

No. 19-8386

CRIMINAL

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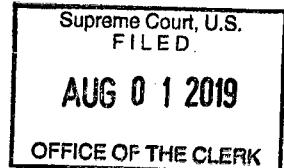
SUPREME COURT OF THE UNITED STATES

DAVID L CULVERHOUSE — PETITIONER
(Your Name)

VS.

STATE OF TEXAS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO



COURT OF CRIMINAL APPEALS OF TEXAS Case no. WR-15,098-03,

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DAVID L CULVERHOUSE

(Your Name)

STILES UNIT - TDC # 355569

3060 FM 3514

(Address)

BEAUMONT, TEXAS 77705

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

#1. May the Court of Criminal Appeals of Texas unconstitutionally deny actually innocent Petitioner's motion for leave to file original application for writ of habeas corpus under Texas and U.S. Constitutions? (in case no. WR-15,098-03), regarding the following:

#2. May Texas continue to operate unconstitutional ineffective Public Defender/Court Appointed Defense Counsel system for indigent criminal defendants?

#3. May all 50 states continue to operate unconstitutional ineffective Public Defender/Court Appointed Defense Counsel systems for indigent criminal defendants?

#4. May Texas and most other states continue to inflict routine punitive excessive bail on indigent actually innocent criminal defendants?

#5. May this U.S. SUPREME COURT vacate the unconstitutional majority opinion in *Ex Parte Franks*, 71 S.W.3d 327-331 (Tex Crim. App. 2001) and uphold the constitutional dissenting opinion in same?

#6. When State Court Officer Appointed Defense Counsel stabbed defendant with knife combined with Trial Judge immediately without legitimate reason shackled defendant visible to jurors in three consecutive trials is such infliction of cruel and unusual punishment 8th Amend violation?

#7. After said counsel admitted initiating/creating courtroom disturbance should he withdraw or should trial court remove him or hold hearing with sworn testimony which would show that defendant should not be shackled?

#8. Did Court abuse discretion by keeping said counsel at trial; appointing him to file state direct review appeal; appointing him at 2nd trial and state direct review appeal and unconstitutionally shackling defendant?

#9. Did Court abuse discretion by forcing defendant to choose between knife wielding counsel or defending himself at 2nd trial?

#10. Combined with prosecutorial misconduct should said counsel be required to file in the state direct review appeal a claim of ineffective assistance of counsel against himself when his deficient performance was obviously intentionally flagrant for the specific purpose of causing the jury to convict with maximum punishment?

#11. When the only evidence causing conviction is perjured testimony recanted under oath in 2nd trial may the State conceal and withhold the trial transcripts to keep this Petitioner wrongfully imprisoned?

#12. May the State Court violate 6th Amend. by moving the trials (change of venue) to other districts along with the same biased trial judge presiding at each trial and with same prosecutor and knife wielding defense counsel at each trial?

#13. May prison officials continue to destroy or routinely delay and fail to mail this pro se indigent prisoner's petitions in a timely manner to state and federal courts in a State created impediment to prevent filing?

#14. May Texas continue to deny indigent pro se prisoners a fair meaningful opportunity to develop actual innocence claim in application for writ of habeas corpus?

#15. May the trial court refuse to allow defendant to testify his actual innocence to the jury and not allow him to speak quietly to defense counsel during trial?

#16. May Texas deny counsel at critical stages of the proceedings?

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

According to Urghant v. State, 203 A. 3d 719 (Del. 2019) the Public Defenders Office is ineffective under both United States v. Chronic, 466 U.S. 648 (1984) and Strickland v. Washington, 466 U.S. 668 (1984), re: absence of legal representation during critical pretrial stage, herein Petitioner's case.

In Garza v. Idaho, 203 L.Ed. 2d 77 (2019) U.S. SUPREME COURT ruled ineffective assistance of counsel prejudice is presumed when defendant denied counsel at critical stage of proceedings and trial transcripts prejudicially not available to indigent pro se prisoners, same as herein Petitioner's case.

