No. 19-5715

IN THE
Supreme Court of the United States

BILLY JACK CRUTSINGER,
Petitioner,
v.

STATE OF TEXAS,
Respondent.

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

BRIEF IN OPPOSITION

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

LISA TANNER
Acting Deputy Attorney General
for Criminal Justice

EDWARD L. MARSHALL
Chief, Criminal Appeals Division

GWENDOLYN S. VINDELL
Assistant Attorney General

TRAVIS G. BRAGG
Assistant Attorney General
Counsel of Record

Post Office Box 12548
Capitol Station
Austin, Texas 78711
512.936.1400
Travis.Bragg@oag.texas.gov

Counsel for Respondent

CAPITAL CASE

QUESTIONS PRESENTED

1. Whether the Court has jurisdiction to review a decision by the high state court that was not a final order and did not involve an issue of a federal constitutional dimension presented in a procedurally proper manner.

2. Whether the Court should expend its limited resources to consider a high state court's decision applying state procedural law to its state habeas corpus process.

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BRIEF IN OPPOSITION

Petitioner Billy Jack Crutsinger is scheduled to be executed on September 4, 2019, for the 2003 murders of eighty-nine-year-old Pearl Magouirk and her seventy-one-year-old daughter Patricia Syren. He unsuccessfully challenged his conviction and sentence through nearly sixteen years of state and federal proceedings. Less than three weeks before his execution, he filed a "suggestion" with the Texas Court of Criminal Appeals (CCA) asking it to, on its own motion, reconsider the denial of his initial state habeas application, which occurred almost twelve years prior. The CCA denied his suggestion, and he now petitions this Court for a writ of certiorari off that state court decision. However, because he fails to show that this Court possesses jurisdiction over the matters for which he seeks review, or that there are otherwise compelling grounds to issue a writ of certiorari, his petition should be denied.

STATEMENT OF JURISDICTION

Crutsinger invokes the jurisdiction of this court to review the CCA's decision under 28 U.S.C. § 1257(a). Pet.2–3. Indeed, because he is seeking review of a high state court decision, he must pass through this particular gateway. However, as discussed below in full, *see* Reasons.I., the CCA's

denial of Crutsinger's "Suggestion" is not a final order subject to this Court's review. *See* Fed. R. App. P. 28(a)(4)(D). Further, the decision did not involve a question of a federal constitutional dimension presented to the CCA in a procedurally proper manner. *See Foster v. Chatman*, 136 S. Ct. 1737, 1745 (2016); *Wills v. Texas*, 511 U.S. 1097, 1097 (1994) (O'Connor, J., concurring); *Chesapeake & Ohio Ry. Co. v. McDonald*, 214 U.S. 191, 192–93 (1909) (emphasis added). Therefore, this Court lacks jurisdiction to consider the petition.

STATEMENT OF THE CASE

I. Initial State Court Proceedings

In September 2003, Crutsinger was convicted of capital murder and sentenced to death for the stabbing-deaths of two elderly women. ROA.2624–26.[1] The CCA affirmed on direct review. *Crutsinger v. State*, 206 S.W.3d 607, 613 (Tex. Crim. App. 2006). This Court denied his petition for writ of certiorari. *Crutsinger v. Texas*, 549 U.S. 1098 (2006).

Crutsinger filed a state application for writ of habeas corpus, in which he raised an ineffective-assistance-of-trial-counsel (IATC) claim

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[1] "ROA" refers to the record on appeal utilized by the Fifth Circuit in *Crutsinger v. Davis*, No. 19-70012, --- F.3d ----, 2019 WL 4010718 (5th Cir. Aug. 26, 2019).

for failure to conduct any pretrial investigation. ROA.1076–219. The state convicting court entered findings of fact and conclusions of law recommending the denial of relief. ROA.1071, 4018–4080. Based on these findings and its own review of the record, the CCA denied habeas relief more than a decade ago. *Ex parte Crutsinger*, No. WR-63,481-01, 2007 WL 3277524, at *1 (Tex. Crim. App. Nov. 7, 2007). Crutsinger did not seek certiorari review.

