20-6981 ORIGINAL

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Phillip J. Walter, Jr — PETITIONER
(Your Name)

vs.

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

Phillip J. Walter TDCJ#02099080
(Your Name)

899 FM 632
(Address)

Kenedy, Tx 78119
(City, State, Zip Code)

None
(Phone Number)

QUESTION(S) PRESENTED

1) Is an Appellate Court duty bound to ensure that an appellant—Represented or Pro Se—is afforded a full, fair, & meaningful appeal, to inlcude: Initial briefing, Rehearing &/or En-Banc Reconsideration.
   - Suggested Answer: Within the bounds of the law, an Appellate Judge must fulfill this duty, until their jurisdiction expires.
2) When do the protections guranteed by the 5th Admendment (Due Process), on Direct Appeal, end: After Initial briefings, or after Rehearing &/or En-Banc Reconsideration.
   - Suggested Answer: Until the Mandate is issued, or after Rehearing or En-Banc.
3) If, on Motion for Rehearing, a, now Pro Se, litigant/appellant raises issues his appellate Counsel should've raised, should the Appellate Court be mandated to hear & consider these issues.
   - Suggested Answer: To ensure the appellant is afforded a full & meaningful appeal, the Appellate Court should be mandated to hear these issues.
4) With the issue of deficient Appellate procedures known & proven (By this court), if raised on Appeal, should the Appellate Court resolve this issue by reseting applicable time limits & order a Motion for New Trial be had, or pass on the issue altogether.
   - Suggested Answer: Because Jusitice demands meaningful procedures, the Appellate Court should unquestioningly reset the appellate timelimits.
5) If on Motion for Rehearing of a direct Appeal, a now Pro Se appellant raises the issue of his Appellate Counsel's deficient proformance denying him a meaninful Appeal, should the Appellate Court be mandated to hear this issue, to order brefing, & consider it.
   - Suggested Answer: To avoid the appearence of the denial of Due Process, the Court should order briefings on the issue & consider it on the merits.
6) If it is clear that a defendant cannot obtain a Fair Trial in the original Venue, has the Trial Court abused his discretion by not changing the Venue on their own motion.
   - Suggested Answer: Yes, the Trial Court abused it's discretion.
7) What is the, or should the, standard be for a Trial Court to decide that a fair Trial cannot be had in a given venue.
   - Suggested Answer: The size of the city/county, the coverage given, & the opinions of the empaneled jurists should be considered, & the prejudicial value weighed.

Questions Cont'd

8) If, after a panel member—potential juror—is selected, said juror realizes that they made an error & answered a voir dire question improperly/wrongfully—it would've disqualified them for bias or imparitiality—yet they are forced to serve anyway, has the defendant been denied a fair & impartial trial among his peers.

- Suggested answer: Yes, because said juror, with or without questioning, should've been disqaulified.

9) Was it Ineffective of counsel &/or an abuse of the Trial Court's discretion, to allow multiple potential panel members, whom self admit bias/prejudices & impartialities, to serve as jurors in a criminal proceding.

- Suggested answer: Yes, because, once admitted, there can be no question as to whether said panel members would be fair & impartial.

10) Has the 6th Admendment Right to the Effective Assistance of counsel, on Direct Appeal, been realized/afforded when the procedural scheme prevents Appellate counsel from being effective &/or from presenting meritful issues.

- Suggested Answer: No, because if the Appellate Counsel is unable to represent his client in a meaningful way, the appointment is a farse.

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

Trial Court: 42nd District Court, Callahan County, Tx, Cause # 7138,

Appellate Court: 11th District, Eastland Tx, Cause # 11-16-00338-CR

Court of Criminal Appeals: Petition for Discretionary Review, Cause # PD-0130-20

TABLE OF CONTENTS

INDEX TO APPENDICES

Index of Authorities

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 C 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 11th District Court of Appeals court 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.

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 05/06/2020. A copy of that decision appears at Appendix C.

[✓] A timely petition for rehearing was thereafter denied on the following date: 08/19/2020, and a copy of the order denying rehearing appears at Appendix D.