Re: United States v. Acosta, 924 F.3d 288 (6th Cir. 2019) Prosecutor's misconduct was so exceptionally flagrant that it constitutes plain error, and is grounds for reversal even [though] the [ineffective counsel] did not object to it herein Petitioner's case.

Benitez v. U.S. 521 F.3d 625, 630, 636 (6th Cir. 2008) (court's failure to inquire into defendant's dissatisfaction with counsel, constituting denial of counsel, was structural error). same as herein Petitioner's case.

Abuse of discretion to shackle defendant visible to jury and court did not take any precautions to minimize any potential prejudice U.S. v. Haynes, 729 F.3d 178 189 (2nd Cir. 2013); U.S. v. Benegas, 600 F.3d 342, 345-47 (5th Cir. 2010); Ruimveld v. Birkett, 404 F.3d 1006, 1014-18 (6th Cir. 2005); Maus v. Baker, 747 F.3d 926, 927-28 (7th Cir. 2014). (same as herein Petitioner's case).

Court erred by failing to conduct formal hearing with sworn testimony to determine whether restraints were necessary U.S. v. Miller, 531 F.3d 340, 345 (6th Cir. 2008), same as herein Petitioner's case. The U.S. SUPREME COURT may apply the plain-error standard to errors neither preserved below nor argued on appeal. Rosales-Mireles v. United States, 138 S.Ct. 1897 (2018); United States v. Douglas, 910 F.3d 804 (5th Cir. 2018); For reversible plain error see also United States v. Figueroa, 920 F.3d 260 (5th Cir. 2019).

For actual innocence see United States v. Garcia, 2019 U.S. Dist. LEXIS 1207 (E.D. Cal. 2019); Finch v. Makoy, 2019 U.S. App. LEXIS 2579 (4th Cir. 2019).

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United States v. Bagley, 473 U.S. 667, 682, 685 (1985)	1.
Strickland v. Washington, 466 U.S. 668 (1984); Trevino v. Thaler, 133 S.Ct. 1911, 1921 (2013)	1. and 4.
Illinois v. Allen, 397 U.S. 337 (1970)	1.
Deck v. Missouri, 544 U.S. 662 (2005)	1.
Wiseman v. State, 223 S.W.3d 45 (Tex. App. - Houston [1st Dist.], 2006)	1.
Brechit v. Abramson, 507 U.S. 619, 113 S.Ct. 1710, 123 L.Ed.2d 353 (1993)	1.
Armstrong v. Manzo, 380 U.S. 545 (1965)	2.
More v. Purkett, 275 F.3d 685, 689 (8th Cir. 2001)	2.
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Ex Parte Franks, 71 S.W.3d 327 (Tex. Crim. App. 2001)	3.
Teague v. Quigley, 482 F.3d 769 (5th Cir. 2007); Lynce v. Mathis, 519 U.S. 433-444 (1997)	4.
Jackson v. Davis, 933 F.3d 408 (5th Cir. 2019); Rivas v. Fisher, 687 F.3d 514 (2nd Cir. 2012)	4.
United States v. Garcia, 2019 U.S. Dist. LEXIS 1207 (E.D. Cal. 2019)	4.
Finch v. McCoy, 2019 U.S. App. LEXIS 2579 (4th Cir. 2019)	4.

Garza v. Idaho, 203 L.Ed. 2d 77 (2019) In RELATED CASES section herein, Bucklew v. Precythe, 139 S.Ct. 1112 (2019).

STATUTES AND RULES

See Reasons For Granting The Petition Section Herein For: 139 S.Ct. 1112 (2019).	
Texas Penal Code § 9.31, acting in self-defense.	1.
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28 U.S.C. § 2244(1)(B) state action impediment to filing.	2.
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U.S. SUPREME COURT RULE 36 (3)(a)(b)(4) personal recognizance release	3.
28 U.S.C. § 2244(b)(2)(B)(ii) in the Reasons For Granting The Petition Section Herein.	3.

See the RELATED CASES section herein for Roselas v. Mireles v. United States, 138 S.Ct. 1897 (2018) (may apply the plain-error standard to errors neither preserved below nor argued on appeal).