II. Initial Federal Habeas Proceedings

Crutsinger then initiated federal habeas proceedings in federal district court. Prior to filing his federal petition, he sought funding under 18 U.S.C. § 3599. ROA.61–65. The district court denied this request, holding that Crutsinger failed to demonstrate that the IATC claim he sought to develop was not unexhausted and procedurally barred from review and that he had failed to develop the factual basis for the claim in state-court proceedings. ROA.74–75.

Crutsinger then filed a federal habeas petition alleging IATC for failure to conduct a timely, i.e., pretrial, social history investigation. ROA.228–52. The district court found the substance of his claim was unexhausted, ROA.432 n.5, and that he was prohibited from factual

development in federal court under 28 U.S.C. § 2254(e)(2). ROA.432. The court did not, however, apply a procedural bar to the claim. ROA.432 n.5. The court instead reviewed the claim de novo, found it without merit, denied habeas relief, and denied a COA. ROA.432–54, 460–61.

Crutsinger filed a motion under Federal Rule of Civil Procedure 59(e), challenging both the district court's denial of his claim and the denial of funding. ROA.462–78. While the motion was pending, this Court issued its decision in *Martinez v. Ryan*, 566 U.S. 1, 9 (2012). The district court denied Crutsinger's motion, finding, in part, that the IATC claim was not substantial, and thus *Martinez* did not benefit him. ROA.543. Moreover, the court found that, because the IATC claim was "unexhausted *as well as meritless*," evidentiary development would be inappropriate; thus, the court declined to reconsider its funding denial. ROA.543–44 (emphasis added).

Crutsinger appealed the district court's decisions to the Fifth Circuit, which in turn denied COA on the IATC claim and held that, even in light of *Martinez* and *Trevino v. Thaler*, 569 U.S. 413 (2013), the district court did not abuse its discretion in denying funding. *Crutsinger v. Stephens*, 576 F. App'x 422, 428–31 (5th Cir. 2014) (*Crutsinger I*).

Crutsinger raised the same issues in a certiorari petition in this Court, which it denied. *Crutsinger v. Stephens*, 135 S. Ct. 1401, 1401 (2015).

III. Recent Federal Habeas Proceedings

Over two years ago, Crutsinger moved the district court for funding to employ a DNA expert. ROA.593–606. The request was denied. ROA.678–91. Crutsinger moved for reconsideration and that was also denied. ROA.692–706, 735–43. The denial of funding was affirmed on appeal. *Crutsinger v. Davis*, 898 F.3d 584 (5th Cir. 2018) (*Crutsinger II*). This Court denied Crutsinger's petition for writ of certiorari. *Crutsinger v. Davis*, 139 S. Ct. 801 (2019).

A little more than a year ago, Crutsinger moved for relief from judgment under Federal Rule of Civil Procedure 60(b) in light of this Court's decision in *Ayestas v. Davis*, 138 S. Ct. 1080 (2018). ROA.751–848. The district court found that Crutsinger's motion for relief was, in fact, a second or successive petition, so it transferred the case to the court of appeals for authorization proceedings. ROA.1254–64. The Fifth Circuit, however, disagreed with the district court's characterization of Crutsinger's motion and remanded the case to consider it under the traditional Rule 60(b) rubric. *Crutsinger v. Davis*,

929 F.3d 259 (5th Cir. 2019) (*Crutsinger III*). The Fifth Circuit also denied Crutsinger's attendant motion for stay of execution. *Crutsinger v. Davis*, 930 F.3d 705 (5th Cir. 2019) (*Crutsinger IV*).