[✓] An extension of time to file the petition for a writ of certiorari was granted to and including 01/16/2020 (date) on 03/19/2020 (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

6Th Admendment

1) The Effective Assistance of Trial Counsel (Strickland v. Washington, 104 S.ct 2052 (1984)
2) The Effective Assistance of Appellate Counsel (Evitts v. Lucey, 105 S.ct 830 (1985)

5Th Admendment

3) Right to a Fair Trial (Irvin v. Dowd, 81 S.ct 1639 (1961)
4) Right to a meaningful Direct Appeal (U.S v. Pajooh, 143 F.3d 203 (C.A.5(Tex) 1998)

Statutory Provisions

5) Vernons Texas Code, CCP, Art 31.01 ("Venue change...on the court's motion")—See Appendix for full citation.

STATEMENT OF THE CASE

Though not presented in question format—presented as issues/complaints—the questions presented, in the instant petition, were presented & considered/denied by the lower State Court's in the following manners:

- Questions 1,2,3,10: Presented in a motion for rehearing, at ground 3, on Direct Appeal. Court Affirmed.
  > Presented in a Petition for Discretionary Review (PDR) & Rehearing of the same, at grounds: "3,4, &5" & "4 & 5". respectively. Court denied review.
- Question 4: Presented in the same manner of questions "1,2 & 3, & also at ground 4 of Admendment of motion for rehearing of Direct Appeal. Court Affirmed.
- Question 5: Presented in a motion for rehearing, at ground 3, on Direct Appeal. Court Affirmed.
- Questions 6 & 7: Presented in motion for rehearing, at ground 2, on Direct Appeal. Court Affirmed.
  > Presented in a PDR, at ground 2. Court denied review.
- Questions 8 & 9: Presented in a motion for rehearing, at ground 1, on Direct Appeal.
  > Presented in a PDR, **at ground 1.** Court denied review.

Pursuant to Sup.Crt.Rule 14(g)(i), the questions presented herein, are properly before the Court.

Statement

The instant "Statement of The Case", shall focus primarily on the questions presented, though, per Appendix A "Opinion of 11th District Court of Appeals" pp. 2-5, further—though contested—"Background Facts", or information, may be located.

PJW, alleges, that, during his Voir Dire jury selection, more than sufficient evidence was presented, by his own counsel & multiple members of the panel, that, "Evidence of inflamitory, prejudicial Pre-Trial publicity that so saturate[d] the community as to render it virtually impossible a fair trial by an impartial jury drawn from the community" U.S. v. Fastow, 292 F.Supp.2d 914 (S.D.Tex 2003), was present. However, though PJW's counsel clearly knew of such prejudices (See RR2/172:15-18;93-94:18-20,22;137-138:12-14,16-18,21) he still refused to even attempt a venue change, However, though clearly authorized by CCP.Art. 31.01 (See APP. F), to order a change of venue on it's own motion, the Trial Court failed to do as such, though the evidence was clear & undisputable. Brimage v. State, 918 S.W. 2d 466 (Tex.Crim.App 1996). Therefore, though sufficient evidence that implicated another party having committed the murder was presented (Reasonable doubt), retribution was needed & PJW was made the sacrificial lamb. Emotions ran high & he was denied a fair trial.

Statement Cont'd

Further, during, & shortly thereafter, said Voir Dire, panel members: Poole & Jared Loper, informed PJW's Trial Counsel, the State, & the Trial Court, that they were decidedly impartial (See RR2/94: 1-3, 6-7; 148:13) because the victim was a police officer (Mr. Poole) & that, because he knew the family & that because the family member was in the courtroom , which made him feel totally uncomfortable, he felt he couldn't possibly be fair & impartial (See RR2/164: 1-3, 7-8) (Mr. Loper), however, both were selected & forced—against Mr. Loper's wishes—to serve on the jury.

Though PJW was appointed counsel (His same Trial Counsel) on Direct Appeal, this attorney, Jeffrey A. Propst, failed to raise multiple valid, substantial issues:

1) Trial Counsel's failure to challenge for cause multiple potential jurors,
2) Trial Counsel's failure to move for a venue change,
3) The Trial Court's failure to move for a venue change on it's own motion,
4) The unresonably deficient Appellate procedures, &
5) The unresaonably deficient Motion for a New Trial procedures.

to list but a few.