OTHER U.S.CONST. 5th, 6th, 8th, 14th Amendments violated

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U.S. CONST. 5th, 6th, 14th Amendments, Violated	2.
U.S. CONST. 5th, 6th, 8th, 14th Amendments violated	3.
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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 N/A; or,
 has been designated for publication but is not yet reported; or, N/A
 is unpublished. N/A

The opinion of the N/A court appears at Appendix _____ to the petition and is

reported at N/A; or,
 has been designated for publication but is not yet reported; or, N/A
 is unpublished. N/A

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_____.
4

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 May 8, 2019. A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: N/A, 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 N/A (date) on _____ (date) in Application No. __A_____.
4

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution Amendments 5, 6, 8 and 14, violated herein three trials.
U.S. CONST., Art. I § 9, cl. 2 "The privilege of the Writ of Habeas Corpus shall not be suspended... violated by Court of Criminal Appeals of Texas in case no. WR-15, 098-03 herein,

TEXAS Constitution, Art. I § 12 "The Writ of habeas corpus is a writ of right and shall never be suspended" violated by Court of Criminal Appeals of Texas in case no. WR-15, 098-03 herein.

U.S. CONST., Art. I § 9, cl. 3 and Art. I § 10, cl. 1 Prohibition against Ex Post Facto; U.S. CONST. Separation of Powers and Texas Constitution Art. 2 § 1 Separation of Powers Clause Violated by Court of Criminal Appeals of Texas assumed the power of the Texas Legislature by re-writing the law in Texas Senate Bill No. 152 in *Ex Parte Franks*, 71 S.W. 3d 327 (Tex. Crim. App. 2001). Statutory Construction, Due Process, Equal Protection, Immunity, Privileges also violated in same.

U.S. CONST., 5th and 14th Amendments Due Process violated by Texas shackling Petitioner visible to jurors and trial court judge Donald R. Ross erred by failing to conduct formal hearing with sworn testimony to determine whether shackles, hand cuffs attached closely to steel chain belly band and attached to leg irons were necessary, did not question jurors about effect of shackled defendant upon their verdict, did not determine whether a less restrictive alternative was available, did not take any precautions to minimize any potential prejudice, did not take any reasonable steps to make shackles invisible to jurors, and failed to make defendant-specific valid legal finding on the record that a state interest justified shackling. A shackled defendant's conviction must be reversed unless [U.S. SUPREME COURT] determines beyond a reasonable doubt that his shackling constituted harmless error. U.S.C.A. Const. Amendments 5, 14. TEXAS RULES OF APPELLATE PROCEDURE, 44.2 (a); *Wiseman v. State*, 223 S.W. 3d 45-53 (Tex. App. — Houston [1st Dist] 2006). Texas did not prove beyond a reasonable doubt that the restraints did not contribute to the obtained verdict. *Deck v. Missouri*, 544 U.S. 622, 635 (2005); *U.S. v. Banegas*, 600 F. 3d 342, 345-47 (5th Cir. 2010). Court Appointed Defense Counsel Joe Edward Shumate refused to raise an ineffective assistance of counsel claim against himself. U.S.C.A. Const. Amend. 6, *Alvarez v. State*, 79 S.W. 3d 679, 681-82 (Tex. App. — Houston [14th Dist] 2002, pet. dismissed). Petitioner prays the COURT to require same when counsel's deficient performance is flagrant and intentional in order to persuade the jury to find guilt and assess maximum punishment. The Court Appointed Defense Counsel/Public Defender State System violates the 5th, 6th, 8th and 14th Amendments, United States Constitution and the State Punitive Excessive Bail System violates U.S. CONST. 5th, 6th, 8th, 14th Amendments.