On remand, the district court entertained supplemental briefing on Crutsinger's motion for relief. ROA.1300–09, 1349–61. The court ultimately denied the request to reopen the proceeding, alternatively denied the funding request, and denied a stay of execution. ROA.1388–1413. This week, the Fifth Circuit denied Crutsinger's request for a COA and his motion to stay the execution. *Crutsinger v. Davis*, No. 19-70012, --- F.3d ----, 2019 WL 4010718 (5th Cir. Aug. 26, 2019) (*Crutsinger V*).

IV. Recent State Court Proceeding

Just over a week ago, Crutsinger suggested the CCA reconsider, on its own motion, his initial state habeas case. Suggestion That the Court Reconsider, on Its Own Motion, the Initial Application for Post-Conviction Writ of Habeas Corpus, *Ex parte Crutsinger*, No. WR-63,481-01 (Tex. Crim. App. Aug. 19, 2019) (Suggestion).[2] He also

[2] Crutsinger includes this "Suggestion" as Appendix 2 to his petition. *See generally* Pet.App.2.

moved to stay his execution. Motion to Stay Execution, *Ex parte Crutsinger*, No. WR-63,481-01 (Tex. Crim. App. Aug. 19, 2019). Both requests were denied without written order. Letter from Deanna Williamson, Clerk, Tex. Court of Criminal Appeals, to Billy Jack Crutsinger, Movant (Aug. 23, 2019) (on file with the CCA). From this postcard denial, Crutsinger seeks a writ of certiorari and a stay of execution. Pet. for Writ of Cert. 1–37 (Pet.).

REASONS FOR DENYING THE WRIT

I. This Court is Without Jurisdiction to Entertain Crutsinger's Petition for Certiorari Review Because the CCA's Denial of Crutsinger's Suggestion Was Not a Final Order, It Did Not Involve an Issue of a Federal Constitutional Dimension, and He Failed to Present Any Such Issue in a Procedurally Proper Manner.

Crutsinger invokes the jurisdiction of this court to review the CCA's decision under 28 U.S.C. § 1257(a). Pet.2–3. Because he is seeking review of a high state court decision, he must pass through this particular gateway. "Whether a state-court judgment is subject to review by the Supreme Court on writ of certiorari is in turn governed by 28 U.S.C. § 1257 . . . ." *New York Times Co. v. Jascalevich*, 439 U.S. 1317, 1318 (1978). However, "it is only final judgments with respect to issues of federal law that provide the basis for our appellate jurisdiction with respect to state-court cases." *Id.* "Compliance with the provisions of § 1257 is an essential prerequisite to our deciding the merits of a case brought here under that section." *Johnson v. California*, 541 U.S. 428, 431 (2004). Because the CCA's denial of Crutsinger's Suggestion does not meet these prerequisites, the Court lacks jurisdiction to consider his petition.

Section 1257 first requires that the state court decision be a final judgment to allow for appeal to this Court. The decision at issue here is clearly not that. In state court Crutsinger asked that the CCA take its own initiative to reconsider its almost twelve-year-old denial of his state habeas application. His vehicle was fictitiously titled a "Suggestion," *see* Pet.App.2, because "[a] motion for rehearing an order that denies habeas corpus relief . . . may not be filed," though the CCA "may on its own initiative reconsider the case." Tex. R. App. P. 79.2(d). Thus, Crutsinger's filing is not a proper one under state law, reflected in the pretense of its title.

By denying Crutsinger's spuriously titled pleading, the CCA merely decided that it would not accept his invitation to reconsider on its own motion the *actual final judgment* for this state habeas proceeding. Indeed, the CCA issued its final judgment in this proceeding almost twelve years ago on November 7, 2007. *See Ex parte Crutsinger*, 2007 WL 3277524, at *1.[3] If Crutsinger wished to seek review of that decision, he

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[3] The CCA's normal review process of habeas cases occurs in its role as the "ultimate factfinder" and arbiter of law after the trial court acts as "'the collector of evidence.'" *Ex parte Reed*, 271 S.W.3d 698, 727 (Tex. Crim. App. 2008) (quoting *Ex parte Simpson*, 136 S.W.3d 660, 668 (Tex. Crim. App. 2004)). That happened in this case, more than a decade ago. *Ex parte Crutsinger*, No. WR-63,481-01, 2007 WL 3277524, at *1 (Tex. Crim. App. Nov. 7, 2007).

