

No. 19-8836

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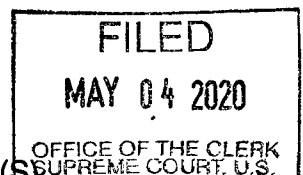
SUPREME COURT OF THE UNITED STATES

12-18-00282 CR

Bobby Culpepper — PETITIONER
(Your Name)

vs.

The State of Texas — RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

The 12th Court of Appeals Texas, Tyler, Texas
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Bobby Culpepper #2230811
(Your Name)
1385 FM 3328
Palestine, TX. 75803
(Address)

Palestine, TX. 75803
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Was Petitioner giving a Fair Trial, or was Petitioner's trial a total "Structural Error", "Due Process" because of "Total Deprivation" of counsel at trial? Because a Civil suit filed in U.S. District Court against the state of Texas Smith County D.A. and Asst. D.A. and Petitioner's Trial Counsel, before Petitioner's trial Date. The Civil Action No. is 6:18cv516.
2. Was presiding Judge bias and prejudice against Petitioner at trial because Petitioner filed a complaint on presiding Judge for violating Judicial conduct canon rules before Petitioner's trial date? The complaint was filed in March 2018 before Petitioner's Trial in Oct. 2018.
3. Was the Jury Foreman at Petitioner's trial or any of the Jurors a part of M.A.D.D. That's Mothers Against Drunk Driving which might be biased and prejudice against Petitioner?
4. Was Petitioner's U.S.C., 14th amendment "Due process", violated in previous 3 questions? Petitioner's Trial counsel was busy looking at his girlfriend the 7th District's "court reporter" during Petitioner's trial instead of paying attention to the D.A.s, and what they were talking about.

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:

Petitioners Trial Counsel

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903-599-9069

Respondant

The State of Texas

Respondents Trial Counsel

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RELATED CASES

Culpepper v Texas Court of Criminal Appeals of Texas
No. PD-1301-19 CoA No. 12-18-00282 Trial court No. 007-0892-18

Petition For Discretionary Review Refused on 2-5-2020

Motion For Rehearing rejected on 2-25-2020

Culpepper v. The State of Texas Court of Appeals

No. 12-18-00282 CR. Trial Court No. 007-0892-18

Texas Mandate. Judgement issued Mar. 24, 2020

Petition For Discretionary Review refused on 2-5-2020

Motion For Rehearing refused on 2-25-2020

Culpepper v. The State of Texas Twelfth 12th
Court of Appeals. Judgement issued on Nov. 27, 2019
No. 12-18-00282 CR.

Culpepper v. The State of Texas 7th District
Court No. 007-0892-18. Judgement entered
on Oct. 11, 2018

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CASES

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STATUTES AND RULES

Art. 1993, 73rd Leg. Ch 900 1.01 eff. Sept. 1, 1994 Pg. 5

Art. 1 section 10 Pg. 6

Section 12.42 Penal Code Pg. 6

OTHER

N/A

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

N/A

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix *N/A* to the petition and is

☐ reported at *N/A*; 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 *N/A* to the petition and is

☐ reported at *N/A*; 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,
☒ is unpublished.

The opinion of the *2th District Court of Smith County* 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

N/A

☐ 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: 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 N/A (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 2/5/2020.
A copy of that decision appears at Appendix C.

☒ A timely petition for rehearing was thereafter denied on the following date: 2/25/2020, and a copy of the order denying rehearing appears at Appendix D.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The U.S.C. 14th Amendment constitutes "Due Process". In this case "Total deprivation" of Counsel, constitutes "Structural Error" meaning that as it is error which effects the whole criminal proceeding, it is not subject of harmless error. Massingill v. State, 8, S.W. 3d 733 (Tex. Crim. App. 1988).

The U.S.C. 6th Amendment constitutes "Right to Counsel". In this case Petitioners Trial Counsel was ineffective and deficient at trial. Trial Counsel was more worried about what his girlfriend was doing the 2th District Courts Reporter, than being effective at Petitioners trial. Counsel didn't object, to important things, didn't allow Petitioners mother in court, didn't file any motions, didn't encourage Petitioner to Testify, ~~he~~ was just totally ineffective at trial and worried about his on Agenda. Obviously violates Petitioners 6th Amendment Right. see Ex parte Fierro, 934 S.W. 2d 370 (Tex. Crim. App. 1996).

STATEMENT OF THE CASE

~~As~~ Petitioner would like his conviction & sentence reviewed U.S. Supreme Court, Appeal No. 12-18-00282 CR, Trial Court No. 007-0892-18 From The State of Texas.

