state statutory right to competent counsel, and his federal due process rights to access to courts. *See Burns v. Ohio*, 360 U.S. 252, 257 (1959) ("[O]nce the State chooses to establish appellate review in criminal cases, it may not foreclose indigents from access to any phase of that procedure because of their poverty.").

Mr. Crutsinger brought forward his evidence that Richard Alley (his appointed lawyer) was not competent (as informed by the professional conduct rules) at the time of the 2003 appointment, (Suggestion at 49-66); was not competent for the duration of the representation, (Suggestion at 67-77); and in the alternative, if the TCCA found Alley to be competent, then the actions of Alley, as an agent of Crutsinger, were so meaningless as to constitute abandonment (Suggestion at 78-81).

The evidence consisted of seventy-three (73) pages of Analysis of, and 1.6 GB of data consisting of, the federal court disciplinary record of Richard Alley in *Lagrone v. Thaler* (in the U.S. District Court, Northern District of Texas, Fort Worth Division (USDC Case No. 4:7cv521), together with the legal papers in the *Carpenter, Williams, Reese, Scheanette, Kerr* and *Crutsinger* capital state habeas litigation. Mr. Alley had been court-appointed to represent each Applicant aforementioned. Mr. Crutsinger asked the TCCA on its own Suggestion to reopen the initial state

habeas proceeding, appoint new state habeas counsel, and allow Mr. Crustinger to proceed anew.

Although Mr. Crustinger made a colorable showing, in an August 23, 2019 email from Sian Schilhab, General Counsel for the Texas Court of Criminal Appeals, the state court denied Mr. Crustinger's Suggestion, and denied his Motion for Stay of Execution, without order.

This Court has jurisdiction to answer the question presented. The Texas Court of Criminal Appeals failed to expressly and unambiguously state that it had based its denial on an adequate and independent state law ground, and instead answered the federal question in the negative. Thus, this Court has jurisdiction under the presumption favoring the assertion of federal jurisdiction in ambiguous cases. *See Harris v. Reed*, 489 U.S. 255, 265 (1989); *Michigan v. Long*, 463 U.S. 1032, 1040–41 (1983). This presumption is favored because "... it is equally important that ambiguous or obscure adjudications by state courts do not stand as barriers to a determination by this Court of the validity under the federal constitution of state action." *Michigan v. Long*, 463 U.S. 1032, 1041 (1983), *citing Minnesota v. National Tea Co.*, 309 U.S. 551, 557 (1940).

A stay of execution is warranted where there is: (1) a reasonable probability that four members of the Court would consider the underlying issue sufficiently meritorious for the grant of certiorari or the notation of probable jurisdiction; (2) a significant possibility of reversal of the lower court's decision; and (3) a likelihood that irreparable harm will result if no stay is granted. *See Barefoot v. Estelle*, 463 U.S. 880, 895 (1983). For the reasons expressed below and in the Certiorari Petition itself, these criteria are satisfied in this case.

First, there exists a significant possibility that four members of the Court would consider the issue at stake – Whether the appointment by a convicting court of a lawyer, who was not competent to represent the indigent, death-sentenced prisoner at any stage of the initial state collateral proceeding, contrary to the state statute's guarantee of a right to competent counsel, results

in a denial of a federal 14th Amendment right of access to courts, and is in conflict with *Johnson v. Avery* and *Wolff v. McDonnell* – suitable for the grant of certiorari.

The question presented is suitable for a grant of certiorari because the Court has answered the question presented in an analogous situation in *Johnson v. Avery*, 393 U.S. 483, 488 (1969). This Court wrote that "the initial burden of presenting a claim to post-conviction relief usually rests upon the indigent prisoner himself... In the case of all except those who are able to help themselves—usually a few old hands or exceptionally gifted prisoners—the prisoner is, in effect, denied access to the courts unless such help is available."

Further, the denial of all access to courts from 2003 to the present day is in conflict with *Wolff v. McDonnell*, 418 U.S. 539, 579 (1974). ("The right of access to the courts ... is founded in the Due Process Clause and assures that no person will be denied the opportunity to present to the judiciary allegations concerning violations of fundamental constitutional rights.").

For these same reasons, *supra*, there is a significant possibility of reversal of the lower court's decision.

Finally, there is a likelihood that irreparable harm will result absent a stay because the state court firmly and irrevocably denied all access to courts to Mr. Crutsinger, ensuring he will be executed on September 4, 2019 without any meaningful state habeas review.

CONCLUSION

WHEREFORE, Petitioner Crutsinger respectfully requests that this Court stay his execution scheduled September 4, 2019 pending consideration and disposition of Mr. Crutsinger's petition for writ of certiorari.

Respectfully submitted,

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