should have petitioned this Court within ninety days of the CCA's order denying habeas relief, i.e., on or before February 5, 2008.[4] Of course, Crutsinger argues that he is seeking review of the CCA's "ruling" in 2019 not to entertain his recent plea. Pet.2. But any attempt to cast this literal postcard denial of his suggestion as a "final judgment" within the meaning of § 1257 defies common sense.[5] And because it is not a final judgment, this Court does not have jurisdiction over this petition.

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[4] A petition for certiorari from the CCA's state habeas denial in 2007 would have been the most reasonable proceeding in which to raise the argument Crutsinger now presents to this Court, i.e., that he was denied access to the state court in 2007 because his initial state habeas attorney was so incompetent that he failed to raise cogent claims of a federal constitutional dimension. Indeed, nothing prevented him from filing such a petition. That he waited almost twelve years after the final judgment of the CCA denying his state habeas application, and one week prior to his execution, to bring this "claim" to the Court accentuates the dilatory nature of his petition.

[5] Treating such a ruling as a final judgment would present huge finality concerns for Texas criminal convictions. Texas Rule of Appellate Procedure 79.1 places a fifteen-day time limit on filing a motion for rehearing. But because Rule 79.2 specifically prohibits a motion for rehearing an order denying state habeas relief, there is no associated time limit on a "suggestion" for reconsideration, such as Crutsinger filed here. Thus, a petitioner seeking certiorari review of a long since final state habeas proceeding could instantly renew the ninety-day filing period for a petition with this Court in perpetuity. *Cf. Lookingbill v. Cockrell*, 293 F.3d 256, 261 (5th Cir. 2002) (acknowledging "serious concern about tolling the deadline for motions for reconsideration filed with the [CCA]; absent a timeline for filing and deciding motions for reconsideration, AEDPA's time limit could toll indefinitely.").

The Court is further deprived of jurisdiction because the state court decision involved consideration of state law only. The CCA's ability to rehear a habeas case is wholly a matter of state law—it enjoys the unfettered prerogative to reopen long-dormant habeas proceedings. But that discretion is exercised only "under the most extraordinary" or "compelling circumstances." *Ex parte Moreno*, 245 S.W.3d 419, 427–28 (Tex. Crim. App. 2008).[6] There is no federal law involved here and, thus, no federal jurisdiction. *See Foster*, 136 S. Ct. at 1745 ("This Court lacks jurisdiction to entertain a federal claim on review of a state court judgment 'if that judgment rests on a state law ground that is both 'independent' of the merits of the federal claim and an 'adequate' basis for the court's decision.'" (quoting *Harris v. Reed*, 489 U.S. 255, 260 (1989)).

Crutsinger's retort is that silence somehow equals federal law consideration. Pet.2. But there is no presumption that a state court passes upon a federal question in the postconviction context. Rather, the state court decision must "fairly appear to rest primarily on federal law,

[6] To undermine that discretion "would pose an unnecessary dilemma for the States:" choosing between a discretionary excusal that allows for some flexibility or a rigid bar that favors finality. *Beard v. Kindler*, 558 U.S. 53, 61 (2009). This Court has voiced its favor of such discretionary rules. *See id.*

or to be interwoven with the federal law." *Coleman v. Thompson*, 501 U.S. 722, 729 (1991). And where there is no "clear indication that a state court rested its decision on federal law, a federal court's task will not be difficult." *Id*. at 739–40.

Crutsinger's assertion that the CCA must necessarily have considered a federal constitutional issue because they did not expressly say otherwise turns the *Harris* presumption on its head. He incorrectly argues that a "plain statement" is required as a matter of course. Pet.2. But this is only required to rebut the presumption once invoked. In other words, the state court need only express avoidance of a federal constitutional issue once they have engaged with the issue. But it would make no sense to require a state court to unsay something that was never said.