Instead, said counsel raised but a single, meritless issue: Improper law of parties instructions. (See App. A. pp.5)

However, having been affirmed by the Appellate Court, PJW was allowed to obtain his Appellate records & to conduct his own legal research & investigation, thereby, he found substantial evidence that he'd been denied a fair trial. The failure of PJW's Appellate Counsel to discover & to raise such grounds/issues, effectively denied him the opportunity to have them heard by the court in the first instance; initial briefs.

However, because the Appellate Court's have the full discretion to hear new issues/grounds in a motion for rehearing (See Bomilla v. State, 933 S.W. 2d 538 (App.1.Dist 1995), PJW took the initiative of filing said motion, raising these issues; before his Appellate time limits expired. Even as such, though properly before the court, said court failed to order rebriefing, thus, it cannot be concluded that the court consdidered said issues. (See App. G).

Subsequently, having been denied said review, PJW filed for a Petition for Discretionary Review, contesting said denial & those issues, only, to be denied such a review. (See. App. C & D).

The instant petition is therefore being filed.

REASONS FOR GRANTING THE PETITION

In Evitts v. Lucey, 105 S.ct 830 (1985), this court concluded & confirmed that an Appellant, on direct appeal of his conviction, was entitled to the Effective Assistance of counsel, a Federally guaranteed 6th Admendment protected right. However, unlike U.S v. Cronic, 104 S.ct 2039, 2044 (1984), where the court found that, "If no actual assistance for the accused's defense is provided, then the constitutional guarantee has been violated. To hold otherwise "Could convert the appointment of counsel into a sham & nothing more than a formal compliance with the constitutions requirement that an accused be given the assistance of counsel. The constitutions gurantee of assistance of counsel [cannot] be [satisfied] by mere formal appointment." Avery v. Alabama, 308 U.S. 444, 46, 60 S.ct 321, 22", this court has not decided whether or not an Appellant's right to the effective assistance of counsel, on Direct appeal, has been realized, if the procedural scheme of the court prevents such effectiveness. See Martinez v. Ryan, 566 U.S. 1, 132 S.Ct 1309, 17-18 (2012), "explaining that the right to the effective assistance of counsel at trial is a "bedrock principle in our justice system" without which a person "cannot be assured a fair trial""(citations ommitted). Surely, the court would agree the same can be said about the direct appeal.

The petitioner shows the courts as follows, "For poor people, the Texas scheme for addressing claims of ineffective assistance of counsel is broken." Griffith v. State, 507 S.W. 3d 720 (Tex.Crim.App.2016), "Legal scholars know this, & the Supreme Court has essentially acknowledged this. Instead of addressing this problem, some people will pivot & rationalize that Texas is doing better than [they] used to do providing counsel for indigent defendants. ...The point is that indigent defendants in Texas ordinarily do not have a viable procedural avenue for challenging the ineffectiveness of their trial attorneys. This is a problem that is unique to the poor in Texas because affluent people, who can afford to hire habeas counsel, have an adequate procedural avenue for challenging the ineffectiveness of trial counsel through post conviction applications. A poor person, of course, like a rich person, can file his habeas application...but he will almost certainly fail, because, as a pro se litigant, he

