

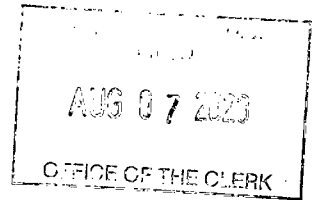
20-5426

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



IN Re DAVID LYNN MOSS — PETITIONER
(Your Name)

vs.

THE STATE OF TEXAS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE COURT OF CRIMINAL APPEALS OF TEXAS

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

PETITION FOR WRIT OF CERTIORARI

DAVID LYNN MOSS

(Your Name)

3872 F.M. 350 SOUTH

(Address)

LIVINGSTON, TEXAS 77351

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

A State Court of last resort decided an important question of law in a way that conflicts with relevant decisions of this court. This court decided *Lafler V Cooper*, in March of 2012, following the filing of my initial habeas application. An application for writ of Habeas Corpus was filed challenging this error that occurred in this case but was dismissed, because it was not presented in the initial application. recently in *Chaidez V United States*, was decided by this court in which it was stated that this *Lafler V. Cooper*; did apply retroactive because it was simply a garden-variety of *Strickland V Washington*, which now brings the following question;

Whether or not the Court of Criminal Appeals decision was contrary to a decision by the Texas Code of Criminal Procedure, also by this court court court on the review of a rule the did not exist at the time of an initial application ? Also was the court's decision contrary to clearly established law.

LIST OF PARTIES

- [^x] 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

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>CHADIZ V UNITED STATES</u> , 568 U.S. 342, 133 S.Ct. 1103 (2013).....	<u>5</u>
<u>EX PARTE CASEY TYRONE SLEDGE</u> , 391 S.W.3d. 104 (Tex.Crim.App 2013)	<u>5</u>
<u>HILL V lockhart</u> , 474 U.S. 52, 59 (1985).....	<u>7</u>
<u>LAFLER V COOPER</u> , 566 U.S. 156, 132 S.Ct. 1376 (2012).....	<u>5</u>
<u>STRICKLAND V WASHINGTON</u> , 466 U.S. 668, 104 S.Ct. 2059 (1984).....	<u>5</u>
<u>SUFFLE V PARKS</u> , 494 U.S. 484.....	<u>5</u>
<u>TEAGUE V LANE</u> , 489 U.S. 288, 109 S.Ct. 1259 (1989).....	<u>5, 7</u>

STATUTES AND RULES


TEXAS CODE OF CRIMINAL PROCEDURE ART, 11.07 sect (4)

OTHER

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IN THE

COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

P. Petitioner 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 STATE HABEAS COURT 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 5/6/2020.
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date:
JULY 9, 2016, 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. § 1257(a).

ORY PROVISIONS INVOLVED

CONSTITUTION:

armed of the accusation, the

the right to counsel.

SIXTH AMEN
Guarante
right +

cc

INAL PROCEDURE ARTICLE 11.04:

TEXA

of Criminal procedure 11.07 Section 4 bars a court from considering the merits of a subsequent application challenging the same conviction unless the application states sufficient facts estab,ishing one of the following: (1) the factual or legal basis for the claim was unavailable when the previous application was filed. Tex. Crim. Proc. Code art 11.07 §4(a).

STATEMENT OF THE CASE

Petitioner is applying this courts decision to an issue that occurred prior to the start of his case. There were plea offers made by the prosecutors that counsel (George Ashford) did not tell Petitioner about, but perjured himself in an affidavit claiming he did. During the start of the trial the court asked had their been any offer's made, The prosecutor stated yes, a 30-year offer which I was never informed of, which the attorney admitted at that time he never informed petitioner about. The court gave petitioner a few minutes to consider it. During that time counsel told that, he never informed me because he knew he would be able to beat the case, so I rejected the offer based on the counsel's claim. It was later asked by the complainant why I didn't take the 15, year offer, I told her that I was not aware it existed. A copy of the trial record is being presented as Appendix D. Petitioner sought relief from the court following the announcement of *Lafler V Cooper*, and the Court of Criminal Appeals of Texas denied relief as barred by Tex. Code Crim. Proc. art 11.07 sect §4. Recently the petitioner discovered the case did apply as a watershed rule, when he read *Chaidez V United States*, which petitioner challenged the court mistake of the law, but the court dismissed it again, the issue could not have been presented in the initial application because this court had not decided the case. The United states Supreme Court did not decide *Lafler V Cooper* until 2012, after his initial writ was denied, and his case under review in thi court.

