

IN THE UNITED STATES SUPREME COURT
CASE NO: _____

Supreme Court, U.S.
FILED

JAN 05 2021

OFFICE OF THE CLERK

JULIAN GUTIERREZ, III,
PETITIONER,

Vs.

LORIE DAVIS, Director
Respondent.

20-6836

PETITION FOR WRIT OF CERTIORARI

From the Fifth Circuit Court of Appeals, No: 19-10743
USDC Northern District of Texas, No: 3:18-cv-1895

On behalf of:
Julian P. Gutierrez, III
TDCJ No. 2063107
Wynne Unit
810 FM 2821
Huntsville, TX 77349

ORIGINAL

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Petitioner received Effective Assistance of Counsel as guaranteed by the Sixth Amendment to the United States Constitution, viz.:
 - a. Whether trial counsel was ineffective for failing to visit the crime scene;
 - b. Whether trial counsel was ineffective for failing to conduct an independent investigation;
 - c. Whether trial counsel was ineffective for failing to move for a pre-trial in-court identification line-up;
 - d. Whether trial counsel was ineffective for failing to request a directed verdict/judgment of acquittal at the close of the State's evidence-in-chief
 - e. Whether trial counsel was ineffective for failing to request a New Trial based on non-identity of Petitioner;
 - f. Whether trial counsel was ineffective for failing to effectively cross-examine governmental witnesses;
 - g. Whether trial counsel was ineffective for failing to subpoena the crime scene investigator.
2. Whether the Petitioner received Effective of Assistance of Appellate Counsel, as guaranteed by the Sixth Amendment to the United States Constitution, viz.,
 - a. Whether the evidence was legally sufficient to support a conviction based on non-identity of Petitioner

PARTIES:

Defense/Petitioner

Julian Pesina Gutierrez, III, Petitioner

Phillip Linder, trial counsel; 3500 Maple Ave. Ste 400
Dallas, TX 75219

Tara Cunningham, appellate counsel; 325 N. St. Paul Street,
Ste. 2750
Dallas, TX 75201

Prosecution

Daniel Abrahamson, trial

Ken Paxton, Attorney General of Texas;

Jennifer Wissinger, Federal Habeas Criminal Appeals Division
Box 12548
Austin, TX 78711-2548

Court Proceedings

Honorable Jeanine Howard, 6th Judicial District, Dallas, TX

Fifth District of Texas Court of Appeals

Texas Court of Criminal Appeals

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CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS
OF THE OPINIONS AND ORDERS

STATE V. GUTIERREZ, III, F-1460200-X (4/20/2016)
Gutierrez, III v. State, 05-16-00755-CR (Tex. App. - Dallas 2017)
Gutierrez, III v. State, [PDR] PD-0611-17 (Tex. Crim. App. 2017)
Gutierrez, III v. State, (habeas) 87,466-02 (Tex. Crim. App.)
Gutierrez, III v. Davis - Director, 3:18-cv-1895-G-BN (USDC)
Gutierrez, III v. Davis - Director, 19-10743 (5th Cir.)

BASIS FOR JURISDICTION

- (i) Petitioner would state the Fifth Circuit Court of Appeals entered its affirmance of the USDC on March 17, 2020.
- (ii) Petitioner timely filed a Petition for En Banc Hearing or Rehearing on Nov. 25, 2020; a denial/refusal was issued on Dec. 1, 2020.
- (iii) In this particular case, Rule 12.5 is inapplicable.
- (iv) Petitioner relies upon Rule 10(a) and (c) of the Supreme Court Rules.
- (v) Service has been provided on the Attorney General for the State of Texas, Ms. Jennifer Wissinger, Criminal Division, in accordance with Rule 29(5)(b).

CONSTITUTIONAL QUESTION

The constitutional question, as listed on page 2 of this document is incorporated, along with the applicable citations of official and unofficial reports, and need not be recited here, to keep this matter brief and concise.

STATEMENT OF THE CASE

The questions as presented supra, accurately gives a concise statement of the case, i.e., whether counsel's performance was deficient.

- (1) The federal question herein sought was initially raised in the pre-trial stage, throughout trial (first stage), and continued onto the State habeas stage and federal habeas stage, with no variance or deviation from the argument. at each level, the Court denied Petitioner's proofs under the guise of ubiquitous catagorization of 'conclusionary'. Petitioner directs this Honorable United States Supreme Court to the Opinon(s) and Reports of the lower courts, as so appendixed.

REASONS RELIED UPON TO SUPPORT GRANTING OF WRIT

Petitioner fully relies upon Rule 10 (a), (b), and (c) as his reasons for supporting the granting of the Writ.

It is so prayed.

Respectfully submitted,

Julian Gutierrez, III

A handwritten signature in cursive script, appearing to read 'Julian Gutierrez, III', with a stylized flourish at the end.