Petitioner Did not get a fair Trial. In fact Petitioners Trial was a complete "Structural Error", Total Deprivation of Counsel, biased presiding judge at trial, because of a complaint filed by Petitioner for presiding judge ^{before} trial violating The Judicial conduct Canon laws. The complaint was ~~done~~ before Petitioners Trial date on Mar. of 2018 Trial Date was 10, 11, 2018, so Petitioner Had no chance at Trial! see Arizona v. Fulminante 494 U.S. 279, 111 S.Ct. 1246 (1991). Total deprivation of Counsel, "structural error", see Massengill v. State, 8 S.W. 3d 733 (Tex. Crim. App. 1999). There also was a complaint No. 6:18cv516 in U.S. District Court Eastern District of Texas filed against The Smith D.A., Asst. D.A.'s, and Petitioners trial Counsel for violating Petitioners 14th U.S.C. right, and 6th U.S.C. Right filed before trial date of 10, 11, 2018, so "Total deprivation", "structural error", again in Petitioners Trial. Again violating Petitioners "Due Process" of the 14th Amendment of the U.S.C. States Counsel knowingly or unknowingly introduced false testimony at trial when state told Jurors that Petitioner was sentenced to 10 years in TDCJ on a previous charge in 1998 No. F96-705711 was false testimony. In fact Petitioner recieved 10 years of 'Shock Probation', with just 120 days ~~in~~ in TDCJ not 10 years as state indicated to the Jury. After the 120 days at TDCJ as part of the "Shock probation", Petitioner was released from TDCJ and completed the 10 years of Shock Probation at home. That's probation Not Parole, as state introduced to the jury at trial. Again "structural error", and "Total deprivation" at Petitioners Trial. The record clearly shows Petitioner didn't get a fair Trial, False Testimony which is "material", Giglio v. United States 405 U.S. 150 92 S.Ct. 763 (1972). The admission of "material", when it is reasonably likely that it affected the Judgement of the Jury. Ex parte Weinstein, 421 S.W. 3d 656, 665 (Tex. Crim. App. 2014)

4.

Statement of The Case Central.

State also used this felony case F-96-705 7/1 to enhance the Current Felony case to a 2nd Degree Felony case No. 007-0892-18 ~~and~~ to give Petitioner 20yrs confined in TDCJ case No. 007-0892-18 is only a BWT charge which should've been a misdemeanor class A. The felony case No. F-96-705 7/1 in Texas By law shouldn't have been used for enhancement purposes because petitioner completed the 10yrs of "Shock Probation" in 2008, which shock probation completed is not a final conviction so case No. F96-705-7/1 can not be used for enhancement purposes. See Ex Parte Langley, 833 S.W. 2d at 144. see Also Horilhan v. State, 579 S.W. 2d 213, 218 (Texas. CR. App 1979). Also Rodgers v. State, 744 S.W. 2d 281 (Tex. App. Forth Worth 1987). It is well settled that a probated is not a final conviction for enhancements purposes, see Ex Parte Murchison, 560 S.W. 2d 654, 653, (Tex. CR. App. 1978).

State used an alleged 1993 DWI conviction to enhance this BWT to a Felony. keep in mind this BWT happened 24yrs after the 1993 DWI. The 1993 DWI charge No. 101686-A Texas. By law if properly investigated should've been deemed VOID! Because there was no final judgement on it or Attorney for Petitioner on it or anything in the court reporter record showing Petitioner had an Attorney or nothing showing Petitioner waived his right to an Attorney. Plus the 1993 DWI 101-686-A was before the of Sept. 1, 1994. Art 1993, 73rd Leg, ch 900, § 1.01 eff. Sept. 1, 1994. Sentenced outside statutory range, DWIS was over 10yrs old from most recent BWT. Mapes v. State (App. 14 Dist. 2006) 187 S.W. 3d 655. Also Guerra v. State (App. 1 Dist. 2002) 2002 WL 31236269. On DWI case No. 101-686-A. Finger prints at trial was only evidence, can't be used for enhancement. Cruz v. State (App. 8 Dist. 2009) WL 475784 358.6 1181. Also St. Clair v. State (App. 1 Dist. 2003) 101 S.W. 3d 737. Again, "Total Deprivation of Counsel at Petitioner's trial." "Structural Error." Counsel For The State and Counsel For Petitioner deprived Petitioner of his Constitutional Rights by violating his 6th and 14th U.S.C Rights. Failure to Investigate Petitioner's prior convictions Properly. violates "Due Process".

Statement of The Case Contd.

