

19-7385
No. _____

ORIGINAL

FILED
JAN 13 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

ARTHUR LEE KIMBEL — 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

Arthur Lee Kimbel #2157935

(Your Name)

Robertson Unit, 12071 F.M. 3522

(Address)

Abilene, Texas 79601

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

When an Appellant files an Appellate Brief raising Pro Se claims after appointed counsel submits an Anders Brief, is the reviewing appellate court constitutionally required to address the Pro Se claims and provide the basic reasons for the court's decision to deny relief?

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

STATE OF TEXAS V. ARTHUR LEE KIMBEL, Trial Court No. 6234
ARTHUR LEE KIMBEL V. STATE OF TEXAS, COA No. 04-17-00782-CR
ARTHUR LEE KIMBEL V. STATE OF TEXAS, PDR No. PD-0561-19

TABLE OF AUTHORITIES CITED

CASES

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McFarland v. State, 930 S.W.2d 99 (Tex. Crim. App. 1996)	6
Smith v. State, 463 S.W.3d 890 (Tex. Crim. App. 2015)	6
Weatherford v. State, 828 S.W.2d 12 (Tex. Crim. App. 1993)	6

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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 is unpublished.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 is unpublished.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 _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the Fourth Court of Appeals, Texas 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.

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**:

The date on which the highest state court decided my case was 11th Sept 2019. A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: 23rd October 2019, and a copy of the order denying rehearing appears at Appendix C.

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 XIV:

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

Petitioner Kimbel was charged with possession of controlled substance with intent to deliver, PG1 (methamphetamine), in the amount of four grams or more, but less than 200 grams.

On September 12, 2017, the jury found Kimbel guilty and sentenced him to LIFE in prison, plus a \$10,000 fine. Kimbel was habitualized under Sec. 12.42(d), Texas Penal Code.

Kimbel filed a motion for new trial, which was denied. He then filed a timely Notice of Appeal.

On June 15, 2018, Kimbel's appointed appellate counsel filed an Anders Brief. Kimbel then filed a Pro Se Direct Appeal Brief to the Fourth Court of Appeals. He presented two grounds alleging trial court erred in: (1) admitting into evidence photographs of text messages from Kimbel's cell phone regarding previous (alleged) sales of methamphetamine; and (2) denying his motion for mistrial, which was based on the assertion that jurors saw Kimbel in a holding cell during the trial.

On May 15, 2019, the Fourth Court of Appeals issued a memorandum Opinion denying Kimbel relief. Although the Court of Appeals acknowledges that Kimbel filed pro Se claims, beyond stating simply that they agreed with counsel that the appeal was without merit, the Court of Appeals did not address any of Kimbel's pro Se claims or arguments.

On August 6, 2019, Kimbel filed a Petition For Discretionary Review with the Texas Court of Criminal Appeals. Kimbel argued that the Court of Appeals erred by failing to address his Pro Se claims and provide the basic reasons for the Court's decision. As such, his cause should be remanded so that the Court of Appeals could address all issues and claims presented in the pro Se Direct Appeal.

The Texas Court of Criminal Appeals denied Discretionary Review, and Kimbel filed a Motion For Rehearing. This Motion was denied October 23, 2019.

Kimbel now files this Petition For Writ of Certiorari.

REASONS FOR GRANTING THE PETITION

Q. When an Appellant files an Appellate Brief raising Pro Se claims after appointed counsel submits an Anders Brief, is the reviewing appellate court constitutionally required to address the Pro Se claims and provide the basic reasons for the court's decision to deny relief?

The Texas Courts have decided an important federal question in a way that conflicts with relevant decisions of this Court [Rule 10(c)]. To wit, the constitutional requirements of appellate review pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967).

In the case at hand, after court appointed appellate counsel filed an Anders Brief, Kimbel filed a Pro Se brief in which he raised the claims that the trial court erred in:

- 1) admitting into evidence photographs of text messages from Kimbel's cell phone regarding alleged previous sale of methamphetamine; and,
- 2) denying his motion for mistrial, which was based on the assertion that jurors saw Kimbel in a holding cell during the trial.

Beyond agreeing with Anders Counsel that "the appeal is without merit", the Court of Appeals absolutely failed to address any issues raised and necessary to the final disposition of the appeal, and neglected to give the basic reasons for the Court's decision.

Kimbel filed a timely Petition For Discretionary Review (PDR) with the Texas Court of Criminal Appeals and argued:

- 1) It is impossible to perfect a PDR on the denial of the Pro Se claims raised on the Direct Appeal because the Memorandum Opinion is silent as to the rationale and legal authority of the Court's decision - that it would be a futile pursuit to assume the Court of Appeals adopted the Anders Counsel's argument as their own because Kimbel raised issues and arguments unaddressed by the Anders Brief; and,

2) Texas Rules of Appellate Procedures, Rule 47.1 and/or 47.4 required the Court of Appeals to hand down a written opinion that addresses every issue that is raised, and necessary to the final disposition of the appeal - and that his cause should be remanded back to the Court of Appeals so they may address his Pro Se claims presented in his Direct Appeal.

The Texas Court of Criminal Appeals refused Kimbel's PDR.

In Anders v. California, 386 U.S. 738 (1967), this Court held that after appointed counsel submits an Anders Brief, a copy of that brief should be furnished to the Appellant and time allowed for him to raise any points that he chooses. *Id* at 744.

But when the Appellant raises Pro Se claims and arguments unaddressed in the Anders Brief, how is he afforded the constitutional requirement of substantial equality and fair process when the Court simply agrees with Anders Counsel that "the appeal is without merit" but does not explain how or why they came to that conclusion, nor address the Pro Se claims and arguments?

How can he legitimately pursue further appeal on those Pro Se claims?

Kimbel has identified numerous Texas caselaw holding that the Court of Appeals is required to address a defendant's claims squarely presented to it - but none of these cases address a situation where an Anders Brief was filed. See, Smith v. State, 463 S.W.3d 890 (Tex. Crim. App. 2015); Light v. State, 15 S.W.3d 104 (Tex. Crim. App. 2000); McFarland v. State, 930 S.W.2d 99 (Tex. Crim. App. 1996); Weatherford v. State, 828 S.W.2d 12 (Tex. Crim. App. 1993).

It appears Texas does not recognize the same constitutional protections for Pro Se Litigants as they do for licensed attorneys. Logic dictates that if Texas did, they would have reviewed all of Kimbel's claims and arguments and provided the reasons for their decision like they would have if he was represented by appellate counsel.

Pro Se Litigants are being deliberately railroaded by taking away the ability to effectively argue their claims.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Arthur Lee Kimbel

Date: 13th January 2020