is unlikely versed in the pleading & proof requirements for obtaining habeas relief. See Ex parte Garcia, 486 S.W.3d 565 (Tex.Crim.App 2016)(Mem. op.)(Alcala, J., dissenting); see also Martinez v. Ryan, 566 U.S. 1, 132 S.Ct 1309, 17-18 (2012)(observing that,"[w]ithout the help of an adequate attorney, a prisoner will have difficulities vindicating a substantial ineffective assistance of trial counsel claim"...)...Yet, this Court continues to do nothing to fix this broken process. This Court happily sings that everything is alright, which, of course, it is, for non-indigent habeas applicants who can afford to hire counsel....under the current construction of the Texas Rules of Appellate Procedure, the thirty day deadline found in Rule 21.4 is a strict deadline, & a trial court lacks jurisdicition to consider any motion-for-new-trial claim not raised prior to that deadline. See Tex.R.App.P.21.4. ...A person convicted of a crime has a 6th Admendment right to effective assistance of counsel during the motion for new trial & appellate process. Cooks v. State, 240 S.W. 3d 906, 911 (Tex.Crim.App. 2007); Evitts Supra. But there is no guranteed right to appointed counsel at the post-conviction habeas stage for non-death-penalty cases. Thus, under the current interprètation of the 6th Admendment, the only time that a criminal defendant is guranteed counsel & has an opportunity to litigate a claim of ineffective assistance of trial counsel is during the motion for new trial & appellate process....On a broader level, this case... highlight[s] the catch-22 most indigent defendants face. Regardless of whether a litigant challenges ineffective assistance of counsel on direct appeal, on the one hand, or on habeas, on the other hand, the procedural scheme he faces is designed for him to fail, unless, of course, he can afford to hire counsel to represent him." Griffth Supra.

The Petitioner wishes to point out that, the majority of the foregoing, was a verbatim citation of Griffith Supra. The reason for such a lengthy reference was to allow this court to understand that justices of the Court of Criminal Appeals, as well as this court, have both blasted the harmful procedural scheme set forth in the appellate rules in Texas. See Martinez v. Ryam, 566 U.S. 1, 132 S.Ct 1309, 1317 (2012; Trevino v. Thaler, 133 S.Ct 1911, (2013 U.S. Lexis 3980(2013)) "The structure & design of the Texas system, in actual operat-

ion, however, makes it virtually impossible for an ineffective assistance claim to be presentd on direct review. See Robinson v. State, 16 S.W.3d 808, 10-11 (Tex.Crim.App. 2000)" Further, this court also concluded that, "Texas Courts ineffect have directed defendants to raise claims of ineffective assistance of trial counsel on collateral, rather than on direct review." Trevino Supra at 1919; thus making it clear that the Texas Court's of Appeals, generally, will not consider issues of ineffective assistance of trial counsel.

The instant case affords this court the opportunity to formally & finally address & resolve this deficient procedures issue. The instant case further allows this Court to decide whether an appeal with deficient procedures designed to prevent an appellant's appellate counsel from being effevtive satisfies the appellant's 6th Admendment right to counsel, or if such procedures would have denied that appellant such right & what the proper remedy should be.

Though not expressed in depth herein (briefing of these issues would have to be ordered) the issues expressed to be prevented from being raised were:

1) Trial Counsel's failure to move for a New Trial,

2) Trial Counsel's failure to move for a Bill of Exceptions,

3) Trial Counsel's failure to request the Trial Court to narrow the scope of certain admitted evidence,

4) Trial Counsel's failure to throughly investigate,

5) Trial Counsel's unreasonble deficient & unknowledgable examination/crossexamination of witnesses,&

6) Trial counsel's statements effectively erroded the defendant's presumption of innocence right.

PJW , Contends, that, inregards to the above issue, that by the Court of Criminal Appeal's refusal to consider the issue of deficient Appellate procedures denying an Appellant the effective assistance of Appellate Counsel Guranteed by the 6th Admendment, that they have, therefore, effectively, "decided an important Federal question in a way that confl-

icts with relevant decisions of this court." Sup.Crt.R.10(c). See Evitts Supra; by allowing the practice to continue, on it's watch, unabatted.

Next, this Court has found, repreatedly, that there is a, "Fundamental idea that [No] man's life, [Liberty] or property be forfeited as criminal punishment for violation of the law until there had been a charge fairly made & fairly tried in a public tribunial free of [prejudice, Passion & Excitement] & Tyrannical power." Chambers v. Florida, 309 U.S. 227, 636 (1940), & that, "Every Defendant in a criminal case is [Guaranteed] a fair trial by an [Impartial] jury by both the Texas Constitution & by the United States Constitution." Lewis v. State, 654 S.W.2d 483 (Tex.App-Tyler 1983) Further, it can be found that, "There are some Constitutional Rights so basic to a [Fair Trial] that their infraction can [Never] be treated as [Harmless] error." Connecticut v. Johnson, 460 U.S 73.74, 103 S.Ct 969 (1983); which, PJW, contends, to be, "Tried in a public tribunial free of [Prejudice, Passion [&] Excitement]" Chambers Supra, is clearly one of those Rights basic to a fair trial. Johnson Supra. Except , as will be shown, the foregoing was the very last thing wanted by the judical members charged with ensuring such Right is secured.

