

19-5827

No. _____

Supreme Court, U.S.
FILED

JUN 24 2010

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

James Michael Peluso — PETITIONER
(Your Name)

vs.

State of Texas — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

James Michael Peluso #1371492
(Your Name)

Robertson Unit, 12071 F.M. 3522
(Address)

Abilene, Texas 79601
(City, State, Zip Code)

—
(Phone Number)

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

Q. Whether a prisoner in Texas has a right to effective counsel in collateral proceedings which provide the first occasion to raise a claim of ineffective assistance at 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:

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STATUTES AND RULES

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 is unpublished.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 is unpublished.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 + B 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 is unpublished.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 is unpublished.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**:

^{5th} 5th March 2014

The date on which the highest state court decided my case was 10th April 2018.
A copy of that decision appears at Appendix B.

A timely petition for rehearing was thereafter denied on the following date: 10th April 2018, and a copy of the order denying rehearing appears at Appendix A.

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 VII to the US Constitution:

"In all criminal prosecutions, the accused shall enjoy the right to... have the Assistance of Counsel for his defense."

Amendment XIV to the US Constitution:

"No State Shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

James Michael Peluso is an indigent Texas Prisoner. In 2014 Peluso filed his State Habeas Corpus without the assistance of appellate counsel. In his application he raised a meritorious claim of Ineffective Assistance of Counsel. However, because of the inherent restrictions of his confinement, he was unable to substantiate his claim and the Texas Court of Criminal Appeals denied his habeas application.

In August 2017 Peluso filed a "Motion To Reconsider Upon The Courts Initiative" arguing that he was denied Due Process as required by the 14th Amendment because he was not provided the benefit of Habeas Counsel to present his Ineffective Assistance of Trial Counsel claim on his initial-review collateral proceeding.

On 10th April 2018 the Texas Court of Criminal Appeals denied Peluso's "Motion To Reconsider."

Peluso now seeks a Writ of Certiorari to vindicate the Right to Habeas Counsel in Texas.

- Thank you.

REASONS FOR GRANTING THE PETITION

Q. Whether a prisoner in Texas has a right to effective counsel in collateral proceedings which provide the first occasion to raise a claim of ineffective assistance at trial?

This Case seeks to vindicate the Constitutionally recognized Right to counsel in initial-review collateral proceedings - To wit, Habeas Counsel.

It calls for an answer to the question expressly "left open" in Coleman v. Thompson, 111 S.Ct. 2546 (1990), and touched on by Martinez v. Ryan, 132 S.Ct. 1309 (2012), and Trevino v. Thaler, 133 S.Ct. 1911 (2013).

The Texas Court of Criminal Appeals has decided an important question of federal law that has not been, but should be, settled by this Court. Although the Supreme Court has never resolved the question at hand, the Texas Court of Criminal Appeals has held that a State prisoner does NOT have a Constitutionally protected right to Habeas Counsel in initial-review collateral proceedings. See, Ex parte Graves, 70 S.W.3d 103 (Tex. Crim. App. 2002) [holding: "there is no constitutional right to effective assistance of counsel on a writ of habeas corpus"].

Peluso avers that the Texas Court of Criminal Appeals holding is contrary to Supreme Court precedents of Douglas v. California, 373 U.S. 363 (1963); Evitts v. Lucey, 105 S.Ct. 830 (1985); Halbert v. Michigan, 125 S.Ct. 2582 (2005); and the rationales of Martinez and Trevino.

The holding in Martinez highlighted a significant risk of injustice when a prisoner is not afforded counsel in an initial-review collateral proceeding.

After the scathing criticism in Trevino, which articulated how the Texas procedural system fails to provide an adequate vehicle by which prisoners may effectively challenge the effectiveness of trial counsel's performance, the State of Texas has refused to correct the clear flaws in its system.

This has created a violation of Constitutional magnitude which affects every indigent prisoner in Texas. All indigent Texas prisoners will continue to receive inadequate Habeas review in violation of the Fourteenth Amendment until the Supreme Court answers this question. Therefore, the question presented is of great public importance.

Peluso strongly avers that to satisfy the Fourteenth Amendment, an indigent prisoner has a Right to the appointment of appellate counsel in collateral proceedings which provide the first occasion to raise a claim of ineffective assistance of trial counsel ("IAC"). In Texas, Habeas Corpus is such a collateral proceeding.

The answer to this question is framed by two Supreme Court decisions concerning state-funded appellate counsel - Douglas, and Ross v. Moffitt, 94 S.Ct. 2437 (1974).

In Douglas, this Court held that "where the merits of the one and only appeal an indigent has of right are decided without benefit of counsel, an unconstitutional line is drawn between rich and poor which violates the Fourteenth Amendment" - Douglas thus established that as a matter of Constitutional law, adequate appellate review is impossible unless counsel has been appointed to indigent prisoners.

In Ross, this Court later held that a State need not appoint counsel to aid a poor person seeking to pursue a second-tier discretionary appeal.

The question presented by Peluso is essentially one of classification which of those decisions provides the controlling instructions?

Presently, Texas has bracketed the Right to Counsel on Habeas Corpus with Ross because it is a State postconviction proceeding/collateral review. This is premised on Coleman v. Thompson, 111 S.Ct 2546 (1991) which broadly stated: "There is no Constitutional right to attorney in state postconviction proceedings." See also, Ex parte Graves, 70 S.W.3d 103 (Tex. Crim. App. 2002).

However, in Martinez, this Court clarified that Coleman expressly "left open" the question of "whether a prisoner has a right to effective counsel in collateral proceedings which provide the first occasion to raise a claim of ineffective assistance at trial". See, Martinez, at 1315.

This is precisely the question presented to this Court.

In the subsequent ruling of Trevino, this Court held that Texas procedure made it "virtually impossible" for appellate counsel to present an adequate IATC claim on direct appeal. See, Trevino at 1918. Consequently, the better and prescribed procedural mechanism for pursuing a claim of IATC is through writ of habeas corpus proceedings. See also, Freeman v. State, 125 S.W.3d 505, 506 (Tex. Crim. App. 2003).

This makes Habeas Corpus the "initial-review collateral proceeding" for IATC claims in Texas and is the equivalent of a prisoners direct appeal as to such claims. See, Ex parte Buck, 418 S.W.3d 98, 109 (Tex. Crim. App. 2013).

Peluso avers that this distinction should put the answer to this question squarely under Douglas. This is because:

- a. Habeas Corpus is a writ of Right. See, Tx. C.C.P., art 1.08; Texas Constitution, art 1, § 12.
- b. Habeas Corpus is the designated First-tier and "Initial-Review Collateral Proceeding" for IATC claims in Texas.
- c. Habeas Corpus decides the claims merits and no other court has addressed the IATC claim.
- d. Error-correction is the Habeas proceedings prime function.
- e. Habeas Corpus is NOT a discretionary review
- f. Habeas Corpus is a prisoners "one and only appeal" as to IATC claims.
- g. Prisoners are generally ill equipped to represent themselves because they have no brief or court opinion; the inherent restrictions of their confinement places them in no position to develop the evidentiary basis of IATC claim; and navigating the appellate process is a perious endeavour.

the case at hand, Peluso was not provided Habeas counsel during his initial-review collateral proceeding (Habeas Corpus). Because he did not have the assistance of Habeas Counsel, and the fact he is a prisoner who is unlearned in the science of law, Peluso was unable to fully and fairly present his meritorious claim of IATC.

Therefore, Petitioner Peluso respectfully requests this Court address the presented question. Thank you.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

James Peluso

Date: 24th June 2018