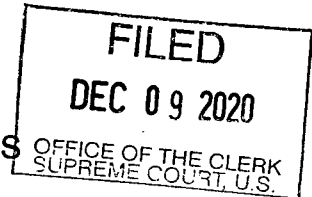


20-6711
No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



PAT DEE LEATHERMAN — PETITIONER
(Your Name)

vs.

Bobby LUMPKIN, DIRECTOR TOCT-CFO — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

PAT DEE LEATHERMAN

(Your Name)

McConnell Unit
3001 S. Emily Drive

(Address)

Beeville, Texas 78102

(City, State, Zip Code)

361-363-2300

(Phone Number)

QUESTION(S) PRESENTED

5th Amendment - [I can not be a witness against myself.] Why has the court of conviction and every court up to now allowed the use of the 911 call, made while the defendant's will was overtaken by his drunkenness, "Miller v. Fenton 494 U.S. 104, 110-12, 106 S.Ct. 445, 449-51 L.Ed. 2d 405, 411-12 (1985). The statement he made was clearly an "INVOLUNTARY STATEMENT," Higgins v. State, 924 S.W. 2d, 739. And violates the 5th Amendment by being used as evidence against him? The question of constitutionality is a principle concern here. Any use of an involuntary statement violates the defendant's due process. Why is this acceptable for the courts to continue turning a blind eye to this constitutional violation?

6th Amendment - The right to Adequate Effective Assistance of Counsel in every court has been violated by 3 different Attorneys, in 3 different phases of this case, with no Acknowledgment by any court or Judge. Attorney Brenda Vickers Failure to investigate key witnesses, and Failure to get an Expert Evaluation from a Forensic Pathologist on "State's Evidence," demonstrates a Failure to comply with Fiduciary duties of an Attorney, Prejudicial default, Attorney Michael K. Burns "Dropping and Abandoning" this case in a critical stage of the Appeals Process, Prejudicial this case. Court Appointed Attorney James R. Wilson (For one Testing) Failure to communicate, Ineffective Assistance of Counsel on all three Attorneys, violates 6th Amendment, a question of constitutionality applies to Effective Assistance of Counsel, why has no court or Judge not noticed this and addressed a Remedy for these violations?

A guilty Plea does not bar me, the defendant from my constitutional claims,
16-424 CLASS v. United States, 583 U.S. — (2018)

14th Amendment - A violation occurs when Prosecution withholds Exculpatory Evidence Favorable to the Defendant in the form of a phone call recording, and Judge Craig Tonson's Failure to initiate DNA + Blood Spatter Testing after Granting the motion on 8-14-2018. This not only violates the 14th Amendment, and BRADY, but is also an Act of Committing "obstruction of Justice". Why are these violations allowed to continue without anybody being held accountable? The Michael Morton Act was created to put a stop to the corruption in our Justice system. Why is it being ignored in this case? A copy of the DNA motion and a currently Filed writ of mandamus is appended.

The Question remains, why are we guaranteed these Constitutional Rights if NO COURT will honour them, or adhere to the Constitution of the United States of America? The constitutionality is in Question here and now! ?... et, al.

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:

NO. 19-11052 Pgt Leatherman v. Bobby Lumpkin, Director
U.S.D. C. NO. 4:19-CV-86

NO. 19-11052 Pgt Leatherman v. Lorie Davis, Director
TEXAS Department of Criminal Justice, Institutional
Division

RELATED CASES

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TABLE OF AUTHORITIES CITED

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CASES	PAGE NUMBER
<u>Ex parte Banks</u> , 580 S.W. 2d 348 (Tex. Crim. App. [Panel of 1979] Ref. Page 2 of 6 in Brief (9)(d), (9)(6)(ii))	
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<u>Ex parte Gaines</u> , 455 S.W. 2d 210, 211 (Tex. Crim. App. 1970) Ref. Page 2 of 6 in Brief	
<u>Higgins v. State</u> , 944 S.W. 2d, 739 Ref. Page (h)(7)(A), (J)(9)(b)	
<u>Sims v. Live Oak</u> , 970 F.2d 1575 (CA 6 1992) Ref. Page 2 of 6 in Brief (9)(6)(i), (h)(7)(B), (J)(9)(C)	
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<u>Mincey v. Arizona</u> , 437 U.S. 385, 98 S.Ct. 2408, 57 L.Ed. 2d 290 (1978) Ref. Page (h)(7)(A), (J)(9)(b)	
<u>Slack v. McDaniel</u> , 529 U.S. 473, 484 (2000) Ref. Page 5 of 6 in Brief (9)(6)(iii)	
<u>Stevens v. Ortiz</u> , 465 F.3d 1229, 1242 (10th Cir. 2006) Ref. Page (9)(6)(i), (h)(7)(A)(B)(C), (J)(9)(2), (b)	
<u>Strickland v. Washington</u> , 466 U.S. at 689 Ref. Page 2 of 6 in Brief, (J)(9)(2), (J)(9)(C), (9)(6)(i), (h)(7)(B), (h)(7)(C)	

STATUTES AND RULES see Attached Copy of Brief in support of motion for Reconsideration/motion for Rehearing en banc, Section C, 3

1st, 5th, 6th, 14th Amendment Constitutional Rights;

PENAL CODE § 2.01

Senate Bill No. 344 Section 7, Chapter 11, CODE OF CRIM. PROC. ART. 11, 073

TEXAS CODE OF CRIMINAL PROCEDURE Chapter 64

18 USC. § 3600 DNA Testing

Blood Spatter Testing.