However, in the instant case, two potential jurors, Poole & Jared Loper, both expressed strong reservations & inabilities to being able to preside fairly & without impartiality. (See RR2/94:1-3, 6-7; 164:1-3, 7-8). However, inrespect to Mr. Loper, instead of dismissing him once his clear impartiality was made known (See RR3/57:17-18 "I do [NOT] believe I can [Continue] & be [Fair]"), the Court decided it would be better to question his integrity, wherein, Mr. Loper, in defense of said integrity, conceded, "I don't want to take anymore of your time. I appologize." See RR3/64:2-3; not even remotely close to a resolution to be fair & impartial. See Vaughn v. State, 833 S.W.2d 180, 84 (Tex.App.-Dallas 1992) "Bias exist as a matter of law when a juror [Admits] he is [Biased] for or against a defendant. Anderson v. State, 633 S.W.2d 851, 54 (Tex.Crim.App. 1982)

The foregoing issue raises the question whether the Trial Court would be considered to have abused Their discretion by deciding to go on to question Mr. Loper, after he expressed

his inability to be fair & impartial (Not raised/presented herein since said issue was not raised, specifically, in a lower state court—See.Yee v. Escondido, 112 S.Ct 1522, 31, 503 U.S 519, 33 (1992) "In reviewing judgements of State Courts under the Jurisdictional Grant of 28 U.S.C § 1257, the Court has, with [Very Rare Exceptions] refused to consider petitioner's claims that were not raised, or addressed, below. Illinois v. Gate, 462 U.S 213, 18-20, 103 S.Ct 2317, 21-23 (1983)), though Question number 8 "Has the Defendant been denied a fair & impartial trial among his peers." is easily & clearly appropriate, thus, before the Court.

However, the foregoing issue was only further aggravated where considerably more than a Scintilla's worth of undisputed evidence was presented by, not only PJW's own Trial Counsel, but by multiple potential jurors of the Court, as well.

Substantial evidence of the foregoing maybe found firmly in the Court's records at the following location:

> RR/172:15-18,

> RR2/93-94:18-20, 22; 1-3, 6-7,

> RR2/94-95:22-25; 13,

> RR2/95-96:25; 1-6,

> RR2/97-98:16-20, 22-25; 1-2, 21-22,

> RR2/99-100:12-13, 21-25; 1-5, 5-16;

> RR2/101:6-7, 23-24,

> RR2/102:9-10, 12-14, 16-17,

> RR2/137-138:12-14, 16-18; 21-6, 10, &

> RR2/132-136:21-25; 1-5, 6-18; 14-23; 1-2, 14-21.

However, though it has been clearly established that, "When the legislature modified the language of Art. 560, in enacting Art 31.01 (See App. F), it's purpose was evidently to [Require] a Court, once satisfied that a [Fair Trial] cannot be had, to...change [the] Venue." Brimage v. State, 918 S.W.2d 466 (Tex.Crim.App 1996), which has repeatedly been re-

inforced by other Texas Court's of Appeals: Walter v. State, 209 S.W.3d 722 (Tex.App.-Texarkana 2006); Bath v. State, 951 S.W.2d 11 (Tex.App.-Corpus Christi 1997); Aranda v. State, 738 S.W.2d 702 (Tex.Crim.App 1987); Cook v. State, 667 S.W.2d 520 (Tex.Crim.App 1984, the Trial Court, in the instant cause, failed to utilize this authority &, instead, allowed the cause to proceed. Allowing a clearly emotional jury to be empaneled, thus denying PJW his Right to a fair & impartial Trial.

