IN THE

SUPREME COURT OF THE UNITED STATES

James Earvin Sanders
(Petitioner)

v. No. 20-5111

Lorie Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division
(Respondent)

SUPPLEMENTAL BRIEF

TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Pro se Petitioner:

James Earvin Sanders, TDCJ-ID# 1579328

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Iowa Park, TX 76367

Allred Unit

QUESTION PRESENTED

Where trial counsel withheld exculpatory psychiartic mitigating evidence but lied to defendant during trial by claiming that the ADA, who admitted the interrogation tape, withheld it from the defense; only to have appellate counsel refuse to file suppression of evidence on direct appeal because no objection to such a Brady violation was made: Does such a failure provide "cause" to default the State's procedural bar under Martinez, Trevino, and Buck, when appellate counsel's failure to file on the Brady violation or ineffective-assistance-of-trial-counsel (for failure to object to said violation) deprived Petitioner of direct review on an issue that would have revealed that trial counsel lied about the Brady violation?

STATEMENT OF THE CASE

This Court in Martinez v. Ryan, 132 S.Ct. 1309 (2012) and Trevino v. Thaler, 133 S.Ct. 1911 (2013), expanded on the rare exception in Coleman because cases in Arizona and Texas made it difficult, if not impossible, for the appellants to properly file on ineffective-assistance-of-trial-counsel claims on direct review. Problems such as time restraints in filing notice of appeal and the need to investigate issues outside of the court record were deemed as reasons why the ineffective assistance of appellate counsel on direct review could be "cause" for procedural default of the State's procedural bar, allowing the appeal to be reviewed on its merits.

In Trevino, the narrow exception in Coleman was broadened to Texas cases specifically because although,technically, one could file IATC on direct appeal in Texasm the restraints mentioned above made doing so difficult.

The Petitioners case, like Trevino, originates in Texas. And like that case, the lack of an adequate direct appeal deprived the Petitioner of an opportunity to expand the record and receive a ruling from the court that could assist him in pursuing his IATC ground on collateral review.

In accordance with the issues described in The History of the Case (Pettition for Cert. at 5-9), Petitioner requested that appellant counsel file a ground on suppression of evidence based on trial counsel's assertion that the ADA withheld the interrogation tape. Appellate counsel, J. Stanley Goodwin, said he could not file a Brady violation because trial counsel did not object to such, and therefore it was not on the trial record. He further explained that

could only be filed on errors and mistakes and objections that were clearly on the record. Thus, he filed the direct appeal on three issues that were quickly shot down.

Years later, when the Petitioner finally received his discovery and filed his 11.07, and Ground Three cited the ADA's failure to disclose exculpatory evidence. In the State's Findings of Fact, they cited trial counsel Zellmer's sworn affidavit in which he now claimed to not know why the Petitioner was alleging suppression when he had had the tape the entire time. (See State's Answer to Applicant's 11.07, Exhibit B at 2of6.)

Why is this in line with Trevino?

Had appellate counsel filed on the Brady violation, as requested, or filed on ineffective-assistance-of-trial-counsel (IATC), then a cursory investigation would have revealed that trial counsel had lied and once the DA's office proved that they had provided him with the tape and other mitigating psychiatric evidence, then the record would have been further developed and filing on IATC would have been a foregone conclusion. A ruling on such would have resulted, and if denied, the Petitioner would have had both a brief from appellate counsel and an order from direct review that addressed pertinent issues.

Is this not precisely why the Court expanded its narrow exception in Coleman, and then Martinez?

Because, in this situation, Petitioner did not find out that trial counsel had lied about everything until the 11.07 had been filed and the State had issued its response. By then the ground had already be presented and reviewed, so adding an ineffective-assistance-of-appellate-counsel was not possible and unwarranted.

Ineffective-Assistance-of-Appellate-Counsel

When all of this occurred in 2008, the actions of appellate counsel were based on common practice appellate law in Texas. This is the very reason the ruling in Trevino exists. That said, the Petitioner did not actually file a ground on IAAC because at the time, his assistance was not deemed ineffective by law, and the 11.07 grounds were already filed and answered.

Nonetheless, the Court of Criminal Appeals of Texas only issued a white card denial without any type of written order. So at this stage of the appellate procedding, Petitioner has yet to receive a ruling on the merits of this appeal due to the procedural time bar administered under 28 U.S.C. §2244(d)(1).

Yet had counsel on direct appeal looked into the alleged Brady violation, and filed on it or the IATC that failed to object to it, then Petitioner would have had an opportunity to broaden the record on appeal, and receive an order addressing the issues along with a copy of his appellate attorney's brief to work his collateral-review attack off of.

Again: Isn't this the Court's very reasoning for its decision in Trevino?

Does not an appellant deserve a ruling on the merits of his claims at some point in the proceeding? The First Amendment is said to entitle everyone to a right to redress of grievances, does it not?

The "cause" in Trevino was clearly explained as reason to default on the State's procedural bar, not cause to overturn and remand. At this point, Petitioner seeks to simply defeat the procedural bar so the merits of the case can be addressed.

Trevino and Martinez were recently brought to the Petitioner's

attention by another inmate. Petitioner has tried to order Buck v. Davis, 137 S.Ct. 173 (2017), which supposedly is in-line with Trevino, but the Allred Unit Law Library has yet to send the case law. (See attachments A & B.) Nonetheless, this case was under review in 2017, yet neither the district court, nor the Fifth Circuit has applied either of these cases to this case, even though Trevino, and the rulings therein seem to fit it perfectly.

Based on Trevino, is there "cause" to default the procedural time bar by the State so that this case can be reviewed on its merits?

CONCLUSION

Petitioner prays that the Court will grant certiorari based on its ruling in Trevino, which appears to fit perfectly with the reasoning behind Trevino. Petitioner is NOT asking for oral argument, as he is a pro se petitioner, and has no one to come argue his case for him. He would simply like certiorari to be granted so the court can decide if Trevino, and possibly Buck should have been applied to his case.

SIGNED this 9th day of August, 2020.

Respectfully submitted,

James Earvin Sanders

James Earvin Sanders

I, James Earvin Sanders, the Petitioner, do hereby declare under penalty of perjury that this Supplemental Brief to my Writ of Certiorari (Petition) was placed in the Allred Unit mailing system on Sunday, August 9th of 2020.