STATEMENT OF THE CASE

Re: QUESTION(S) PRESENTED #1: Layton Cummings shot Donna Ray in self-defense (Tex. Penal Code §9.31),
this Petitioner struggled to disarm Layton Cummings, firearm discharged wounding
Layton Cummings. Petitioner performed cardiopulmonary resuscitation on Donna Ray.
Layton Cummings' accomplice Tony Montgomery struck Petitioner on head with
crow bar. Donna Ray died. Layton Cummings and Tony Montgomery lied falsely
claiming that Petitioner murdered Donna Ray and attempted to murder Layton Cummings.
Petitioner is actually innocent (McQuiggin v. Perkins, 133 S.Ct. 1924, 1931-32 (2013)) of the
murder conviction (not guilty plea jury found guilty assessed max. life sentence) Texas
202nd JUDICIAL DISTRICT COURT CASE NO. 83 F 89. At the initial charges notification
bond hearing indigent Petitioner was denied counsel (Thompson v. Pfister, 698 F.3d
976, 984 (7th Cir. 2012); Rothgery v. Gillespie Cty., 544 U.S. 191, 213 (2008); Brewer
v. Williams, 430 U.S. 387, 404 (1977); Carnley v. Cochran, 396 U.S. 506, 513 (1962);
Tollett v. U.S. 444 F.2d 622, 625 (8th Cir. 1971)). Petitioner was also denied counsel
at Habeas Hearing, Hearing to Challenge Array of Grand Jury, Hearing to Recuse Judge
Donald R. Ross, other Court Hearings and Hearing on Court's Own Motion to Change
Venue where Judge Donald R. Ross violated U.S. CONST., 6th Amend. and Tex. Code
Crim. Proc. Art. 31.01 by falsely stating without any evidence in the Record
that a trial, alike fair and impartial to the accused and to the State
could not be had in Texas 4th JUDICIAL DISTRICT COURT as Petitioner and
Prosecutor William L. Ferguson timely contested the move to 202nd JUDICIAL DISTRICT.
... the accused shall enjoy the right to a... trial, by an impartial jury of the State
and district wherein the crime shall have been committed, which district shall have
been previously ascertained by law, ... Prosecutor William L. Ferguson suppressed
Layton Cummings' confession to the murder of Donna Ray, (United States v. Bagley,
473 U.S. 667, 682, 685 (1985); Kyles v. Whitley, 514 U.S. 419, 433 (1995)). Court
Appointed Defense Counsel failed to put Layton Cummings on the witness stand.
Petitioner was denied Effective Assistance of Counsel (Cuyler v. Sullivan, 466 U.S.
385, 344-45 (1980); Strickland v. Washington, 466 U.S. 668 (1984); Trevino v.
Thaler, 133 S.Ct. 1911, 1921 (2013)). At the beginning of Guilt/Innocence Phase
of Murder trial the said appointed counsel Joe Edward Shumate stabbed
Petitioner with a knife. Acting in self-defense Petitioner struck counsel with a
water pitcher. Although counsel Joe Edward Shumate admitted to initiating/creating
the courtroom disturbance Judge Donald R. Ross abused court's discretion
by shackling Petitioner, hand cuffs, belly band, leg irons visible to the jury
without proper determination (Holbrook v. Flynn, 475 U.S. at 568-69,
106 S.Ct. 1340 (1986); Illinois v. Allen, 397 U.S. 337 (1970); Deck v. Mo.,
544 U.S. 622, 624-25, 628, 632-33, 635 (2005)). No reasonable
steps were taken to make shackles invisible to jury. (Wiseman v.
State, 223 S.W.3d 45-53 (Tex. App. - Houston [1st Dist.] 2006)).
Shackling contributed to the jury's conviction and max. punishment
because shackles essentially branded defendant as having a violent
nature in a case where his propensity for violence was the crucial
issue. The shackles had substantial and injurious effect or influence
in determining the jury's verdict. (Brecht v. Abrahamson, 507 U.S. 619,
637, 113 S.Ct. 1710, 123 L. Ed. 2d 353 (1993)). Shackling distracted,
embarrassed and impaired Petitioner's ability to confer with "Knife wielding"
defense counsel and significantly affected defense trial strategy. (United
States v. Durham, 287 F.3d 1297, 1304 (11th Cir. 2002)). Judge Donald R. Ross
did not consider reasonable alternatives to visible to jury shackling and failed to inquire
into defendant's dissatisfaction with counsel. 1. Benitez v. U.S. 521 F.3d 625, 630, 636 (6th Cir. 2008).