Obstruction of Justice

Genuine Issue for Trial

28 USC § 2241 (C)(3), USCA §§ 2253 (C)(2), 2255

Michael Morton Act Effective January 1, 2014

OTHER Fed. R. App. P. Rule 10(4)(B)(2)

5th Cir. R. 35.2.5

5th Cir. R. 35.2.6

Fed. R. App. P. 35(2)

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 _____ 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 _____ 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.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 9-9-19.

☐ 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: 8-14-20, 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 _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment - To Petition the Government For a REDRESS OF GRIEVANCES

The Fifth Amendment - nor shall any Person be Subject For the Same Offense to be Twice Put in Jeopardy of Life or Limb; nor shall be Compelled in any Criminal case to be a Witness against himself; nor be deprived of Life, Liberty, or Property, without Due Process of Law.

The SIXTH Amendment - The Right to Effective Assistance of Counsel in every Court Proceeding

The Fourteenth Amendment - no state shall make or ENFORCE ANY Law which shall Abridge the Privileges or Immunities of Citizens of the United States; nor shall any state Deprive any Person of Life, Liberty, or Property without Due Process of Law; nor Deny to any Person within its Jurisdiction The Equal Protection of Law.

Each of these Constitutional Amendments have been Violated repeatedly in this case. Bringing up the question of Constitutionality of the United States Constitution, why doesn't it apply to me and this case?

STATEMENT OF THE CASE

PAT DEE LEATHERMAN - TEXAS PRISONER #0049162, moves for a Certificate of Appealability (COA) to Appeal denial of his 28 USC § 2254 Application challenging his guilty Plea conviction of murder. He contends that the district court erred by dismissing as time barred, and without conducting discovery or holding an evidentiary hearing (both denied in USDC), his claims that (1) his trial counsel rendered ineffective assistance by failing to investigate and subpoena favorable witnesses and failure to get an expert evaluation from a forensic expert on "State's Evidence," which prosecution [repeatedly denied her access to.] A lawyer who fails to adequately investigate, and introduce into evidence, records that demonstrate her client's factual innocence, or that raise sufficient doubt as to that question to undermine confidence in the verdict renders deficient performance. Attorney Brenda Vickers has a "duty" to retain services of a forensic expert. [counsel was ineffective because of her] Failure to investigate the case. Specifically, Leatherman contends that it was [counsel's] duty to obtain the services of a forensic expert to examine the "State's Evidence," Sims v. Livesay, 970 F.2d 1575 (CA 6 1992), Strickland v. Washington, 466 U.S. at 687, defendant has shown that counsel performed deficiently and defendant has demonstrated prejudice, "a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different." Buck v. Davis, 580 U.S. (2017).

"Appeals Attorney" Michael K. Burns - Dropped the Leatherman case 'Abandoning Leatherman' in [a critical stage of the Appeals process], in 2009 because of threats on his life, leaving Leatherman "STRANDED." Ineffective Assistance of Counsel. Pet. Standard: Ex parte Banks, 580 S.W.2d 348, 349 (Tex. Crim. App. Panel 09 1979); Ex parte Gaines, 455 S.W.2d 210, 211 (Tex. Crim. App. 1970); Ex parte Dietzman, 790 S.W.2d 305, 306-07 (Tex. Crim. App. Panel 09 1990); Ex parte Daigle, 848 S.W.2d 694, 692 (Tex. Crim. App. Panel 09 1993);

(Court Appointed Attorney For DNA Testing) James R. Wilson - Failure to communicate with client & ineffective assistance of counsel. Strickland v. Washington, 466 U.S. at 687.

(2) The state violated Brady v. Maryland, 373 U.S. 83 (1963), by withholding a recording of an exonerative phone call, and for not allowing DNA and blood splatter testing to be done in accordance to 18 USC § 3600 DNA testing violating procedure which "Requires" an inventory list be made, and given to the Government, the Petitioner, and the court, which once these tests are performed will prove defendant's innocence. 14th Amendment, Due Process Violation of Relevant Scientific Evidence. See Senate Bill No. 344.

(3) Defendant is Actually Innocent.

(4) The state violated defendant's 5th Amendment rights by using evidence against him, an audio recording of a 1911 call in which defendant's statement (was being a witness against himself) in violation of the 5th Amendment, [made while intoxicated] to the murder. Confession was made because "my will was overtaken by my drunkenness." Miller v. Fenton, 474 U.S. 104, 110-12, 106 S. Ct. 445, 449-51, 58 L. Ed. 2d 405, 411-12 (1985)

A guilty Plea does not bar me from my constitutional claims, Class v. United States, 583 U.S. (2018).