The postcard sent to Crutsinger by the CCA simply said his Suggestion was "denied." The Court's task here is not difficult—there is no hint of federal law consideration. "In these circumstances, it would have been perfectly reasonable for a state court to conclude that the broader federal claim was not before it." *Adams v. Robertson*, 520 U.S. 83, 89 (1997) (finding that the Court should refuse to consider a federal

due process claim raised for the first time in a petition for rehearing to the state court).[7]

Even assuming arguendo there was some federal law consideration present, Crutsinger's failure to conform with state law further deprives the Court of jurisdiction. That is because, "[t]o lay the foundation for such right of review[,] it is necessary to bring the Federal question in some *proper* manner to the consideration of the state court whose judgment it is sought to review." *Chesapeake*, 214 U.S. at 192 (emphasis added). But "if this is not done, the Federal question cannot be originated by assignments of error in this [C]ourt." *Id*. at 192–93.

"It has been the traditional practice of this Court . . . to decline to review claims raised for the first time on rehearing in the court below." *Wills*, 511 U.S. at 1097 (O'Connor, J., concurring) (regarding the denial of a petition for a writ of certiorari). "Questions first presented to the highest State court on a petition for rehearing come too late for consideration here, unless the State court exerted its jurisdiction in such

[7] Again, compare Crutsinger's "suggestion" with a proper motion for rehearing under the state rules. Texas Rule of Appellate Procedure 79.2(c) allows for a "motion for rehearing an order that refuses a petition for discretionary review" but only where the person filing the motion can demonstrate "substantial intervening circumstances or . . . other significant circumstances." Whether such circumstances exist is clearly a question of fact, not one of federal constitutional law.

a way that the case could have been brought here had the questions been raised prior to the original disposition." *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 128 (1945). Again, if Crutsinger wanted review of the particular issue as he presents it now to this Court, he should have filed a petition for certiorari after the CCA's truly final judgment denying state habeas relief almost twelve years ago. Not only is this attempt at an end run around dilatory, it simply does not provide this Court with the requisite jurisdiction.

II. Crutsinger also Provides No Compelling Reason for Further Review.

Crutsinger's "Suggestion" to the CCA asked the court to reopen his initial state habeas proceedings—again, on the court's own motion—based on the premise that his initial state habeas counsel was so incompetent, Crutsinger deserved a do-over. Pet.App.2. The CCA simply declined to reconsider. Pet.App.1. Now, Crutsinger asserts in this Court that he has been denied access to the state courts at various stages of the state habeas process. Pet.25–36.

He claims the CCA denied him access during the initial state habeas proceedings from 2003 to 2007—again, almost twelve years ago—because the state district court appointed him state habeas counsel that

Crutsinger asserts was incompetent. Pet.26–28. He further argues he was denied access to the state courts over the near twelve intervening years because of Texas's subsequent application bar, *see* Tex. Code Crim. Proc. art. 11.071, § 5(a), as applied by the CCA. Pet.28–30 (citing *Ex parte Graves*, 70 S.W.3d 103 (Tex. Crim. App. 2002)). Finally, he alleges he was denied access by the CCA by their most recent denial of his "Suggestion." Pet.30–33.

The Court requires those seeking a writ of certiorari to provide "[a] direct and concise argument *amplifying* the reasons relied on for allowance of the writ." Sup. Ct. R. 14.1(h) (emphasis added). Crutsinger attempts to wrap his question presented in the cloak of a federal constitutional issue. But at bottom, Crutsinger is simply complaining about Texas's state habeas process—specifically, the appointment provisions of state habeas counsel, the state bar on subsequent applications, and the state procedure for reconsidering a prior denial of state habeas relief. And the complaint of a state court process where there is no attendant right to federal constitutional due process is no reason to expend the Court's limited resources.