But for counsel's deficient performance the outcome would have been different.

United States v. Chronic, 466 U.S. 648 (1984)
Denied counsel at critical stage of proceedings.

STATEMENT OF THE CASE

Judge Donald R. Ross also threatened to gag Petitioner if he spoke one word so Petitioner not allowed to testify his actual innocence to the jury during guilt/innocence phase of MURDER trial. (Grannis v. Ordean, 234 U.S. 385 (1914); Armstrong v. Manzo, 380 U.S. 545 (1965)). Petitioner also not allowed to speak quietly to "knife wielding" defense counsel Joe Edward Shumate during trial (Morre v. Purkett, 275 F.3d 685, 689 (8th Cir. 2001)). Counsel Joe Edward Shumate did not ask to be removed and replaced, did not object to shackling, did not file interlocutory appeal during trial, did not ask court to instruct jury to not consider shackles as evidence of MURDER and did everything possible to cause jury to convict and assess maximum punishment. Prior to trial Petitioner held in jail under punitive excessive bail to prevent him from earning money to hire private lawyer (8th Amend. violation). Counsel Joe Edward Shumate sabotaged MURDER conviction appeal. The only evidence to convict was the perjured testimony of Tony Montgomery who admitted under oath 2 1/2 months later while he testified at the ATTEMPTED MURDER jury trial that he committed perjury at the MURDER trial specifically to convict actually innocent Petitioner. The attempted murder trial held at Texas 12th JUDICIAL DISTRICT COURT Case No. 13,039 because Judge Donald R. Ross unconstitutionally changed the venue from Texas 4th Judicial District Court. The transcripts of the murder and attempted murder trials prove by clear and convincing evidence that Petitioner is actually innocent of both crimes but TEXAS singled out Petitioner and denied him access to trials transcripts because of his poverty. (Ross v. Moffitt, 417 U.S. 600, 612 (1974) and such continues to be an impediment to filing created by STATE action (28 U.S.C. § 2244(i)(B)). At the Attempted Murder trial Judge Donald R. Ross unconstitutionally forced Petitioner to choose between "knife wielding" counsel Joe Edward Shumate or Self-Representation so Petitioner represented himself in hand cuffs, belly band, legirons shackled visible to the jury with Joe Edward Shumate as Stand-By counsel over the objection of Petitioner who had timely requested new counsel. (Jones v. Walker, 496 F.3d 1216, 1230-31 (1st Cir. 2007); Patterson v. Ill., 487 U.S. 285, 292 n. 4 (1988); Pasadena v. Maurer, 424 F.3d 303, 316, 318 (3rd Cir. 2005); James v. Brigano, 470 F.3d 636, 644 (6th Cir. 2006); Thomas v. State, 550 S.W.2d 64 (Tex. Crim. App. 1977); Robles v. State, 577 S.W.2d 699 (Tex. Crim. App. 1979)). Plea not guilty, jury found guilty, assessed max. 20 years for Petitioner for attempted murder. Counsel Joe Edward Shumate also filed, sabotaged the attempted murder conviction appeal. A few months later in Texas 71st JUDICIAL DISTRICT COURT Case No. 3211 Petitioner plead not guilty, jury found guilty of ROBBERY and assessed 16 years. Layton Cummings committed said ROBBERY, Tony Montgomery drove the getaway car. Prosecutor suppressed their confessions. Defense Court Appointed Counsel was ineffective. The same jury that found Petitioner Competent To Stand Trial also determined guilt/punishment of the ROBBERY unconstitutionally after being prejudiced by the psychiatrist testimony. Petitioner shackled visible to the jury at Competency Trial and at ROBBERY Trial. TEXAS denied Petitioner access to Robbery Trial Transcripts. Prosecutor fabricated evidence and prosecution was malicious in all three felony trials. Petitioner is actually innocent of robbery.