A COA may be issued only if the applicant "has made a substantial showing of the denial of a constitutional right." 28 USC § 2253(c)(2); See Slack v. McDaniel, 529 U.S. 473, 484 (2000). When a district court has denied a request for habeas relief on procedural grounds, the prisoner must show that jurist of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurist of reason would find it debatable whether the district court was correct in its procedural ruling. Slack, 529 U.S. at 484. Leatherman has made this necessary showing.

Accordingly, Leatherman's motions for COA, Appointment of Counsel, to compel the production of both test results and withheld evidence and for release pending appeal should be granted to avoid another fundamental miscarriage of justice.

REASONS FOR GRANTING THE PETITION

What Compelling reasons exist for the exercise of the court's discretionary jurisdiction, And to show you why the decision of the lower court may be erroneous, but the national importance of having the supreme court decide the question involved. The ways the lower court in my case was erroneous,

(C) A state court or United States court of Appeals has decided an important question of Federal Law that has not been, but should be, settled by this Court, or has decided an important Federal question in a way that conflicts with relevant decisions of this Court.

IN THE UNITED STATES DISTRICT COURT, FOR THE NORTHERN DISTRICT OF TEXAS, FORT WORTH DIVISION, STYLED Pat Dee Leatherman v. LORIE DAVIS, Director TDCJ-CID, CIVIL ACTION NO. 4:19-cv-086-0, Judge Reed O'Connor makes a statement on the 5th page of his Ruling that fails to adhere to the 14th Amendment (Due Process and Due Process of Law) Reference statement - Pet'r's Resp. 3 ECF No. 35, A habeas petitioner attempting to overcome the expiration of the statute of limitations by showing actual innocence is required to produce "new, reliable evidence - whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence" - sufficient to persuade the district court that "no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt," McQuiggin, 569 U.S. at 386 (quoting Schubert v. Delo, 513 U.S. 298, 329 (1995)). Although actual innocence, if proved, can overcome the statute of limitations.

overcome the statute of limitations.

Considering: A motion was Filed on August 8, 2018 for DNA + Blood Spatter Testing, however Judge Craig Tonson Approved of this motion and Appointed defendant Attorney James R. Wilson to represent him in these Proceedings. Judge Craig Tonson still has not Fulfilled his ministerial Duty of Ruling on this motion in Violation of the 14th Amendment. October 13, 2020 a Petition for a writ of mandamus has been Filed in the Second District Court of Appeals, in regards to this DNA + Blood Spatter motion that was Filed and Approved of, over 2 years ago. The District Attorneys Continue to withhold an Exculpatory Phone call Recording which reveals the Names of everyone involved in the murder of Tracy Leathersman in Violation of Brady, 14th Amendment, Due Process and Due Process of Law) and Allowed by this Justice to commit "Obstruction of Justice". These three Critical Pieces of Evidence are Favorable to the defendant, but are withheld From the Court's Verdicts and Expert Evaluation Violates defendant's Constitutional Rights. They will be a Colorable Showing of defendant's actual Innocence in Light of "New Evidence". Defendant Pat Dee Leathersman asks this Court to please consider these Facts of Constitutional Violations and allowing the District Attorneys to break the Laws committing obstruction of Justice. Why is Constitutionality not considered in this case?

Constitutional Claims. CLASS V. UNITED

2 guilty Plea does not bar me, the defendant, from my constitutional claims. CLASS v. United States, 583 U.S. — (2018) NO. 16-424

Why does the Michael Morton Act not apply to the District Attorneys in Parker County, Texas? They broke the Law, and should be held accountable for their actions of disgrace to that Public Office. Why is it acceptable to use the 911 call which is SELF-INCRIMINATING, violating the 5th Amendment? [I can not be a witness against myself] No one has ever proven every element of that call, in fact the DAs Denied Attorney Brenda Vickers access to "State's Evidence" Prohibiting an Expert Evaluation from a Forensic Pathologist, again in violation of the 14th Amendment, Due Process and Due Process of Law. This is breaking the Law! Without due process this conviction is illegal, Attorney Michael K. Burns dropping this case and "abandoning" defendant in a critical stage of the Appeals Process. This conviction can not stand. Reasons for Granting this Cert. I Petitioner Leatherman testify, certify, and verify am actually innocent of the charges of First Degree Murder that I am accused of, and should be granted Certiorari to verifiably prove this beyond reasonable doubt, through the withheld evidence, and the DNA + Blood Spatter evidence that is in the second court of Appeals now.

I PAT DEE LEATHERMAN, is in fact **CONCLUSION** Actually innocent wrongfully convicted, in custody in violation of the United States Constitution, or Laws, or Treaties of the United States Per 28 USC § 2241(c)(3). Relief sought; Set aside his conviction, dismiss his sentence and discharge him restoring his rights.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Pat Dee Leatherman

Date: December 9, 2020