

No. 20-5173

ORIGINAL

Supreme Court, U.S.  
FILED

MAY 15 2020

OFFICE OF THE CLERK

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_

JUAN DOMINGO VELAZQUEZ — PETITIONER  
(Your Name)

vs.

THE 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

JUAN DOMINGO VELAZQUEZ, #1347285

(Your Name)  
POLUNSKY UNIT  
3872 FM 350 SOUTH  
LIVINGSTON, TEXAS 77351

(Address)

\_\_\_\_\_  
(City, State, Zip Code)

None  
(Phone Number)

**QUESTION(S) PRESENTED**

Was it "structural error" that violated Petitioner's Sixth Amendment autonomy rights when Petitioner's court appointed counsel conceded his client's guilt\* to the jury after Petitioner had entered a plea of not guilty?

\*Counsel informed the jury: "We know who committed the shooting. Juan Domingo Velazquez. We agree with Mr. Windham the prosecutor". (R.R. V 93,94).

## 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

Mc Coy v Louisiana,  
\_\_\_\_ U.S. \_\_\_\_, 138 S.Ct. 1500, 200 L.Ed.2d 821(2018)

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OTHER

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☐ is unpublished.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☐ is unpublished.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☒ is unpublished.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 Fourteenth Court of Appeals court appears at Appendix unavailable to the petition and is

☐ reported at 222 S.W. 3d 551 - Texas Cases; 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 4-22-20.  
A copy of that decision appears at Appendix A. and  
8-10-16

☐ A timely petition for <sup>reconsideration</sup> rehearing was thereafter denied on the following date: April 22, 2020, and a copy of the order denying rehearing appears at Appendix B.

☐ 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**

Sixth Amendment - United States Constitution

Fourteenth Amendment - United States Constitution

In all criminal cases the accused shall have the right to counsel for his defense.

No person shall be deprived of life, liberty or property except upon Due Process

## STATEMENT OF THE CASE

On January 12, 2006, a Harris County Texas jury found Petitioner guilty of murder. The offense was alleged to have occurred on May 24, 2005. Punishment by the jury was assessed at 45 years imprisonment.

On March 8, 2007, the Fourteenth Court of Appeals affirmed the judgement of the trial court in a published opinion styled; Velazquez v State, 222 S.W.3d 551 (Tex.App. 14th Dist -2007 - no pet.).

On November 9, 2015, Petitioner filed for State postconviction relief alleging inter alia that his counsel was ineffective for conceding his client's guilt, viz: "We know who committed the shooting, Juan Domingo Velazquez. we agree with Mr. Windham, the prosecutor." In presenting his ineffective counsel claim, Petitioner relied on the long-time standard announced in Strickland v Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), requiring a two-prong showing of ineffectiveness and prejudice.

On Aug. 10, 2016, the Texas Court of Criminal Appeals denied habeas corpus relief based upon the finding of the trial court without a hearing (APPENDIX A).

Then along came Mc Coy v Louisiana, \_\_\_\_ U.S. \_\_\_\_, 138 S.Ct. 1500, 200 L.Ed.2d 821 (2018), holding that conceding a client's guilt is [structural error] and the ineffective assistance of counsel jurisprudence announced in Strickland v Washington, supra does not not apply here, Mc Coy, at 1511.

Accordingly, on February 18, 2020, Petitioner filed in the Texas Court of Criminal Appeals a MOTION FOR RECONSIDERATION ON THE COURT'S OWN INITIATIVE in light of the Mc Coy ruling holding that Strickland v Washington does not apply in [structural error] cases. But on April 22, 2020, the Court denied reconsideration. (APPENDIX B).

## REASONS FOR GRANTING THE PETITION

The Texas Court of Criminal Appeals has departed from Supreme Court precedent governing "structural error" as determined in Mc Coy v Louisiana, \_\_\_\_ U.S. \_\_\_\_, 138 S.Ct. 1500, 200 L.Ed.2d 821 (2018), and clearly abused its discretion by refusing to reconsider the denial of his May 2016 habeas corpus application where Petitioner fully relied on the two-prong standard announced in Strickland v Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), to support his ineffective assistance of counsel claim where counsel sua sponte and without permission, conceded his client's guilt to the jury.

Absent of running the risk of filing a successive Petition, [Reconsideration] under Texas Rules of Appellate Procedure 79.1(d), was the only other remedy at law available for Petitioner to resind his Strickland v Washington, presentation since the Supreme Court of the United States determined that the "ineffective counsel jurisprudence announced in Strickland does not apply here (Mc Coy v Louisiana at 1511)", where "structural error" violated the defendant's Sixth Amendment autonomy rights.

In addition, in pursuing postconviction relief Texas State prisoners have only "one bite at the apple" Ex Parte Saenz, 491 S.W.3d 819,824 (Tex.Crim.App. 2016). Accordingly, the Texas Court of Criminal Appeals should have permitted [Reconsideration] without fear of being cited for writ abuse.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Juan Domingo Velazquez

Date: May 13, 2020