2. Flagrant prosecutorial misconduct.

Defense counsel Joe Edward Shumate did not object to these manifest constitutional errors as such is credible compelling evidence that counsel's deficient performance prejudiced Petitioner, see Rivas v. Fisher, 780 F.3d 529, 550-52 (2nd Cir. 2015).

STATEMENT OF THE CASE

Re: QUESTION(S) PRESENTED #2 and #3: In Texas due to systematic substantial ineffective assistance of public defender/court appointed counsel for indigent criminal defendants thousands of actually innocent U.S. Citizens, U.S. Military Veterans, Documented and Undocumented Foreign Citizens are unconstitutionally (Violation of 5th, 6th, 14th Amendments, U.S. CONST.) incarcerated in State prison coerced by counsel to plead guilty to crimes they did not commit or counsel was inept or misrepresented them at bench trials or jury trials. Also all of the above caused tens of thousands of actually innocent prisoners to be incarcerated in State prisons Nationwide. See Appendix B herewrth. (U.S. CONST., 5th, 6th, 14th Amendments violated).

(8th Amend)

Re: QUESTION(S) PRESENTED # 4: Texas and other states routinely inflict punitive excessive bail on indigent actually innocent defendants to keep them in jail so they cannot earn money to hire private lawyers to defend them, so they are forced to accept overworked, underpaid, ineffective appointed defense lawyers or public defenders. Excessive bail punishes indigent defendants in a way that it does not punish wealthy defendants. This results in unequal treatment between wealthy and indigent defendants solely and exclusively on the basis of the latter's poverty. so he is deprived of the presumption of innocence and liberty solely on the basis of his poverty... "constitutional guarantees of due process and equal protection both call for procedures in criminal trials which allow no invidious discrimination between persons and different groups of persons." Griffin v. Illinois, 351 U.S. 12 (1956); "Defendant charged with non-capital offense shall be released on bail..." Stack v. Boyle, 342 U.S. 1, 4 (1951); "Excessive Bail Clause integral to ordered liberty and binding on states through 14th Amendment" Murphy v. Hunt, 455 U.S. 478, 481 (1982), Baze v. Rees, 553 U.S. 35, 46 (2008); A judicial officer may release a defendant on personal recognizance, on unsecured appearance bond. 18 U.S. C. § 3142 (b). U.S. SUPREME COURT RULE 36 (3)(a)(b)(4). (8th Amend).

Re: QUESTION(S) PRESENTED # 5: Texas applied the unconstitutional majority opinion in Ex Parte Franks, 71 S.W.3d 327-331 (Tex Crim. App. 2001) to deny mandatory supervision release to actually innocent life-sentenced prisoners whom were and are unconstitutionally incarcerated due to ineffective assistance of public defender/court appointed lawyers. The constitutional dissenting opinion states: "... the legislature had already arbitrarily substituted sixty years for a life sentence in prescribing the method of calculating a life sentence... I conclude that a prisoner sentenced to serve a term of life is eligible for release on mandatory supervision..." See Ex Parte Franks, 71 S.W.3d at 329-331. See also Senate Bill No. 152 enacted by Texas Legislature: "It is the intent of this Article to aid all prisoners to readjust to society upon completion of their period of incarceration by providing a program of mandatory supervision for those prisoners not released on parole or through executive clemency... A prisoner who is not on parole, except a person under sentence of death, shall be released to mandatory supervision... (by adding earned good-time credits to calendar time served).