Indeed, the rights Crutsinger now attempts to graft onto the various state habeas proceedings do not exist because there is no right to such proceedings in the first instance. As Justice O'Connor has stated:

> A post-conviction proceeding is not part of the criminal process itself, but is instead a civil action designed to overturn a presumptively valid criminal judgment. Nothing in the Constitution requires the States to provide such proceedings . . . nor does it seem [] that that Constitution requires the States to follow any particular federal role model in these proceedings.

Murray v. Giarratano, 492 U.S. 1, 13 (1989) (O'Connor, J., concurring); *see also Pennsylvania v. Finley*, 481 U.S. 551, 557 (1989) (states have no obligation to provide collateral review of convictions). "State collateral proceedings are not constitutionally required as an adjunct to the state criminal proceedings and serve a different and more limited purpose than either the trial or appeal." *Giarratano*, 492 U.S. at 10 (plurality opinion). Indeed, this Court has explained that "[t]he additional safeguards imposed by the Eighth Amendment at the trial stage of a capital case are . . . sufficient to assure the reliability of the process by which the death penalty is imposed." *Id.*

But more importantly, where a State allows for postconviction proceedings, the Federal Constitution [does not] dictate[] the exact form

such assistance must assume." *Finley*, 481 U.S. at 555, 557, 559; *cf. Estelle v. McGuire*, 502 U.S. 62, 67–68 (1991) ("federal habeas corpus relief does not lie for errors of state law") (internal quotation marks and citation omitted). Indeed, as the Court has explained, "Federal courts may upset a State's postconviction procedures only if they are fundamentally inadequate to vindicate the substantive rights provided." *Dist. Att'y's Office for the Third Judicial Dist. v. Osborne*, 557 U.S. 52, 69 (2009).

Try as he might, Crutsinger cannot show Texas's procedures were fundamentally inadequate. Chiefly, he cannot show he was actually denied access to the courts. While inmates have a constitutional "right of access" to the courts, that right does not include the ability "to discover grievances, and to litigate effectively once in court." *Lewis v. Casey*, 518 U.S. 343, 354 (1996). "One is not entitled to access to the courts merely to argue that there might be some remote possibility of some constitutional violation. Plaintiffs must plead sufficient facts to state a cognizable claim." *Whitaker v. Livingston*, 732 F.3d 465, 467 (5th Cir. 2013) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)); *see also Williams v. Hobbs*, 658 F.3d 842, 852 (8th Cir. 2011) ("The prisoners do

not assert that they are physically unable to file an Eighth Amendment claim, only that they are unable to obtain the information needed to discover a potential Eighth Amendment violation.”).

Assuming arguendo Crutsinger has a constitutionally mandated right of access to state habeas courts, he received it. His argument to the contrary is further undercut by the fact that he has received an “extensive review of the [trial] record” in federal habeas court and was “not precluded from receiving a merits-based review of his federal habeas claims” in the numerous federal courts that have reviewed this case. *Crutsinger V*, 2019 WL 4010718, at *4. This highlights another failing of Crutsinger’s issue as he presents it to this Court.

His assertion that his initial state habeas counsel’s representation has given rise to some new federal constitutional claim is wholly speculative and, assuming it to be true, has been abated in at least a couple of ways. The harm is speculative because Crutsinger refuses to identify any claim that state habeas counsel should have raised but did not. *See* Pet. 31 (“Indeed, . . . Crutsinger filed *no* ineffectiveness claim at all.”). When attorney incompetence is alleged, there must be harm—that the result of the proceeding would have probably changed but for

deficient representation—even when that deprivation occurs during state collateral review. *See Martinez*, 566 U.S. at 14 (citing *Strickland v. Washington*, 466 U.S. 668 (1984)).

In other words, the prisoner must propose a claim that went unpresented because of constitutionally substandard performance. *See id.* ("[A] prisoner must also demonstrate that the underlying ineffective-assistance-of-trial-counsel claim is a substantial one."). But because Crutsinger eschews any semblance of raising a claim, his assertion of irreparable harm is "pure speculation," "mere possibility," and "nothing more than a theoretical possibility." *Harrington v. Richter*, 562 U.S. 86, 100, 112 (2011). This does not prove ineffective representation any more than it proves irreparable injury.

