19-7212

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
JAN - 7 2020
OFFICE OF THE CLERK

Ronald Lee Alexander Sr. — PETITIONER
(Your Name)

vs.

Sharon Keller CJ — 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

Ronald Lee Alexander Sr.
(Your Name)

Wynne Unit - 810 FM 2821
(Address)

Huntsville, Texas 77349
(City, State, Zip Code)

936-295-9126 (129)
(Phone Number)

QUESTION(S) PRESENTED

1). Whether a Texas prisoner has a right to effective Counsel in Collateral proceedings which provide the first occasion to raise a claim of ineffective assistance at trial?

2) Whether the 14th Amendment is violated when a Texas habeas Applicant is denied habeas relief in a manner that is unauthorized by the Texas 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:

RELATED CASES

Gideon -v- Wainwright, 83 S.Ct. 792 (1963)
Evitt. v. Lucey, 105 S.Ct. 830 (1985)
Coleman -v- Thompson, 111 S.Ct. 2546 (1990)
Martinez -v- Ryan, 132 S.Ct. 1309 (2012)
Trevino -v- Thaler, 133 S.Ct. 1911 (2013)
Douglas -v- California, 83 S.Ct. 814 (1963)
Halbert -v- Michigan, 125 S.Ct. 2582 (2005)
Ross -v- Moffitt, 94 S.Ct. 2437 (1974).
Ex parte Graves, 70 S.W. 3d 103 (Tex. Crim. App. 2002)
Ex parte Buck, 418 S.W.3d 98, 109 (Tex. Crim. App. 2013)
Freeman -v- state, 125 S.W. 3d 505, 506 (Tex. Crim. App. 2003)
Ex parte Dawson, 2016 Tex. Crim. App. Lexis 1440
Ex parte Sledge, 391 S.W. 3d 104 (Tex. Crim. App. 2013)
Ex parte Lemke, 13 S.W. 3d 791, 793 (Tex. Crim. App. 2000)
Ex parte Moussazadeh, 361 S.W.3d 684 (Tex. Crim. App. 2012)

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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 _____ 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[ ] is unpublished.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 to the petition and is

[✓] reported at White card; 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 N/A.

[ ] 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).

[X] For cases from **state courts:**

The date on which the highest state court decided my case was Dec. 5, 2019. A copy of that decision appears at Appendix A.

[X] A timely petition for rehearing was thereafter denied on the following date: Dec. 5, 2019, 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

United states Const. 14th Amendment

Texas Const. art. V § 4

Texas Const. art. 1 § 12

Texas R. App. P. 79.2 (d)

Texas Crim. Proc. art. 1.051 (d)(3)

Texas Code Crim. Proc. Art. 11.07, Section 4(a)-(c)

Texas Code Crim. Proc. Art. 108

STATEMENT OF THE CASE

The writ of habeas Corpus is essential to the protection of Constitutional Rights - but in TEXAS, Habeas Corpus has been rendered a meaningless ritual for those unable to afford appellate Counsel. The structure, design, and operation of the TEXAS procedural System dictates that no indigent prisoner in TEXAS will have the benefit of Counsel in raising a claim of "ineffective Assistance of trial Counsel" (IATC). This is because TEXAS procedures MAKE it "virtually impossible" to present an adequate claim of "IATC" on Direct Appeal. The TEXAS Court of Criminal Appeals has explicitly Stated that as a general rule a prisoner should not raise an issue of IATC on Direct Appeal, but rather on Habeas Corpus. However, by deliberately choosing to MOVE IATC claims outside the Direct Appeal process - where Counsel has explicitly stated that as a general rule prisoner should not raise an issue of IATC on Direct Appeal, but rather on Habeas Corpus. However, by deliberately choosing to MOVE IATC claims outside the Direct Appeal process - where Counsel is constitutionally guaranteed - TEXAS has significantly dismished a prisoners ability to file such claims. The prisoner, unlearned in the science of law, can not be expected to posses the legal knowledge necessary to prepare thoughtful and Meritorious Habeas Applications. A prisoner ability to file such claims MAY not only misapprehend the substentive details of federal constitutional law, or fail to comply with the States procedural rules but while confined in prison, the prisoner is in no position to develop the evidentiary basis for a claim of IATC, which often turns on evidence outside the trial record. This is significant because in Habeas Corpus the burden is on the prisoner to allege and prove facts which, if true, entitle them to habeas relief. Not only does a TEXAS prisoner has a number of statutes that react an insurmountable barrior to obtaining the evidence necessary to carry their burden of proof. For example TEXAS government Code Section 552.028(a)-(c) allows all government bodies to simply ignore

requests for information from a prisoner - even if they offer to pay for it. Another example is Texas Code of Criminal Procedures, article 39.14(f) which prohibits an attorney from providing a prisoner with a copy of their case file or client - Attorney file (other than the prisoners own statement).