STATEMENT OF THE CASE

Herein Petitioner continues to receive mandatory supervision release earned good-time credits. Teague v. Quartermann, 482 F.3d 769, 774-75 (5th Cir. 2007) ruled that; "Texas law afforded inmate a protected liberty interest in his previously earned good-time credits under either prior or amended mandatory supervision scheme... tribunal could not take them away without affording inmate due process. inmate had a mandatory right to early release." This tribunal COURT OF CRIMINAL APPEALS OF TEXAS committed the retroactive nullification and elimination of the benefit and purpose of Petitioner's previously earned good-time credits (see Lynce v. Mathis, 519 U.S. 433-449, 117 S.Ct. 891-900, 137 L.Ed.2d 63 (1997)) by violating Texas and United States Constitutions Ex Post Facto, Due Process, Separation of Powers, Equal Protection, Privileges, Immunities, Statutory Construction by re-writing the law in Tex. Senate Bill No. 152 in their majority opinion in Ex Parte Franks, 71 S.W.3d 327 (Tex. Crim. App. 2001). Petitioner has Due Process legitimate expectation that the sentence he heard orally pronounced in the courtroom (life with eligibility for mandatory supervision) is the same sentence he will be required to serve. Ex Parte Madding, 70 S.W.3d 131, 136 (Tex. Crim. App. 2002); U.S. v. Rivas-Estrada, 906 F.3d 346 (5th Cir. 2018). The Legislature must be understood to mean what it has expressed, and it is not for the courts to add to or subtract from such a statute. Boykin v. State, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991). Even if the outermost boundaries of the statute may be imprecise, any such uncertainty has little relevance here where Texas legislative intent falls squarely within the 'hard core' of the statute's proscriptions and Texas high court judges concede as much by stating: "an inmate not under a sentence of death shall be released to mandatory supervision" see Franks, 71 S.W.3d at 327. Farrell v. Burke, 449 F.3d 470, 490-92 (2nd Cir. 2006). The statute in effect when the holding offense is committed determines an inmate's eligibility for release on mandatory supervision Ex Parte Thompson, 173 S.W.3d 458 (Tex. Crim. App. 2005). Texas grants permission to file application for writ of habeas corpus but denies a fair meaning full opportunity to develop the claims for 99.9% of merititous petitions from actually innocent pro se indigent prisoners incarcerated due to ineffective public defenders/court appointed defense counsel. Trevino v. Thaler, 133 S.Ct. 1911-1921, 185 L.Ed.2d 1044 (2013). These Texas Stiles Unit prison officials destroy or routinely delay and fail to mail pro se prisoner petitions in a timely manner to state and federal courts. See Dorn v. Lafler, 601 F.3d. 439, 444 (6th Cir. 2010).

Equitable tolling applies because because petitioner presents credible claim of actual innocence. See Cleveland v. Bradshaw, 693 F.3d 626, 631-32 n.2, 642 (6th Cir. 2012). The diligence required for equitable tolling is reasonable diligence, not maximum feasible diligence. Jackson v. Davis, 933 F.3d 408 (5th Cir. 2019). Procedural default excused under actual innocence exception. Rivas v. Fisher, 687 F.3d 514, 546-47, 552 (2nd Cir. 2012). McQuiggin's actual innocence exception applies to legal claims that are procedurally defaulted. United ^{state} Garcia, 2019 U.S. Dist. LEXIS 1207 (E.D. Cal. 2019), Hearing on the merits allowed. Finch v. Mckoy, 2019 U.S. App. LEXIS 2579 (4th Cir. 2019). Prosecutor's fabrication of evidence and malicious prosecution without probable cause time limitations. See Mcdonough v. Smith, 139 S.Ct. 2149 (2019).