Further, this assertion has been abated. For one, Crutsinger has had exceptionally capable representation for more than a decade. ROA.41. And that is not just the opinion of the State, but of the judiciary. *See Crutsinger IV*, 930 F.3d at 708 ("Crutsinger, however, has been well-represented by his counsel for approximately eleven years."). This is reflected in the decade's worth of federal habeas litigation punctuated by five opinions by the Fifth Circuit over that span. *See supra*

Statement.II, III. And, as the Fifth Circuit found just this week, this extensive federal habeas litigation has, again, resulted in an "extensive review of the [trial] record" and "a merits-based review of his federal habeas claims." *Crutsinger V*, 2019 WL 4010718, at *4.

For another, this Court has created a mechanism for reaching IATC claims—by which, arguably, a variety of underlying claims can be bootstrapped—for the very complaint that Crutsinger raises at present—the ineffective assistance of state habeas counsel. *See Trevino*, 569 U.S. at 428. And the federal courts have provided de novo merits review of the IATC claim Crutsinger chose to advance. *See Crutsinger I*, 576 F. App'x at 425–28. That is the remedy for inadequate state habeas counsel. *See Martinez*, 566 U.S. at 17 (the ineffectiveness of state habeas counsel "merely allows a federal court to consider the merits of a claim that otherwise would have been procedurally defaulted," but it "does not entitled the prisoner to habeas relief").[8]

[8] It is worth pointing out that Crutsinger's evaluation of his state habeas counsel is heavily fact dependent, and because there was no evidentiary development in the lower court, this court would have "to review evidence and discuss specific facts" for Crutsinger to garner relief, something the Court "do[es] not" do. *United States v. Johnston*, 268 U.S. 220, 227 (1925). It is also worth noting that state habeas counsel is now dead and cannot explain his choices. Crutsinger should not receive a benefit from counsel's eternal silence when he waited almost twelve years, and up to the eleventh hour, to make this argument to the CCA.

Further, Texas's bar to subsequent applications clearly cannot be said to prevent access to courts as the federal habeas statutes contain an almost identical bar to successive petitions. *Compare* Tex. Code Crim. Proc. art. 11.071, § 5(a) *with* 28 U.S.C. § 2244(b).[9] To find that would undo necessary safeguards of finality in already extensive postconviction litigation proceedings. And to suggest that the CCA's unwillingness to reconsider an almost twelve-year-old decision, based on facts that have long been available to Crutsinger, is likewise a denial of the right to access is wholly unsubstantiated. Ultimately, Crutsinger asks this Court to rework Texas entire state habeas process, as enacted by the State's legislature and applied by the State's courts. Such a dangerous invitation must be denied in full.

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[9] Also consider that the federal habeas statutes prohibit "[t]he ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings" to serve as grounds for relief. 28 U.S.C. § 2254(i). As such, the CCA cannot have violated federal constitutional concerns, as Crutsinger seems to suggest, by holding the same for state habeas proceedings. *See Ex parte Graves*, 70 S.W.3d at 110–13.

CONCLUSION

Crutsinger fails to show that this Court possesses jurisdiction over the matters for which he seeks review, or that there are otherwise compelling grounds to issue a writ of certiorari. Consequently, his petition should be denied.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

LISA TANNER
Acting Deputy Attorney General
for Criminal Justice

EDWARD L. MARSHALL
Chief, Criminal Appeals Division

GWENDOLYN S. VINDELL
Assistant Attorney General

TRAVIS G. BRAGG
Assistant Attorney General
State Bar No. 24076286
Counsel of Record

Post Office Box 12548,
Capitol Station
Austin, Texas 78711
512.936.1400
Travis.Bragg@oag.texas.gov

Attorneys for Respondent–Appellee