REASONS FOR GRANTING THE PETITION

A court abuse by definition abuses its discretion when it makes an error in law as here. Its clear there was noway peritioner could have challenged this issue in his initial application because Lafler V Cooper, 566 U.S 156, 132 S.Ct. 1376, had not been decided, also petitioner case was pending on federal review on other issues. The State Habeas Court recommended the application be dismissed, because Lafler V Cooper didn't apply. In Chadiz V United States, 568 U.S. 342, 133 S.Ct. 1103 (2013) it was stated that Lafler V Cooper, was simply a garden-variety of Stickland V Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984) which did not change any law, nor was it a new law. Lafler V Cooper came within the extreme narrow exception for a watershed rule of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceeding, because the rule was procedural, not substantive. The issue presented here is a reflection of another case decided by this court, see Suffle V Parks, 494 U.S. 484; which quoted Teague V Lane, 489 U.S. 288, 109 S.Ct. 1259, 108 L.Ed 2d 415 (1989).

DID THE STATE HABEAS COURT FINDINGS CONFLICT WITH ANOTHER STATE COURT DECISION INVOLVING THE SAME SITUATION ?

~~In~~ Ex parte Casey Tyrone Sledge, 391 S.W.3d 104 (Tex.Crim.App.2013) it was noted that, "if an applicant can invoke a legal basis for relief that was unavailable at the time of his initial post-conviction writ application, the applicant may overcome the section 4 statutory bar. Tex.Code Crim.Proc.art 11.07 §4(1)(2)". Applicant in this case had established that the legal basis was not recognized

nized by and could not have been formulated from a final decision of the United State Supreme Court, a court of Appeals of the United States, or a court of appellate jurisdiction of the state of Texas on or before the date of the application. Teague made it clear a case does not announce a new rule when it is merely an application of the principle that governed a prior decision of a different set of facts. 489 U.S., at 307, 109 S.Ct. 1060, 103 L.Ed.2d 334."

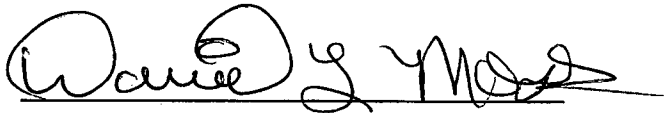
In this case the state court decision violate clearly established Federal law. This court previously rejected an argument advanced by the Solicitor General that the Sixth Amendment did not extend to advice about a plea offer because it did not impact the fairness of the trial, noting that "Where we merely apply Strickland in a way that correspond to an evolution in professional norm, we make no new law". Petitioner stated in his application for habeas relief in the state court that if not for counsel's advice, he would not have rejected the plea offer, also had counsel actually informed him of the 15-year offer he would not have turned it down because of the fact that he had prior offenses. The records show could admitted that he never told me about an offer of 30-years, and with the time the court gave petitioner to discuss it, this defense counsel; told him not to take it. Its clear that petitioner did not know about the plea offer, and would not have took time to discuss it if he was not going to consider it. It wasn't until the end of the trial that the complainant's mother, and the complainant told me that there had been an offer for 15-years, and for 25-years, which the prosecutor that was on the case at that time told them it was not accepted, but the fact is it was never relayed to petitioner.

Petitioner is asking this Honorable Court to consider the question of whether the state court decision a violation of their own law as governed by Texas Code of Criminal Procedual art. 11.07 Sect §4. Also was the decision "contrary to...clearly established Federal law", because the state court was confronted with facts that were materally indistinguishable from a relevant Supreme Court precedent but arrived at a different result. The factual issue presented here is also relevent to this court decision in Hill V lockhart, 474 U.S. 52, 59 (1985).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel G. Moss", written over a horizontal line.

Date: August 3, 2020

APPENDIX (A)

CARD FROM THE COURT OF CRIMINAL APPEALS
DISMISSING THE APPLICATION WITHOUT A WRITTEN ORDER