REASONS FOR GRANTING THE PETITION

This case presents issues of importance beyond the particular facts and parties involved; to resolve disagreements among lower courts about specific legal questions herein and the importance to the public of the issues; the worldwide and national importance, the others similarly situated are actually innocent Documented and Undocumented Foreign Citizens, U.S. Citizens and the U.S. Military Veterans unconstitutionally incarcerated in State prisons due to ineffective public defender/court appointed counsel. The writ warrant the exercise of the Court's discretionary powers, and adequate relief cannot be obtained in any other form or from any other court because the lower U.S. district courts and U.S. courts of appeals routinely deny actually innocent prisoner's pro se petitions because they know that this Honorable U.S. SUPREME COURT does not have the time to review any of these meritorious by clear and convincing evidence in the record trials transcripts illegally concealed and withheld by the States to keep actually innocent petitioners incarcerated. The Texas state court of last resort has decided important federal questions in ways that conflicts with decisions of other state courts of last resort, United States courts of appeals, important questions of Federal law that has not been, but should be, settled by this SUPREME COURT, and in ways that conflicts with relevant decisions of this SUPREME COURT. The last state court decision is ambiguous as to whether it reached the merits (WR-15,098-03) of the federal claims or rendered its decision on procedural grounds, this SUPREME COURT may presume the state court reached the merits and review this case. See Harrington v. Richter, 562 U.S. 86, 99 (2011) (citing Harris, 489 U.S. at 265); Johnson v. Williams, 133 S.Ct. 1088, 1094 (2013); Running eagle v. Ryan, 686 F.3d 758, 768 (9th Cir. 2012). Petitioner just now discovered that Texas is still in possession of the written confessions of Layton Cummings and Tony Montgomery showing that Petitioner is actually innocent and demonstrated objective cause for failing to raise claims earlier and actual prejudice resulted from inability to raise the claims; that constitutional violations caused the three convictions and demonstrated both actual innocence and cause for failing to discover earlier the factual basis for the claims and but for the constitutional violations the three juries would have found Petitioner innocent as the evidence herein is clear and convincing and the newly discovered evidence is also clear and convincing in that none of the three juries would have convicted Petitioner in light of the new evidence. 28 U.S.C. § 2244(b)(2)(B)(ii). Petitioner respectfully prays the COURT to rule that The State Officer Appointed Counsel stabbed Petitioner with a knife combined with Trial Judge immediately shackling Petitioner visible to jurors in three felony trials violates 8th Amendment "cruel and unusual" means punishments that are "tortures" and "barbarous" where terror, pain or disgrace superadded without a legitimate reason. See Bucklew v. Precythe, 139 S.Ct. 1112 (2019), and please appoint attorney Joe Shearin, 2515 McKinney Avenue, Suite 1400, Dallas, Texas 75201-7600, phone 214-267-1000 and attorney Don Tittle, 6301 Gaston Avenue, Suite 440, Dallas, Texas 75214-3922 phone 214-522-8400 to represent Petitioner herein. The totality of the circumstances of all three jury trials herein are connected by the actual perpetrators of the crimes Tony Montgomery/Layton Cummings and that defense counsel Joe Edward Shumate caused Petitioner to be unconstitutionally shackled visible to the jurors in all three trials;

convicted by perjured testimony and misconduct by Prosecutor William L. Ferguson, combined with flagrant abuse of trials courts discretion by Judge Donald R. Ross. Petitioner also prays the COURT to rule that the Court of Criminal Appeals of Texas may not unconstitutionally deny actually innocent Petitioner's motion for leave to file original application for writ of habeas corpus case no. WR-15-098-03, and please have the convictions, sentences, judgments vacated in the Trial Court Case No. 83-F-89, murder life, Texas 202nd Judicial District Court, Trial Court Case No. 18,039, attempted murder 20 years, Texas 12th Judicial District Court, Trial Court Case No. 3,211, Robbery 16 years, Texas 71st Judicial District Court, and bar retrials on the basis of actual innocence and manifest constitutional errors and Texas court appointed attorney/public defender system is unconstitutional, and because of U.S. SUPREME COURT made constitutional rights retroactively applicable to this case, and please have Petitioner released on personal recognizance bond while this case is pending because Texas routinely applies punitive excessive bail to keep actually innocent indigent defendants in jail to prevent them from earning money to hire effective private defense lawyers, and please vacate the unconstitutional majority opinion in Ex Parte Franks, 71 S.W.3d 327 (Tex. Crim. App. 2003) and rule the dissenting opinion constitutional in same. Texas subjected herein Petitioner to a miscarriage of justice and manifest injustice. Please consider the combined circumstances of the three trials as links in a chain of unconstitutionality.

CONCLUSION

Petitioner prays the COURT to grant relief on the basis of actual innocence and flagrant multiple manifest constitutional errors intentionally committed by the State of Texas. Respectfully submitted;

¶ Herein Petitioner is a U.S. Citizen and a U.S. MARINE CORPS VETERAN. First time in prison. The petition for a writ of certiorari should be granted.

Respectfully submitted,

David L Cuherhouse

Date: August 1st, 2019