Petitioner's Trial Counsel was ~~inadequate~~ ineffective, and deficient at Petitioner's Trial. ~~To~~ Start with Petitioner's Trial Counsel's girlfriend was the court Reporter for the 7th District Court where Petitioner's Trial was as well. They were talking about buying a house together and making a duplex out of it so each of them can have their own half of the house. Laughing and ~~more~~ interested in what his girlfriend was doing than my trial. Conflict of Interest to Petitioner, Article 1, section 10, of the Texas Constitution entitles a defendant to effective assistance of Counsel. Hernandez v. State 726 S.W. 2d 53, 56-57 (Tex. Cr. App. 1986). Counsel's function is to ensure a fair trial by assisting the defendant Strickland, 466 U.S. at 696. The 6th amendment guarantees each defendant the right to effective assistance of Counsel at every critical stage of the proceedings in his defense Mempa v. Rhay 389 U.S. 128, 134 (1967). Counsel was deficient, and prejudice against Petitioner. There was a complaint filed against Trial Counsel and a civil suit filed in U.S. District Court No. 6:18-cr-516 against Trial for his ineffectiveness at Petitioner's Trial. So there was conflict of interest, bias, and prejudice against Petitioner. "Structural error," "Total Deprivation of Counsel," "Deficient performance - counsel's performance representation fell below an objective standard of reasonableness under CR-App 2005. Ex parte Cash, 178 S.W. 3d 816, 818 (Tex. Cr. App. 2005). Counsel failed to know the statutory provisions applicable to the case, Ex parte Welch, 981 S.W. 2d at 185. Counsel has the duty to make an adequate investigation, Ex parte Durham, 650 S.W. 2d 825, 827 (Tex. Cr. App. 1983). Counsel failed to investigate Petitioner's prior case No. 101-686-A should've been voided for enhancement purposes, case No. F96-705-7/1 should've been voided for enhancement purposes, since Petitioner completed 10yrs of "shock probation", on it not Parole. Both enhancements were erroneous, but Trial Counsel "Failed to Investigate", so that affected punishment. Ex parte Langley 833 S.W. 2d 141, 144 (Tex. Cr. App. 1992). Prior convictions used to enhance punishment under section 12.42 Penal Code must be final conviction Ex parte White, 211 S.W. 3d at 319. A probated sentence is not a final conviction for enhancement purposes Ex. Parte Langley, 833, S.W. 2d 141, 143.

REASONS FOR GRANTING THE PETITION

Petitioner is asking this Court to Grant Certiorari. For many reasons: Petitioner's trial was a total "Structural Error", on all levels from the Presiding Judge at trial, The Counsel For The State of Texas, and Petitioner's Trial Counsel, "Total Deprivation", of Counsel on both sides. From the beginning when Petitioner filed complaints and Civil Suits no. 6:88 cv 516 in U.S. District Court, against the Presiding Judge for violating the Judicial Conduct Canon laws, against the Prosecutors at Trial, and against Petitioner's Trial Counsel, for violating Petitioner's U.S.C. amendment rights The 14th amendment for "Due Process", and the 6th amendment for "ineffective assistance of counsel". The complaints and civil suits were filed before Petitioner's Trial Date. ~~because~~ of earlier proceedings before Trial Date, The Complaints and Civil Suits that were filed was a Conflict of Interest at trial. Petitioner informed his Trial attorney a couple of months before the trial about the complaints and civil suit, so they all new it! so Petitioner didn't get a fair trial! Petitioner ask Trial Attorney why the same D.A. and Asst. D.A.s were on Petitioner's case, Not to mention. The Trial Attorney himself, wouldn't that be a Conflict of Interest and "Total Deprivation of Counsel", "Structural Error"? It was Petitioner against Presiding Judge, D.A. and Asst. D.A.s, and Petitioner's trial counsel, Petitioner had no chance at a fair Trial. Petitioner is asking this Court for a new trial, But as Petitioner's Trial was all a "Structural Error", and "Total Deprivation of counsel" warranting an Automatic Reversal, would be a blessing from God. Petitioner has 4 beautiful children to go home to and his job back at The Union Pacific Railroad where he has worked the last 20 yrs as an Engineer to support his kids, where he made \$120,000 a year. However that was cut short when Smith County Texas D.A. took that from him by giving him 20 yrs in TDCJ for a B.W.I. which if investigated properly it would've been a Class A misdemeanor. The Judge, D.A. and Asst. D.A.s, and Trial Counsel were Biased and Prejudice against Petitioner through entire Trial. "Structural Error"

7.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Billy Calpepper

Date: 4-23-30