Now, however, to date, no Court, to include the Texas Court of Criminal Appeals, nor this Court, has thus far addressed &/or considered the issue of said Trial Court's failure to utilize said discretion, once sufficient evidence was before it, that such a venue change was needed. See V.T.C.A.CCP.Art.31.01.

PJW brings to the Court's attention that he acknowledged that this particular issue possibly needed to be decided by the Court of Criminal Appeals, in his motion for Rehearing on Direct Appeal, for which both the Appellate Court & Highest State court refused to consider the issue, leaving only this Court to decide what the proper, minimal, standard of the Trial Court's discretion must be & how it should be applied when deciding whether or not to order a change of Vebue, on his own motion.

PJW, concedes, that Art. 31.01, is, infact, a State law, however, this law was enacted to protect Federally Guaranteed Constitutional Rights to a fair trial—5th & 6th 7 14th Admendments—therefore, where the State Courts have considered the proper way to enforce the proper use of these powers, the only Court left to consider such a question is this Court.

The final matters to be considered pertain to the Appellate Court's discretion to hear new issues raised for the first time on a motion for Rehearing. PJW, contends, it can be assumed that where the Appellate Court failed to order a rebreifing on newly presented issues raised on motion for rehearing &, instead simply denied the motion, on it's face (See App. G), that said Court did not fully, if at all, consider these new issues on their merits.

PJW, concedes, that, generally, "the Sole purpose of a motion for rehearing is to prov-

ide the Court an opportunity to correct any errors on issues already presented."Wentworth v. Meyer, 839 S.W.2d 766, 78 (Tex.1992) "& that, a motion for rehearing does not [On It's Face] afford a party an opportunity to raise new issues" Pfifer v. Appraisal District, 45 S.W.3d 159, 66 (Tex.App.-Tyler 2000), however, the instant cause highlights an Appellant not willing to simply sit around & wait, to allow his Appellate Counsel to totally deny him the effective assistance he's Garuannted &, instead, emphasizes an Appellant doing his absolute Due Diligence in protecting his Right to a fair Appeal of convictions that simply should not be. Due Diligence enough to step up & to raise these matters even before his Appellate time limits expired. Due Diligence that was/is fully supported by the Law.

First, see Bonilla v. State, 933 S.W.2d 538 (App 1. Dist 1995), "Whether [A] new grounnd raised for [the] [First Time] on [Motion for Rehearing] is [A] decision left to the sound Discretion of [the] Court of Appeals." Therefore, it can no-longer be argued, "The Court pf Appeals [Has] Discretion whether to consider [New] matters raised in...[Motion for Rehearing]" Perkins v. State, 905 S.W.2d 452 (App. 8 Dist 1995).

To reaffirm the foregoing, the Texas Court of Criminal Appeals has determined that, if a party raises a new ground for the first time on a motion for rehearing, the decision to consider the matter is, "left to the sound discretion of the Appellate Court." Rochell v. State, 256 S.W.3d 315, 29-30 (2008 Tex.App.Lexis 4073). The Court further held that, "there are times when "as justice requires" or "in the interests of justice" an Appellate Court may consider a motion for rehearing to decide an issue not presented in the original briefs." Hughes v. State, 878 S.W.2d 142, 51 (TEX.CRIM.App 1990)(Citing Boyle v. State, 820 S.W.2d 122, 41 (Tex.Crim.App 1991).

Wherefore, PJW, asks, this Court; is it not [In The Interests of Justice] that an Appellant's Direct Appeal Right & his Right to the Effecftive Assistance of Appellate Counsel be protected? Are these not matters that should fall well within the considerations of "In The Interests of Justice"ibid.

Wherefore, PJW presents each of the listed questions, with his reasons for this Court

to grant a full review of the issues presented herein.

Prayer

I pray this Court, Grants a full review of the issues presented herein.

I Pray this Court, if it orders briefing, also orders Counsel to be appointed to PJW.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

PHILLIP J WALTER JR TDCJ NO 02099080

Date: JANUARY 11, 2021

Phillip J Walter Jr