How then is an unrepresented prisoner meant to prove their allegations of fact if they are prevented by both statutes and their physical confinement from obtaining the necessary evidence? The system is designed as a closed loop, which only those wealthy enough to afford appellate counsel can escape.

If a state did not appoint appellate counsel on a Direct Appeal, it would be deemed unconstitutional, when an "initial-review collateral proceeding" (Habeas Corpus) is the equivalent of a prisoner Direct Appeal as to fact, then logic dictates that if a state fails to appoint appellate counsel for this appeal it would also be unconstitutional.

They are fundamentally the same in all but name. Without the Right to Habeas counsel, prisoners in Texas will never have adequate or meaningful Habeas review.

REASONS FOR GRANTING THE PETITION

Q. 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?

This case Seeks to vindicate the Constitutional Right to Habeas Counsel in initial-review Collateral proceedings. 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"); See Also, Ex parte Sledge, 391 S.W. 3d 104 (Tex. Crim. App. 2013).

Applicant avers that the Texas Court of Criminal Appeals holding is contrary to the Supreme Court precedents of Douglas -v- California, 83 S.Ct. 814 (1963); Evitts -v- Lucey, 105 S.Ct. 830 (1985); Halbert -v- Michigan, 125 S.Ct. 2582 (2005); and the rationales of Martinez and Trevino.

Although the holding in Martinez was equitable and does not apply to state courts, the rationale highlighted a significant risk of injustice when a prisoner is not afforded Counsel in an initial-review Collateral proceedings. After the Scathing criticism in Trevino, which articulated 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.

Applicant 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 assistence of trial counsel. In Texas, Habeas Corpus is such a collateral proceedings.

The answer to this question is framed by two Supreme Court precedents concerning state-funded appellate Counsel - Douglas -v- California, 83 S.Ct. 814 (1963), 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.

Later, in Ross, this Court 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 Applicant is essentially one of classification: which of these two precedents

provides the controlling instruction? Presently Texas has bracketed the Right to Counsel on Habeas Corpus with Ross. because it is state post-conviction proceeding / collateral review.

This case has been premised on Coleman-v-Thompson, 111 S.Ct. 2546 (1991) which broadly stated that "there is no Constitutional right to attorney in state post conviction proceeding". 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 ineff-ective assistance at trial". See, Martinez, at 1315. This is precisely the question presented to this Court.

Furthermore, in a subsequent ruling, Trevino, this Court held that Texas procedure made it "virtually impossible" for appellate Counsel to present an adequate ineffective assistance claim on Direct Appeal. See, Trevino, at 1918. Consequently, the better and prescribed procedural Mechanism for pursuing such a claim is almost always 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 ineffective assistance 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).

Applicant 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, Tex. Const. 1, § 12;
b. Habeas Corpus is the designated First-Tier and "initial-review Collateral proceedings" for ineffective assistance claims in Texas.
c. Habeas Corpus decides the claims merits and no other court has addressed the ineffective assistance claims.
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 ineffective assistance claims.
g. Prisoners are generally ill equipt to represent themselves because they have no brief or court opinion to guide them; the inherent restrictions of their confinement places them in no position to develop the evidentiary basis of ineffective assistance claim; and navigating the appellate process is a perilous endeavour.

For these reasons, it is of great public importance that this Court GRANT Certiorari to address this unanswered question.

Reasons for Granting the Petition Cont.

Q. Whether Article 11.07, Section 4(a)-(c), of the Texas Code of Criminal procedure is unconstitutional as Applied to Applicant's ineffective assistance of trial Counsel claim when he was not provided Habeas Counsel in his initial-Review Collateral proceedings?

Currently in non-death penalty cases, pro se indigent prisoners are procedurally barred from presenting a claim of ineffective assistance of trial counsel if that claim could have been brought in an initial writ of Habeas Corpus application. See, Texas Code of Criminal Procedure, Article 11.07, Section 4(a)-(c).

This statute should be held to be unconstitutional as applied to pro se indigent prisoners who are not provided with Habeas Counsel for their initial Habeas Applications. For the bedrock principle of Gideon -v- Wainwright, 83 S.Ct. 792 (1963) to provide meaningful protection to the indigent/accused, Counsel must be afforded to allow the presentation of ineffective assistance of trial Counsel claims.

Because Texas does not provide Counsel for initial-review collateral proceedings, pro se prisoners are forced to litigate ineffective assistance of Counsel claims on their own. The current state of the law (as explained in previous question), combined with 11.07, Sec 4's procedural default, ensures the vast Majority of pro se indigent prisoners have no recourse to properly learn, discover, and then litigate all their ineffective assistance of Counsel claims, and thus this leaves

them with no Mechanism for vindicating the requirement that the Counsel in Gideon be effective.

For this reason, this Court should address the question as to whether this statute is Unconstitutional if a prisoner is not provided the benefit of Habeas Counsel during their Initial-Review Collateral Proceeding.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Ismael L. Alvarado

Date: Dec. 26, 2019